IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA Civil Appeal No. 67 of 2016

(Being High Court of Malawi, Lilongwe District Registry, Civil Cause No. 1347 of 2015)

Between:

Lackson Chimangeni Khamalatha and 26 Others .....Applicants/Appellants And

The Secretary General of Malawi Congress party.....1st Respondent

The Director of Elections of Malawi Congress Party.....2nd Respondent

Malawi Congress Party.....3rd Respondent

Coram: Honourable Justice A.C. Chipeta SC,JA

Namasala, of Counsel for the Applicants/ Appellants

Kita, of Counsel for the Respondents

Chimtande (Mrs), Official Interpreter

RULING

On 3rd October, 2016 I rather reluctantly set down the present *inter partes* Summons for an Interlocutory Order of Injunction pending Appeal for hearing on 18th October, 2016 at 2:00 pm. Since I had serious doubts about my jurisdiction to handle the Summons, I clearly directed that I desired to be first addressed on the question of juris diction before I could decide whether I should delve into the substance of the Summons.

It is to be recalled that this matter came my way in a somewhat dramatic fashion. I was on 30th September, 20 16, as Motion Judge, first brought this file when it only contained a Notice of Appeal and Skeleton Arguments. I sent it back to the Supreme Court of Appeal Registry with an indication that the rules require that Notices of Appeal be filed with the Registrar of the Court below, and that in the form it was this file had no business for me as a single Justice of Appeal to attend to in it. It is now my understanding that a proper Notice of Appeal has since been filed in the High Court in place of the one that had been ill-directed to this Court. However, by 3rd October, 2016 the same file was back before me, but this time it bore the *inter partes* Summons for Interlocutory Injunction *pending* Appeal that I ended up setting down.

When on the appointed day the matter was called, as I understood him learned Counsel for the Applicants/Appellants, in trying to address the concern I had expressed, was contending that if I declare that I have no jurisdiction I will be virtually shutting his clients out of the remedies they believe they are entitled to in this Court. He took time to lay down the background of the matter, and argued that at the stage they have reached his clients can only be helped by the Supreme Court of Appeal. They had a matter in the Court below, he said, which matter had been supported by an interlocutory injunction. The matter then got dismissed along with its interlocutory injunction. It was next restored without the interlocutory injunction, and when that injunction was re-applied for, the High Court dismissed the application. His client's then appealed to this Court against the Order of the High Court refusing to grant the injunction. If, therefore, as a single Justice of the supreme Court of Appeal I claim to have no jurisdiction, he asked, where else will his clients go.

Learned Counsel for the Applicants/Appellants then indicated that he believes that I have juris diction both to hear the appeal his clients have filed in this Court against the High Court's refusal to grant them an Injunction Order, and also to hear his clients' Interlocutory Summons for Injunction *pending* the hearing of the appeal. I referred learned Counsel to section 7 of the Supreme Court of Appeal Act (Cap 3:01) of the Laws of Malawi and asked for his comment on the same. His view was that the provision empowers a single Justice of Appeal to hear urgent interlocutory appeals without formalities of preparation and entry of record, but indicated that if I felt that the appeal should go to a three member panel of the

Court, then at least I should hear the Summons for Interlocutory Order of Injunction *pending* the hearing of the said appeal.

In this regard, he contended that following the filing of the Notice of Appeal in the Court below, it should be deemed that the record of appeal has been entered in this Court, and that I should thus get seized of the interlocutory Summons his clients have filed. By way of buttressing his stand, learned Counsel referred to Section 23(1)(a) of the Supreme Court of Appeal Act, which permits 14 days only for the filing of Notices of Appeal relating to Interlocutory Orders. He took that as a sign that such appeals must be dealt with urgently and without need of going through the requirements of settlement and preparation of record. For further authority learned Counsel presented me with a copy of a Formal Order that emanated from a single Justice of Appeal in MSCA Civil Appeal No. 32 of 2016 **Eveness Nkhalamba vs Alex Nkhalamba** (restraining the Respondent from enforcing the Order of a First Grade Magistrate) and he also cited the case of **Mulli Brothers vs Malawi Savings Bank Ltd** MSCA Civil Appeal No. 48 of 2014 (on grant of injunction pending appeal by a single Justice of Appeal), copy of which he attached to his skeleton arguments.

