



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
FINANCIAL CRIMES DIVISION
CIVIL CAUSE NO 2 OF 2026**

BETWEEN:

YUSUF INVESTMENTS LIMITED t/a

AMARYLLIS HOTELCLAIMANT

-AND-

NATIONAL BANK OF MALAWI PLC1ST DEFENDANT

THE FINANCIAL INTELLIGENCE AUTHORITY.....2ND DEFENDANT

THE ANTI-CORRUPTION BUREAU.....3RD DEFENDANT

CORAM: HON. JUSTICE REDSON E. KAPINDU

Messrs GK Associates, Legal Practitioners

for the Claimant

Mr. F. Dzikanyanga, Court Clerk

DIRECTION

KAPINDU, J

1. This Direction is made in my capacity as Judge-in-Charge of the Financial Crimes Division, pursuant to a request made by the Assistant Registrar, under Order 5, Rules 11 and 12 of the Courts (High Court) (Civil Procedure) Rules, 2017 (CPR, 2017).
2. The Claimant (who will henceforth be referred to as the putative Claimant in the instant matter), Yusuf Investments Limited t/a Amaryllis Hotel, have filed various documents with the Court.
3. First, they have filed Summons (Specially Endorsed), which the Court's Registry has assigned as Civil Cause Number 02 of 2026. Along with the said Summons, even though the same is stated to be specially endorsed, is a comprehensive "*Statement of Case*" and a Form of Initial Directions again to be issued by the judge-in-Charge in terms of the procedure rules.
4. Immediately, I should state that it seems to me that there is need to provide some clarification on some issues related to the filing of the abovesaid summons, which is a commencement of action process (originating process).
5. A Specially Endorsed Summons, as that term is generally used in common law legal parlance, is supposed to be a self-contained complete commencement of action document (originating process), which has within it, a complete "*Claim*".
6. As stated above, in the instant case, the putative Claimant has filed what purports to be a Summons (Specially Endorsed), and also a document that purports to be a "*Statement of the Case.*" In various ways these things are irreconcilable.

7. First, it appears to me that the putative Claimant's Counsel, like numerous others, has not really fully grasped what is meant by the term "*Statement of Case*". The Rules themselves are also perhaps a bit confusing in some way, but we can clarify the matters.
8. Firstly, it is important to notice that under Order 35 Rule 3(4) of the CPR, 2017, the rules are clear that "*the statements of case*" (plural for statement), were "*previously known as pleadings*". Thus, when we encounter the plural term "*Statements of case*", we should remind ourselves, at least for those with knowledge of or familiar with the old (previous) civil procedure rules, that this is synonymous with the term "*Pleadings*" as was used under those rules. Thus, by parity of reasoning, the term "*Statement of case*" (singular), should be understood as being synonymous with the term "*Pleading*" as was understood under the previous rules.
9. In this regard, when Counsel styles a document as a "*Statement of Case*", essentially, within the understanding that is expressly communicated by Order 35 Rule 3(4) of the CPR, 2017, it suggests that under the previous procedural scheme, they would have styled it "*Pleading*". Now this, for all we know, is not a correct way of styling such a legal document.
10. For one to appreciate the proper way to style a specific type of "*statement of case*" under the CPR, 2017 (i.e what would be a specific type of pleading under the previous rules), we have to advert to the interpretation section under Order 1 Rule 4 of the CPR, 2017, which provides that "*“statement of case” includes a claim, a defence, a reply and a counterclaim, but does not include an application in a proceeding.*"

11. This definition under under Order 1 Rule 4 of the CPR, 2017 therefore means that the CPR, 2017 envisage, as various types of Statement of Case:
 - (a) a Claim,
 - (b) a Defence,
 - (c) a Reply, and
 - (d) a Counterclaim,and, the list is not exhaustive.

12. This understanding is further clarified under Order 7 of the CPR, 2017 that is specific on Statements of Case. It is clear from the provisions of Order 7 that the term "*Statement of Case*" is a generic term that may entail any of the above listed types of documents or others applicable, and is not confined to what was called a Statement of Claim under the previous rules.

13. I stated that the rules themselves might have brought in some confusion because, if one reads Order 5 of the CPR, 2017, without further reference to other provisions such as those cited above, in order to have a holistic understanding of the context in which the term is used under the Rules, one may get the wrong impression that a Statement of Case only refers to what was called a Statement of Claim under the previous rules. The truth however is that the term "*Statement of Case*" is synonymous with the term "*Pleading*" under the old rules of procedure.

