



IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
LILONGWE DISTRICT REGISTRY
COMMERCIAL CASE NO. 53 OF 2020

BETWEEN:

WELTHUNGERHILFE.....CLAIMANT

-AND-

COOPERATIVES GENERAL INSURANCE LIMITED.....DEFENDANT

CORAM: HON. JUSTICE DR. C.J. KACHALE, Judge

Mphote, of Counsel for the Claimant

Nkhata, of Counsel for the Defendant

Nanga, Court Clerk

RULING ON APPLICATION TO SUMMARY JUDGMENT

(Under Order 12 Rule 23 of the Courts (High Court) Civil Procedure Rules 2017)

1. The claimant filed the present application on 19th October 2021, through which it sought a summary judgment to be entered on its claim against the defendant. The claim is based upon performance bonds executed between the two parties in respect of a construction contract which the claimant had with a third party. The gist of the present application being that the defendant has raised no meritorious defence to the main action (all the matters being disproved by the arbitral determination of 20th August 2020 in the dispute between the claimant and the third party).
2. The defendant contends that the defence was valid at the specific time the matters were pleaded (even if the same might have been overtaken by subsequent developments in the dispute between the claimant and the third party).
3. The court having had occasion to consider the positions of the two sides in light of the applicable law has reached the following conclusions: in

the first place, the claimant is correct in insisting that the doctrine of autonomy as regards the performance bonds precludes the parties from having recourse to the dispute between the claimant and the third party (who has no interest in the performance bond); see the case of **Edward Engineering Ltd-v-Barclays Bank Int. Ltd and Another [1978]QB 159**. Thus, the invocation of any purported breach of contract on the part of the claimant in respect of the substantive contract would not avail any valid defence to this action. Accordingly, the defence pleaded raised no triable issue in that regard.

4. In any event, these matters have since been settled through the arbitral award of 20th August 2020 which exonerated the claimant of any default in the breach of the contract. The efforts of the defendant to insist on joining the third party to this action are ill conceived as they undermine the very commercial imperative for having performance bonds (which includes distributing the risks and mitigating the losses accruing due to any disputes in the initial contract).
5. It is therefore, the considered conclusion of the court that there is no legal justification to prolong the matter by going to trial on the question of the liability of the defendant on the performance bonds as pleaded in the statement of case: there is no defence which has been pleaded to warrant such a course of action. Accordingly, judgment is hereby entered in favour of the claimant with costs.

Order accordingly.

Made in Chambers this 12th day of January 2023 at Lilongwe.


C.J. Kachale, PhD
JUDGE