



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CIVIL DIVISION**

**MISCELLANEOUS CIVIL CAUSE NUMBER 210 OF 2022**

**In the Matter of the review of the decision of the Senior Resident Magistrate  
Court sitting at Limbe in Civil Cause Number 1946 of 2020**

**BETWEEN**

**SHIRE HIGHLANDS MILK PRODUCTION**

**APPLICANT**

**AND**

**DOROTHY NALUZU**

**RESPONDENT**

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

Machika, Counsel for the Applicant  
Chizimba, Counsel for the Respondent  
Mankhambera, Official Court Clerk

**ORDER**

1. This matter was brought before this court, at the instance of the applicant, for this Court to exercise its supervisory and revisionary powers as provided in section 26 of the Courts Act. The revision pertains to the alleged conduct of the lower court denying the witness of the applicant from adducing the contract that formed the basis of the dispute before the lower court.
2. The gist of the matter is that the applicant, previously unrepresented before the lower court but now represented by counsel, indicates that its witness

testified before the lower court in this matter that concerned the respondent's claim that the applicant was in breach of a contract between the parties. The respondent was represented by counsel. The applicant indicates that the lower court never gave guidance to its witness on how to adduce evidence. The applicant indicates that its witness had a written contract that formed the subject matter of the proceedings before the lower court. However, that the applicant's witness did not tender the written contract in evidence since the said witness was not given guidance in that regard by the lower court during trial. The applicant asserts that the lower court denied its witness a chance to tender the contract in evidence, whose terms the said witness referred to in evidence. The applicant added that the lower court also failed to consider the respondent's failure to adduce evidence in the form of a contract when the respondent's claim was mainly based on the said contract.

3. The order on revision is made pursuant to section 26 of the Courts Act which provides that

(1) 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.

(2) Upon the High Court calling for any record under subsection (1), the matter or proceeding in question shall be stayed in the subordinate court pending the further order of the High Court.

4. This Court only perused the record of the lower court in this matter. Indeed, the record shows that no guidance was provided to the applicant's witness in terms of adducing written evidence pertaining to the contract. On one hand, the lower court may however not be faulted in that regard because the respondent who was represented by counsel never brought up the issue of the written contract between the parties herein in the first place.

5. Usually, where parties are unrepresented, courts will give some guidance on production of evidence and matters of proof generally. The Courts Act does not

enjoin the lower court or this Court to do so but this is a fundamental and inherent function of the courts to ensure that justice is done between the parties after the court has considered all available evidence in the matter be it oral or documentary.

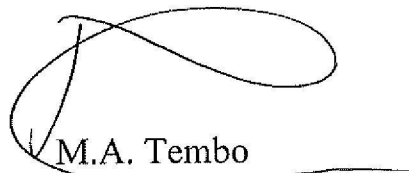
6. The lower court should in the circumstances have indicated to the applicant's witness that she was required to provide proof in the applicant's defence by oral evidence and by documentary evidence, if any was available. The record does not show that this was done with regard to the documentary evidence.

7. Ordinarily, this Court would have exercised its supervisory powers in this matter on the question of the lack of the relevant guidance alone. However, this Court observes that the applicant raises another matter that should properly be the subject of an appeal, namely, that the lower court also failed to consider the respondent's failure to adduce evidence in the form of a contract when the respondent's claim was mainly based on the said contract.

8. This Court observes that section 27 of the Courts Act provides that where an appeal lies from any judgment in any civil matter and no appeal is brought, no proceedings by way of review shall be entertained at the instance of the party who could have appealed.

9. Since the applicant herein could have appealed on the manner in which the lower court arrived at its decision and has not done so, this Court is enjoined not to exercise its powers on revision as dictated by section 27 of the Courts Act. The applicant shall therefore pursue its interests herein by way of appeal if it is so minded, bearing in mind that under section 22 (d) of the Courts Act, this Court has power on appeal to call additional evidence such as the written contract that was not adduced before the lower court. The record of proceedings before the lower court herein is accordingly remitted back to the lower court.

Made in chambers at Blantyre this 4<sup>th</sup> October, 2022.



M.A. Tembo  
**JUDGE**

