IN THE SUPREME COURT OF MALAWI

SITTING AT BLANTYRE

MSCA CIVIL APPEAL NO 04 OF 2017

(Being Commercial Case No 06 of 2013, High Court of Malawi, Commercial Division, Blantyre Registry)

BETWEEN

BARROW INVESTMENT LTD APPELLANT

AND

MPICO MALLS LTD RESPONDENT

CORAM: **HONOURABLE E B TWEA SC, JA**

HONOURABLE L P CHIKOPA SC, JA

HONOURABLE D F MWAUNGULU SC, JA

Mpaka[Mr.] and Stenala[Mr.], of Counsel for the Appellant

Msowoya[Mr.], of Counsel for the Respondent

Masiyano, Court Official

JUDGMENT

Twea SC, JA

I have in advance read the judgment of my noble friend, Mwaungulu SC, JA, and I would also dismiss the appeal for the reasons he advances.

Chikopa SC, JA

I have also had an opportunity to read in advance the judgment of Mwaungulu SC, JA. I would also dismiss the appeal.

Précis

Succinctly, this appeal from the decision of Mtambo, J, in the Blantyre Commercial Division on one item of the bill of costs of the appellant, the claimant in the court below, raises two questions for determination by this Court. On those two questions, the court below found for the respondent, the defendant. The first question is whether the defendant should pay the appellant's (claimant's) collection charges – at all. The second is, if collection fees are payable by whoever to whoever, what is the correct scale.

Both issues should – as it must be – be resolved by Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The amendments to the Scale in 1999 (G N 49/1999) and 2002 (G N 6/2002) cause the conundrum that this Court must resolve. The conundrum compounds because in the Law Revision Order 1/2010 the Law Revision Officer introduced, from 2010, a scale, with excerpts of the 1999 and 2002 amendments. Apparently, there is no Government Gazette Notice for what the Law Revision Officer in 2010 entered in the Law Revision Order. In the Law Revision Order 1/2015, it is the Scale published by Government in Government Notice No 6/2002 that appears. The court below has two incongruent positions. Mtambo J's decision coheres to one such view. There has been no decision of this Court after the Law Revision Order 2010 which introduced what looks to be an incongruent provision with the law in Government Notice 6/2002.

History

This action commenced on 22nd January 2013. The Bill of Costs, after a consent judgment of 30th September 2013, was lodged on 6th May 2015. The Registrar's ruling on objections to collection charges was delivered on 26th October 2015. The appeal in the court below arises because in this matter the Registrar in the court below on 26 October, 2015, in an elaborate order, concluded, differently from decisions of the same court post Law Revision Order, 2010, and disallowed collection charges on the appellant's bill of costs. The Registrar reasoned that collection charges were not pleaded and were not supported by the current law.

The appellant on 28 October, 2015 appealed to a judge. On 16 November, 2015 the appellant made an alternative application to amend the writ and statement of claim to include collection charges. The judge has yet to determine this alternative application. The judge, however, dismissed the appeal from the Registrar's order. The order of the judge on appeal signed by the Registrar on 8 February, 2016, in matters pertinent to the appeal, states:

'Upon hearing Counsel for the parties and upon considering the record, it is this adjudged that (1) the pleadings did not indicate a claim for collection costs; (2) that the Court has noted that the plaintiff's submissions that there is no need to plead the law and that collection costs are only incurred when money is collected ... the Court hereby dismisses the appeal ... The reasoned ruling to follow'.

The appellant, with the leave of the judge, appealed to this Court on 18 February, 2016. The judge to date has not delivered the ruling.

The Appeal

On appeal, the appellant criticizes the appeal order of the judge in the court below on two grounds. That the Judge in the court below erred in law in failing to address the specific issues and/or in failing to provide reasons for dismissing the appeal or for not commenting at all on the alternative application for amendment of pleadings as taken out on the appeal before the court below.

Secondly the court below erred in law and acted contrary to the constitutional adjudicative function of the court in failing to address the specific issues taken out and in making no reference at all to relevant facts regarding the end of litigation.

