

Alinafe Banda & Another v Jericho Chimoto Banda

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice William Yakuwawa Msiska
Cause Number:	Civil Review Cause No. 170 of 2021 (Being Civil Cause Number 170 of 2018 in the Senior Resident Magistrate's Court sitting at Lilongwe)
Date of Judgment:	November 15, 2021
Bar:	None None

The High Court, Lilongwe District Registry, received a matter by way of reference from the Senior Resident Magistrate's Court sitting at Lilongwe for review of a default judgment, pursuant to its supervisory and revisionary powers under section 26 of the Courts Act. The Plaintiffs had commenced proceedings by way of Default Summons in the subordinate court, claiming possession of land, usufruct rights, damages for malicious damage to property, and costs of the action. The Defendant was duly served with the summons but allegedly refused

to sign for acknowledgment. Subsequently, Counsel for the Plaintiffs filed for, and the subordinate court inadvertently issued, a default judgment on 4 July 2018.

Upon later reflection, the subordinate court noted that it had wrongly issued the default judgment, leading to the referral for review. The principal question for the Court was whether the subordinate court correctly entered a default judgment given the nature of the claim.

The default judgment entered by the subordinate court was set aside. The Court held that, in the subordinate courts, Order X rule 4 of the Subordinate Court Rules dictates that default judgments may only be entered where the claim is for an **ascertained amount of money**, and not otherwise. As the Claimants' suit was for possession of land, usufruct rights, and unquantified damages, it was not a claim for a specific monetary amount and therefore did not warrant a default judgment under the rule. The Court ordered that the Senior Resident Magistrate's Court sitting at Lilongwe was directed to hear the parties on the matter.