



**IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CAUSE NO 330 OF 2020**

BETWEEN

Chikondano Khonje.....CLAIMANT

AND

Electricity Supply Corporation of Malawi..... DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. L. Mbulo, of counsel for the Claimant

Mrs. K. Dossi, of counsel for the defendant

Miss T. Chiulika, Official Interpreter/ Court Clerk

RULING ON SETTING ASIDE A DEFAULT JUDGMENT

This is an application by the Defendants to set aside the default judgment obtained by the Claimant on the 22nd of April, 2021. The Defendants had duly supported the application by a sworn statement in which it was deponed that, the delay was because their engineers were still carrying out investigation of the matter before a response could be prepared. Regarding defence on merit, they said there was no electricity malfunction in the area where the Claimant is alleging that there was an electric fault which caused a damage. They further averred that there were two other houses which shared the same electricity line with the Claimant which did not experience any electricity abnormalities. They submitted through their legal counsel that during trial they would be establishing through evidence that the alleged electricity incident never actually happened hence their prayer that the default judgment be set aside.

On the part of the Claimant, counsel Mbulo submitted that the defendant's delay in bringing the present application was inordinate as service of all documents were duly done upon them some months ago. It was also his submission that the defendant's defence on merit was a sham in that it was a mere general denial.

On my part, having considered the submissions by both parties, I am of the view that despite the delay being a bit inordinate, the defendant has duly demonstrated defence on merit. The issues being raised in opposition to the claim seem to be contentious requiring full hearing before the judge.

Of course, according to **Evans -vs- Bertram** (1937) AC 473, 480 the principle is that unless and until the court has entered judgment on merit or consent, it can be set aside. I therefore set it aside.

I know it is not the Claimant's fault; all processes were properly served upon the Defendant by the Claimant. As such, it would be unfair for the court to set aside the default judgment without allowing him to recover the costs incurred so far.

Nevertheless, I allow the application. The default judgment is set aside on the following conditions;

1. Defendant to pay costs to the Claimant incurred so far, on the basis of indemnification within 21 days from today. Costs to be agreed between the parties.
2. In the event that the Defendant fails to pay costs to the Claimant within the prescribed time of 21 days, the *status quo* shall be observed; the existing Default Judgment shall be automatically restored and the Claimant shall be at liberty to enforce it without further notice.
3. The Defendant should properly file their defence within 14 days from today.
4. The matter shall proceed to mediation before the honourable judge, and both parties have 21 days together to prepare, file and serve their respective mediation bundles.

It is so ordered.

Made in chambers today the 5th of September, 2021.

Brian Sambo
Assistant Registrar

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical line extending downwards, positioned over the typed name and title.