



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL APPEAL CASE NO 20 OF 2014

BETWEEN

CHITA ONE INVESTMENTS-----APPELLANT

AND

MARTIN KANDODO AND OTHERS-----RESPONENTS

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Sikwese of Counsel, for the Respondent

Itai, Official Interpreter

RULING

This is an inter-parties application filed by the respondents to dismiss an appeal that was lodged by the appellants for want of jurisdiction. The appellants were duly served with the notice of hearing but did not turn up for the hearing. No reasons were given for such a failure. I therefore went ahead to hear the matter in the absence of the appellants' counsel.

This matter is fully based on affidavit evidence and I have therefore extracted the most relevant portions therefrom. The history of the matter is very simple. In 2011, the respondents sued the appellants at the Industrial Relations Court (IRC) in Lilongwe and obtained a default judgment in their favour on the 27th of July 2012. On the 21st of October

2013, the Assistant Registrar assessed the matter and awarded compensation to the respondents in the sum of MK5, 379, 143.17. After the order of assessment was issued, the appellants applied for stay of execution and further lodged an appeal to the High Court against the Order of the Assistant Registrar. The respondents' counsel therefore contends that the appellants did not comply with the procedure of the Industrial Relations Court (IRC) Rules, on the basis that a party not satisfied with the decision of the Registrar of the Industrial Relations Court has the right to review before the Chairperson/Deputy Chairperson sitting alone as per Rule 5(A) (2) IRC Procedure Rules [2009] (as amended).

I have looked at the affidavit in opposition of this application deposed by the appellants. In a nutshell, the appellants aver that the High Court has power to review by way of appeal any grievance that a party to the proceedings may lodge before the court. It is therefore the appellants' contention that there is nothing wrong in bringing this appeal to the High Court taking into account how the two Assistant Registrars at the IRC have handled this matter before.

This application is very important indeed as it will assist other court users to appreciate how things should be done once a party is aggrieved with the decision of the IRC which is subordinate to the High Court. Appeals from the IRC to the High Court are governed by Section 65 of the Labour Relations Act. This Section provides:

1. Subject to subsection (2), decisions of the Industrial Relations Court shall be final and binding.

2. A decision of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction within 30 days of the decision being made.

My understanding of Section 65 of the Labour Relations Act is that a party can only appeal to the High Court against a final decision of the Industrial Relations Court. A final decision of the Industrial Relations Court only arises once it is the decision of the Chairperson/Deputy Chairperson sitting with Member Panellists or sitting alone. With regards to the decision of the Registrar of the Industrial Relations Court as was made in this instant case, I do not think that it can be said to be a final decision of the Industrial Relations Court. This position becomes more clearer when one looks at the provision of Rule 5 (A) (2) of the IRC (Procedure) Rules which provides that a decision of the Registrar or Deputy Registrar of the Industrial Relations Court may be reviewed by the Chairperson or the Deputy Chairperson on application by a party to the matter or proceedings. This provision is a check and balance provision. Much as the High Court has the powers of review, but in exercising those powers, the High Court has to foster institutional harmony and integrity of the judiciary. It would therefore not be in order for the High Court to encourage Court Users to side step Rule 5 (A) (2) of the IRC Procedure Rules.

I therefore decline to entertain this appeal as it is brought to this court pre-maturely. Counsel for the appellants should have respected the said Rule by first applying for a review before the Chairperson/Deputy Chairperson of the IRC. I therefore order that the appellants should go back to the IRC and comply with Rule 5(A) (2) of the IRC Procedure Rules. They can only appeal to the High Court after they are aggrieved

with the decision of the Chairperson/Deputy Chairperson of the IRC. I order that costs be to the Respondents.

DELIVERED THIS 25TH DAY OF JANUARY 2016 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE
