



REPUBLIC OF MALAWI  
 IN THE HIGH COURT OF MALAWI  
 PRINCIPAL REGISTRY  
 CIVIL DIVISION

MISCELLANEOUS CIVIL REVIEW CASE NO. 77 OF 2021  
 (Being Personal Injury Cause No. 1119 of 2020 sitting at Limbe, Dalton Court)  
 (Before Honourable Justice Mambulasa)

**BETWEEN:**

**UNIVERSAL SECURITY SERVICES.....APPLICANT**

**-AND-**

**REDSON PHEREWENDE.....RESPONDENT**

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Mr. Shabbir Khan, Advocate for the Applicant

Mr. Obet Chitatu, Court Clerk

Mrs. Annie Libukama, Court Marshal

**ORDER**

## **MAMBULASA, J**

### **Introduction**

- [1] This matter was brought before this Court on a without-notice application at the instance of the Applicant under section 26(1) of the Courts Act,<sup>1</sup> for it to exercise its review and general supervisory powers over an Order of the Senior Resident Magistrate Court made on 1<sup>st</sup> February, 2021 and the action itself.
- [2] The application has been taken out on the grounds that the Senior Resident Magistrate Court did not have jurisdiction to entertain the claim because its cause of action was based on the Workers' Compensation Act.<sup>2</sup>
- [3] In that action commenced by the Respondent in the lower court, he was claiming damages for loss of amenities of life, pain and suffering, disfigurement and costs of the action.
- [4] The Applicant filed its defence denying the claim. The defence also raised the fact that the Respondent is not entitled to damages being claimed because the action is solely based on the Workers' Compensation Act and not under the common law tort of negligence.
- [5] The Applicant made an application in the lower court to dismiss the matter on account of the said want of jurisdiction. The Respondent's legal practitioners never opposed the application. In its ruling dated 1<sup>st</sup> February, 2021 but

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<sup>1</sup> Cap. 3:02 of the Laws of Malawi.

<sup>2</sup> Cap. 55:03 of the Laws of Malawi.

handed to the Applicant in August 2021, the Senior Resident Magistrate Court declined to dismiss the matter.

[6] The Senior Resident Magistrate Court opined as follows on page 4 of its ruling:

For counsel for the Defendant to roundly conclude that magistrates' courts do not have jurisdiction over injuries that employees sustained at their work places is to me very misleading. This Court is of the view that magistrates' courts have jurisdiction over such matters. There are so many cases which I have handled, I am handling and have not been concluded and other magistrates' courts elsewhere are handling similar matters. This is the first and unique application where counsel for the Defendant claims that magistrates' courts do not have jurisdiction over matters where employees have been injured in their work places. Unless, there is a practice direction on the same, this Court does not agree with counsel's argument. The only problem I have seen with the Plaintiff's statement of claim is that it does state the basis for the claim that is [sic], it does not state that he is making the claim under breach of statutory duty or under common law of negligence or occupiers' liability, *res ipsa loquitur* and many others.

[7] The lower court went further and held on page 5 of its ruling that:

Therefore, this Court denies to grant the said application to dismiss this matter. Further, this Court orders counsel for the Plaintiff to amend his statement of claim so that it precisely states the basis for the claim whether it is on breach of statutory duty or on Common Law which can be under negligence, occupiers' liability, *res ipsa loquitur* and many others. Upon such amendment, counsel will file and serve on the Defendant for them to raise their defence and the matter will proceed like that.

## **Issue for Determination**

[8] The only issue for determination before this Court is:

Whether the Senior Resident Magistrate Court had jurisdiction to entertain a personal injury claim arising from a workplace and commenced under the Workers' Compensation Act?

## **The Law**

[9] Jurisdiction is a very fundamental matter that must always be considered by every judicial officer before hearing or entertaining any matter.<sup>3</sup>

[10] The issue of jurisdiction is not a mere technicality and can never be cured. Once a court has no jurisdiction, then, that is it. Nothing can be done about that action or proceeding. The position of the law is very clear that the issue of jurisdiction can be raised at any stage of the trial or proceedings. The authority for this proposition is a Supreme Court of Appeal decision of *Hetherwick Mbale -vs- Hissan Maganga*.<sup>4</sup>

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<sup>3</sup> See *Malawi Communications Regulatory Authority -vs- Daniel Datchi, Godfrey Itaye & Others*, Miscellaneous Civil Review Case No. 67 of 2021 (High Court of Malawi) (Principal Registry) (Civil Division) (Unreported). See also *Symon Chimanya -vs- The Attorney General*, Miscellaneous Civil Cause No. 45 of 2018 (High Court of Malawi) (Principal Registry) (Unreported).

<sup>4</sup> MSCA Miscellaneous Civil Appeal Cause No. 21 of 2013.

[11] Jurisdiction is almost invariably a creature of statute. In *Kettie Kamwangala –vs- The Republic*<sup>5</sup> A. C. Chipeta, JA made an apt observation when he said that:

...Jurisdiction, as I further understand the law, is not assumed for mere purposes of convenience...Jurisdiction is Statute-conferred, and unless and until the circumstances the Statute has specified as creating jurisdiction in this Court occur, no one should try and confer jurisdiction on this Court otherwise.

[12] In *Humphreys Malola -vs- Alice Malola*<sup>6</sup> the High Court (M. A. Tembo, J sitting) also noted that jurisdiction is statutory.

