



JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE No. 654 OF 2011



Between:

JACKSON KABUDULA

PLAINTIFF/RESPONDENT

and

NICO GENERAL INSURANCE
COMPANY LTD

DEFENDANT/ APPELLANT

RULING

The plaintiff commenced this action against the defendant by way of writ of summons which was filed on 30 June 2011, claiming damages for personal injuries that he sustained in a motor vehicle accident. On 9 April 2013 the parties entered a consent judgment on the issue of liability, and agreed that the defendant do pay the plaintiff damages which will be subject to issue of contributory negligence. The extent of contributory negligence by the plaintiff having been agreed at 30 per cent, the defendant was liable to pay the plaintiff only 70 per cent of the total sum of damages which would be assessed by the Registrar. On 28 October 2013 the Deputy Registrar awarded the plaintiff the sum of K5,582,000 in respect of his claim against the defendant. The defendant appealed against the order on assessment of damages for being very exorbitant and excessive. The plaintiff objected to the hearing of the appeal on the ground that the High Court does not have jurisdiction to determine the appeal. This court has to determine whether or not the High Court has jurisdiction to determine an appeal on assessment of damages.

The submissions of the defendant / appellant

The defendant submits that appeals from the Registrar ought to and do lie to the judge in chambers. According to the defendant, for the purposes of observing the rule of law and doctrine of *stare decisis* the law is as was enunciated by the Supreme Court of Appeal in *Gani v Chande*¹ decision. The defendant contends that by the authority of the case of *Civil Liberties Committee v Ministry of Justice and another*² this court is bound by the decision of the Supreme Court of Appeal in *Gani v Chande*³ regardless of the contrary views or reservations it can have against the Supreme Court of Appeal's decision. The defendant argues that the doctrine of *stare decisis* which was emphasized by the Supreme Court of Appeal in the case of *Civil Liberties Committee v Ministry of Justice and another*⁴ still binds the courts in Malawi to date. The decision of the Supreme Court of Appeal on this matter is binding and ought to be followed and cannot be overruled by a decision made by a judge of the High Court. The plaintiff submits that the court in *Chakwantha v Prime Insurance Company Limited*⁵ was at pains to distinguish the case of *Gani v Chande*⁶ in so far as it decided on the question of whether appeals lie to the Supreme Court of Appeal but the learned judge did not show how the Supreme Court of Appeal's decision in relation to the provisions material to this issue was different from the case before him or let alone whether the decision of the later Supreme Court of Appeal cannot change the law simply because it mentioned only one of its judgments and left out another. The defendant submits that the decision in *Chakwantha v Prime Insurance Company Limited*⁷ is not binding upon this court, first because a judge of the High Court is not bound by the decision of another judge of the same or similar jurisdiction. Secondly the judgment in *Chakwantha v Prime Insurance Company Limited*⁸ was made in total contradiction to an earlier Supreme Court of Appeal decision in relation to the same issue. Thirdly, the judge did not distinguish the Supreme Court of Appeal authority to the case before him.

¹ [2006] MLR 25.

² [2004] MLR 55.

³ [2006] MLR 25.

⁴ [2004] MLR 55.

⁵ HC/PR Civil cause no. 2195 of 2010 (unreported 8 August 2013).

⁶ [2006] MLR 25.

⁷ HC/PR Civil cause no. 2195 of 2010 (unreported 8 August 2013).

⁸ HC/PR Civil cause no. 2195 of 2010 (unreported 8 August 2013).

The defendant argues that under rule 3 of the High Court (Exercise of Jurisdiction of the Registrar) Rules appeal lie to the judge in chambers. A position that was affirmed by the judgment in *Gani v Chande* and has not been reversed by another Supreme Court of Appeal decision. Overall the defendant submits that this appeal is properly brought before the High Court and should be entertained. The defendant submits that the decision in *Chakwantha v Prime Insurance Company Limited*⁹ is not binding on this court and ought not to be followed.

The submissions of the plaintiff / respondent

The counsel for the plaintiff submits that the correct order under which the appeal should have been taken out is Order 58 rule 2 of the RSC and not under Order 58 rule 1 of the RSC. According to the plaintiff there is no competent appeal laid before this court and the present appeal must be dismissed for being commenced in the wrong court since the right procedure on appeal against the decision of the Registrar on assessment is contained in the decision in *Mpinganjira v Attorney General*.¹⁰ The plaintiff also rely on the cases of *Banda and another v Chunga*¹¹ and *Sukali v Southern Bottlers Limited and NICO General Insurance Limited*.¹² The case of *Sukali v Southern Bottlers Limited and NICO General Insurance Limited*¹³ attempts to distinguish the decision of the Supreme Court of Appeal in *Gani v Chande*¹⁴ and endorses the earlier decision of *Banda and another v Chunga*.¹⁵