Appellant's submissions

In the court below, the appellant raised formidable arguments against the Assistant Registrar's order. The first point, also taken seriously in this court was that, by designating in the writ of summons and statement of claim, 'a claim for costs in the action,' the appellant claimed all costs incidental to the action. It was, therefore, unnecessary, for the appellant to plead collection charges in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. He argued, based on Halsbury Laws of England, 5th Edition, volume 12, para. 1730, that, unless the context otherwise requires, "costs includes fees, charges, disbursements, expenses, remuneration, reimbursement, or the amounts allowed in the respect of solicitors' charges in the prescribed circumstances. He submitted therefore, that "costs in the action" covers all costs, including party to party costs and, and by extension, collection charges under Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The appellant therefore, thought that all costs the solicitor of the receiving party incurred must be included. He relied on *Harold v Smith* (1860) 5 H & N 381; and *Gundy v Sainsbury* [1910] 1 KB 99. The appellant also cited Lord Atkin in *Pecheries Ostendaies v Merchants Marine Ins Co. Ltd* 1 KB 762 where the

latter said an award of costs is "inte ded to give the successful litigant full indemnity for all costs it reasonably incurred l y him in relation to the action."

The appellant based on the objective of costs as stated in *Commissioner for Taxes v. A Limited* [...]7 MLR 211 and in *Speedy's Limited v Finance Bank Malawi Ltd* [2008] MLR (Com) 373, 389, contends that a successful litigant must be restored to the position that was back before litigation. The appellant also cited a passage in Cook on Costs 2009: A Guide to Legal Remuneration in Civil Contentious and Non Contentious Business, London, Butterworths, 2009 pp 247 to 256:

> 'Costs are awarded to indemnify the successful party for the costs and expenses he has incurred in the litigation'.

The appellant further argued, based on section 41 (3) of the Constitution, that, restoring the successful litigant by indemnifying him for all legal costs, is concomitant with the principle of *restiutio in intergrum* as espoused by the Constitutional Court of South Africa in *Hoffman v South African Airways* (2001) (1) CA 1, as explained by Professor Danwood Chirwa in Human Rights under the Malawian Constitution, Cape Town, Juta & Co Ltd 77- 78.

The other point the appellant raised in submission relates to whether costs - including collection charges in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 – should be pleaded at all. The appellant, based on Order 18 of the Rules of Supreme Court 1965, argued that costs should generally not be pleaded. Order 18 Rule 15 (1) of the Rules of the Supreme Court reads:

> 'A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed'.

He also cited a statement in *Cargill v Bower* (1878) 10 Ch. D:

> "A plaintiff need not ask for costs or for general or other relief; the Court will always grant him any general relief to which he is entitled, provided it be not inconsistent with that relief that is expressly asked for."

He also relied on a statement by Lord Denning in *Karsales (Harrow) Ltd v Wallis* ([1956] 2 All E R 866; [1956] 1 WLR 936):

'I have always unders ood in modern times that it is sufficient for a pleader to plead the material facts. He need not plead the legal consequences which flow from them. Even though he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise on the facts'.

This is the statement upon which Sir Jacobs in Pleadings: Principles and Practice, London Sweet & Maxwell, 1990, stated:

'A necessary corollary of the first principle of pleading that material facts only are to be stated is that matters of law or mere inferences of law should not be stated as facts or pleaded at all. Thus if the material facts are alleged it is not necessary to plead the legal result. If for convenience this is pleaded, the party in not bound by, or limited to, the legal result he has alleged. He may rely on any legal consequence which may properly flow from the material facts pleaded'.

The appellant further derided the Registrar for not following judges' decisions binding on him – *BP (Malawi) Ltd v Riaz Mahomed t/a Ninkawa Bulk Logistics, Shire Ltd v City Building Contractors, National Bank of Malawi Ltd v Central African Produce Ltd* and *Preferential Trade Area Bank v Electricity Supply Commission of Malawi and another.* The appellant relied on a statement from American Law Register, 1886, where Cooley said:

'A solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness; and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it. It would, therefore, be extremely inconvenient to the public, if precedents were not duly regarded and implicitly followed. It is by the notoriety and stability of such rules that professional men can give safe advice to those who consult them; and people in general can venture with confidence to buy and trust, and to deal with each other, if judicial decisions were to be lightly disregarded, we should disturb and unsettle

the great landmarks or property. When a rule has been once deliberately adopted and declared, it ought not to be disturbed, unless by a court of appeal or review, and never by the same court, except for very cogent reasons and upon a clear manifestation of error; and if the practice were otherwise, it would be leaving us in a state perplexing uncertainty as to the law ... So, Judge Black referred to the principle of *stare decisis* as "that great principle which is the sheet-anchor of our jurisprudence;" Bank of Pennsylvania v Commonwealth, 19Penn. St. and Judge Cooley observes: "Even if the same or any other court, in a subsequent case should be in doubt concerning the correctness of the decision which has been made, there are consequences of a very grave character to be contemplated and weighed before the experiment of disregarding it should be ventured upon. That state of things, when judicial decisions conflict, so that a citizen is always at a loss in regard to his right and his duties, it is a very serious evil; and the alternative of accepting adjudged cases as precedents in future controversies resting upon analogous facts, and brought within the same reasons, is *obviously preferable'*.

