

IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE
MSCA CIVIL APPEAL NO. 33 OF 2017

[Being High Court, Lilongwe District Registry, Civil Cause Number 329 of 2012]

BETWEEN

MALAWI REVENUE AUTHORITY

APPELLANT

AND

JUSTIN LIKHUNYA

RESPONDENT

CORAM: THE HON. MR JUSTICE L P CHIKOPA SC JA

G Nankhuni Mr. of Counsel for the Applicant/Respondent

B Mwangwera Ms. of Counsel for the Respondent/Applicant

Maluwa Mr. Court Clerk

RULING

Chikopa SC, JA

BACKGROUND/INTRODUCTION

There is a bit of confusion, and that is putting it mildly, about this matter.

The Applicant/Respondent sued the Respondent/Applicant in the High Court over an alleged wrongful seizure of a motor vehicle. On February 5th, 2014 the Senior Deputy Registrar heard an application on behalf of the Applicant/Respondent for Summary Judgment. The application was opposed. The ruling was delivered on December 12, 2016 in favour of the Applicant/Respondent.

On March 2, 2017 the Respondent/Applicant sought and was granted a stay of execution of the Summary Judgment pending appeal. On March 14, 2017 the Respondent/Applicant filed a Notice of Appeal against the Summary Judgment in this Court.

after December 12th, 2016. We also agree that this matter in so far as it is herein on appeal from the Senior Deputy Registrar is in the wrong forum. And also that the 'appeal' was filed way after the expiry of the seven days within which it should have been filed.

Sure indeed the Respondent/Applicant argued that this Court has the jurisdiction to entertain this appeal courtesy of section 21 of the Supreme Court of Appeal Act. But that is not what the law says. Section 21 talks of appeals from the High Court or a Judge thereof to this Court. The Senior Deputy Registry is neither of those officers. On the other hand Order 14 Rule 3-4 as read with Order 58 Rule 1 of the RSC make it very clear that the appeal from the Senior Deputy Registrar's judgment should have gone to a Judge in Chambers.

About the affidavit the Respondent/Applicant while admitting that it was irregular for not indicating the date when it was signed prayed that we allow for its amendment to reflect the date it was signed by Counsel Mwangwela in Blantyre. As we understand the law and practice relating to affidavits as set out in Order 41 of the RSC the talk is usually about an irregularity or irregularities. Where therefore an affidavit is for some reason irregular it will not be used unless with the permission of the Court in which it was filed and sought to be used. The affidavit was used before the Senior Deputy Registrar when the Respondent/Applicant was seeking a stay of the Summary Judgment. It should not in our judgment have been used unless with the permission of that Court. Meaning with respect that there is nothing to be gained by asking us to regularise the defective/irregular affidavit. The affidavit was not and will not be used in this Court. We also doubt whether we have in the circumstances the power to regularise the affidavit.

Application to Extend Time within Which to Appeal Against the Summary Judgment

This application can only be a contradiction in terms. Before us is already an 'appeal' against the Summary Judgment. It is the subject of the Applicant's/Respondent's application to dismiss for procedural impropriety. This application is for enlargement of time to launch another appeal against the same

COSTS

The Applicant/Respondent will have the costs of these applications.

Dated at Blantyre this of 20th day of September 2017.

L P CHIKOPA SC

JUSTICE OF APPEAL