



JUDICIARY



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISCELLANEOUS CAUSE NO. 42 OF 2016**

**(Being Civil Cause N0. 765 of 2015 before the Principal Magistrate Court sitting
at Blantyre)**

BETWEEN

**REGINA MULIRA (suing on her own behalf and on behalf of other
beneficiaries of Rodrick Masanje (Deceased) PLAINTIFF**

AND

MALAWI SUN HOTEL AND CONFERENCE CENTRE LIMITED DEFENDANT

CORAM HER HONOUR EDNA BODOLE

Khan, of Counsel, for the Plaintiff

Ng'omba, of Counsel, for the Defendant

Mrs Chilimampunga, Court Clerk

RULING

The plaintiff commenced this action against the defendant in the lower court claiming damages for loss of expectation of life and loss of dependency. The defendant was found liable. Upon application by the plaintiff, the lower court made an order transferring the issue of assessment of damages to the High Court



on the basis that the damages to be awarded in this matter would be in excess of its jurisdiction which is K2,000,000.

When the matter came for assessment of damages, the defendant raised a preliminary objection alleging the lower court had no jurisdiction to transfer proceedings to the High Court. As such the assessment proceedings before this court are a nullity and should be dismissed.

I shall now examine the purported referral or transfer of the assessment proceedings to the High Court. Section 46 of the Courts Act is very clear as to how a subordinate court can effect transfer of proceedings from itself to another court. It states that

- “(1) Subject to any written law, a subordinate court may –
 - (a) transfer any proceedings before itself to a subordinate court of a lesser grade;
 - (b) transfer any proceedings before itself to any subordinate court of a higher grade with the consent of such court; and
 - (c) direct the transfer to itself of any proceedings before any subordinate court of a lesser grade.
- (2) A subordinate court shall comply with any direction given to it under subsection (1).”

This section empowers a subordinate court to transfer proceedings from itself to another subordinate court but not the High Court.

Section 41 of the Courts clearly shows that where a plaintiff relinquishes his claim to be within the jurisdiction of a subordinate court, he cannot later bring subsequent proceedings in any court in respect of the relinquished part. Any court, therefore, includes the High Court.

Section 40 of the Courts Act is to the effect that if any defence or counterclaim of the defendant involves matters beyond the jurisdiction of a subordinate court, any of the parties may apply to the High Court for the transfer of the proceedings. The High Court may grant the order and the action will proceed as if it had

originally been instituted in the High Court. It must be observed that even where the defence or counterclaim of the defendant exceeds the jurisdiction of a subordinate court, the subordinate court cannot transfer proceedings to the High Court. This section does not empower a subordinate court to transfer proceedings from itself to the High Court. It empowers the High Court to transfer proceedings from a subordinate court to the High Court.

Under section 26 of the Courts Act the High Court has general supervisory and revisionary jurisdiction over all subordinate courts. The section empowers the High Court to transfer proceedings from subordinate courts to the High Court.

In Gladys Ndunya v Gift Ndunya Miscellaneous Matrimonial Cause No. 24 of 2015

Justice K. Nyirenda stated as follows:

“...a subordinate court can only transfer proceedings to another subordinate court and not to the High Court. The Courts Act also puts the matter in quite unambiguous language that it is the High Court that can transfer to itself a case from a subordinate court. Neither the Courts Act nor the Subordinate Court Rules empowers a magistrate court to “refer” or “defer” a matter to the High Court.

...A magistrate court, whose jurisdiction is essentially statutory, cannot under the Courts Act refer or transfer a case to the High Court for want of jurisdiction.”

The sentiments expressed in Gladys Ndunya and Gift Ndunya (supra) in regard to the Courts Act vis-à-vis a subordinate court's jurisdiction in transferring proceedings to the High Court are clear and self-explanatory. I, therefore, find that a magistrate court has no jurisdiction to transfer a matter to the High Court. I find that the lower court had no jurisdiction to transfer the assessment

proceedings to the High Court. This court cannot hear the assessment proceedings and they are dismissed with costs to the defendant.

Made in chambers this 11th day of May, 2017 at Blantyre.

EDNA BODOLE (MRS)

ASSISTANT REGISTRAR