

IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

M.S.C.A. CIVIL APPEAL NO.7 OF 1987
(Being Civil Cause No. 246 of 1986)

BETWEEN:

O.K. BAZAAR.....APPELLANT

- and -

M.R. GIRACH.....RESPONDENT

Before: The Honourable Mr. Justice Banda, J.A.
The Honourable Mr. Justice Mtegha, J.A.
The Honourable Mr. Justice Kalaile, J.A.
Maulidi, Counsel for the appellant
Latiff, Counsel for the respondent
Phiri/Gausi, Court Reporters
Kadyakale, Law Clerk

JUDGMENT

Mtegha, J.

The appellant in this case is appealing against a ruling made by Mbalame, J. on 9th December 1986 in which he refused to entertain an appeal from the Registrar because the appeal was filed out of time.

Perhaps it would be prudent if I briefly state the facts of the case.

The appellant, who was the plaintiff in the lower court, applied to the Registrar for judgment on admissions. The learned Registrar dismissed the application and the appellant appealed to a Judge in chambers.

When both counsel had addressed the court, counsel for the respondent pointed out that the appeal cannot be entertained because the appeal was filed out of time. The learned Judge found that the learned Registrar's ruling was made on 16th September, 1986, and notice to appeal was filed with the court on 22nd September 1986, and according to O.58/1/3 time of the appeal had elapsed.

It has been submitted by Mr. Maulidi that the Judge was wrong to hold that time, within which to appeal, had elapsed because O.58/1/3 was not complied with. He says

that his appeal was within time because, taking into account 0.3/2/5 of the Rules of Supreme Court, Saturdays and Sundays are excluded for the purpose of computing time. In this case, 16th September 1986 was a Tuesday, 20th and 21st September was a Saturday and a Sunday, respectively, and 22nd was a Monday when he filed in notice of his appeal. He was therefore within the time of 5 days. Again under the provision of Rule 3 of High Court (Exercise of Jurisdiction of Registrar) Rules 1975, period required for an appeal to the Registrar's ruling to a Judge in Chambers is 7 days; therefore he was within time.

Mr. Latiff, for the respondent, does not agree with the opinion of the court below. He says, however, that the rule cited above is the correct one and entirely agrees with Mr. Maulidi's submission.

We are also of the same view. The lower court entirely ignored the provisions which have been cited above. We therefore allow the appeal and set aside the Judge's order. We further order that the case be remitted back to the Judge to hear the substantive appeal.

On the question of costs, we set aside the costs awarded to respondent in the lower court and order that each party will pay its own costs on this appeal.

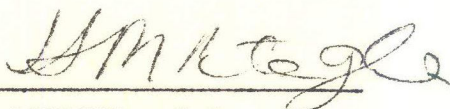
DELIVERED at Blantyre on this 8th day of August, 1988.

Signed




BANDA, J.A.

Signed



MTEGHA, J.A.

Signed



KALAILE, J.A.