

Mphembedzu v Nico General Insurance Company Limited, Civil Cause Number 822 of 2007

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M.L. Kamwambe
Cause Number:	Civil Cause Number 822 of 2007
Date of Judgment:	July 23, 2008
Bar:	Mr. Kalua, for the Appellant Ms Kaukonde, for the Respondent

The Plaintiff appealed to the High Court, Principal Registry, against a decision of the Assistant Registrar to set aside a default judgment. The original action was commenced by the Plaintiff on 4 April 2007, and a default judgment was entered on 29 May 2007 after the Defendant failed to file a notice of intention to defend. Damages were subsequently assessed on 18 October 2007, and execution was levied on the Defendant in November 2007, with the judgment sum already paid to the Plaintiff.

The Defendant's application to set aside the judgment was made approximately 10 months after the judgment was obtained, 5 months after damages were assessed, and 4 months after execution had been levied. The Court had to determine whether the Assistant Registrar was correct in setting aside the judgment despite the inordinate delay on the part of the Defendant. The Court, sitting as a rehearing, noted that while the underlying principle is to allow a judgment on the merits, an application to set aside must be made promptly and within a reasonable time. The Court found the 10-month delay to be inordinate and inexcusable, particularly given that the Plaintiff had already been paid the judgment sum. The Court also dismissed the Defendant's explanation for the delay, noting that even a meritorious defence would not justify the prejudice caused to the Plaintiff.

The appeal was allowed. The Court held that the delay was inordinate and inexcusable, and that the Plaintiff would be greatly prejudiced if the judgment were set aside. Consequently, the Court dismissed the Defendant's application to set aside the judgment and ordered the Defendant to pay the costs of the appeal.