

Gerald Kazembe t/a Madzi Distributors v Southern Bottlers Limited & Ecobank Malawi Limited

Summary

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| Court: | High Court of Malawi |
| Registry: | Commercial Division |
| Bench: | Honorable Justice K.T Manda |
| Cause Number: | Commercial Case No. 15 of 2020 |
| Date of Judgment: | July 17, 2024 |
| Bar: | Mr. Maliwa, counsel for the claimant Mr. Mpaka, counsel for the 1st defendant, Mr. Machika, counsel for the 2nd defendant |

The Claimant applied to the High Court of Malawi, Commercial Division, seeking an order to strike out the First Defendant's defence and counterclaim due to their failure to comply with a mandatory Order of Directions. The Second Defendant joined and supported this application. The directions, issued at a scheduling conference, required the First Defendant to file its witness statements and skeleton arguments within 21 days of being served with the Claimant's documents. Service was effected on 10 April 2024, making the deadline 21 May

2024. By the time of the application hearing, the First Defendant had not filed the requisite processes.

The First Defendant opposed the application, arguing the Claimant's application was premature as they had not filed a Trial Bundle under Order 16 or set down the matter for a pre-trial conference under Order 14. The First Defendant also sought to excuse its non-compliance by citing challenges with changes in company staff , arguing that the Court has power to extend time under section 47 of the General Interpretation Act , and asserting that the delay was not long enough to warrant striking out. The Court found the First Defendant's submissions "cavalier" and an attempt to mislead the court. The Court decisively ruled that non-compliance with court directions is mandatory and attracts sanctions, and that section 47 of the General Interpretation Act applies only to time limits set by written law, not by court directions. Citing Supreme Court precedent, the Court noted that a party seeking pardon for non-adherence must show good cause and that the interests of justice would be served. The Court found the First Defendant's excuses, including change of staff, to be insufficient, noting that the matter had been pending since 2020.

The application was granted. The Court held that the First Defendant failed to show good cause for its non-compliance and that justice would be better served by allowing the consequences of the lawyer's negligence to fall upon their heads, in line with established jurisprudence. The Court ordered that the First Defendant's defence be struck out and its counterclaim dismissed with costs awarded to both the Claimant and the Second Defendant.