Addressing the question of jurisdiction when his turn came, learned Counsel for the Respondent first referred to Section 7 of the Supreme Court of Appeal Act, which he indicated limits the power of a single Justice of Appeal to exercising all the powers of the Court except those involving the hearing or determination of an appeal. He next referred to the Notice of Appeal which, he said, is about the Court deciding whether or not to grant the injunction the lower Court refused to grant. He observed, incidentally, that the *inter partes* Summons that has been taken out before me seeks the very same relief as the appeal herein is meant to determine, i.e whether or not to grant the injunction that was refused . He thus wondered how a single member of the Court ca n have jurisdiction to hear an application for injunction which is the very business the three Judges panel is supposed to decide when it hears the appeal.

All in all, the point learned Counsel for the Respondents was making was that as a single Justice of Appeal I do not have the power to hear and determine the appeal the Applicants/Appellants have brought up, as that is a job for a panel of three Justices of Appeal. Further, he was of the view that even if I had jurisdiction to hear applications *pending* appeal, the present Summons would not qualify to be

heard and determined by me, because if I decide it I will in advance have decided the very issue the panel of three Justices of Appeal will be expected to decide on when the appeal filed is eventually called before them.

This aside, it was learned Counsel's argument that even if as a single Justice of Appeal I had the jurisdiction to handle the type of application that is contained in the Summons at hand, the present application would fail to qualify for my attention as it will have been brought to my Court prematurely. Turning to Order Ill rule 19 of the Supreme Court of Appeal Rules, learned counsel pointed out that when parties appeal to this Court against High Court decisions, this Court only starts entertaining applications that arise within their appeals after such appeals have been entered in this Court. Appeals, he added, are only deemed entered when there has been compliance with Order Ill rule 11of the Supreme Court of Appeal Rules.

In the present matter, it was pointed out that the Registrar of the Court below has not even had the chance to comply with the Order and rule just cited. After receiving the Notice of Appeal, it was observed, the said Registrar has not even had time to settle the record of appeal. Thus, the appeal cannot at this stage be said to have been entered in the Supreme Court of Appeal. In a nutshell, the Respondents' view was that for this reason a single Justice of Appeal like me cannot begin handling interlocutory applications *pending* appeal before the appeal they relate to has been entered in the Supreme Court of Appeal. Regarding the **Mulli Brothers vs Malawi Savings Bank Ltd** case cited by the Applicants/ Appellants, the Respondents asked that it be understood in its context, regard being had to the stage of the proceedings at which the decision in it was made, and further regard being had to the question whether the Court in that case considered the provisions that have now been cited to the Court.

As the record will show, I am the one who raised the question of jurisdiction right at the outset in this case. I did so because for a few years now I have been dwelling in the Supreme Court of Appeal. I have thus acquired a perspective from the inside. Looking at the business that is being paraded before this Court and the procedures that are being employed, I have reason to fear that if we are not careful, this Court might soon lose its appearance as an independent appellate Court and that it will begin looking like just a senior division of the High Court. The tendency is now growing where parties bring applications and appeals to this

Court almost as a matter of course, and just because they think such ought to be the business of this Court, regardless of what the law says about such matters.

Indeed, even between the single Justice of the Supreme Court of Appeal and the Court's panel of three Justices of Appeal [see: Section 3(a) of the Supreme Court of Appeal Act], appeals have been drawn up and determined as if the full bench is a higher level of Court than the Court of the single Justice of Appeal. Also, quite often what are meant to be re-hearings of applications that have been before a single Justice of Appeal have been crafted and heard as appeals to panels of three Justices of Appeal. It seems to me, therefore, that the only way for us to return to sanity, and to ensure that as a Supreme Court of Appeal we are not compelled to combine our prescribed duties with errands of the High Court which the parties think we should help out with in the spirit of a good next door neighbour of the High Court is to return to the basics by re-reading the law and trying to apply it as it was truly meant to be applied. One such way of ensuring the success of our efforts in this regard, I tend to think, is to ascertain our juris diction and to cross- check the procedures available to us in respect of each matter the parties happen to table before us before we nose-dive into them and commit untold errors.

Actually, going by the manner in which this matter has unfolded itself before me I find myself fortified in the view that this Court should maintain its vigilance against the invasion of its space with any unfit or otherwise undeserving business. Primarily, of course, this Court's business is to deal with appeals emanating from the High Court (see: Section 104(2) of the Constitution of Malawi), even though there is also room for it to deal with sundry applications, some of them under the use of original as opposed to appellate jurisdiction See: *inter alia* Section 7 of the Supreme Court of Appeal Act and Order II of the Supreme Court of Appeal Rules. The important thing to bear in mind is to check what business the law allows for placement before a single Justice of the Supreme Court of Appeal, or before a a three member panel of the said Court, and what procedures ought to be followed whether before the single Justice of Appeal or before the three member panel Court.

