

Augusten Hermes Gwizima & Another v Lodzani Hapana Fatchi & Another

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M.A Tembo
Cause Number:	Civil Cause Number 143 of 2015
Date of Judgment:	July 19, 2021
Bar:	Chipeta, Counsel for the Claimants Mickeus, Counsel for the 2nd Defendant

The Second Defendant applied to the High Court, Principal Registry, to strike out the Claimants' case due to their failure to comply with a court direction. The matter was commenced by the Claimants in 2015 via an originating summons. The claim alleged that the First Defendant had fraudulently transferred the Claimants' property, which had been put up as collateral for a loan, to the Second Defendant, who then purchased it. A Judge previously seized of the matter, finding the procedure inappropriate for the contentious nature of the claim, ordered in April 2018 that the matter should stand as if commenced by a writ of summons. Subsequently, on 12th March 2021, the present Court directed

the Claimants to redo their statement of case and file a summons within 10 days. The Claimants failed to comply with this direction, which led to the striking out application by the Second Defendant. The Claimants opposed the application, citing issues with payment of legal fees as the reason for the non-compliance.

The principal issue before the Court was whether the Claimants' case against the Second Defendant should be struck out for serious and prolonged non-compliance with a clear court order, considering the overriding objective of the rules.

The application was allowed, and the claim was **dismissed** as against the Second Defendant. Applying the three-tier approach developed in *Denton v TH White Ltd*, the Court found that the breach was **serious** because the Claimants failed to file the required documents for several months in a matter ongoing since 2015. The Court deemed the stated reason for default—ability to pay legal fees—**unconvincing**, as counsel had remained on the record and was aware of the direction. Considering all the circumstances, including the need for efficient litigation and enforcing compliance, the Court held that the Claimants' failure unduly prolonged the matter, unjustly keeping the Second Defendant out of his purchased property since 2015. The non-compliance ran counter to the overriding objectives of the applicable rules of procedure. The Court ordered that the Claimants' claim be struck off and dismissed as against the Second Defendant, who was granted liberty to develop the property. The Claimants were **restricted** to seeking reliefs against the First Defendant only, and the Court awarded **costs** to the Second Defendant.