

Chiyembekezo Missi t/a Good Hope General Dealers v George Macheke and Rachael Fatchi

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause Number 181 of 2025
Date of Judgment:	November 06, 2025
Bar:	Mr. Semphani, counsel for the Claimant Mr. Bentry Nyondo, counsel for the 1st Defendant Mr. Nkhunda, counsel for the 2nd Defendant

The 1st Defendant sought an order from the High Court, Commercial Division, to suspend the enforcement of a default judgment entered against him on 15th September 2025, pending the determination of a substantive application to set aside that default judgment. The default judgment was entered because the 1st Defendant had failed to enter a response or file a defence within the time prescribed by the rules of procedure. The Court considered three main arguments advanced by the 1st Defendant in support of the stay: first, that the default judgment was irregular; second, that the failure to file a defence was

counsel's inadvertence; and third, that the 1st Defendant possessed a defence on the merits.

On the alleged irregularity, the Court held that the default judgment was **not irregular**. The 1st Defendant had argued that the award of collection costs on the interest awarded was contrary to law . The Court reasoned that since the interest, when assessed, translates into an amount of money that will have been collected, collection costs are applicable to that collected interest . Regarding counsel's fault, the Court reiterated its firm position from previous cases that a client is not insulated from the consequences of their legal practitioner's negligence . However, the Court was ultimately convinced by the 1st Defendant's assertion that he had a **defence on the merits**. Specifically, he denied being a party to the maize sale agreement and denied receiving the maize, raising an issue about the exact parties to the contract that justice required to be resolved. Consequently, the application for a stay was **allowed** . The Court ordered that enforcement of the default judgment be suspended pending the determination of the 1st Defendant's application to set it aside. Ancillary to the order, the 1st Defendant was condemned to pay the Claimant's costs incurred up until this point, and these costs must be paid before the contemplated application to set aside the default judgment is determined.