



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1362 OF 2007**

BETWEEN:

H.L.J. KAMBIYA..... PLAINTIFF

-and-

FINANCE BANK OF MALAWI (in Liquidation).....DEFENDANT

CORAM: Hon. Justice M.L. Kamwambe
Mr Dzonzi of counsel for the Applicant
Mr Mpaka of Counsel for the Respondent
Mrs Phombeya, Court Clerk

RULING

Kamwambe J

This matter came for hearing the originating summons on the 13th day of October, 2008. Before hearing the substantive matter this court questioned whether it has jurisdiction to hear the matter as it was commercial in nature and the amount involved is K2,000,000.00. I adjourned the matter to the 16th October, 2008 so that counsel address me on the issue adequately.

Counsel agreed that the matter is commercial in nature. Plaintiff's counsel argued that this matter cannot now be transferred to the Commercial Court by virtue of Order 22 rule 5 of the High Court (Commercial Division) Rules, 2007 which were gazetted on the 20th April 2007. Order 22 rule 5 reads as follows:-

- (1) A commercial matter qualifying for transfer in
- (2) terms of this Order, may be transferred within six (6) months from the date of the commencement of these rules.
- (3) After expiry of the six (6) months period, any commercial matter pending in the High Court which could have been transferred to the Commercial Division in terms of this rule but remaining untransferred shall cease to be eligible for transfer to the Commercial Divisions.

A close look at the rule tells one that such commercial cases eligible for transfer to the Commercial Division are those that were already in the High Court at the commencement of the Rules. Otherwise it is unfathomable how time can start running against a matter or case which was not in the High Court Registry before the Rules were operational.

It is worth noting that the Commercial Division became operational on 14th May, 2007. Common sense and fairness would demand that time starts running from the date the Commercial Division became operational.

However, this action was lodged with the High Court on 12th June, 2007 well after the Rules and Commercial Court Division came into operation. This action cannot therefore competently derive protection or shelter under Order 20 rule 5 (2). This is the more reason that counsel for the Defendant said that the only problem is whether in June 2007 the Commercial Division was not operational and that if it was then wrong to have brought the matter to the High Court. Counsel requested that the court do ascertain the true position. And this I did.

Now that we know the true position of the matter and that it should have commenced in the Commercial Division of the High Court, I make a tentative finding that this court has no

jurisdiction to attend to this matter. Consequently, I need not even proceed to deal with the Defendant's request to adjourn the matter as counsel had just received instructions and was not ready to proceed. It is so decided.

Made in Chambers this 17th day of October 2008 Chichiri, Blantyre.

M.L. Kamwambe
JUDGE