



HIGH COURT  
COMMERCIAL DIVISION  
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Republic of Malawi  
**IN THE HIGH COURT OF MALAWI**  
COMMERCIAL DIVISION  
BLANTYRE REGISTRY  
COMMERCIAL CASE NUMBER 278 OF 2022  
(Before Msungama, J.)

**BETWEEN:**  
**TERRASTONE LIMITED..... CLAIMANT**  
**-AND-**  
**FARGO LIMITED .....DEFENDANT**

CORAM

Justice Msungama  
Counsel katuya, for the Claimant  
Counsel Msiska, for the Defendant  
Makonyo, Court Clerk

RULING

1. Before me is an application by the Defendant for an order to continue the suspension of enforcement of a judgment. The said suspension order was made on the 7<sup>th</sup> of September, 2023 on the back of a without notice application by the Defendant. The current application is made pursuant to O. 10 r. 1 and 3 as read with O. 28r.50 of the CPR 2017. It is supported by a sworn statement sworn by counsel Gondwe. It is also supported by a skeletal argument. The Claimant opposes the application. Such opposition is supported by a sworn statement sworn by counsel Katuya who also filed a skeletal argument.
2. The background of the matter is that on the 5<sup>th</sup> December 2022, the parties herein entered into an agreed judgment by which the Defendant was obliged to pay the Claimant the principal sum of MK129,340,055.10, interest in the sum of MK54,847,038.40, and party-and-party costs in the sum of MK12,588,788.92. The agreed judgment also provided that except for the party and party costs, which would be paid within three months, the other sums would be due for payment within 6 months of the date of the judgment. It further provided that in the event of default, the Claimant would be at liberty to take judgment enforcement measures.

3. The Defendant failed to make the payments as per the agreed judgment. Therefore, on the 26<sup>th</sup> of June 2023, the parties entered into an agreed order varying the terms of the agreed judgment. By this order, the payment period was extended to the 5<sup>th</sup> of September 2023. The order also fixed the total sum to be paid at the figure of MK240,894,125.75 comprising principal and interest. Come the 5<sup>th</sup> of September 2023, the Defendant failed to make the ordered payment.
4. The reasons given by the Defendant as a basis for seeking the order it seeks are contained in the sworn statement of counsel Gondwe. Counsel states that the Defendant is a contractor but due to the shortage of forex in the country, it is facing financial challenges. Further, it is stated that the Defendant is owed large sums of money by its debtors one of them being Southern Region Water Board ("SRWB"). It is further stated that the adverse economic challenges being faced by the country were not contemplated by the Defendant at the time that the agreed judgment was entered into. The Defendant states that despite these challenges, it is still prepared to honour its debt to the Claimant.
5. As already stated elsewhere above, the application is opposed by the Claimant. The Claimant states that the variation of the agreed order was made based on certain undertakings made by the Defendant, including that the Defendant was in the process of selling some of its real property, an exercise which was expected to yield a sum of over MK4 billion and that the Defendant had secured and commenced two large construction projects. The understanding was that some of the funds from these two initiatives would be channeled towards the settlement of sums owing to the Claimant.
6. The issue for the decision of the court is whether the order suspending enforcement of the judgment should be continued.
7. I have carefully weighed the reasons which have been advanced by the Defendant in support of its application. In the first place, it has to be remembered that we are dealing with a debt based on an agreed judgment and variation order voluntarily entered into by the parties. For one of them to come back to this court and seek an order that the other side should not be able to enforce it, very strong grounds have to be put forward. A mere assertion that circumstances have changed is not enough. I do not see how the devaluation of the local currency can be used as an excuse in the present circumstances. It was up to the Defendant to demonstrate how the devaluation has affected its ability to comply with the voluntary orders it has entered into with the Claimant. Further, it would appear that the Defendant is seeking an open-ended suspension of enforcement of the judgment which would place it in a position where it would honour its obligations to the Claimant at its convenience and pleasure. That cannot be allowed in a commercial transaction like this one. All in all, I am not convinced that it would be in the interest of justice for this Court to extend the suspension. The application is dismissed with costs to the Claimant. The Claimant is at liberty to proceed with judgment enforcement measures available to it under the law.

Made in Chambers this 30<sup>th</sup> day of April 2024 at the High Court, Commercial Division, Principal Registry, Blantyre.



M.T. Msungama  
Judge



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