As I earlier had occasion to say, this matter started with the disaster of a Notice of Appeal and Skeleton Arguments being filed in this Court. Section 23(1) of the Supreme Court of Appeal Act provides as follows: *"If a person desires to appeal under this part from the High Court to the Court, he shall, in such manner as may*

be prescribed by the rules of Court, give notice to the Registrar of the High Court of his intention to appeal-" (Emphasis supplied) . From the address I got from learned Counsel for the Applicants/Appellants, once he sent the Notice of Appeal and Skeleton Arguments to this Court, what he was expecting next, since this to him was an appeal on an interlocutory injunction which he considered urgent, was to get a date of hearing of his said appeal before a single Justice of Appeal or, if the such single Justice of Appeal was not disposed towards hearing the appeal alone, to then get that date of hearing before a panel of three Justices of Appeal. From what I have gathered, Notice of Appeal in this matter was only filed in the High Court after I had observed that this was the wrong Registry to file it in. If this is indeed the case, then the legitimate filing of the Notice of Appeal in this case must have only occurred on or after 30th September, 2016.

Moving on, lets us for a moment accept that if Notice of Appeal has indeed since been legitimately filed in the Court below, and that if according to Section 23(1)(a) of the Supreme Court of Appeal Act it has been so filed within 14 days of the delivery of the Interlocutory Order that is being appealed against, then it ca n be claimed that we do have a valid appeal in existence. However, having a valid appeal in existence is one thing, while having such appeal ready for hearing is quite a different thing. As can be seen, Section 23 as quoted above leaves it to the rules of the Court to spell out how the parties ought to proceed once an appeal has been lodged with the Registrar of the Court below within the times that have been prescribed for whichever of the two categories of appeal that provision recognizes.

Now when we go to the Supreme Court of Appeal Rules, it will be appreciated that in the case of Civil appeals the material rules are to be found under Order Ill. When I look at the rules under the said Order Ill, I must say, they look to me as rules that generally govern all civil appeals to the Supreme Court of Appeal. There is no subdivision amongst them about a portion of them catering for interlocutory appeals, and a different portion among them catering for appeals from final judgments, just as there is no provision either in the parent Act or within the rules themselves restricting the use of the rules in question only to appeals from final judgments or excluding their application when interlocutory appeals are in issue.

A perusal of these rules reveals an elaborate scheme of how appeals, whether on interlocutory Orders or on final judgments, are to be handled both by the parties

and by the Courts (i.e. the High Court and the Supreme Court of Appeal). Well apart from directing how notices and grounds of appeal should be framed and on whom they should be served once duly filed, these rules also set out assignments for the Registrar of the High Court to supervise as well as to ensure a smooth settlement and preparation of the record of appeal and to see to its procedural ascendance into the Supreme Court of Appeal. The rules even say up to what point the High Court remains seized of the matter even with a Notice of Appeal on it, and from which point the Supreme Court of Appeal takes over both the record of appeal and all interlocutory applications that might subsequently arise in it. A reading of rules 5 to 19 of Order Ill of the Supreme Court of Appeal Rules will make this very clear and put the subject to rest.

In the light, therefore, of what Section 23 of the Supreme Court of Appeal Act and what the rules under Order Ill of the Supreme Court of Appeal Rules say about the point at which a civil appeal transits from the domain of the High Court to the domain of the Supreme Court of Appeal, it is very clear that it cannot be and it is not at the moment a Notice of Appeal will have just been filed with the Registrar of the High Court. Setting down an appeal for hearing in this Court, therefore, cannot occur either the moment Notice of Appeal has just been filed in the High Court or within a few days after such notice has been so filed but before any steps have been ta ken for the preparation of the record of appeal and its official handover between the Registrar of the High Court and the Registrar of the Supreme Court of Appeal. Learned Counsel for the Applicants/Appellants has, however, argued before me that the filing of the Notice of Appeal in the Court below should be deemed to be an entry of the record of appeal in this Court for purposes of the appeal being given a date of hearing, the appeal in question being on an interlocutory Order that he considers urgent. If this were indeed the case, I believe, the rules would not have been disagreeing with learned Counsel as just shown above, and he would certainly have been in a position to point out to me which rule allows Appellants in interlocutory matters to short-circuit the steps the rules in Order Ill have put in place.

