

# Energem Petroleum Limited v General Alliance Insurance Company Limited Commercial Cause Number 316 of 2018

## Summary

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| <b>Court:</b>            | High Court of Malawi  |
| <b>Registry:</b>         | Commercial Division   |
| <b>Bench:</b>            | Honourable Justice M.T Msungama                             |
| <b>Cause Number:</b>     | Commercial Cause Number 316 of 2018                         |
| <b>Date of Judgment:</b> | June 29, 2021   |
| <b>Bar:</b>              | Mr. Mpaka, For the Claimant<br>Mr. Mbeta, for the Defendant |

The Claimant, a petroleum company, sought an order to restore its matter to the cause list after the High Court, Commercial Division, had dismissed it for want of prosecution. The dispute arose from a loss of petroleum products, valued at MK197, 246,006.00, which the Claimant alleged was covered by an insurance policy issued by the Defendant. The Defendant denied liability. Following a failed mediation, the parties agreed to have the case determined on a single point of law concerning the insurance policy's coverage. A notice was issued for a hearing, but the Claimant's counsel appeared unprepared, stating that they had

not filed skeleton arguments and believed the purpose was merely to seek leave to file submissions. The Court, noting the clear terms of the notice and the Claimant's lack of preparation, dismissed the action for want of prosecution and awarded costs to the Defendant.

The principal issue before the Court was whether it had jurisdiction to restore the action. The Claimant argued that the Court's action was a curable irregularity and that the Court's primary responsibility was to adjudicate the matter on its merits. The Claimant also contended that the dismissal was irregular as no formal application for dismissal had been made by the Defendant. The Defendant countered that the Court was *functus officio* after the dismissal and that the only available remedy was an appeal or a consent order between the parties. The Court sided with the Defendant, holding that an order dismissing a proceeding for want of prosecution, made in the presence of the Claimant, could only be set aside on appeal or by the parties' consent, as per Order 12 rule 55(1) of the Courts (High Court) (Civil Procedure) Rules, 2017. The Court found that the Claimant's application to restore the matter, while framed differently, was an attempt to circumvent this rule. The application was dismissed with costs to the Defendant.