14. Thus, in the instant matter, what the putative Claimant's Counsel styled as a "*Statement of the Case*", was essentially supposed to be simply Styled "*Claim*". Alternatively, the old style "*Statement of Claim*" seems to still be consistent with the CPR, 2017. However, using the generic term, "*Statement of Case*" when one really wants to refer to the "*Claim*" as stated under the CPR, 2017, would be misleading because, logically, the Defendant would equally be entitled to simply

style his/her/its Defence as a “*Statement of Case*” as well, thus causing sheer confusion in the litigation process.

15. Coming back to the point that in the instant matter, the putative Claimant purports to file a Summons (Specially Endorsed) accompanied by a “*Claim*” (which they have wrongly termed “*Statement of the Case*”), these two are conceptually irreconcilable because a Specially Endorsed Summons should contain within it a complete Claim.
16. Evidently however, the term “*Summons (Specially Endorsed)*” is prescribed in Form 1 under the First Schedule to the CPR, 2017. To the extent that the Rules themselves seem to have abolished the distinction between a “*Summons (Specially Endorsed)*” and “*Summons (Generally Endorsed)*” as understood under the previous rules, it would appear that, to that extent, Form 1 under the First Schedule to the CPR, 2017 was not properly drafted.
17. However, be that as it may, I am aware that Order 24 Rule 1 of the CPR, 2017 provides that “*All documents filed in a proceeding shall be in the forms set out in the First Schedule.*” Thus, on its face, Order 24 Rule 1 of the CPR, 2017, in so far as it used the mandatory term “*shall*”, seems to make the use of Form 1 mandatory, notwithstanding the evident defect therein. I however opine that this ought not to be the case. The proper practice which Counsel have to adopt is to remove the term “*Specially Endorsed*” when they are drafting Summons in Form 1. It is, in my considered view, legally acceptable to do so because under Section 5 of the General Interpretation Act (Cap. 1:01 of the Laws of Malawi), which deals with “*Forms*”, it is provided that:

“Where a form is prescribed or specified by any written law, deviations therefrom neither materially affecting the substance nor calculated to mislead shall not invalidate the form used.”

18. The deviation that the Court directs herein will ensure harmony and/or consistency of the entirety of the CPR, 2017 on this particular aspect, and will therefore not in any way serve to materially affect the substance of the rules or be misleading.
19. Pausing there, beyond filing of the commencement of action Summons (originating process) under Order 5 rule 1 of the CPR, 2017, the putative Claimant has also filed a without notice interlocutory application for an order of mandatory injunction, under Order 10 Rules 8, 27, 28, 29 and 30 of the CPR, 2017, compelling the Defendants to forthwith lift, remove and set aside all restrictions, freezes or limitations placed on the Claimant's bank accounts, and to restore full and unrestricted access and operational functionality thereto until the final determination of the matter.
20. I should mention that both the commencement of action Summons and the interlocutory application for injunction herein purport to have been filed in the Blantyre Registry of the Financial Crimes Division of the High Court. This is not correct. The Court must also clarify the position here. The Financial Crimes Division of the High Court has, thus far, only one Registry at Lilongwe, but it has one Judge stationed in Blantyre for operational reasons.
21. Pausing there, I should mention that the genesis of the present decision by the Court, by way of direction, is that earlier today, I received a note, as Judge-in-Charge of this Division, from the Assistant Registrar of the Court, along with the file to which the present Direction relates. The note states that:

“My Lord, Judge-in-Charge,

This is a new matter...I have perused the documents on record, and I am not satisfied that the matter has been properly commenced. In accordance with Order 5 rules 11 and 12 of the Courts (High Court) (Civil Procedure) Rules, I respectfully refer the file to your Lordship for directions on how it should be dealt with.”

22. I proceed to layout, for ease of reference, not only the provisions of Order 5 Rules 11 and 12 as referenced by the Assistant Registrar, but also, additionally, Rule 13 thereof. They are in the following terms:

“11. The Registrar may reject a document or refer the document to a Judge for directions about how to deal with it.

12. A Judge may direct the Registrar to accept or reject the document.

13. Where the Court rejects a document

(a) the Registrar shall give notice of the rejection together with the grounds of the rejection to the person who filed the document with the Court;

(b) the Registrar shall return the document and copies of the document filed with the document; and

(c) the document shall be taken not to have been filed.”