If, therefore, the Applicants/ Appellants were genuinely looking forward to obtaining an ear ly date for the hearing and disposal of their appeal on what they have designated as a n urgent interlocutory matter, they should have been looking at and complying with lega l provisions either within the Supreme Court of Appeal Act and its rules or within the rules that according to Section 8(b) of the relevant

Act are meant to supply gaps in our local law. May be had they done so they could have discovered and utilized legitimate ways of speeding up the process Order Ill and its rules in the Supreme Court of Appeal Rules has placed in their path. To me, therefore, just orally emphasizing the urgency of this appeal and, on that pretext, demanding that it be accorded a speedy hearing, as the Applicants/ Appellants have done in this case, is not good enough to justify a departure from what the rules in Order Ill of the Supreme Court of Appeal Rules demand. I am accordingly not convinced that just because this appeal is on an interlocutory issue of injunction, and just because the Applicants/Appellants claim that it is urgent, then this Court should cut corners and neglect the clear provisions of the law so as to grant them early results. If we have done that before, then I believe we have been wrong and we must stop doing so. It is, therefore, my judgment that the present appeal is fa r from being ready for hearing, and that it does not as of now yet deserve to be given any date of hearing. This is so notwithstanding that it is an appeal on an interlocutory order concerning the refusal by the High Court to grant an injunction, which relief the Appellants and/or their learned Counsel believe they need to get urgently before anything has been done to comply with any due preparatory legaI formalities.

This aside, even if for some reason this appeal were otherwise ready for being set down for hearing by the Supreme Court of Appeal, I am of the view that determining whether it should be handled by a single Justice of Appeal or by a panel of three Justices of Appeal is a matter that must be determined according to what the law provides, rather than by what anyone might find desirable in the light of the interlocutory relief under pursuit in the appeal. It is here, therefore, where Section 7 of the Supreme Court of Appeal Act comes in to point the way forward on how the appeal should be heard and determined. This provision, without mincing any words, says: *"A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal."* (Emphasis supplied).

In my understanding, the clear and unadulterated meaning of the quoted provision is that whenever a single Justice of Appeal hears or determines, or is persuaded to hear and determine an appeal, he/she acts in direct contravention or disobedience of the said provision. Learned Counsel for the Applicants/Appellants in this case has, however, canvassed the view that I have the jurisdiction to hear his clients' appeal, and that I could have thus set it down

as soon as he had filed notice thereof in the Court below. From the indicators I had given that I might not be having the jurisdiction to do so, he even lamented that his clients might get stranded about where to take their appeal if I decline to exercise jurisdiction over it.

Contrary to these fears, however, Section 7 above- refer red makes it quite plain that as a single Justice of Appeal, despite having all the powers of the Supreme Court of Appeal, I have no jurisdiction to hear or determine any appeal on my own. I hold, therefore, that as a single Justice of Appeal, I have no jurisdiction to hear and determine the appeal the Appellants have lodged in this case. Indeed, my lack of jurisdiction to set down and hear their appeal does not in my view in any way jeopardize the Applicants/ Appellants from awaiting a panel of three Justices of Appeal that will be made available to them once their appeal becomes ready for hearing. My refusal to handle their appeal as a single justice of Appeal is simply based on the dictates of Section 7 of the Supreme Court of Appeal Act and not on any intentions to shut them out of the judicial system and from the remedies the Supreme Court of Appeal holds in store for them. The appeal will be heard when ripe, and it will not be heard by me alone sitting as a single member of this Court, but by a Court presided over by a panel of three Justices of Appeal.

There is also, as I disclosed earlier, an *inter partes* Summons the Applicants/ Appellants have placed before me to determine *pending* the hearing of the appeal. In my judgment, as rightly observed by learned Counsel for the Respondents, there is a major problem this application would be posing for me, even if it were otherwise found to be correctly before me in the Supreme Court of Appeal. Here is what the problem is. The High Court having refused to grant the Applicants/ Appellants the interlocutory injunction they were seeking to support their action even as it undergoes hearing in that Court, the appeal that is yet to be set down before a three member panel of this Court is about whether this Court could disagree with the High Court ruling and instead give the Applicants/ Appellants the injunction they were seeking. This notwithstanding, the *inter partes* Summons the Applicants/Appellants have placed before me is about me considering whether I should, before the appeal is called, grant them the very interlocutory injunction they will be imploring the full Court to give them at the hearing of their appeal.

