



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 350 OF 2015**

**BETWEEN:**

**VIRGINIA NDALAMA ..... PLAINTIFF**

**-AND-**

**MALAWI HOUSING CORPORATION ..... DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**  
Messrs. Chidothe and Lackibu, of Counsel, for the Plaintiff  
Mrs. Annie Mpasu, Court Clerk

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**ORDER**

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*Kenyatta Nyirenda, J.*

The present proceedings were commenced on 31<sup>st</sup> August 2015 by originating summons. The Plaintiff seeks determination of the following questions:

- “1. *Whether the Plaintiff is entitled to continue staying in the Defendant’s house number N3/0008 situated in Malasyia Residential area (Ndirande Township) in the City of Blantyre.*
2. *Whether the Defendant is entitled to seal and/or evict the Plaintiff from the house number N3/0008 situated in Malasyia Residential area (Ndirande Township) in the City of Blantyre.*
3. *Whether the Plaintiff can pay the debt herein by instalments.”*

The Plaintiff also filed with the Court on the same day, that is, 31<sup>st</sup> August 2015, an ex-parte summons for an order of interlocutory injunction restraining the Defendant from sealing and/or evicting the Plaintiff from house number N3/0008 situated in Malasyia Residential area (Ndirande Township) in the City of Blantyre pending the determination of the matter or further of the Court.



The ex-parte summons came before Kalembera J who granted an order of interlocutory injunction subject to the Plaintiff filing an inter-partes summons for continuation of the same within 14 days from 31<sup>st</sup> August 2015.

On 15<sup>th</sup> September 2015, the Defendant filed with the Court a summons to vacate the order of injunction that was granted herein. After two adjournments at the instance of the Plaintiff, hearing of the two summons was eventually scheduled for 2<sup>nd</sup> May 2017. On the set hearing date, the Plaintiff sought another adjournment, giving the reason that the parties were about to have the matter settled out of Court. Mbvundula J issued the following Order:

*"Unless the Plaintiff files the consent order referred to by 5<sup>th</sup> May 2017, the Plaintiff's action will stand dismissed with no liberty to restore the same. Special note is taken that this is not the first adjournment on this matter."*

The Unless Order was not complied with. Actually, the Plaintiff has taken no other step in these proceedings since 2<sup>nd</sup> May 2017. Order 12, r.56, of the Court (High Court) (Civil Procedure) Rules [Hereinafter referred to as "CPR"] comes into play where there is such non-action. The provision is couched in the following terms:

*"The Court may strike out a proceeding without notice, if there has been no step taken in the proceedings for 12 months."*

In the present proceedings, more than 13 months have elapsed without the Claimant taking steps to prosecute this case. This is clearly an abuse of court process. I have no option but to strike out the proceedings herein. It is so ordered.

In light of the foregoing and by reason thereof, the Registrar's attention is drawn to Order 12, r.58, of CPR.

Pronounced in Chambers this 14<sup>th</sup> day of June 2018 at Blantyre in the Republic of Malawi.



**Kenyatta Nyirenda**

**JUDGE**