



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**REVENUE DIVISION**  
**CIVIL APPEAL NUMBER 04 OF 2018**

**BETWEEN:**

ABDUL KARIM BATAWALALA t/a LIDO

GROUP OF COMPANIES

RELIANCE TRADING COMPANY LIMITED

AND

THE MALAWI REVENUE AUTHORITY

1<sup>ST</sup> APPELLANT

2<sup>ND</sup> APPELLANT

RESPONDENT

**CORAM: HONOURABLE JUSTICE JOSEPH CHIGONA**

MR. PEARSON WAME, OF COUNSEL FOR THE APPELLANTS

MR. NURU ALIDE, OF COUNSEL FOR THE APPELLANTS

MR. GOBA CHIPETA, OF COUNSEL FOR THE APPELLANTS

MR. MODECCAI MSISHA, SC, OF COUNSEL FOR THE RESPONDENT

MRS. LONESS MICHONGWE, OF COUNSEL FOR THE RESPONDENT

MR. FELIX KAMCHIPUTU, COURT CLERK

**CHIGONA, J.**

**ORDER**

[1] This is the order of the court following an application by the appellants seeking leave to amend a Notice of Appeal pursuant to Order 111 rules 2(5) and 19 of the Supreme Court of Appeal Rules. The application is supported by a sworn statement, sworn statement in rejoinder and skeleton

arguments. Counsel Wame adopted all these supporting documents during the hearing of the present application.

[2] The genesis of the present application, as extracted from the sworn statement in support, is the judgment marked as **AM 4**, that this court delivered on 13<sup>th</sup> October 2020 in favour of the Respondent following an appeal that was lodged by the Respondent, Malawi Revenue Authority, against the determination of the Special Arbitrator. Following that judgment, the court granted leave to the Appellants to appeal to the Supreme Court as evidenced by the Order for leave to Appeal and Notice of Appeal marked as **AM 5a** and **AM 5b** respectively. The Appellants have now approached this court for an order to amend the Notice of Appeal. The justification for the application/amendment as contained in paragraph 15 of the sworn statement is as follows:

“That in view of the nature of the grounds of appeal as particularized in **AM 5b** above, there are all premised on the misdirection or error in law a fortiori, the intended amended is aimed at giving full particulars and the nature of the misdirection or error of law without changing the substance therein. Exhibited and marked **AM 6** is a copy of Amended Notice of Appeal underlined in red attesting my deposition.”

[3] The deponent avers in paragraph 16 that the intended amendment is based on the ground that the amendment does not raise new issues which were not before the High Court; that the facts necessarily to sustain the points of law concerned were established in the evidence on record and that the granting of leave to amend shall not give rise to any prejudice to the Respondent.

[4] The deponent avers that the Record of Appeal is ready and the Appellants intends to have the appeal entered before the Supreme Court of Appeal immediately following the determination of the present application as evidenced by the Registrar’s Statement marked as **AM 7**.

[5] During the hearing of the application, counsel for the Appellants stressed to this court that the amendment being sought is not introducing any new issues and that there is no prejudice on the Respondent. Counsel submitted that the amendment is sought to add full particulars to the grounds of appeal as filed. Counsel Wame cited the case of **BOWLER v TRADEKINGS**<sup>1</sup> where the court stated that an application to amend Notice of Appeal should be granted unless such an amendment intends to introduce new issues not before the lower court and that granting such an amendment will be prejudicial to the other party.

[6] The Respondent filed a sworn statement in opposition and skeleton arguments. The deponent avers that Appellants suppressed material facts that there exists a ruling that mandated them to move the court so as to have the appeal, in respect of the same subject matter, expedited. The deponent avers further that the Appellants suppressed material fact that they did not comply with the directions of the Supreme Court delivered on 21<sup>st</sup> October 2021 as evidenced by the Court Order marked as **AC 1**. Counsel avers that the Court ordered the parties to attend before the Registrar within 28 days from the date hereto to facilitate the best way towards a disposal of this

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<sup>1</sup> [2010] MLR 25

appeal. The deponent also avers that the Appellants made an application before the Supreme Court whose hearing was before Honourable Justice of Appeal Katsala which was dismissed for want of proper forum as evidenced by a copy of said application marked **AC 2**.

