

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MSC. CIVIL CAUSE NO. 12 OF 2003**

**BETWEEN:**

**KATUNDU HAULAGE LIMITED ..... PLAINTIFF**

**- and-**

**ATTORNEY GENERAL ..... DEFENDANT**

**CORAM: TEMBO, J.**

Bazuka Mhango, Counsel for the Plaintiff

Ben, Court Clerk

**RULING**

Having read the application for leave to move for committal for contempt of Court against the Secretary to Treasury, Mr. Chilambe; further having read the affidavit in support thereof; and indeed noting what, Mr. Mhango, learned counsel for plaintiff has submitted to be the applicable law for the disposal of the instant application; and further noting, in that respect, that the learned counsel seeks the order of the Court pursuant to Ords 42/1/7, 45/1/2-3 as these are read together with Ord 45 r 2 of the RSC; the court now makes the following ruling:

The court hereby notes the fact that there is indeed a judgment debt of K7,658,129.20 and

k1,148,719.38 being 15% collection charges; it is further the view of the court that the Secretary to the Treasury has had express notice of the order requiring the Secretary to the Treasury to pay that judgment debt and 15% collection charges. The order so notifying the Secretary to the Treasury was made on 14 January, 2003 and that there is a certificate of non-compliance in that regard which had been prepared and issued by Mr. Bazuka Mhango, learned counsel for the plaintiff, on 27<sup>th</sup> January, 2003. The judgment debt and 15% collection charges remain unpaid by the defendant to date.

On the basis of the foregoing, the plaintiff now seeks leave to move for committal for contempt of court against the Secretary to the Treasury, Mr. Chilambe.

To begin with a mere glance at Ord. 45/1/1 as that order is read together with Ord. 77 r 15(1) of the RSC clearly shows that Ords 45-52 do not apply in respect of any order against the crown. In our situation, we would be talking of non-application to the Government. Thus, understood in that way, the Orders under which or pursuant to which the plaintiff's instant application is made are not applicable to the Government. Besides, it is the considered view of the Court that, if any thing at all, the plaintiff ought to proceed by way of compliance with the provisions of S.8 of the Civil Procedure (Suits by or against the Government or Public Officers) Act (Cap:6:01). A perusal of the affidavit evidence in support of the instant application does not appear to show that the plaintiff has complied with the procedure prescribed thereunder.

Consequently, the application is rejected and is, therefore, dismissed accordingly.

**MADE** in Chambers this 20<sup>th</sup> day of February 2003, at Blantyre.

A. K. Tembo

**JUDGE**