

# Chinyama Taumbe Phiri v Martina Kachere

## Civil Cause No. 282 of 2016

### Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Kenyatta Nyirenda
<b>Cause Number:</b>	Civil Cause No. 282 of 2016
<b>Date of Judgment:</b>	May 14, 2018
<b>Bar:</b>	Messrs. Gondwe and Theu, Counsel for the Claimant Mr. Banda, Counsel for the Defendant

The Claimant sought an order to dispense with mediation and for further directions in a claim for a declaration of a resulting trust over a property. The proceedings were initiated in July 2016 with a specially endorsed writ of summons and an ex-parte application for an interlocutory injunction. An injunction was granted, but the Claimant was required to file an inter-partes summons for its continuation within seven days. While the inter-partes summons was filed, no further steps were taken to prosecute the matter. The Claimant's subsequent application to dispense with mediation, filed nearly 20 months later, asserted that the parties had already exchanged and filed statements of their

cases, a claim the Court found to be factually false.

The Court had to decide whether to grant the Claimant's application for directions and to dispense with mediation. The Court found that there had been no action in the case for over 12 months, which constituted an abuse of court process and was an intolerable delay. Relying on the principle that litigation must come to an end, the Court held that the prolonged and inexcusable delay risked a fair trial and prejudiced the Defendant. The Court also expressed strong disapproval of the falsehood contained in the Claimant's sworn statement, emphasising the legal practitioner's duty of candour to the court.

The Court dismissed the proceedings by striking them out under Order 12, r. 56 of the Courts (High Court) (Civil Procedure) Rules, and held that the Claimant's remedy for the loss of their case lay against their legal practitioner for professional negligence. The Court ordered the Registrar to take notice of the matter under Order 12, r. 58 of the CPR