

Dan Dice v Loius Kambuwa and Others Land

Cause Number 92 of 2020

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Land Cause Number 92 of 2020
Date of Judgment:	December 03, 2024
Bar:	For the Claimant: Mr. Patrick Kalandu For the Defendants: Ms. Audrey Tolani

The Defendants, having had their defence struck out for failing to comply with an Order for Directions, applied to the High Court, Principal Registry, to have the defence restored. The Claimant opposed the application, arguing that while the Courts (High Court) (Civil Procedure) Rules 2017 (CPR) provides for the restoration of a defence under other orders, it is intentionally silent on the procedure for restoring a defence struck out under Order 14 rule 5, which was the applicable rule in this instance. The Defendants' new counsel contended that their former counsel's unhelpfulness led to the striking out and that, in the interest of natural justice, they should be heard.

The main legal issue before the Court was whether it possessed the jurisdiction to restore a defence struck out for non-compliance with an Order for Directions under Order 14 rule 5 of the CPR. The Court, relying on the precedent set in *Energem Petroleum Limited v General Alliance Insurance Company Limited*, held that once a defence is struck out under a rule that does not provide for its restoration, the Court becomes *functus officio*. The Court determined that the right to be heard, while fundamental, could not grant the Court jurisdiction it did not possess under the law. Accordingly, the application was dismissed. The Court further advised that the Defendants' only recourse was to either appeal or seek to have the order set aside by consent. The application was dismissed with costs awarded to the Claimant.