[13] Section 44 of the Workers' Compensation Act provides as follows:

Any person affected by a decision of the Board, made under section 43, may within twenty-one days of such decision or within such further period as the court may on good cause shown, allow appeal to the court of a Chief Resident Magistrate.

[14] Section 50 of the Workers' Compensation Act provides as follows:

Determinations or orders of the Commissioner under this Act may be enforced as if they were determinations or orders of a Chief Resident Magistrate court in civil cases, irrespective of the value involved.

[15] Section 63 of the Workers' Compensation Act states as follows:

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<sup>5</sup> [2013] MLR 146 at 147.

<sup>6</sup> Civil Appeal Case No. 48 of 2016 (High Court of Malawi) (Principal Registry) (Unreported).

Where the injury was by the personal negligence or willful act or default of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer by civil suit independently of this Act:

Provided that-

- (a) any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury;
- (b) any compensation paid under this Act shall take into account any damages previously paid in respect of the same injury; and
- (c) no such additional payment if it is in excess of the amount of compensation payable under this Act, shall be made from the Fund.

[16] Section 26 (1) of the Courts Act under which the application for review has been brought by the Claimant in this matter provides as follows:

In addition to the powers conferred upon the High Court by this or any other Act, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts and may, in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to such subordinate court such directions as to the further conduct of the same as justice may require.

## **Analysis and Application of the Law to the Facts**

- [17] This Court's reading of the Workers' Compensation Act suggests that there is no provision that confers jurisdiction on all the subordinate courts created under section 33 of the Courts Act to entertain personal injury claims arising from workplace commenced under the Act itself.
- [18] However, limited jurisdiction has been specifically conferred on the Chief Resident Magistrate Court under the Workers' Compensation Act, to the total exclusion of all other subordinate courts which are presided over by both professional or lay magistrates under the Republican Constitution of Malawi.<sup>7</sup> That limited jurisdiction is in two instances. First, is to hear appeals from decisions of a Workers' Compensation Commissioner made under section 36 of the Act. Second, is to enforce determinations or orders of the Workers' Compensation Commissioner in terms of section 50.
- [19] In terms of section 63 of the Workers' Compensation Act, subordinate courts created under section 33 of the Courts Act have jurisdiction to entertain claims for personal injuries which were by the personal negligence or willful act or default of employers or of some other person for whose act or default the employer is responsible but commenced independently of the Workers' Compensation Act under the common law tort of negligence.
- [20] In those cases where the subordinate courts have jurisdiction to deal with claims for personal injuries which were by the personal negligence or willful

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<sup>7</sup> See generally Section 110 of the Republican Constitution of Malawi.

act or default of employers or of some other person for whose act or default the employer is responsible but commenced independently of the Workers' Compensation Act, under the common law tort of negligence, they can only award damages or compensation subject to the proviso to section 63 of the Workers' Compensation Act.

### **Finding and Determination**

- [21] In this case, exhibit "SK1" the Default Summons clearly shows that the action was commenced under the Workers' Compensation Act. Paragraph 1.4 of the Statement of Claim was to the effect that the Plaintiff was claiming compensation pursuant to statutory law on Workers' Compensation. Similarly, paragraph 2.5 of the same stated that: "In the whole scheme of events, the Plaintiff pleads by statutory law on Workers Compensation that he is entitled to compensation as he was injured on duty for the Defendant."
- [22] In view of the foregoing, it is therefore this Court's finding that going by the manner in which the Respondent pleaded its case and brought or commenced it under the Workers' Compensation Act, the Senior Resident Magistrate Court did not have jurisdiction to entertain this claim. There is no provision under the Workers' Compensation Act that confers jurisdiction on the Senior Resident Magistrate court or indeed any other subordinate court created under section 33 of the Courts Act, to deal with personal injury claims arising from workplaces brought under the Act itself. Even the Chief Resident Magistrate Court does not have such jurisdiction. The situation would have been different if the claim had been commenced or brought under the common law tort of negligence. This is a nuance that the lower court did not seem to appreciate in



this matter. The lower court misdirected itself in law. Resultantly, the Order which the court made on 1<sup>st</sup> February, 2021 and served on the Applicant in August 2021 and the action itself are a nullity. There was nothing else which could have been done to save the situation. Jurisdiction should never be assumed for mere purposes of convenience. The stage at which the action or proceeding was at, should not have mattered at all to the Senior Resident Magistrate Court.<sup>8</sup> Ordering an amendment in the circumstances of this case was a misdirection in law. It totally undermined the adversarial nature of judicial proceedings under our legal system.

[23] In the final analysis, the Order of the Senior Resident Magistrate Court made on 1<sup>st</sup> February, 2021 and the action itself in the lower court are hereby declared a nullity. The direction of this Court is that there is no action before the Senior Resident Magistrate Court to be proceeded with following this review. Similarly, if what the lower court stated in paragraph 6 above is correct, it is further directed that if the matters that it or other subordinate courts are handling are identical to this case, they should desist from doing so as they do not have jurisdiction to handle such claims commenced under the Workers' Compensation Act itself. They cannot even order that the pleadings be amended in the manner suggested by the lower court in this case. A wrong is a wrong. It should never matter how many other judicial officers are doing it. All such matters should be treated as dead on arrival.

[24] The Court makes no order as to costs.

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<sup>8</sup> See for instance, *Lustania Limited -vs- L B Nkhwazi* [2009] MLR 305.

[25] Made in Chambers this 4<sup>th</sup> day of March, 2022 at Blantyre, Malawi.

*M. D. Mambulasa*

**M. D. MAMBULASA**  
**JUDGE**