



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL CAUSE NO. 389 OF 2020**

BETWEEN

EXPLOITS UNIVERSITY CLAIMANT

AND

LI GUOJUN 1ST DEFENDANT

DR. BENJAMIN BENSAM SAMBIRI 2ND DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Claimant, Absent and unrepresented
1st Defendant, absent and unrepresented
2nd Defendant, absent and unrepresented
Mrs. Alinafe Mtenje, Court Clerk

ORDER

Kenyatta Nyirenda, J.

1. This case was commenced on 18th May 2020. The Claimant asserts that he is the rightful owner of land known as Chitsime 10/6/19 situated at Area 38 in Lilongwe District. The 1st Defendant also claims to be the rightful owner of the land in question.

2. Scheduling Conference took place on 14th June 2024 and the Order of Directions on the Conduct of the Trial provided, among other things, that:

“3. *Witnesses*

(a) *The Claimant intends to call two witnesses, namely, Mr. Desmond Bikoko and Mr. Julio Rudofe Pondani.*

(b) *The 1st Defendant intends to call three witnesses, namely, Mr. Li Guojun, Mr. Joab Chimalizeni and Mr. Malijani, Commissioner for Lands.*

4. ***Witness statements***

The Claimant to file with the Court, and serve on the Defendants, witness statements and skeleton arguments within 14 days hereof.

Each Defendant to file with the Court, and serve on the other parties, witness statements and skeleton arguments within 14 days of being served by the Claimant.

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7. ***Trial Bundle***

A paginated Trial Bundle shall be agreed by the parties and lodged by the Claimant with the Court within 30 days hereof

8. ***Trial***

Trial shall take place on 21st August 2024 at 9 o'clock in the forenoon before a single judge sitting alone."

3. On 19th August 2024, the 1st Defendant filed with the Court his Skeleton Arguments at Trial. The directions given by the Court regarding witness statements and trial bundle were not complied with by the parties. As a result, trial failed to take place on 21st August 2024. The case was adjourned to 24th October 2024. A Paginated Trial Bundle was filed with the Court on 18th October 2024

4. On 24th October 2024, Counsel Mphote sought an adjournment on the ground that one of the Claimant's witness, Mr. Julio Rudofe Pondani, had undergone surgery on 2nd October 2024 and he was required to be on bed rest for 6 weeks. He also informed the Court that the Claimant planned to file a supplementary witness statement. Counsel Chiume supported the prayer for adjournment since the 1st Defendant also wished to file a witness statement from the Land Registrar and to amend the 1st Defendant's List of Documents. The application for adjournment was granted and the parties were given 14 days within which to file the new witness statements and 21 days within which to file a Trial Bundle containing the new documents. The case was adjourned to 18th December 2024.

5. On 6th November 2024, the 1st Defendant filed with the Court the supplementary witness statement of the 1st Defendant and the 1st Defendant's Supplementary List of Documents.

6. Come the date of trial on 18th December 2024, Counsel Mndolo informed the Court that the Claimant's witness, Mr. Julio Rudofe Pondani, was still unwell and

he prayed for an adjournment. The Court adjourned the case to 29th January 2025 at 9 o'clock in the forenoon.

7. When the case was called for hearing today at 9:30 o'clock in the forenoon, neither the parties nor their respective legal practitioners were present. Mrs. Mtenje, the Court Clerk, stated that she got a call from Counsel Mphote that the Claimant's witness, Mr. Julio Rudofe Pondani, was still unwell. He was, therefore, seeking an adjournment.

8. The Court is very much surprised that Counsel Mphote seeks to apply for an adjournment by way of a phone call. It could be that Counsel Mphote is not aware of how an application for an adjournment has to be done. For his benefit and all those legal practitioners who think they can obtain an adjournment by simply making a phone call, it is important that I restate some of the critical points to remember with regard to applications for adjournments.

9. Firstly, as reducing delays is one of the major focus of the Court, the Court wants its business to go ahead. As such a party seeking an adjournment must have a genuine reason for his or her application. In the present case, there is no evidence adduced before the Court in support of the allegation by Counsel Mphote that the Claimant's witness, Mr. Julio Rudofe Pondani, was still unwell. Further, as will be noted from the Order of Directions on the Conduct of the Trial, Mr. Julio Rudofe Pondani is not the only witness for the Claimant. In this connection, the duty was on the Counsel Mphote to explain to the Court why the evidence of Mr. Desmond Bikoko could not be given before that of Mr. Julio Rudofe Pondani. Clearly, this duty has been breached.

10. Secondly, there is a duty on a party who intends to apply for an adjournment to notify other parties involved as soon as he or she is aware that he or she will be applying for an adjournment. The early notification allows the Court to use the time allocated to the case to run another case. This is one of the factors that the Court will consider in exercising its discretion as to whether to adjourn or not. In the case under consideration, I am not persuaded that Counsel Mphote only came to know on the set trial date of 29th January 2025 that Mr. Julio Rudofe Pondani was still unwell. He ought to have checked this well before 29th January 2025.

11. Thirdly, a party seeking an adjournment has to appear, personally or otherwise, on the set hearing date to formally make the application for the adjournment. If Counsel Mphote was tied up, he ought to have briefed another legal counsel to appear before the Court to formally seek an adjournment. This was not done.

12. Fourthly, and perhaps more importantly, the decision to grant an adjournment is discretionary. The concerns of the party seeking an adjournment are not the be all and end all of the application. The Court is not confined to regarding the interests of the party making the application. It is also entitled to regard the interests of justice which may well be a different matter.

13. Fifthly, a party requesting an adjournment must have a backup plan in case the application fails. He or she must be prepared to run the case as he or she cannot guarantee that the request for adjournment will be granted by the Court. Needless to say, Counsel Mphote paid no attention to this requirement.

14. I think I have said sufficient to show that the purported application for an adjournment is incompetent. In this regard, the Court would have proceeded to hear the claim by the Claimant but for the fact that both the Claimant and his legal practitioners are not here to prosecute the claim. In the circumstances, I have no option but to dismiss claim with costs. It is so ordered.

15. In conclusion, it is always important to remember that adjournments should never be taken lightly. Adjournments have the potential to cause disruption to court sittings, inconvenience to witnesses and, also as a result of the passage of time, cause problems for a witness's memory. In essence, adjournments drain court resources.

Pronounced in Court this 29th day of January 2025 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE