

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

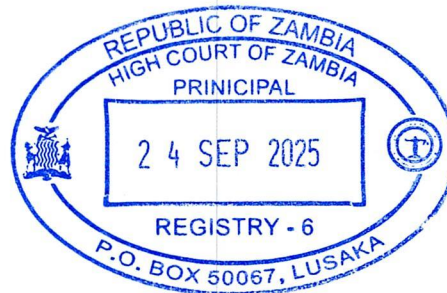
2022/HP/0959

BETWEEN:

AHMED EL DANBOUKY

AND

THE ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

Before the Honourable Lady Justice S. Chocho in Chambers, on September 24th, 2025.

For the Plaintiff: Mr. S Mwannshiku of Messers M and M Advocates.

For the Defendant: Mr. K Malikebo (State Advocate) of Messers Attorney Generals Chambers.

R U L I N G

Cases referred to:

- 1. Walter Wells Limited V. Wilson Samuel Jackson 1984 ZR 98.***
- 2. Premesh Patel V. Rephandius Institute Limited 2011/ZR 134.***
- 3. Mwambazi V. Moresher Farms (1997) ZR 108.***
- 4. Muchinka Farm Limited v Attorney General CAZ Appeal 47 of 2017.***

5. *Development Bank of Zambia and Mary Ncube (Receiver) vs Christopher Mwanza and 63 Others SCZ/8/103/08.*

Legislations referred to:

- 1. *Order 12 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.***
- 2. *Order 12 Rule 2 of the High Court Rules and Order 20 Rule 3 of the Rules of the Supreme Court of England.***

1. INTRODUCTION

- 1.1. This Ruling is in respect of the Defendant's application for an Order to set aside Judgment in Default made pursuant to ***Order 12 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.***
- 1.2. The application is supported by an affidavit in support of Summons for an Order to set aside Judgment in default and a list of authorities and skeleton arguments filed into Court on May 23rd, 2025.

2. BACKGROUND

- 2.1. The background to this matter as per pleadings and affidavit evidence before this Court is that the Plaintiff commenced this action against the Defendant by way of Writ and Statement of Claim filed on June 22nd, 2022 claiming the following reliefs:

- i. Damages for negligence;
 - ii. Damages for the loss suffered by the Plaintiff in failing to purchase the land for the construction of an animal feed plant;
 - iii. Damages for the losses the Plaintiff suffered in the loss of US\$20,000.00;
 - iv. Damages suffered for the mental anguish suffered by the Plaintiff; and
 - v. Any other Order which the Court might deem fit.
- 2.2. The Defendant did not enter appearance and file a Defence which caused the Plaintiff to enter Judgment in Default.
- 2.3. The Judgment in Default was signed on April 12th, 2023.
- 2.4. The Defendant filed an application for an Order to set aside Judgment in Default made pursuant to **Order 12 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia**, supported by an affidavit in support of Summons for an Order to set aside Judgment in Default and a list of authorities and skeleton arguments dated May 23rd, 2025.

3. AFFIDAVIT EVIDENCE

- 3.1. The Defendant filed an affidavit deposed by one Kelvin Chipulu on May 23rd, 2025.
- 3.2. The Defendant avers that the Defendant has not filed a Defence within time due to delayed instructions from the client.
- 3.3. The Defendant avers that they are now in receipt of instructions and are desirous to defend the matter on its merits.
- 3.4. The Defendant further avers that setting aside the Default Judgment will occasion no prejudice to the Plaintiff and will be in the interests of Justice.
- 3.5. In response, the Plaintiff filed an affidavit in opposition of summons to set aside the Judgment Default.
- 3.6. The Plaintiff avers that he made an application for leave to enter default Judgment in July, 2022.
- 3.7. The Plaintiff avers that the Defendant neglected to attend any of the scheduled hearings or file any pleadings in opposition.
- 3.8. The Plaintiff further avers that until Judgment in Default was entered at no point did the Defendant indicate to the Court that

they were waiting for instructions or intended to oppose the application.

3.9. The Plaintiff avers that it is clear that the attempt to set aside the Judgment in Default two years later is not due to the Defendant wanting the matter to be heard on its merits, but due to emotional reasons.

3.10. The Plaintiff avers that the Defendant has had more than enough time to obtain instructions as the Police involved are Lusaka based and not in some far province.

4. **LAW AND SUBMISSIONS**

4.1. I have had occasion to review and consider the application, having heard Counsel for the Defendant and the Plaintiff, read the affidavits, skeleton arguments and list of authorities for which I am grateful.

