



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS APPLICATION NUMBER 96 OF 2020

**BETWEEN:**

**CHIBUKU PRODUCTS LIMITED**

**CLAIMANT**

**AND**

**PROPHET MESHIACH DESILVA Trading as Christian**

**Gathering of All Nations-CGOAN**

**DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO**

Minjale, Counsel for the Claimant  
Msuku, Counsel for the Defendant  
Mankhambera, Official Court Interpreter

**ORDER**

1. This is the order of this Court on the claimant's application for repossession of land and re-entry. The application is taken out under Order 12 rules 7, 8 and 14 of the Courts (High Court) (Civil Procedure) Rules. The application is supported by a sworn statement made on behalf of the claimant. The defendant opposes the application and similarly filed a sworn statement. Both parties filed arguments.
2. The claimant is the leasehold owner of a piece of land that it had allowed the defendant to use without consideration in Chilobwe, Blantyre since 2016. The



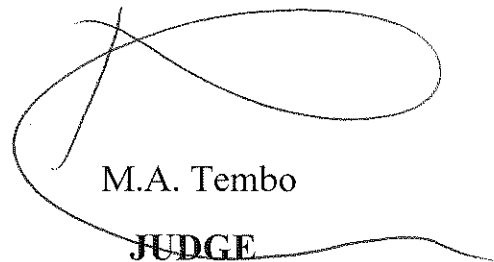
claimant indicates that the usage of the land was indicated to be for religious purposes. In November, 2019, the claimant requested the defendant to vacate the said land within a month due to usage of the land for commercial purposes that went beyond the religious usage. The defendant sought an extension of the notice on several occasions. And the final notice to vacate indicated that the defendant vacates by December, 2020. The defendant has not vacated the leasehold property. This necessitated the claimant's action seeking possession of its land and the instant application.

3. The defendant agrees that he was allowed to use the land in question herein for religious purposes without any consideration on his part. He however denies that he is using the premises for non-religious purposes. He asserted that he in fact opened a piggery and hires out part of the premises to raise funds to support the religious programs run at the property.
4. This Court observed that the defendant's correspondence to the claimant mainly sought adequate time to relocate which the defendant indicated to be December, 2020. That was agreed to by the claimant as per paragraph 20 and 21 of the claimant's sworn statement.
5. It is therefore surprising, as contended by the defendant, that the claimant still made the instant application before the time agreed for the defendant to vacate the premises herein.
6. This Court wishes to observe that, as correctly submitted by the defendant, this application is really an abuse of the Court process in the circumstances. An owner of premises cannot give a notice to vacate and then seek summary possession before expiry of that notice period. As correctly submitted by the defendant, this Court will stop any abuse of its process by striking out process that is an abuse of the court process. See *Zindawa v Randere* 15 MLR 493.
7. Considering that the defendant gave a licence for the defendant to remain on the premises herein until December, 2020 the application herein is indeed an abuse of court process and it is accordingly dismissed with costs.
8. The defendant raised a number of other issues that merit comment by this Court. The claimant observed that the claimant did not commence these proceedings by summons as required by Order 5 rule 1 Courts (High Court) (Civil) Rules. Contrary to this assertion, there is a summons filed by the claimant herein. It is not clear whether that was never served on the defendant.
9. In fact, initially, the claimant sought to proceed without notice and without a summons. The claimant intended to proceed under Order 12 rules 7, 8 and 14 of the Courts (High Court) (Civil Procedure) Rules. This Court declined that

application and directed the filing of a summons to precede any application with notice for possession of the land herein. That is why we have an application with notice preceded by a summons.

10. So, as far as the current matter is concerned, there is a summons. The mode of commencement of proceedings in the present matter therefore accords with the Rules.
11. The defendant then observed that instant application is irregularly taken out under Order 12 Rules 7, 8 and 14 of the Courts (High Court) (Civil Procedure) Rules given that the said Rules are meant to apply on an application for default judgment on a claim for recovery of land. That is an apt observation. The Order under which the present application herein was taken out is one that provides for an application for a default judgment on a claim for recovery of land.
12. The present application is not for a default judgment. It is irregularly taken out. And it cannot be saved under the Rules in the circumstances. If anything, the claimant should have actually proceeded on an application for summary judgment which requires the claimant to indicate that the defendant has no arguable defence to the claim upon examination of the defence served. See Order 12 rule 23 Courts (High Court) (Civil Procedure) Rules. As it is, even if the claimant sought a summary judgment, it appears the defendant has a strong defence in the form of the licence to stay on the property until December, 2020. The application would be dismissed for the foregoing reason as well.

Made in chambers at Blantyre this 18<sup>th</sup> November 2020



M.A. Tembo  
**JUDGE**