

**IN THE MALAWI SUPREME COURT OF APPEAL  
SITTING AT LILONGWE**

**MSCA CIVIL APPEAL NO. 05 OF 2018**

**[Being High Court of Malawi, Lilongwe District Registry, Civil Case No 103 of 2015]**

**BETWEEN**

**PREMIUM TAMA TOBACCO LIMITED**

**APPELLANT**

**-AND-**

**FRANK MAMBALA & OTHERS**

**RESPONDENTS**

**KANENGO TOBACCO PROCESSRS LTD**

**APPELLANT**

**-AND-**

**PATRICK MPHONGOZIDANA & OTHERS**

**RESPONDENTS**

**CORAM: THE HONOURABLE THE CHIEF JUSTICE A K C NYIRENDA SC JA**

**THE HONOURABLE JUSTICE E B TWEA SC JA**

**THE HONOURABLE JUSTICE DR. J M ANSAH SC JA**

**THE HONOURABLE JUSTICE R R MZIKAMANDA SC JA**

**THE HONURABLE JUSTICE A C CHIPETA SC JA**

**THE HONOURABLE JUSTICE L P CHIKOPA SC JA**

**THE HONURABLE JUSTICE F E KAPANDA SC JA**

**THE HONURABLE JUSTICE D F MWAUNGULU SC JA**

**THE HONOURABLE JUSTICE A D KAMANGA SC JA**

M. Msisha SC and F Kilembe of Counsel for the Appellants.  
G Liwimbi/G Chembezi of Counsel for the Respondent  
C Chimtande [Mrs.] Court Clerk  
M Pindani[Mrs.] Reporter

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**RULING/ORDER**

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**Chikopa SC, JA**

The Respondents brought this matter against the Appellants in the Industrial Relations Court[IRC] claiming damages for unfair termination and breach of employment contract. The IRC found for them with damages to be assessed. Before the same were assessed the Appellants appealed to the High Court where the appeal was dismissed and damages ordered to be assessed by the Registrar. Before he could, the Appellants approached this Court by way of appeal but only with respect to liability.


With respect, we think this appeal is prematurely before us. For as long as the damages have not been quantified the judgment against the Appellants remains inchoate, incapable of enforcement. On the other hand, it opens the door to the real possibility for multiple appeals with parties being at liberty to appeal up to this Court not only in respect of liability but also on the quantum of damages. As experience has shown, it, works out an injustice with successful litigants being kept away from the fruits of a successful litigation for up to six years or more. See *FMB v Eisenhower Mkaka & Others* MSCA Civil Appeal Cause No 19 of 2017[Being High Court of Malawi Lilongwe registry Civil Cause Number 25 of 2009].

It, in keeping with similar sentiments expressed in *AON v Makolo* MSCA Civil Appeal No 22 of 2018 and *Toyota Malawi Ltd v Jacques Mariette* MSCA Civil Appeal Cause Number 61 of 2017, seems to us the proper thing to do that parties should only appeal where the Court below has dealt with issues of both

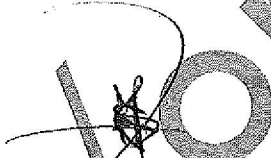
liability and damages to finality. Where there is an immediately enforceable judgment which is not the case herein.

Accordingly, it is our conclusion that the appeal is prematurely before us. The appeal is hereby delisted. Costs shall be in the cause.

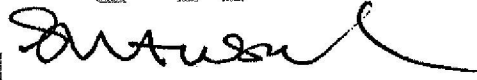
Dated at Lilongwe this 29<sup>th</sup> day of November, 2018.



THE HON. A K C NYIRENDA SC  
CHIEF JUSTICE



THE HON. JUSTICE E B TWEA SC  
JUSTICE OF APPEAL



THE HON. JUSTICE [DR] J M ANSAH SC  
JUSTICE OF APPEAL



THE HON. JUSTICE R R MZIKAMANDA SC,  
JUSTICE OF APPEAL

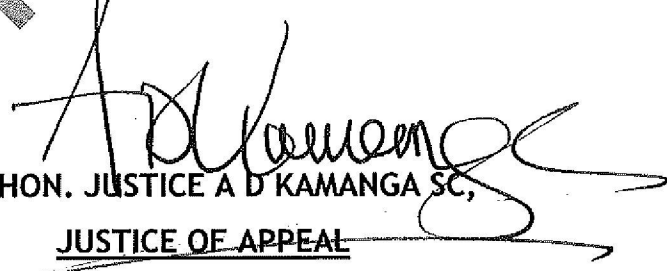
Final Order

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THE HON. JUSTICE A C CHIPETA SC  
JUSTICE OF APPEAL

THE HON. JUSTICE L P CHIKOPA SC,  
JUSTICE OF APPEAL

THE HON. JUSTICE F E KAPANDA SC  
JUSTICE OF APPEAL

  
THE HON. JUSTICE D F MWAUNGULU SC  
JUSTICE OF APPEAL

  
THE HON. JUSTICE A D KAMANGA SC,  
JUSTICE OF APPEAL