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High Court
Lilongwe



IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

LAND CASE NUMBER 76 OF 2019

BETWEEN

THE ADMINISTRATOR OF THE ESTATE OF THE ESTATE OF ALICE LOBO
JAILOSI (DECEASED).....CLAIMANT

AND

RONALD ARTHUR WARD.....FIRST DEFENDANT

AND

LAND REGISTRAR.....SECOND DEFENDANT

CORAM: Hon Justice Jack N'riva, Judge

Mr P Maliwa for the claimant

Mr M Msisha for the first defendant

Ms D Nkangala, Court Clerk

RULING

The claimant commenced this action against the defendants seeking an order that the transfer of land from the deceased to the first defendant was done fraudulently.

He made an application for an interlocutory order for

1. Default judgment against the second defendant
2. Summary judgment against the first defendant

The claimant sought default judgment on the ground that the second defendant did not file a defence. He also sought the summary judgment because, he felt the first defendant's defence did not address the allegation of fraud. The argument was that the failure to address the allegation of fraud was 'very telling of want of defence on the part of the first defendant'.

When the application was set down for hearing on the issue of summary judgment, the first defendant complained that the notice given to them was short. The Court adjourned the application to an unspecified date for the first defendant to respond to the application and the claimant, if he wished, to reply to the response.

The claimant respondent to the application for summary judgment.

Having looked at the response to the application, my judgment is that the dispute cannot be resolved by the way of summary judgment. The defendant has raised responses to the assertions by the claimant. It would not be justifiable to take the step of hearing the application for summary judgment: order 1 rule 5(5) (h) of the Courts (High Court) (Civil Procedure) Rules, 2017. The matter needs full trial.

Since there are two defendants, entering default judgment against the second defendant would effectively mean entering judgment against the two defendants. It would effectively mean disposing off the dispute when the first defendant is desirous of defending the claim. As such, I also dismiss the application for default judgment.

I notice that the claimant has been writing the office of the Registrar demanding judgment in the matter. In the light of what I have said, the demand was premature. The matter was not yet at a point where one would demand a judgment.

In the light of all these circumstances, and in order to expedite the resolution of the dispute, I exercise my discretion and order that the matter should be exempted from mediation. I make this direction under order 13 rule 1(2)(d) of Courts (High Court) (Civil Procedure) Rules, 2017.

The claimant should take steps to ensure that the matter is brought before another Judge for hearing.

The claimant should take necessary steps to have the matter set in motion before the other Judge.

MADE the 23rd day of February, 2021

A handwritten signature in black ink, appearing to read 'J N'RIVA', written in a cursive style.

J N'RIVA

JUDGE