The law

The law relating to appeals from the Registrar emanate from Order 58(1) and (2) of the Rules of the Supreme Court and rule 3 of the High Court (Exercise of Jurisdiction of the Registrar) Rules. While Order 58 rule 2(1) of the RSC provides that an appeal shall lie to the Court of Appeal, the converse is provided in rule 3 of the High Court (Exercise of Jurisdiction of the Registrar) Rules. Rule 3 of the High Court (Exercise of Jurisdiction of the Registrar) Rules gives the High Court jurisdiction to determine any decision, order or direction of the Registrar. In the

⁹ HC/PR Civil cause no. 2195 of 2010 (unreported 8 August 2013).

¹⁰ [1990] MLR 11.

¹¹ [1990] 13 MLR 53.

¹² HC/PR Personal injury cause no. 774 of 2012 (unreported 8 August 2013).

¹³ HC/PR Personal injury cause no. 774 of 2012 (unreported 8 August 2013).

¹⁴ [2006] MLR 25.

¹⁵ [1990] 13 MLR 53.

present matter the assessment of damages was followed by an order of the Registrar which is being appealed against to the High Court.

In the cases of *Banda and Another v Chunga*¹⁶ and *Mpinganjira v Attorney General*¹⁷ the Supreme Court of Appeal decided that according to Order 58 rule 2(b) of the RSC the High Court does not have jurisdiction to hear an appeal from the decision of the Registrar on assessment of damages and that appeals from a judgment of the Registrar on assessment of damages lies to the Supreme Court of Appeal. In *Mpinganjira v The Attorney General* the Supreme Court of Appeal commented in passing, at the outset of the hearing, that the appeal against an order for assessment of damages made by the Registrar to a Judge in Chambers was a wrong procedure. Hence, the Supreme Court of Appeal decided to ignore the proceedings which were taken by the Judge in Chambers and treated the appeal at hand as an appeal from the assessment made by the Registrar in his capacity as “Master of the Court.”

The turning point on handling appeals from the Registrar against assessment of damages was brought about by the case of *Gani v Chande*¹⁸ when the Supreme Court of Appeal reversed its earlier decision in *Banda and Another v Chunga* and held that appeals on assessment of damages lie to a judge in chambers and not to the Supreme Court of Appeal. In the case of *Gani v Chande* the Supreme Court of Appeal observed an inconsistency between Order 58 and the rules. The conflict between the two decisions in *Banda and Another v Chunga* and *Gani v Chande* has attracted a number of judicial decisions including the one in *Chakwantha v Prime Insurance Company Limited*.¹⁹

In the case of *Chakwantha v Prime Insurance* the High Court declined to hear an appeal against assessment of damages made by the Registrar and directed that the appeal as to assessment of damages be lodged with the Supreme Court of Appeal and not the High Court. The court was of the view that *Gani v Chande* contradicts section 21 of the Supreme Court of Appeal Act and section 21(b) of the General Interpretations Act. The judgment states that the jurisdiction of the Supreme Court under section 21(b) over judgments cannot be removed from the Supreme Court and then be given to a Judge by rules of court, Rule 3 of the High Court (Exercise of the Registrar’s Jurisdiction) Rules which is in fact, subordinate legislation.

¹⁶ [1990] 13 MLR 53.

¹⁷ [1996] MLR 12.

¹⁸ [2006] MLR 25.

¹⁹ HC/PR Civil cause no. 2195 of 2010 (unreported 8 August 2013).

Having heard from the parties and examined the case law on the issue of appeals from a judgment of the Registrar on assessment of damages, this court is persuaded by the reasoning in the case of *Chakwantha v Prime Insurance* and is not bound by the decision of the Supreme Court of Appeal in *Gani v Chande* for the reasons that are advanced in the case of *Chakwantha v Prime Insurance* itself. I therefore find that there is no competent appeal laid before the High Court and the present appeal against the order on assessment of damages is dismissed for being commenced in the wrong court since the right procedure on appeal against the decision of the Registrar on assessment is contained in the decisions in *Mpinganjira v Attorney General* and *Banda and Another v Chunga*. As has already been noted, the decisions in the two above cited cases hold that it is the Supreme Court of Appeal which has jurisdiction to hear appeals against assessment of damages made by the Registrar, which are conducted in the same way as a trial, and not the High Court.

The costs are awarded to the plaintiff.

Delivered in open court this 7th day of September 2018 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga
JUDGE

Case information

Mr. Zambezi	:	Counsel for the plaintiff.
Mr. Sauti	:	Counsel for the defendant.
Mr. Ng'ambi/ Ms. Million	:	Court Clerks