[7] During the hearing of the application, Msisha, SC, submitted that if the application is not to change the substance of the grounds of appeal but explain them, then its unnecessary application. Counsel argued that if the application is only aimed at adding full particulars, it is inconsistent with Order 111 rule 2(3) of the Supreme Court of Appeal Rules which provides that grounds of appeal should be concise and should avoid arguments.

[8] Counsel opposed the application on the ground that there has been a delay occasioned by the Appellants as the Notice of Appeal was filed in 2020 and nothing happened until the settlement of record in April 2021. Counsel submitted that the Appellants were to prepare the record of appeal for approval by the Registrar and this was not done. Senior Counsel submitted that even after settlement of record, nothing happened. What followed was an application to amend Notice of Appeal filed in the Supreme Court of Appeal that was rejected. Senior Counsel submitted that before that application, there was another application that resulted into the Order dated 20<sup>th</sup> October 2021 where the Supreme Court directed the parties to appear before the Registrar within 28 days to expedite the appeal. Senior Counsel submitted that the Appellants were to initiate this process as ordered by the Supreme Court. Senior Counsel argued that nothing of that sort happened until the present application. Counsel submitted that the Appellants are employing tactics to delay the appeal.

[9] Secondly, Senior Counsel raised an issue of prejudice. He argued that allowing the present application will result in prejudice to the Respondent as their preparation was based on the Notice of Appeal filed in 2020. Senior Counsel argued that there is change of the Grounds of Appeal herein. Thirdly, Senior Counsel submitted that assuming that this court finds merit in the present application, all costs thrown away be awarded to the Respondent as a precondition for the granting of the present application. In conclusion, Senior Counsel submitted that the present application whose basis is to provide full particulars to the grounds of appeal be dismissed as this justification is insufficient.

[10] In reply, counsel Goba Chipeta submitted that principles of amendment are not to give advantages to the Appellant and disadvantages to the Respondent. He submitted that principles of amendment are meant to offer an opportunity to parties where issues for determination are clarified with the underlying objective of achieving justice. He submitted that the framers of the law knew that changes are inevitable in human nature. He emphasized that the present application is aimed at making the appeal simpler. On other issues raised by the Respondent, he submitted that this court should disregard all of them as the amendment does not touch on those grounds as submitted by the Respondent.

[11] Counsel Nuru Alide submitted that currently in terms of case management, all parties to a case are to take active role in the management of the case. He argued that there was no application by the Respondent to dismiss the appeal for want of prosecution and that the settlement of record was done in the absence of the Respondent. He submitted that the Respondent took a relaxed

approach towards this appeal hence and is therefore precluded from raising issues of delays. He submitted that the Respondent has not shown new changes that this present application will bring. He argued that the objection by the Respondent is only aimed at delaying the appeal further.

### **THE LAW AND DISPOSAL OF THE APPLICATION**

[12] Order 111 rule 2(2) of the Supreme Court of Appeal Rules provides as follows:

“If the grounds of appeal allege misdirection or error in law the particulars and nature of the misdirection or error shall be clearly stated.”

[13] I am of the considered view that Order 111 rule 2(2) must be read with Order 111 rule 2(3) which provides as follows:

“The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.”

[14] Order 111 rule 2 (2) of the Supreme Court of Appeal Rules, in my interpretation, is providing guidance that where the grounds of appeal allege misdirection or error in law the particulars and nature of the misdirection or error shall be clearly stated. In my view, this is to accord a chance to both the Respondent and the Court to grasp the issues that form the basis of the appeal. Order 111 rule 2 (3) of the Supreme Court of Appeal Rules stipulates that the grounds of appeal are to be concise without any argument or narrative.