Let us suppose I hear them and grant them the injunction *pending* appeal. The question that will immediately arise will be what then shall I have left for the full Court to dispose of when it eventually gets to hear this appeal if what I end up granting is the ultimate goal of the appeal the law empowers them to hear? Will I not have, *via* the backdoor of this Summons, heard and determined their appea l as a single Justice of Appea l contrary to the limitation of my powers as announced in Section 7 of the releva nt Act? Would this then not amount to a usurpation of powers that don't belong to me as a single Justice of Appeal? Assuming, however, that I hea r the Summons and, like the High Court Judge, dismiss it, will the Applicants/Appel lants not be entitled to, under the same Section 7 of the Supreme Court of Appeal Act, take up the same Summons to a Court of three Justices of Appeal for possible variation, discha rge, or reversa l? Would this therefore not render the appea l they have already filed redunda nt?

Why, one may in such circumstances ask, should the Respondents face the prospects of appea ring before a panel of three Justices of Appeal twice on one and the same matter, i.e as Respondents in an appea l and the n as Respondents in a re-hearing of the Applicants/ Appellants Summons now before a single Justice of the Supreme Court of Appea l? It follows, in my judgment ,that it borders on abuse of the process of the Court for the Applicants/Appella nts to ask for one and the same remedy of interlocutory injunction from the Supreme Court of Appeal both by way of appea l and from a single Justice of Appeal by way of a Summons *pending* the sa me a ppeal. I really therefore cannot allow myself to be party to that manner of conducting proceedings.

Allowing, howeve r, for the possibility that I could be mistaken in concluding that the Applicants/A ppella nts cannot ask me to, by Summons, give them the very interlocutory injunction they will be fighting to get on the appeal they have already filed, let me say somet hing about the undue speed with which they have come to my Court. From the date I gave directions that their Notice of Appea l should be filed in the Court below, they took only three days to file the present Summons in this Court. Looking at the calendar of events Order Ill rules 5 to 19 envisage once a Notice of Appeal has been procedura lly filed, it strikes me that even with the best of intentio ns for the achievement of speed where time has been a bridged or even over-abr idged, those events cannot be concluded in three days. In the light of what the relevant rules say, I sincerely consider it to be a desperate move on the part of the Applicants/ Appella nts to argue that their filing

of the Notice of Appeal in the Court below must be equated to an entering of their a ppeal in this Court for purposes of my getting seized of applications like the Summons they have brought me.

Most unfortunately, learned Counsel representing the Applicants/ Appellants did not cite any statutory provision or any procedural rule that supports the view they espoused. It is also unfortunate that learned Counsel only cited case authorities that he did not even attempt to explain why as a single Justice of Appea l I will not err if I go ahead to assume jurisdiction over the Applicants/ Appellants Summons for interlocutory injunction herein. As I indicated earlier, as rega rds the **Eveness Nkhalamba vs Alex Nkhalamba** case that wa s cited to me, I was merely given a copy of the formal Order that issued. On its own, I must say, it does not tell me any story in support of the arguments it was cited in support of. Moreover, a reading of that Order appea rs to depict it to be more like an Order of Stay than an Order of Injunction. Similar though these equitable remedies might be, they are governed by different procedural rules. If, therefore, the Order furnished should

turn out to be a Stay *pendin g* a ppeal rather tha n an injunction *pendin g* appeal, it

might very well turn out to be risky for me to use it as a ya rdstick for hea ring the a pplication at hand for an injunction *pendin g* appeal. Further still, the formal Order herein does not show at what stage of the a ppeal process and under what legal provision it was secured. The Applicants/ Appella nts should therefore have done more than just pass on the formal Order in the **Nkhalamba** case if they really wanted it to weigh on my mind in deciding whether to hear their Summons.

As for their reference to the **Mulli Brothers vs Malawi Savings Bank Ltd** case, the Applicants/ Appellants likewise just made the decision of the single Justice of Appeal available to me for a reading a nd a discovery on my own of whether the decision in question indeed supports their argument that soon a Notice of Appeal is filed, single Justices of Appeal like me can take on interlocutory applications

that are filed *pendin g* the hea ring of the appeal. Before I can undertake the task

learned Counsel should have taken up if he really wa nted me persuaded by his argument I find the precis to this judgment quite interesting. It reads: *If I was not dismissin g the ap plication for want of jurisdiction, I was, on princi ple goin g to grant the injunction. "* With such a precis of the decision in place, I have asked

myself why I should read a 21pages long judgment the Applicants/ Appella nts did not bother to analyze and highlight just in order to discover whether or not it indeed supports the point they were arguing before me.