Finally, the appellant contended that based on section 7 of the Revision of the Laws Act, what is in the Laws of Malawi binds.

The Respondent's Submissions

In the court below the respondent, answering to the appellant's grounds, based on *Esso Petroleum Co. Ltd v Southport Corporation* [1955] 3 All E R 864, argued that Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 should nonetheless have been pleaded. The appellant further argued that based on the order, the costs should not, as contended by the appellant be taxed on an indemnity principle. He relied on Order 62 Rule 12 of the Supreme Court of Appeal Rules 1965:

(1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred shall be resolved in favour of the paying party; and in these rules the term "the standard basis" relation to the taxation of costs shall be construed accordingly.

(2) On a taxation on the indemnity basis all costs shall be allowed except in so far as they are of an unreasonable amount or have been

unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" in relation to taxation of costs shall be construed accordingly.

(3) Where the court makes an order as to costs without indicating the basis of taxation or an order that costs be taxed on basis other than the standard basis or the indemnity basis, the costs shall be taxed on a standard basis

He, based on RSC Order 62 Rule 15, argued that solicitor and own client costs are usually taxed on indemnity principle:

(1) This rule applies to every taxation of a solicitor's bill to his own client except:
   a. A bill which is to be paid out of a legal aid fund, or
   b. Where the solicitor and his client have entered into a conditional fee agreement as defined by section 58 of the Courts and Legal Services Act, 1990

(2) On a taxation to which this rule applies costs shall be taxed on an indemnity basis but shall be presumed:
   a. To have been reasonably incurred if they were incurred with the express or implied approval of the client; and
   b. To have been reasonable in amount if their amount was expressly or impliedly approved by the client; and
   c. To have been reasonably incurred if in the circumstances of the case they are of an unusual nature unless the solicitor satisfies the taxing officer that prior to their being incurred he informed his client that they may be allowed on a taxation of costs *inter partes*

He, therefore, argued that the costs should not be assessed on the indemnity principle in this particular case.

The Respondent argued that the cases of *BP (Malawi) Ltd v Riaz Mahomed t/a Ninkawa Bulk Logistics, Shire Ltd v City Building Contractors, National Bank of Malawi Ltd v Central African Produce Ltd* and *Preferential Trade Area Bank v Electricity Supply Commission of Malawi and Another.*, because of the decision of

this court in *Liquidator, Import and Export (Malawi) Limited v Kankhwangwa and others* [2008] MLLR 26, were not the ones binding on the Assistant Registrar. The appellant relied in this passage from the decision of this Court. In *Liquidator, Import and Export (Malawi) Ltd v Kankhwangwa and others,* this Court said:

> 'The learned Judge in the court below made two important observations regarding the Chairman's order for legal collection charges. The first observation was that collection charges are payable by the collecting party and not the paying party. In the present case the collecting parties are the appellants themselves. These charges are payable by the collecting party and not the paying party. These charges are payable by them upon examination of the relevant law which is Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules as amended in March 2002, we totally agree with the learned Judge.
>
> The second observation made by the learned Judge is that legal collection charges cease to be payable immediately upon commencement of an action; what is payable after commencement of a legal action are solicitor and own client's costs, and party and party costs. Again we agree with the learned Judge's understanding of the law on this matter. The learned Judge's view has the clear support of Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules as amended in March 2002. The material part of the said table states:
>
> TABLE 6
>
> Collection of Moneys, Solicitors and own client charges on collection moneys to be charged on receipt of moneys:
>
> Provided that where proceedings are commenced the percentage may only be charged on the amount up to date of commencement of such proceedings. Where proceedings are commenced Solicitor may charge Solicitor and own client charges in addition to party and party costs but, subject to any special agreement between Solicitor and own client charges are additional to party but, subject to any special agreement between Solicitor and client not on a percentage basis."
>
> We uphold the learned Judge's decision which set aside the order relating to legal collection charges made by the Chairman in the

Industrial Relations Court. The appellants' appeal on the question of legal collection charges fails also.

The result is that the appellants' appeal to this Court totally fails. It is dismissed. The appellants are condemned to pay costs relating to this appeal.