4.2. The Defendant submits that this Court has the discretionary power to set aside Judgment in Default pursuant to ***Order 12 Rule 2 of the High Court Rules and Order 20 Rule 3 of the Rules of the Supreme Court of England.***

4.3. The Defendant submits that the threshold for an Applicant to succeed is that must not only give a reasonable explanation as to

why he was in default but that he must also disclose a defence on the merit.

Reliance was placed on the cases below:

- ***Walter Wells Limited V. Wilson Samuel Jackson 1984 ZR 98¹.***
- ***Premesh Patel V. Rephandius Institute Limited 2011/ZR 134².***

- 4.4. The Defendant submits that they have met the threshold for setting aside a Default Judgment.
- 4.5. In response, the Plaintiff submits that when setting aside a Default Judgment, the Applicant must not only demonstrate that it has a defence on the merits but must also give an explanation of the default. Reliance was placed on the cases of ***Walter Wells Limited V. Wilson Samuel Jackson 1984 ZR 98¹*** and ***Mwambazi V. Moresher Farms (1997) ZR 108³.***
- 4.6. The Plaintiff submits that there was inordinate delay on the part of the Defendant and this application should be dismissed with costs.

5. COURT'S ANALYSIS/DECISION

5.1. I have carefully considered the arguments herein, for and against the application and the issue for determination is whether the Defendant has satisfied this Court with good reason for the Judgment to be set aside and be granted leave to defend.

5.2. I have addressed my mind to the authorities on setting aside of a default Judgment. The Supreme Court In the case of **Stanley Mwambazi v Morester Farms Limited (1977) ZR 108³** guided as follows:

"It is the practice in dealing with bona fide interlocutory applications for courts to allow triable issues to come to trial despite the default of the parties; where a party is in default, he may be ordered to pay costs, but it is not in the interests of justice to deny him the right to have his case heard".

It was further held that:

"For this favourable treatment to be afforded there must be no unreasonable delay, no mala fides, and no improper conduct of the action on the part of the applicant."

5.3. The **Mwambazi³** case was upheld in the case of **Water Wells Ltd v Wilsson Samuel Jackson (1984) ZR 98¹** and in delivering its Judgment, the Court held as follows:

*“Indeed the Court of Appeal in England has held to similar effect in **Ladup v Siu (2)**, when they said that, although it is usual on an application to set aside a default judgment, not only to show a defence on the merits but also to give an explanation of the default, it is the defence on the merits which is the more important point to consider. We agree with them that, it is wrong to regard the explanation for the default, instead of the arguable defence as the primary consideration. If the plaintiff would not be prejudiced by allowing the defendant to defend the claim then the action should be allowed to go on trial”.*

- 5.4. In light of the above authorities, I am of the considered view that the primary consideration is whether the Defendant has a Defence on merit; it must also be established that there are no malafides, no unreasonable delay and no improper conduct on the part of the Defendant as stated in the **Mwambazi**³ case.
- 5.5. The intended Defence exhibited by the Defendant reveals that the Defendant has an arguable case and a Defence on merit. I am however of the view that despite the Plaintiff having a Defence on merit, there is the presence of unreasonable delay. The Court of Appeal in the case of **Muchinka Farm Limited v Attorney General CAZ Appeal 47 of 2017**⁴ had the following to say regarding inordinate delay:

“First of all, the fact that the appellant's advocate at the time were different, is in our view immaterial. Even if they had retained counsel, it was their duty to follow up on progress on the case. No plausible explanation has been rendered as to why it took such a long period of time before any action was taken. Their failure to react until after a year and 7 months is indicative that they had gone to sleep. We find that the trial judge cannot be faulted for finding that the wait of 1 year and 7 months was inordinate”.

5.6. The record shows that the Judgment in Default was entered into an April 12th, 2023 and the Defendant made its application to set aside the Default Judgement on May 23, 2025, two years after the Judgement. This in my view is unreasonable and the Defendant has not furnished valid/sufficient reasons as to why the application has been made late in the day. It is trite that litigants must be vigilant in asserting their rights.

5.7. The Supreme Court in the case of **Development Bank of Zambia and Mary Ncube (Receiver) vs Christopher Mwanza and 63 Others SCZ/8/103/08⁵** had the following to say:

“There must be finality to litigation and a party who is clearly in default should reap the consequences of its inertia and cannot be allowed to roam the courts like a headless chicken keeping the other party in suspense more so that the party was represented by counsel”.

6. **CONCLUSION**

- 6.1. For the foregoing, I hereby dismiss the Defendant's application.
- 6.2. Cost to the Plaintiff to be taxed in default of agreement.

Delivered at Lusaka on 24th September, 2025



S. CHOCHO
JUDGE

