

**IN THE HIGH COURT OF MALAWI**  
**LILONGWE DISTRICT REGISTRY**  
**CIVIL CAUSE NO. 103 OF 2004**

**BETWEEN**

MEDICAL CONSULTANTS AFRICA LTD .....PLAINTIFF

AND

GLOBE CORPORATION BV .....DEFENDANT

CORAM : HON. CHOMBO, J.

**RULING**

The plaintiff, by its application of 7<sup>th</sup> December, 2004 is requesting the court to review its decision and order of 9<sup>th</sup> November, 2004.

The court had made an order for contempt of court against the defendant in its absence.

The plaintiff had applied for leave for committal proceedings against the defendant for contempt of court on order made by Justice Chinangwa on 19<sup>th</sup> March 2004. The order was restraining the

defendant by itself, its servants or agents from delivering medical equipment to Thyolo and Chiladzulu hospital. It became apparent that between 5<sup>th</sup> July 2004 and a day or so before 25<sup>th</sup> October, 2004 that the defendant was actually in breach of the said order of injunction. The circumstances of the breach came to the notice of the plaintiff upon attending proceedings by the defendant to discharge the injunction order made in favour of the plaintiff. The court refused to injunction and ruling thereof was merely written and copies of the judgment left for the parties to collect from court. Before plaintiff's counsel could collect the copy of the said ruling he applied for leave for committal proceedings. When the application came before court the application for leave for committal proceedings was dismissed by the court and the defendant was condemned to pay USA\$1500 in penalties for contempt.

The plaintiff now, by its application is requesting court to review its decision of 9<sup>th</sup> November, 2004 condemning the container in its absence and asking the court to allow the application for leave for committal proceedings to allow the defendant to show cause why it should not committed to prison or otherwise.

The plaintiff's application is based on O.52 r2 which provides that no container may be condemned in his absence where his life is at stake.

It is surprising that the plaintiff insists on fighting for the rights of the defendant to ensure that the defendant is given an opportunity to be heard before being condemned for contempt of court.

The case of Attorney General V Khan on Civil cause No. 1401 of 1993 (unreported) the court stated that where:-

*“... The liberty of the individual is at stake all necessary procedural requirements {must be} met”*

In these proceedings the court did not make an order that infringes on the liberty of any individual but only made an order for the payment of a fine into court. Further it is the view of this court that contempt of court is a matter of evidence and where evidential proof to the effect that contempt has been committed the court need not go any further. As stated in the case of Administrator General v Khan Civil case No. 1401 of 1993 Mtegha J, as he then was stated that :

*“Contempt of court is a very serious offence. If a party to proceedings does not comply with a court order, the very foundation, the very authority of the court is undermined.”*

The Plaintiff brought to the attention of the court the issue of the contempt which occurred between 5<sup>th</sup> July 2004 to somewhere before

25<sup>th</sup> October 2004 the day the injunction was vacated. Lackstones Criminal Practice, 1<sup>st</sup> Edition at 591 under paragraph B14.60 states as follows:-

*"In practice therefore, 'criminal contempt is dealt with summarily, either by the court acting of its own motion, as it will usually do in respect of the court) or by a mere formal process in which an application for committal is made to the Divisional Court of the Queen's Bench Division under the Rules of the Supreme Court 1965 and 52 (B14.63).*

The jurisdiction of the court allows the court where proof of contempt is submitted to act on its own motion. The court acted upon the application made by the plaintiff. The court does not therefore find any need for the review of the order made purely on the grounds that the defendant has been condemned without being heard. The defendant in its own right can appeal against the order made by the court, should it feel aggrieved with the said order of the court. The application to review court's order is therefore dismissed.

Made in Chambers this 24<sup>th</sup> December, 2004.

Chombo  
**JUDGE**