The Honorable Assistant Registrar erred in law in refusing to comply with the order of this court to taxation of costs contained in the trial judgment and in effectively reversing and/or adjusting the order of this Court on costs.

On Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, the respondent argues that there was a conspicuous and copious error on the face of the statute in Law Revision Orders 2003 and 2010 in overlooking contents of Government Number 6 of 2002. The respondent, therefore, presupposed that the Attorney General and Law Revision Officer in not introducing contents of Government Notice 6 of 2007 were amending or altering the law. The respondent, therefore argues that, notwithstanding section 7 of the Revision of Laws Act, neither the Attorney General nor the Law Revision Officer could, because of section 12 of the Revision of the Laws Act make alterations or amendments in substantive law. On the other hand, the appellant contends, the validity of Laws of Malawi under section 10 of the Law Revision Act and the amendment powers just described are subject to section 12 of the Revision of the Laws Act.

The respondent further submits that a judgment for a sum "with costs" only gives the plaintiff such costs or none as the rules allow (*Keatings v Storey* [1911] 2 Ir.R.109), and a direction to tax does not prevent the taxing officer from disallowing all the costs if in his opinion none ought to be allowed (*Simmons v Storer* (1880) 14 Ch. D. 154); and this is so even where the costs of a particular party are directed to be taxed.

Reasoning

Before everything, procedural matters, however, need to be mentioned because they are central to the appeal. The first relates to the procedure on assessment or taxation of costs, the latter term relates to the Rules of the Supreme Court, 1965, repealed in Malawi on 26 April, 1999 by the Civil Procedure Rules, 1998. Assessment of costs is the term used under the Civil Procedure Rules, 1998,

which, in relation to assessment of cos' between parties, are the applicable Rules to the court below and this court.

The High Court (Commercial Division) Rules, except in Order 7, rule 7 (1), dealing with summary judgment, does not cover costs or procedure for assessment or taxation for costs. Order 7, rule 7 of the High Court (Commercial Division) Rules refers to Order 62 of the Rules of the Supreme Court Rules, 1965. Order 1, rule 5 of the High Court (Commercial Division) Rules defines 'Rules of the Supreme Court' as "the 1999 edition of the Rules of the Supreme Court 1965." Section 2 (1) of the General Interpretation Act defines 'Amendment,' as "includes repeal, addition, variation and substitution." Section 2 (1) of the General Interpretation Act defines 'calendar year' to mean "period from the 1st January to the 31st December in the same year including both those days." The reference, therefore, to the "the 1999 edition of the Rules of the Supreme Court 1965" in Order 2 (1) of the High Court (Commercial Division) Rules must, as it must be, cover all repeals, substitutions, addition and variations to the Rules of the Supreme Court1965 that occurred from 1st January to 31st December in 1999. This incorporates the amendments introduced on 26th April, 1999 by the Civil Procedure Rules 1998.

Of course, Order 1, Rule 4 (1) of the High Court (Commercial Division) Rules provides:

> 'These Rules shall apply to all proceedings in the High Court (Commercial Division) and all other rules of practice and procedure shall apply to those proceedings subject to the provisions of these Rules'.

Rule 3 (1) of the Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witness Rules provides:

> "Save as otherwise provided in these rules the costs to be allowed pursuant to section 30 of the Act shall be according to the scale in force for similar matters in England'.

Rule 3 (2) of the Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witness Rules provides:

> 'Save as otherwise provided in these Rules the practice and procedure currently in force in the High Court in

England shall be followed in all matters relating to the taxation of the costs of proceedings in the High Court'.

It is, therefore, the procedure and practice in the High Court of England currently that should be followed by the High Court Commercial Division. The Governing practice and procedure, therefore, are Rules 44 to 47of the Civil Procedure Rules, 1998.

The second relates to, a point vehemently stated for the respondent, that the claim for collection costs was not pleaded and, therefore, the item in the bill of costs was properly disallowed. The writ of summons actually claims for costs of the action. That is sufficient – without itemization – to include all costs of the action, including collection charges, if they are payable by a defendant. The Rules of the Supreme Court, 1965, following decided cases, specifically provided that costs need not be pleaded (Order 18, rule 15 (1) of the Rules of the Supreme Court, UK, 1965. The law, however, is that there is no duty to plead for costs. The Civil Procedure Rules, 1998, UK therefore, have even dropped the proviso (Part 16.2 and 16.4 0. Moreover, collection charges, as we see shortly, being costs between client and solicitor, cannot be claimed by a successful party in the bill of costs against the unsuccessful party.