Leaving this behind, it will be recalled that I have earlier on in this ruling alluded to a compendium of rules under Order Ill of the Supreme Court of Appeal Rules that spells out who should do what in respect of the preparation of the appeal until such appeal is entered in the Supreme Court of Appea l. I have also earlier on pointed out that much as the Applicants/Appellants appear to seek exemption from obeying the dictates of these rules, they have not cited what law entitles them to such exemption in the case of appeals on interlocutory matters they view as urgent. To me, therefore, it is important that as a Court I tread carefully until I am convinced that at law I am truly allowed to take on such applications at the stage they have been brought to me.

Actually, that is why my setting down of this Summons was conditional on my first being addressed, and being convinced, that I undoubtedly have jurisdiction over the Summons herein before I could accept any substantive arguments in it. In so treading with care, it becomes necessary that I now quote Order Ill rule 19, which the Respondents also had occasion to refer to in their argume nts on the subject of jurisdiction. It deals with the control of proceedings during pendency of appeal, a nd is therefore directly relevant for purposes of my gauging whether I can hear the Summons of the Applicants/Appellants at the stage they have brought it up *pending* the hearing of their a ppeal. It reads: *"After an ap pea l has been entered and until it has been finall y disposed ot the Court shall be seized of the whole of the proceedings as between the parties thereto/ and except as may be otherwise provided in this Order/ every ap plication therein shall be mad e to the Court and not to the Court below. H* (Emphasis supplied).

Entry of an appeal in the Supreme Court, in my view, must be understood not like the Applicants/A ppellants have pleaded it should be understood. Instead, I believe, we will be on the right course if we follow what rules 10 and 11of Order Ill of the Supreme Court of Appeal Rules say about it. It will be seen that once the Registrar of the Court below has concluded all his assignme nts of settling and supervising the preparation of the record, rule 10 enjoins him to file the same in the Supreme Court of Appeal. It is only at this stage that as *pe r* Order Ill rule 11of the same rules the Registrar of this Court must ensure that all the parties mentioned in the Notice of Appeal, if they have filed an address for service, are served a notice that the record has been filed. It is only in due course hereafter that this rule requires that the Registrar of the Supreme Court of Appeal enter the

appeal in the cause list of the Court and give notice to the parties of its date of hearing. Obviously, therefore, when the Applicants/ Appellants were asking me to deem their filing of the Notice of Appeal to be an entry of their appeal in this Court for purposes of my immediately assuming jurisdiction over their Summons for Interlocutory Injunction *pending* appeal, they were in fact actively asking me to overlook the requirements of the law.

My holding is that from the date they filed their Notice of Appeal in the High Court to date, the Applicants/ Appellants' appeal has not yet crossed out of the domain of the High Court and been entered in this Court for purposes of Justices of this Court, single or multiple, to become seized of all the proceedings therein *and of all applications,* such as this Summons. It follows, I apprehend, that even if this Summons was seeking an intermediary relief other than the main prize of the appeal, and even if I had the power to consider granting them that relief *pending* appeal, I would still have found that the applicants/Appellant s have brought me their interlocutory a pplication before my time is ripe to start hearing such a pplications *pending* their appeal. In this instance, therefore, I find that I do not have the jurisdict ion to handle this Summons, which has been brought prematurely to me, well apart from the fact that its aim is to make me decide the appeal that has been filed before a panel of three Justices of Appeal has had the chance to hear the appeal that is *pending.*

The long and short of this ruling is that I do not have jurisd iction, whether to hear and determine the appeal, or to hear and determine the Summons that has been brought *pending* the hearing of the appeal. Consequently, I decline the Applicants/Appel lants request to hear their appeal and leave that assignment for the three Judge Court panel that has the power to deal with it. At the same time, I decline to hear, as requested by the same Applicants/ Appellan ts, their too hurried and overloa ded interlocutory Summons for injunction. I accordingly dismiss the Summons for interlocutory injunction herein with costs.

Made in Chambers the 24th day of October, 2016 at Blantyre.

A.C. Chipeta SC
JUSTICE OF APPEAL