23. Having carefully gone through the file for purposes of providing the requested direction, I form the firm view that both the originating process herein and the application for interlocutory injunction are utterly defective processes for failing to follow the requisite procedures as prescribed under the law for purposes of challenging the impugned decisions of the 2nd and 3rd putative defendants.

24. Firstly, it is significant to note that Order 1 Rule 3, sub-rules (1) & b (2) of the Courts (High Court)(Civil Procedure) Rules, 2017 (the CPR, 2017) provides that:

“(1) Subject to sub rule 2, these Rules shall apply to all civil proceedings in the High Court.

(2) Other rules of practice and procedure shall so apply as long as it is so provided by an Act or any other written law.”

25. Further, Section 21(b) of the General Interpretation Act (Cap. 1:01 of the Laws of Malawi), provides that “*no subsidiary legislation shall be inconsistent with the provisions of any Act and any such legislation shall be of no effect to the extent of such inconsistency.*”
26. I observe that the present application has solely been made under the CPR, 2017 whilst the impugned decisions were made under specific pieces of principal legislation, namely the Financial Crimes Act (Cap. 7:07 of the Laws of Malawi) (the FCA), and the Corrupt Practices Act (Cap. 7:04 of the Laws of Malawi) (the CPA), both of which are pieces of law that contain clear procedures on how any person aggrieved by the respective decisions of the 2nd and 3rd putative Defendants are to proceed if they seek any form of relief in relation to the making of the Freezing Directives or Restriction Notices, as the case may be.
27. Notably, in respect of a person aggrieved by the making of a Restriction Notice by the 2nd putative Defendant, namely the Anti-Corruption Bureau (ACB) under Section 23(1) of the CPA, subsections (5), (6) and (7) of that Section provide as follows.

“(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) A person making an application under subsection (5) shall give to the Director such notice of the day appointed for the hearing of the application as a judge of the High Court may order.

(7) On the hearing of an application under subsection (5) the High Court may -

(a) confirm the directive;

(b) reverse the directive and consent to the disposal of, or other dealing with, any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(c) vary the directive as it thinks just.”

28. Thus, the position of the law under the CPA is very clear. If the Director, Acting Director or Deputy Director, as the case may be, issues a Restriction Notice under Section 23(1) of the CPA, the way to challenge it is not by Commencing an independent civil action and then, filing therein, Summons for Interlocutory or mandatory injunction as the Claimant seeks to do in the present matter. The Claimant must make an application under Section 23(5) of the CPA, obviously supported by a Sworn Statement and Skeleton Arguments, seeking any of the reliefs as set out under Section 23(7) of the said Act.

29. Likewise, in respect of a Freezing Directive made by the Financial Intelligence Authority (FIA) under Section 23(4) of the Financial Crimes Act, the applicable proviso under Section 23(5) of the Act, provides that *“a party affected or likely to be affected by the order, may apply on notice to all parties concerned to court to be heard on the matter.”* [Emphasis supplied]

30. What these provisions show is that the respective principal pieces of legislation herein have made it abundantly clear that, if the competent authority has made an

appropriate restraint decision under the law, a party seeking relief therefrom must make a relevant application under specific provisions under those laws.

31. The procedural provisions under the CPR, 2017 are subordinate to those prescribed under the principal pieces of legislation. This is the clear import of Order 1 Rule 3 (1) & (2) as read with section 21(b) of the General Interpretation Act, among other laws that firmly establish the same position at law.
32. By contrast, in the present matter, the Claimant has commenced an independent ordinary action, by way of Summons (Specially Endorsed), under Order 5 Rule 1 of the CPR, 2017, in the form of Form 1 in the First Schedule to the Rules, signed by the putative Claimant's Legal Practitioners on 28th March, 2026, accompanied by a form of Initial Directions for my issuance as Judge-in-Charge under Order 5 Rule 19 of the Rules. This is procedurally wrong. As stated earlier, the Applicant should have proceeded to file an application made under Section 23(5) of the FCA as read with Section 23(5) of the CPA.
33. Further, notwithstanding that the Claimant has filed Commencement Summons (Specially Endorsed), they have proceeded to File an Application in a Proceeding Without Notice for an Order of Injunction under Order 10 Rules, 8, 27, 28, 29 and 30 of the CPR, 2017. It is unclear why they have decided to take this rather confused route. Order 10 Rule 8 of the CPR, 2017 provides that:

