

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NO. 642 OF 2001**

BETWEEN :

TELECOM NETWORKS MALAWI LTD ..... PLAINTIFF

-and-

CELTEL MALAWI LTD ..... 1ST DEFENDANT

MACRA ..... 2ND DEFENDANT

CORAM - CHIMASULA PHIRI, J.  
M. Tsingano of counsel for the plaintiff  
T. Nkuna of counsel for the 1st defendant  
D.E. Kadwa of counsel for the 2nd defendant  
Kaundama - Official Interpreter

**RULING**

In this matter the plaintiff has taken out originating summons seeking declaratory orders. Among the orders sought the plaintiff prays for a declaration that with effect from 3rd May 2000 the plaintiff is not liable to pay to the first defendant interconnection charges in view of the Ruling number 1 of 2000 made by second defendant. The plaintiff further seeks an order that the first defendant should cease and desist from sending the plaintiff invoices and statements in respect of interconnection charges. The first defendant filed an Affidavit in opposition in which it highlights that there are interconnection agreements *inter alia* between the plaintiff and the first defendant and also that the second defendant in its ruling suspended interconnection charges. The first defendant stated that it has challenged the

Ruling of the second defendant in Court and that the contention of the first defendant is that the Interconnection Agreements are still in force thereby making interconnection charges payable.

The first defendant made an *ex-parte* application to join the 2nd defendant as a party to these proceedings for purposes of the first defendant's application. The first defendant issued a Notice of Application under Order 28 Rule 7 of the Rules of the Supreme Court i.e. made a counter-claim for declaratory orders. The first 3 orders sought attack MACRA that it had no power to unilaterally and summarily intervene on the valid Interconnection Agreements and that it was wrong for MACRA to intervene in the manner it did and that MACRA's Ruling number 1 of 2000 has no effect. The last 3 orders sought reinforce the terms and conditions of the Interconnection Agreements and charges and that payment for the charges has not in any way been abrogated.

Mr Kadwa raised a preliminary objection and is supported by Mr Tsingano. Mr Kadwa submitted that the status of MACRA in these proceedings is not very clear i.e. whether MACRA is co-plaintiff or co-defendant. If MACRA is co-plaintiff, there is no consent in writing from MACRA. Secondly, Mr Kadwa submitted that what the first defendant has done is to transfer the subject matter of Civil Cause Number 55 of 2000 which is a case by first defendant against second defendant into this counter-claim. That matter has been dismissed twice by two different judges for want of prosecution. In short the first defendant wishes to bring back the action through the back door. Mr Tsingano echoed the sentiments of Mr Kadwa. He submitted that the first defendant can either commence fresh proceedings against MACRA or pursue its appeal against its Ruling made by the Court on 14th March 2001 in Misc. Civil Cause Number. 55 of 2000. Counsel for the first defendant argued that the demands of justice in this matter dictate that these matters be held together as they are so interconnected to each other so that separating them would produce absurd results. Mr Nkuna submitted that MACRA is joined as a party for the defendant's purposes i.e. MACRA is co-defendant and as such it was not necessary to obtain their consent. It was mere oversight that MACRA was not properly named as second defendant in the subsequent documents. Mr Nkuna strongly argued that it is necessary to have MACRA as second defendant because there is very close connection between the original claim, the counter-claim and MACRA. If these claims are

handled separately it will lead to a multiplicity of actions and duplication of efforts. On the issue of whether or not this is an attempt by the first defendant to bring the matter through the backdoor, Mr Nkuna submitted that a party is at liberty to bring parallel proceedings for judicial review and declaratory orders. He cited the case of **Barnard v National Dock Labour Board** [1953] 1 All ER 1113 particularly the dictum of Lord Denning at page 1119 where the Master of Rolls indicated that the Court had wide powers to make *certiorari* orders as well as declaratory orders. Mr Nkuna submitted that he opted to deal with the matters together in the declarations sought. Lastly, Mr Nkuna submitted that it is not true that the substantive matters were dismissed by the court but that it is only leave of the court for judicial review that was discharged.

I listened to the arguments of all counsel carefully and I have had the opportunity to read the Rulings of my brother judges. I have no doubt in my mind that in the light of what happened in Misc. Civil Cause Number 55 of 2000 the first defendant is craftily trying to abandon its expressed wish to appeal against the Rulings of my brother judges and instead bring the same matters which were supposed to be pursued in the Courts of my brothers into my Court. With respect the first defendant is bent to abuse the legal process. If the second defendant is discharged from these proceedings the issues raised by the plaintiff as well as the first defendant in its Affidavit in opposition will remain for court's determination. Above all the matters raised are legal issues and do not necessarily warrant the presence of MACRA to determine the status of Interconnection Agreements *visa vis* the Ruling by MACRA of 3rd May 2000. In the circumstances of this case I discharge MACRA as a party to these proceedings. If the first defendant is desirous to pursue its claim against MACRA it should prosecute its appeal or commence fresh proceedings. The first defendant is condemned to pay costs of this preliminary application.

**MADE** in Chambers this 29th day of March 2001 at Blantyre.



**CHIMASULA PHIRI**  
**JUDGE**