[15] I have considered the decision of the court in **BOWLER v TRADEKINGS**<sup>2</sup> as cited by the Appellants that leave to amend a Notice of Appeal should be allowed unless the amendment is introducing new things not before the lower court. The argument of the Appellants herein is that the amendment sought is not introducing any new material not previously before the High Court. The Appellants argued that if there are any new things being introduced, the Respondent has not brought them before this court.

[16] Let me mention that I have scrutinized the grounds of appeal initially filed by the Appellants herein. I am of the considered view that the present application lacks merit. The sole reason advanced by the Appellants is to add full particulars to the grounds of appeal. I find this assertion by the Appellants troubling. Order 111 rule 2(3) of the Supreme Court of Appeals demands that grounds of appeal be concise without any argument or narrative. I am afraid that granting the application will definitely defeat the dictates of the law. I am not convinced at all that the present application is serving any lawful purpose.

[17] The full particulars that the Appellants intend to add to the grounds of appeal can as well be contained in their submissions to the Supreme Court. At this juncture, the grounds of appeal are to be concise. “Concise” was defined in **Z.M DZINYEMBA t/a TIRZA ENETERPRISE v**

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<sup>2</sup> supra

**TOTAL MALAWI LIMITED**<sup>3</sup> to mean 'brief and to the point'. My observation on the grounds of appeal as initially filed is that they comply with Order 111 rule 2(2). The grounds of appeal are clear as to whether the lower court erred in law or fact. Therefore, to bring the present application with the aim of providing full particulars to the grounds of appeal, in my considered view, is not necessary. I am of the view that granting the application will defeat the dictates of the law as provided in Order 111 rule 2 (3) of the Supreme Court of Appeal Rules. While I agree with the Appellants that an amendment of a Notice of Appeal be allowed unless new things are being introduced not before the High Court as expounded in **BOWLER v TRADEKINGS**<sup>4</sup>, I am of the considered view that in such applications, that is not the only consideration. The court should also consider Order 111 2(3) of the Supreme Court of Appeal Rules. Where the amendment is contrary to this provision, as is the case in the present application, the same should not be granted. In **Z.M DZINYEMBA t/a TIRZA ENETERPRISE v TOTAL MALAWI LIMITED**<sup>5</sup>, the Supreme Court of Appeal struck out grounds of appeal drafted contrary to Order 111 2(3) of the Supreme Court of Appeal Rules.

[18] The Appellants also submitted that the intended amendment will result in reduction of the grounds of appeal. I am of the view that this is not a compelling reason for this this court to grant the amendment. I am of the view that if the Appellants desire not to argue some of the grounds of appeal, they are at liberty to inform the court of their decision. The Appellants are also at liberty to argue the grounds of appeal either separately as presented or combined. To me, it is a decision that the Appellants are at liberty to make. I do not think that the court will be against that decision. In certain instances, even the court combines and resolves grounds of appeal as one after taking into consideration the issues being raised. Hence, I am of the view that this is not a valid reason for the Appellants to make the present application.

[19] In conclusion, it is my finding that the present application by the Appellants is not meritorious. I therefore exercise my discretion to dismiss the application with costs to the Respondent.

[20] As was observed by the Supreme Court of Appeal, the appeal is to expedited. I do not think that filing applications of the present nature is aiding the expeditious disposal of the appeal in the Supreme Court.

**MADE IN OPEN COURT THIS 15<sup>TH</sup> DAY OF JUNE, 2022 AT PRINCIPAL REGISTRY,  
REVENUE DIVISION, BLANTYRE.**

  
JOSEPH CHIGONA

**JUDGE**

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<sup>3</sup> MSCA Civil Appeal No. 58 of 2013

<sup>4</sup> Supra

<sup>5</sup> Supra