“(1) A person may apply for an interlocutory order before a proceeding has started by filing an application in a proceeding and the application shall

- (a) set out the substance of the claim;*
- (b) have a brief statement of the evidence on which the applicant will rely on;*
- (c) set out the reasons why it is appropriate that the order be made before a proceeding has started; and*
- (d) have with it a sworn statement in support of the application.”*

34. Effectively, in the instant matter, although the Applicant has filed commencement summons simultaneously with the application for interlocutory injunction, they are asking the Court to issue the injunction first and then later proceed to issue the Commencement Specially Endorsed Summons. They have not expressly said so in the documents, but that is the only way that the application under Order 10 Rule 8 of the CPR, 2017 may be properly conceived.
35. The general rule however is that an interlocutory application in a proceeding should be filed within an existing proceeding. This is evident from that totality of the the provisions of Order 10 of the CPR, 2017, including specifically, the import of Order 10 Rule 8 of the Rules.
36. In addition, the Court is alive to the fact that Order 10 Rule 8 (c) of the CPR, 2017 states that where an Applicant seeks to take the option of making an application for an interlocutory Order before commencement of action, the Applicant should *“set out the reasons why it is appropriate that the order be made before a proceeding has started.”* The Claimant has not done so. If the Applicant was minded to make the application under Order 10 Rule 8 of the rules, they needed to comply with this rule. They evidently, and perhaps understandably, have not done so. I say *“understandably”* because they have already filed commencement Summons. The Registry already proceeded to assign a case number to the commencement Summons, as Civil Cause No. 2 of 2026. There is therefore no need to ask the Court, in the same breath, to proceed by way of making an interlocutory Order before commencement of action, when commencement summons for the action have already been filed. This is utter procedural confusion.
37. Furthermore, the Claimant seeks that this application be heard without notice to the putative Defendants herein. Under both the FCA and the CPA, the law is very clear that such application should be made on notice.

38. There is more. Order 10 Rule 2 (1) provides that:

“An application in a proceeding shall

(a) be signed by the applicant or the applicant’s legal practitioner;

(b) cite the same parties as in the proceeding and anyone whose interests are affected by the order sought; and

(c) be signed and sealed by the Registrar.”

39. The purported Application in a Proceeding in the present matter has not been signed by the putative Claimant’s legal practitioner as required under Order 10 Rule 2 (1)(a) of the CPR, 2017. The purported application only leaves space for the signature of the Registrar and seal of the Court. The absence of the putative Claimant’s signature or that of the responsible legal practitioner is a clear defect on the face of the application and therefore an irregularity. As the prescribed form is made under a rule, which rule has clear requirements, in the event of the prescribed form missing out on an important requirement under the applicable rule, the rule based upon which the form is framed must be complied with.

40. In short, for all the above-stated reasons, the Court directs that both the commencement Summons (Specially Endorsed), and the Without Notice Application for Interlocutory Injunction herein, are procedurally defective and misconceived under the law and cannot therefore be issued by the Court. The process pursued by the Applicant herein is not the due process as envisaged under both the FCA and the CPA as well as under the CPR, 2017 in so far as the application Mande under Order 10 of the CPR, has not been signed by either the putative Claimant or their legal practitioner.

41. If the Applicant still seeks reliefs from the decisions made by the putative Defendants herein, then they should make appropriate applications as envisaged

under the respective pieces of legislation under which the said decisions were made.

42. The Hon. Assistant Registrar is therefore hereby advised and directed to:

(a) give notice of the rejection of the summons (originating process) and interlocutory injunction application documents herein, together with this Direction which contains the grounds of the rejection, to the putative Claimant, through their legal practitioner(s); and

(b) return the documents and copies of the documents filed with the specially endorsed summons and the interlocutory application documents herein to the putative Claimant's Counsel.

43. In addition, and for clarity's sake, the Hon. Assistant Registrar is further advised and directed, pursuant to Order 5 Rules 13 (c) of the CPR, 2017, to notify the putative Claimant, through their legal practitioner(s), that all the documents herein **shall be taken not to have been filed.**

44. It is so directed.

Made in Chambers at Lilongwe this 2nd day of April, 2026.

R.E. Kapindu, PhD

JUDGE