

Augusten Hermes Gwizima & Another v Lodzani Hapana Fatchi & Another

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M.A Tembo
Cause Number:	Civil Cause Number 143 of 2015
Date of Judgment:	July 19, 2021
Bar:	Chipeta, Counsel for the Claimants Mickeus, Counsel for the 2nd Defendant

ORDER

1. This is this Court's order on the 2nd defendants' application to strike out the claimants' case due to the claimants' failure to comply with the direction of this Court made on 12th March, 2021, that the claimants file and serve a summons within 10 days.

2. The application was made under Order 14 rule 5 of the Courts (High Court) (Civil Procedure) Rules, 2017. The 2nd defendant filed a sworn statement in support of his application. The claimants opposed the application.

3. This present matter was commenced by the claimants in 2015 by originating summons under the old rules of civil procedure. The Judge who was previously seized of this matter found in April, 2018, that the originating summons procedure was not appropriate considering the contentious nature of the claimants' claim herein, namely, that the 1st defendant fraudulently transferred the claimants' property to the 2nd defendant who purchased the same after the claimants had put the property

as collateral for a loan advanced by the 1st defendant to one of the claimants. The Judge ordered that the matter stand as if commenced by writ of summons and that the affidavits filed on the originating summons should stand as statements of case and that the parties were at liberty to seek further directions from the Court.