



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**REVENUE DIVISION**

**MISCELLANEOUS APPLICATION NO. 82 OF 2019**

**BETWEEN**

**ENTYRE LIMITED ..... CLAIMANT**

**AND**

**THE COMMISSIONER GENERAL OF  
THE MALAWI REVENUE AUTHORITY ..... DEFENDANT**

**CORAM: HON. JUSTICE R. MBVUNDULA**

Fraser, Counsel for the Claimant

Kambuwa, Counsel for the Defendant

Chimang'anga, Official Interpreter

**ORDER**

The claimant obtained, *ex parte*, an interlocutory order of injunction against the defendant on 5<sup>th</sup> July 2019. The application related to a dispute regarding taxes and penalties in respect of which the defendant appointed several of the claimant's debtors as agents for purposes of collecting taxes due to the defendant. The application was made ostensibly to allow the claimant to pursue a statutory appeal to the defendant against the defendant's order appointing the agents. In making the application the claimant specifically undertook to take up the appeal within ten days. It was, consequently, an express condition of the order of injunction that the claimant should file the appeal within the ten days.

Following the granting of the order the defendant, on 31<sup>st</sup> July 2019, filed an application to vacate the order of injunction. The application was heard on 25<sup>th</sup>

November 2019. Save for both parties' counsel adopting the contents of the documents they filed in support of their respective clients' cases, the parties did not delve into arguing the merits and demerits of the case. It was however common ground that the claimant had since settled the principal amount of the taxes due leaving out penalties.

Counsel for the defendant went further to point out, with counsel for the claimant conceding, that to-date the claimant had not yet filed the statutory appeal subject of the order of injunction. Counsel for the defendant asked this court to vacate the injunction on the basis of the claimant's failure to comply, emphasizing that whilst the order required the appeal to be filed within ten days of the order it was now close to one hundred and forty days after the making of the order.

Counsel for the claimant sought to justify the failure to comply with the order on a breakdown in communication between counsel and the claimant's officers.

I am of the view that the reasons advanced for the delay do not avail the claimant. Notwithstanding any difficulties obtaining between counsel and client, it was not open for the claimant to do nothing about the clear express condition upon which the order was granted. The period which has elapsed since the order, compared to the period granted for compliance, is clearly inordinate. I am therefore inclined grant the defendant's prayer to vacate injunction for non-compliance with the express condition upon which it was granted. The order is accordingly hereby vacated with costs for the defendant.

Made in chambers at Blantyre this 29<sup>th</sup> day of November 2019.

  
R Mbvundula  
**JUDGE**