



IN THE MALAWI SUPREME COURT OF APPEAL

CIVIL APPEAL NUMBER 5 OF 2010

BETWEEN

LAMSON CHITAWO ----- 1ST APPELLANT
MONICA DZANJALIMODZI----- 2ND APPELLANT

AND

MALAWI PROPERTY INVESTMENT COMPANY LIMITED ----- RESPONDENT

CORAM : HON. E.M. SINGINI, SC., JA

: Mr. Tandwe, of Counsel for the Appellants

: Mr. Likongwe and Mr. Mapira, of Counsel for the Respondent

: Balakasi, Court Interpreter

RULING

SINGINI, SC, JA

This application comes before me sitting as single member of this Court under section 7 of the Supreme Court of Appeal Act (Cap. 3:03). I heard it in chambers on 2nd November, 2010. As far as I can discern, the application seeks

three orders of this Court, that is, an order for extension of time within which to appeal against a judgment of the High Court, a second order allowing amendment of grounds of appeal and a third order allowing the appellants to amend their statement of claim (or the Claim Form, called IRC FORM 1) which they filed in the Industrial Relations Court.

The appellants as employees brought a suit before the Industrial Relations Court against the respondent as employer for unfair termination of employment. Although the court gave judgment for the appellants and the respondent paid the damages as assessed by the court, the appellants were not satisfied with some aspects of the judgment and appealed to the High Court against the judgment. The appellants raised some eight grounds of appeal. The High Court, too, in its judgment delivered on 23rd July, 2010, gave judgment for the appellants and made an order for the assessment of damages by the Registrar which was done and the respondent paid the sum assessed by the Registrar which the appellants received. The appellants were still dissatisfied with the Registrar's assessment of damages and lodged an appeal to this Court.

In the meantime, the appellants have changed their lawyers and the new lawyers have advised the appellants to appeal instead against the High Court judgment itself and not against the order of assessment by the Registrar. With this development the appellants find themselves out of time to appeal against the High Court judgment and are thus applying to this Court for extension of time within which to appeal and also for an order to amend the grounds of appeal to re-direct them against the High Court judgment. The reason for this change of course or approach in appealing is that the new lawyers have advised the appellants that the root source of their dissatisfaction should be the High Court judgment itself in that although the learned judge gave judgment in their favour it was without making pronouncement on each of the eight grounds of appeal which the appellants further claim did not give sufficient or proper guidance to the Registrar in assessing damages payable to the appellants. They therefore filed with this Court summons for enlargement of time within which to appeal and for amendment of grounds of appeal. The summons for this application was filed on

16th September this year, which is over one year after the High Court delivered its judgment.

I think sitting as single member of this Court, I will not risk determining the second limb of this application for an order to amend the grounds of appeal or the application for an order to amend the Claim Form, Form IRC 1. I would consider those two matters to be suitable for determination by a sitting of a full panel of this Court should the first limb of this application for an order of extension of time be granted.

I consider that my determination of the application for extension of time to appeal against the High Court judgment turns on a very short point of the length of delay in appealing and thus the failure by the appellants to have appealed within the prescribed time, which is a period of fourteen days if the High Court judgment is an interlocutory order and a period of six weeks in case of any other judgment as provided by section 23 of the Supreme Court of Appeal Act.

I consider that it must be in very exceptional circumstances that this Court will, or ought to, allow extension of time to appeal where there is a delay of this magnitude extending to over one year. Indeed the law under Order 1, rule 4, of the Supreme Court of Appeal Rules (Cap. 3:02) does give discretion to this Court to grant extension of time to appeal where there are good and substantial reasons for failure to appeal within the prescribed time.

In my judgment I reject as not sufficient the ground of just change of counsel, with whatever fresh legal opinion the new counsel may bring to the case as to what should have been a proper approach in filing an appeal. The converse of this would be to regard the incompetence or negligence or inadvertence of the earlier counsel, or indeed of any counsel, as constituting good ground for delay in filing an appeal and justifying the grant of extension of time, which I reject cannot be a proper ground. This would have the potential of unduly perpetuating litigation or allowing litigation to run out of control. Courts have the duty to bring litigation to a close and to avoid the unsettling of the status quo created by court judgments that would result from allowing appeals to be lodged long after

judgments have been delivered and, as should be expected, have been complied with.

In the present matter before me, having rejected the intervention of new counsel as proper ground, I consider the delay of over one year to be inordinate and that no other good and substantial cause has been advanced for the delay. The case of *Mbewe v Agricultural Development and Marketing Corporation* [1993] 16(1) MLR, p.301 (per Justice Tambala, sitting as a Justice of Appeal and a single member of the Court as I am sitting in this case) is on the point where it was held that even if good and substantial reasons were shown for the delay, this Court may still refuse an application where the delay was inordinate; and in that case a delay of three months before bringing the application was held to have been an inordinately long delay. I therefore dismiss this application.

As for the costs of attendance before me, I consider it proper to order that each part shall bear its own costs.

MADE in Chambers at Blantyre this 9th day of November, 2010.



HON. E.M. SINGINI, SC. JA