

**JUDICIARY**  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**MISCELLANEOUS CIVIL APPLICATION NO. 49 OF 2018**

**BETWEEN**

**PETER GUTA ..... 1<sup>ST</sup> APPLICANT**  
**VIWEMI MAKWAKWA ..... 2<sup>ND</sup> APPLICANT**  
**ALEX GEOFREY ..... 3<sup>RD</sup> APPLICANT**

**AND**

**FDH FINANCIAL HOLDINGS LIMITED ..... RESPONDENT**

**CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA**  
Mr. Maliwa, of Counsel, for the Respondent  
Applicants, absent and unrepresented  
Mrs. Doreen Nkangala, Court Clerk

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**RULING**

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*Kenyatta Nyirenda, J.*

This is my ruling on the Claimant's application for an order to re-open the Applicants' case before the Labour Relations Court (lower court) for further cross examination.

The application is supported by a sworn statement by Mr. Patience Maliwa wherein he deposes as follows:

- "1. ***THAT*** the Applicants commenced an action in the IRC at Lilongwe District Registry claiming among other things compensation for wrongful and unlawful termination of services. There is now produced and shown to me a copy of the Applicants' Form 1 exhibited hereto and marked "**PMI**".

2. **THAT** the matter went for trial following which the Applicants' case was closed. The matter was then reserved for trial following the Respondent's failure to parade its witness for some 2 occasions. The Respondent's prayer to adjourn the matter to allow it secure the presence of its witness who was then, reportedly outside the jurisdiction, was denied.
3. **THAT** I repeat the contents of the above paragraph and further state that following denial to adjourn the matter, the Respondent took out inter-partes notice of motion to reopen the Applicants' case for further cross examination. The lower court denied to even issue the said notice of motion on the basis that it had already reserved the matter for judgment. Now produced to me is a copy of the returned notice of motion exhibited hereto and marked "**PM2**".
4. **THAT** now the Respondent seeks for an order reopening the Applicants' case for further cross examination on the grounds outlined hereunder.

**RIGHT TO BE HEARD, RIGHT TO ACCESS TO JUSTICE AND AN  
EFFECTIVE LEGAL REMEDY**

5. **THAT** in terms of Section 41 of the Constitution, the Respondent has a right to access to justice and a right to an effective legal remedy. The Respondent also has a right to be heard in defending itself. These rights are actualized by among other things, cross-examining the Applicants since in cross examination the examining party indirectly adduces evidence in its favour by discrediting the other party's evidence.
6. **THAT** these rights require a court to conduct trial in a manner which is not prejudicial to the other party.
7. **THAT** the evidence that the Respondent was to adduce in this matter was crucial and discrediting to the Applicants' case. I now produce and mark "**PM3**" the Respondent's purported witness statement which was filed before the IRC. As it can be seen from the same, it contains letters of the Applicants admission of guilty (**exhibits 1(d) and 2 (d)**). This is crucial to the matter and cannot be ignored.
8. **THAT** further to the above Exhibit "**PM3**" demonstrates how the Applicants flouted procedures of processing travelers' cheques by among other things, failure to verify the identity of customers. All this militates to the fact that there was a valid reason for dismissing the Applicants. This evidence cannot go unattended to.
9. **THAT** in light of the above, the IRC having denied a prayer for an adjournment, the prayer to reopen the Applicants' case for further cross examination on these

*documents was supposed to be entertained. Denying to adjourn the matter and also denying to reopen the Applicants' case for cross examination amounts to double jeopardy to the Respondent.*

10. **THAT** *it is clear in the circumstances that the Respondent's right to be heard, right to access to justice and an effective legal remedy will be prejudiced if the Applicants' case will not be reopened for further cross examination. It is also noteworthy that owing to denial to reopen the Applicants' case, the Applicants' evidence technically went in ex-parte. This is prejudicial to the Respondent.*

**THE RATIONALE FOR THE LABOUR RELATIONS ACT**

11. **THAT** *among other things, the underlying rationale of the Labour Relations Act as seen from its long title, is to promote orderly and expeditious dispute settlement, conducive to social justice and economic development.*
12. **THAT** *I repeat the above paragraph and further state that it is in tandem with the said rationale that the Applicants' case be reopened for further cross examination.*

**WANT OF PREJUDICE TO THE APPLICANTS AND INTEREST OF JUSTICE**

13. **THAT** *interest of justice in this matter tilts towards granting the prayer to reopen the Applicants' case for further cross examination.*
14. **THAT** *no prejudice will be occasioned to the Applicants in the event that their case is reopened. On the other hand, the Respondent will be prejudiced if the Applicants' case is not reopened.*
15. **THAT** *without prejudice to the above paragraph, the only prejudice which the Applicants may suffer is in terms of costs incurred in attending to the protracted trial of the matter. The Respondent is willing and ready to shoulder costs incurred in attending to the protracted trial. Effectively, no prejudice therefore lies to the Applicants.*

**WHEREFORE** *I pray for an order reopening the Applicants' case for further cross examination."*

The application is said to be brought under Order 16, r. 4, of the Court (High Court) (Civil Procedure) Rules [Hereinafter referred to as "CPR"] as read with Order 10, r. 5(a), of CPR.

Order 16, r. 4, of CPR provides that trial of a proceeding shall be held in open court unless the Court orders otherwise. Order 10, r.5 of CPR deals with service of an application for interlocutory orders and it provide as follows:

- “5. *An application for an interlocutory order shall be served on the other party to the proceedings, unless-*
- (a) the matter is so urgent that the Court decides the application in proceeding should be dealt with in the absence of the other party; or*
  - (b) the Court orders, for good reason, that there is no need to serve it on the other party.”*

I have great difficulties in understanding how Order 16, r. 4 and Order 10, r. 5(a), of CPR come into play. I see nothing therein which can remotely be said to support the bringing of the application now before the Court.

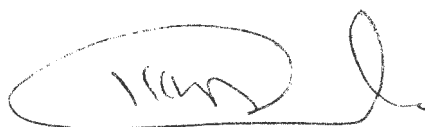
In any case, the application relates to proceedings before the lower court. In handling such an application, this Court has as a matter of prudence to address what in my view constitutes the threshold question, namely, whether or not the application has been competently brought before me, having regard to section 65 of the Labour Relations Act, which is couched in the following terms:

- “(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 thirty days of the decision being rendered.”*

In the present case, according to the Respondent’s own narration of facts, the Respondent took out in the lower court an inter-partes notice of motion to reopen the Applicants’ case for further cross-examination but the lower court refused to issue the said notice of motion on the basis that it had already reserved the matter for judgment. The refusal was made on 8<sup>th</sup> February, 2018. If at all the Respondent was dissatisfied with the refusal, the Respondent ought to have lodged an appeal against the same. The Respondent has advanced no reason whatsoever for not pursuing an appeal. In the premises, the answer did not lie in bringing the present application which is, in any event, premised on wrong provisions of CPR.

All in all, the application is incompetent and misconceived. It ought to be dismissed. Accordingly, the application is dismissed with costs.

Pronounced in Court this 26<sup>th</sup> day of June 2018 at Blantyre in the Republic of Malawi.

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a series of loops and a long horizontal stroke.

**Kenyatta Nyirenda**  
**JUDGE**