

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**CIVIL APPEAL CAUSE NUMBER 29 OF 2022**  
**(Being IRC Matter No. 717 of 2011)**

**BETWEEN**

**SUNBIRD MOUNT SOCHE HOTEL**

**APPELLANT**

**AND**

**B.M. PHIRI AND OTHERS**

**RESPONDENTS**

**CORAM: JUSTICE M.A. TEMBO**

Khondiwa and Francisco, Counsel for the Appellant  
Alide, Counsel for the Respondents  
Makhambera, Official Court Interpreter

**JUDGMENT**

1. This is an appeal brought by the appellants against the decision of the Deputy Chairperson of the Industrial Relations Court made on 18<sup>th</sup> November 2020 upholding the decision of the Assistant Registrar of the Industrial Relations Court adding new respondents to the present matter after the expiry of the limitation period of six years applicable on claims arising out of a contract of employment.
2. The history of this matter is straightforward. On 15<sup>th</sup> November, 2011 the respondents, four in number, brought a claim before the lower court that they

were unfairly dismissed because they were retrenched without being consulted or engaged on the retrenchment. They claimed compensation for the unfair dismissal.

3. On 2<sup>nd</sup> May 2013, the matter came for pre-hearing before the lower court. The respondents were represented by counsel and the appellant was represented by its Human Resources and Training Manager. At the pre-hearing, two issues were isolated for trial, namely, whether or not the four respondents were unfairly dismissed and whether compensation was payable to them. On 3<sup>rd</sup> June, 2013, the fourth respondent discontinued his case leaving only three respondents who continued the matter herein against the appellant to trial.
4. On 20<sup>th</sup> June, 2014, the lower court dismissed the respondent's claim for unfair dismissal, finding that the appellant consulted the respondents on the outsourcing of security services before the retrenchment of the respondents.
5. On appeal to this Court against the decision of the lower court, on 18<sup>th</sup> June, 2018 this Court reversed the decision of the lower court and found that in fact the appellant never consulted the respondents and hence that the retrenchment of the respondents constituted unfair dismissal. This Court ordered the lower court to assess the compensation for the unfair dismissal.
6. On assessment of compensation before the lower court's Assistant Registrar, the Assistant Registrar heard a motion by the respondents to add new respondents as claimants and that motion was opposed by the appellant. On 5<sup>th</sup> August, 2020 the Assistant Registrar of the lower court granted the motion adding the new respondents bringing the total number of respondents to 27 from the original three respondents.
7. The appellant applied for a review of the decision of the Assistant Registrar, adding the new respondents herein, to the Deputy Chairperson of the lower court. The appellant contested the addition of the new respondents outside the limitation period of six years allowed for commencement of a claim arising out of a contract. See section 4 (1) of the Limitation Act. The Deputy Chairperson made a decision on 18<sup>th</sup> November, 2020 upholding the decision of her Assistant Registrar. The Deputy Chairperson reasoned that Rule 25 (1) (d) of the Industrial Relations Court (Procedure) Rules allows addition of parties at any time and that the Limitation Act could not bar addition of respondents in the present matter outside the limitation period. The Deputy Chairperson came to this conclusion while relying on the philosophy behind

the Industrial Relations Court (Procedure) Rules which emphasize the need for informality, economy and dispatch as provided in section 71 (1) of the Labour Relations Act.

8. Being dissatisfied with the decision of the Deputy Chairperson of the lower court, the appellant filed this appeal in which a single question is raised whether indeed in view of Rule 25 (1) (d) of the Industrial Relations Court (Procedure) Rules, which allows addition of parties at any time, the Limitation Act could not bar addition of the new respondents in the present matter after expiry of the limitation period.
9. The appellant reasoned that adding a new party outside the limitation period will not be allowed if it would deprive the appellant of the defence of limitation. And that a party cannot add or substitute a new party after the expiry of the limitation period. See *Zgambo & Aroma Estate Company Limited v Agriculture Management Consultancy & 2 others* civil cause number 455 of 1980 (High Court) (unreported).
10. The respondents contended that they had the three respondents in this matter as representatives. And that it was only just that they were allowed as additional parties even after the expiry of the period allowed for commencing claims based on contract. The appellant however asserted that there was no evidence that the additional respondents let the three original respondents proceed as their representatives in this matter.
11. This Court has found that there is indeed no evidence on the record of the proceedings before the lower court that the original three respondents proceeded herein in a representative capacity for the additional new respondents.
12. This Court also agrees with the appellant that the law remains that a party cannot be added to a proceeding after the expiry of the limitation period if the effect is to deprive the appellant herein of the defence of limitation. See *Zgambo & Aroma Estate Company Limited v Agriculture Management Consultancy & 2 others* civil cause number 455 of 1980 (High Court) (unreported). Any new parties must be added within the period allowed for commencing proceedings, in this case, that should have been done within a period of six years of the retrenchment.
13. In this country, the Limitation Act does not provide for any leeway for adding new parties after the limitation period has run its course. In contrast, in

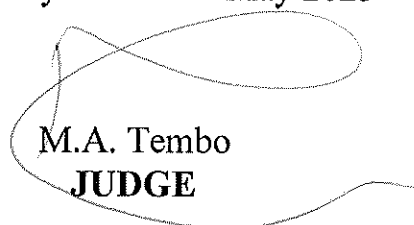
England, the law allows for addition of new parties after the expiry of the limitation period where the addition or substitution of the new party is necessary for the determination of the original action. And the addition is not considered necessary, unless, either the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name or any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant in the action. See section 35 (6) of the Limitation Act, 1980 (England) and Part 19.5 of the Civil Procedure Rules (England) and the case of *Morgan Est (Scotland) Ltd v Hanson Concrete Products Ltd* [2005] WLR 2557. These provisions are however not applicable in our case. However, even if the foregoing provisions applied, the respondents herein could not have succeeded in defending this appeal since they have not demonstrated that the addition of the new respondents was necessary for the determination of the original matter before the lower court. There was no mistake as to who were the respondents in their matter and it is not the case that the matter before the lower court could not be determined unless the additional new respondents were added.

14. The respondents then unsuccessfully attempted to persuade this Court to apply the rules applicable on addition of new causes of action after the expiry of the limitation period arising from the same facts from which the original cause of action was commenced within the limitation period. As correctly submitted by the appellant, such rules on causes of action do not concern the addition of new parties after the expiry of the limitation period.
15. In the foregoing premises, the decision of the Deputy Chairperson is reversed and the only legitimate respondents entitled to compensation in this matter are the three that originally commenced their claims against the appellant before the lower court, within the limitation period.

16. The appeal therefore succeeds.

17. No costs order is made on this appeal since section 72 of the Labour Relations Act restricts the making of costs orders in labour matters before the lower court. See *First Merchant Bank Limited v Mkaka and 13 Others* [2014] MLR 105 (SCA).

Made in open Court at Blantyre this 16<sup>th</sup> May 2023



M.A. Tembo  
**JUDGE**

