



IN THE MALAWI SUPREME COURT OF APPEAL

MSCA CIVIL APPEAL NO 67 OF 2018

(Being Commercial Case No. 37 of 2016, in the High Court, Commercial Division, Lilongwe Registry)

BETWEEN:

ELECTRICITY SUPPLY COMMISSION OF
MALAWI (ESCOM)..... APPELLANT

-AND-

SAMSON EVANS KONDOWE T/A..... RESPONDENT
SAVEMAN INVESTMENT

CORAM: THE HONOURABLE CHIEF JUSTICE, AKC NYIRENDA, SC

Mr Chijere Counsel for the Appellant

Mr Mvalo Counsel for the Respondent

RULING

The Chief Justice

Before me is an application for extension of time within which to appeal which has come to be as a result of the position that this Court has taken in the recent past.

Since *Toyota Malawi Limited v Jacque Mariette*, MSCA Civil Appeal No. 62 of 2016 and *Ricardo Andre Teixeira v Tshenaz Peter Bangwanji Almeida*, MSCA, Civil Appeal No. 49 of 2017, this Court has taken the position that it will not entertain appeals that are premature, which we have described as inchoate. In most instances, these have been appeals made before assessment of damages, where the High Court has made an order for separate assessment of damages. In the past, such practice had been quite common with the result that the Court was ending up with two appeals, one on liability and the other on damages, where a party was further dissatisfied with the quantum or nature of the damages ultimately assessed.

Since the cases above, and others that we could have cited, the Court has not allowed inchoate appeals to proceed and given appropriate directions in each case.

It might well be argued, and plausibly, that an appeal before assessment of damages, where an order for assessment has been made, is in effect an appeal before conclusion of the matter by judgment. It is technically possible to argue that it is not an appeal at all; at most it would be an interlocutory appeal. It seems this is the argument that Mr Mvalo advances, in addition to arguing that the appellant is way out of time, since assessment of damages was long made and the appellant has not made a subsequent appeal.

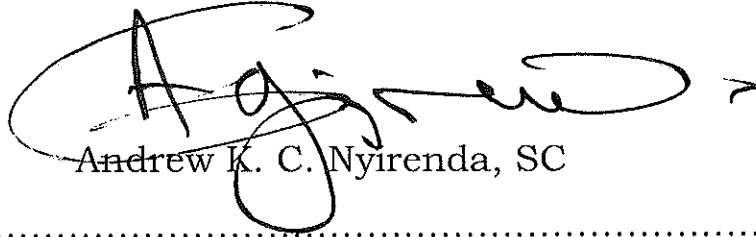
The directions the Court has given so far have not been to extinguish the appeal or dismiss the appeal. The Court has merely directed the appellant to await assessment of damages or other events that would bring the case to finality. In other words, the directions have left the party, desirous of appealing, to be able to come back to Court with an appeal properly brought at the conclusion of the matter by final judgment.

The difference between the present case and the Marriete and Almeida cases is that the case is before Court after assessment of damages has been done. I am sure the Court would have given directions similar to those given in the Mariette case and the Almeida case had the matter been before Court before the damages were assessed.

The appellant would have been alerted to the practice of the Court and also allowed the opportunity to file a fresh notice of appeal soon after the assessment of damages. It is therefore only fair that this application be allowed and that time be extended within which to file a notice of appeal. Time to file such notice shall run from the date of this ruling.

The money paid into court shall remain with the court while this Court does everything within its powers to expedite the disposal of the matter. It is acknowledged that this ruling alone has delayed, while the case calls for speedy disposal in the nature of the subject matter involved in the case.

Made in Chambers, this 16th day of November, 2020.

A handwritten signature in black ink, appearing to read 'Andrew K. C. Nyirenda', written over a horizontal dotted line.

Andrew K. C. Nyirenda, SC

CHIEF JUSTICE