

Lazarous Kanthomba v. Speedy's Limited

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Kenyatta Nyirenda
Cause Number:	HC/PR Civil Cause 2854 of 2006
Date of Judgment:	February 01, 2016
Bar:	Mr. Chipembere, Counsel for the Plaintiff Mr. Sauti, Counsel for the Defendant

Head Notes

Civil Procedure - Dismissal of action - Failure to comply with court directions - Plaintiff's action dismissed for failure to file written submissions.

Civil Procedure - Reinstatement of action - Conditions for restoration to the cause list - Plaintiff's action to be restored upon filing submissions within seven days.

Summary

The Plaintiff commenced an action in the High Court, Principal Registry, seeking either rescission of a motor vehicle sale contract or damages in the alternative. The dispute arose from the sale of an Isuzu Dropside 4 Tonner vehicle. Following the hearing of the case, the Court ordered both parties to file final written submissions within 14 days of

2nd June 2015. While the Defendant complied with this direction and filed their submissions on 24th June 2015, the Plaintiff failed to do so for over seven months.

Consequently, the Court dismissed the Plaintiff's action due to the failure to comply with its directions. However, the Court provided the Plaintiff with an opportunity to have the case restored to the cause list on the condition that their counsel files the written submissions within seven days of the order. In the event that the Plaintiff complies, the Defendant is at liberty to file submissions in reply within seven days of being served.

Legislation Construed

N/A

Judgment

ORDER

The Plaintiff commenced the present action claiming against the Defendant rescission of a contract of sale or damages in lieu thereof and various heads of damages in respect of a sale transaction of a motor vehicle Isuzu Dropside 4 Tonner.

Hearing of the case took place on 23rd February 2015 and 2nd June 2015 respectively. At the end of the hearing, Counsel Chipembere and Counsel Sauti, following

consultations and agreement, made a joint application to be given 14 days from 2nd June 2015 within which they were to prepare and file with the Court their respective final written submissions. The Court granted Counsel their application.

The Defendant filed its final written submissions with the Court on 24th June 2015. On the other hand, more than 7 months have elapsed without the Plaintiff complying with my order of 2nd June, 2015. In the premises, the Plaintiff's action is dismissed for failure to comply with directions.

Counsel for the Plaintiff is at liberty to have the action restored to the cause list on condition that he files with the Court the Plaintiff's written submissions within 7 days hereof. In the event that the Plaintiff's written submissions are filed within the stipulated period, Counsel for the Defendant is at liberty to file, if he so wishes, the Defendants' written submissions in reply within 7 days after being served with the Plaintiff's final written submissions.

Pronounced in Chambers this 1st day of February 2016 at Blantyre in the Republic of Malawi.