IN THE MALAWI SUPREME COURT OF APPEAL

M.S.C.A. CIVIL APPEAL NO. 26 OF 1988

BETWEEN: K. N. PINTO.....APPELLANT

- and -

PRESS TRANSPORT (1975) LTD.....RESPONDENT

BEFORE: THE HON. THE CHIEF JUSTICE
THE HON. MR. JUSTICE MTEGHA
THE HON. MR. JUSTICE CHATSIKA

Mhango, of Counsel for the Appellant
Jussab, of Counsel for the Respondent
Longwe, Court Reporter
Kalimbuka Gama, Court Clerk

JUDGMENT

Banda, C. J.

The case comes before this Court by way of a purported judicial review. It purports to be founded on Order 53 rule 3 of the Supreme Court Practice Rules. The application prays for an order that would set aside the order for costs which this Court, differently constituted, made when it delivered its judgment on 20th March, 1992. The application also seeks a declaration that the deprivation of the costs in the Supreme Court and those of the Court below was perverse and manifestly unjust.

It is not necessary to refer to the facts of the case because the issue before us is a narrow one namely whether it is competent for this Court to review its own judgment. Mr. Mhango has contended that this Court has power under Section 22(1)(d) of the Supreme Court Act to review its own judgment and that it can also invoke the "slip rule" in order for it to review its own judgment. Mr. Mhango further contended that under its inherent jurisdiction this Court has power to review its own judgment.

In our view none of the points raised by Mr. Mhango gives the Court any power to review its own judgment. In the first place we consider that the application itself is ill considered because Order 53 rule 3 expressly states that

the provisions of judicial review under that Order do not apply to the Court of Appeal and therefore to this Court. The facts which would invoke the principle of the "slip rule" which would enable this Court to change its judgment do not and cannot apply on the facts in this case. The effect of the application before this Court is to seek a reversal of the order of costs given by the Court on its previous decision.

The power of review or appeal is a creation of Statute and cannot be given or received through the inherent jurisdiction of the Court. Under rule 29 of the Supreme Court of Appeal Rules, for Civil Appeals, this Court cannot review its own judgment once given and delivered "save and except in accordance with the practice of the Court of Appeal in England". The practice of the Court of Appeal in England is that it has power to alter its decision only before it has been perfected and it has no power to rehear an appeal after its order has been passed and entered: vide ord. 59/1/34. Section 22(1)(d) of the Supreme Court Act only applies to orders which this Court may make on appeals from the High Court and does not give jurisdiction to the Court to review its own judgment.

It is our considered view, therefore, that this Court has no jurisdiction to review, alter or change its own decision which has been delivered except those changes which can be made under the "slip rule" and this rule has no relevancy to the facts raised in the application before this Court. A similar attempt was made to have this Court reverse the decision of the Supreme Court and was correctly rejected in the case of Kayambo v. Kayambo M.S.C.A. No. 8/1988 (unreported).

We would like to make some general observations about some findings made by the trial Court and accepted by the Supreme Court. Those findings were very crucial on the general issue and to the ultimate verdict which the trial Court returned. The trial Judge found that there was illegality and it was on that ground that the plaintiff failed in his action on the basis that he could not enforce an illegal contract against the defendant. We have grave doubts about the finding of illegality which, in our view, is against the weight of the evidence and indeed against the finding of the trial Judge himself. As can be seen on page 2 of the trial Court's judgment the learned trial Judge found specifically that "this fuel had already been paid for in advance by the plaintiff". That finding was crucial to the case and in our view, having made that finding, it is difficult to see how he could also find that there was an

illegality. That finding, in our judgment, destroyed the whole premise on which the illegality could be founded. In our view, what the defendant was doing when he went to the filling station was merely collecting fuel which had already been bought by the plaintiff. He was not buying the fuel at the filling station. We would, therefore, express our grave doubts about the correctness of that decision on the general issue.

We would, therefore, dismiss this application on the ground that we have no jurisdiction to review a previous decision of the Supreme Court of Appeal. We will make no order for costs on this application.

DELIVERED in open Court this 11th day of December, 1992 at Blantyre.

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R. A. BANDA, C.J.

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H. M. MTEGHA, J.A.

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L. A. CHATSIKA, J.A.