

Kasongo v Attorney General

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Nriva
Cause Number:	Civil Cause Number 194 of 2017
Date of Judgment:	May 07, 2019
Bar:	Mr. G. Chimowa, Counsel for Claimant Mr. A. Mahonga, Counsel for the Defendant

The Claimant applied to the High Court, Principal Registry, for an order to strike out the Defence due to the Defendant's repeated failure to comply with a court direction requiring the timely filing of witness statements and skeleton arguments. The Court, had initially set the case down for hearing on 15 March 2019 and directed both parties to file the documents 15 days before the hearing. The Defendant failed to file anything by the deadline. After an adjournment, the Court set the hearing for 2 May 2019. The Defendant only filed the documents on the actual day of the hearing. The Defendant's counsel argued that striking out the defence was not the only option under Order 14 rule 15 and that the Court could make any other just order, further asserting that the evidence was not "strange" as the issue had been dealt with in mediation.

The Court considered that where there is a default, it may make any just order, but found the Defendant to be in **extreme non-compliance** with its direction, noting that even after the adjournment, the documents were only filed on the day of the hearing. The Court reasoned that filing on the same day might be **prejudicial to the Claimant** and that prior mediation was not an excuse for the delay. Emphasising the need for **efficient litigation** under the new procedural rules and the overriding objective to enforce compliance, the Court cited supporting jurisprudence that discouraged last-minute exchange of documents. Relying on the precedent that a witness may not be called without court permission for a late witness statement, the Court determined that the appropriate step was to **strike out the defendant's defence and enter judgment for the claimant**. The Court so ordered with costs to the Claimant and directed that the matter proceed before the Registrar to determine the Claimant's damages.