

James Masumbu (On his own behalf and on behalf of the vendors of Kachere Market) v Blantyre City Council Civil Cause No. 256 of 2017

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Kenyatta Nyirenda
Cause Number:	Civil Cause No. 256 of 2017
Date of Judgment:	May 28, 2018
Bar:	Mr. Kapoto, Counsel for the Plaintiffs Mr. Mbale, Counsel for the Defendant

The Plaintiff, representing himself and vendors of Kachere Market, filed an originating summons in the High Court, Principal Registry, seeking declarations and orders against the Defendant, Blantyre City Council. The Plaintiff alleged that the Defendant's failure to provide sanitary facilities and the subsequent closure of the market were unconstitutional and unlawful. An interlocutory injunction was initially granted but lapsed after the parties failed to appear for an *inter-partes* hearing. Subsequently, the Defendant applied to have the action struck out for

want of prosecution, arguing that the Plaintiff's failure to take any steps to advance the case for nearly nine months constituted inordinate and inexcusable delay and an abuse of court process.

The Court had to determine whether the Plaintiff's inaction warranted the dismissal of the suit. The Defendant's counsel argued that the delay was a clear abuse of the court's process, citing public policy that litigation should be brought to an end. The Plaintiff's counsel countered that a step had been taken by filing a summons for leave to enter judgment. However, upon reviewing the court file, the Court found no evidence that the Plaintiff had taken any steps to prosecute the case. The Court further noted that the Plaintiff's alleged summons for leave to enter judgment was brought under the wrong procedural rules (Order 19 of the Rules of the Supreme Court, applicable to actions begun by writ of summons) instead of the correct rules for originating summonses (Order 28). The Court's disposal was to dismiss the action. The Court reasoned that the plaintiff's conduct, in taking no steps to prosecute the case for an extended period, was an intolerable and inexcusable delay that constituted an abuse of court process and undermined the public interest in the speedy resolution of litigation. The Court also ordered the Plaintiff to pay the Defendant's costs.