JUDICIARY

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 2482 OF 2007

BETWEEN:

JIMMY JOSEPH MWANDALI …….PLAINTIFF

- AND -

NATIONAL BANK OF MALAWI ……..DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA
Mr Tandwe, of the Counsel for the plaintiff
Mr Chipeta, of the Counsel for the Defendant
Mrs Nkhoma – Official Interpreter

R U L I N G

Twea, J

This is a summons inter – parte to set aside an order of stay of proceedings and transferring the case to the Industrial Relations Court. The respondent although served did not appear. The applicant was thus permitted to proceed. However, before judgment was delivered the respondent applied to be heard. The matter was re – heard in accordance with Order 35 r 5/3.

The crux of the summon was that when the respondent applied for a stay, the court not only granted the stay but also order that the case be transferred to the Industrial Relations Court. The applicants argued that this was irregular. Further, that since the High Court has concurrent jurisdiction which is superior to the Industrial Relations Court, the case should not have been transferred.

This court has had several cases of this nature, more especially, concerning the Industrial Relations Court (IRC).

There is no dispute as to the meaning and import of Section 108(1) of the Constitution: that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. However, invariably all arguments brought before this court omit to elaborate the purpose and intent of Section 110 of the Constitution which creates subordinate court and other Constitutional and statutory provisions that create judicial or quasi – judicial tribunals.

To take the arguments that are presented in respect of Section 108(1) of the Constitution to the absurd end it would mean that there should be no subordinate courts because the High Court can try and determine any case. This, definitely, would be against the letter and spirit of the Constitution.

This court has said in several cases and most recently, ***G. B. Chirwa Vs Tea Association of Malawi Civ Cause 1806 of 2007*** that the Constitution creates the subordinate Courts and other tribunals to enhance the citizens right to access to justice. The statutes that establish the subordinate courts and other

tribunals provide for special procedures that are less legalistic, inexpensive and user – friendly. Such procedures are not available in the High Court. The court held that:

> "If and when, the High court wishes to retain jurisdiction over an employment matter that would, ordinarily, be tried before the Industrial Relations Court, it should be clear that it is not doing so as a matter of preference. There must be special and specific reasons for doing so."

The Constitution and our legislature created subordinate courts and tribunals and special procedures to enhance access to justice for the citizens. If the High Court failed to recognise these subordinate courts and their special procedures on account of Section 108(1) of the Constitution, it would be defeating the letter and spirit of the Constitution.

In the present case I do not see anything special or specific that would, in the least have persuaded this court to retain jurisdiction over the matter in issue. It is a matter that would properly be dealt with by the Industrial Relations Court.

I now come to the issue of irregularity. The applicant argued that the order to transfer the case was not prayed for and therefore irregular. It was argued, that following the case of ***Munk Vs Munks (1985) Fam. Law 131 CA*** that the court cannot rely on its inherent jurisdiction to do so. This argument is wrong. The cited case concerns lack of jurisdiction; that a court cannot grant itself jurisdiction to handle matters over which it has no jurisdiction by using it inherent powers. That is not the position in this case.

The High Court has jurisdiction over the employment cases and also has jurisdiction to transfer cases to the most convenient forum. What the court did was not without jurisdiction. It was, therefore, regular. In any case, Section 103(2) gives authority to the courts to decide what is within their competence. Therefore there is no merit in this argument.

Lastly, I have taken note of the submission that the respondent had indicated, in writing, that they would take the matter all the way to the Supreme Court of Appeal. This is not a special reason. A litigant is free to express his or her views on the legal system or when he or she would be satisfied that a legal remedy is available. In any case the applicant is doing exactly the same thing; preferring the High Court to the subordinate court. He cannot be heard to complain against the respondents views.

This application therefore must fail in its entirety with costs.

Pronounced in Chambers this 23rd day of January, 2008 at Blantyre.

E. B. Twea
JUDGE