Section 41 (3) of the Constitution – providing for an effective remedy - is related, but only glibly related to costs of litigation precisely because costs of litigation are in the discretion of the court and are not necessarily compensatory or a remedy. In any case, even if the right exists, the rule about the court's discretion on the matter must be understood as a reasonable limitation on the right.

The fourth aspect relates to the appellant's stolid argument that, from the definition of costs, collection charges, which are charges on the client, should be paid by the unsuccessful party – the judgment debtor. Obviously, the definition of costs is neutral about the one to pay them. Understanding what costs are is helpful, I guess, to know what costs to claim, that is the furthest a definition can go. In relation to collection charges, the definition of costs only goes as far as determining that such charges are costs. The definition does not determine who should pay them. Who should pay them and to who depends on the definition of 'collection of money charges,' not the definition of 'costs.' The definition of costs, therefore, is irrelevant to the question. What is important is, therefore, the definition of 'collection money charges.'

Legislation

Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, mentions, without defining them, that collection money charges are payable:

> 'Collection of Moneys, Solicitor and own client charge on collecting monies to be charged on receipt of moneys:
>
> Provided that where proceedings are commenced the percentage may only be charged on the amount up to the date of commencement of such proceedings. Where proceedings are commenced Solicitor may charge Solicitor and own client charges in addition to party and party but, subject to any special agreement between solicitor and client not on a percentage basis'.

The nature of the activity counsel performs in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 is collection of moneys for or on behalf of own client. Having prescribed the nature of the activity counsel performs for or on behalf of a client, Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 mentions the nature of charges that should be levied – solicitor and own client charges – on the client. Consequently, on collection of money, a solicitor must charge own client solicitor and own client charges. Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 then prescribes what those charges should be.

It is significant that Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 mentions that solicitor and own client charges are 'to be charged on receipt of monies,' not before. *A fortiori,* these charges should not be included in the pleadings. They are automatically chargeable on receipt of the money. They are not chargeable if the money has not been received. The phrase 'on receipt of monies' comports an ambiguity.

In one sense, the phrase means that solicitor and own client charges are charged (by the solicitor) on receipt of money. In this sense the word 'on' means when – when the solicitor is receiving (from the debtor) – the solicitor charges the (judgment) debtor the solicitor's solicitor and own client charges. The phrase cannot have such a meaning, that is to say, the charge is made on a debtor on receipt of money from the debtor. The solicitor cannot, on the face of it, charge these on the

judgment debtor. The successful party cannot, therefore, plead them against the unsuccessful litigant. The solicitor charges them against own client.

Collection charges are charged on receipt of monies. Consequently, if the (judgment) debtor pays the money collected, this rendition implies that solicitor and client charges would be charged on the judgment on the claim and costs – on receipt of monies. Moreover, such a meaning would award solicitor and own client charges against a judgment debtor even where the court ordered that costs should not be awarded against the judgment debtor or where each party is ordered to bear own costs. This applies *mutatis mutandis* for fixed costs under Order 5 of the Rules of the High Court.

Under Order 5 of the Rules of the High Court and the Second Schedule, the unsuccessful party is only liable to pay the successful party these fixed costs:

1. The costs set forth in the Second Schedule shall be allowed in respect of the several matters therein mentioned, in lieu of the costs laid down in the Rules of the Supreme Court.
2. In addition to the said costs there shall be allowed any disbursements certified by the Registrar to have been properly incurred.
3. The Judge hearing a summons under Order XIV of the Rules of the Supreme Court may award costs to be taxed in lieu of the fixed costs prescribed by rule 1.

Order 6, rule 2 of the Rules of the Supreme Court, 1965 is the current Rule 45 of the Civil Procedure Rules, 1998. Both under Order 6, rule 2 of the Rules of the Supreme Court, 1965, and Rule 45 of the Civil Procedure Rules, 1998, these are the only costs that the defendant can indorse on a claim like the present. The claimant cannot indorse any other costs. These are the only allowable costs. The solicitor cannot endorse Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 on the writ of summons. Rule 45.1 provides:

'(1) This Section sets out the amounts which, unless the court orders otherwise, are to be allowed in respect of legal representatives' charges.
(2) This Section applies where –
(a) the only claim is a claim for a specified sum of money where the value of the claim exceeds £25 and –

(i) judgment in default is obtained under rule 12.4(1);
(ii) judgment on admission is obtained under rule 14.4(2);
(iii) judgment on admission on part of the claim is obtained under rule 14.5(6);
(iv) summary judgment is given under Part 24;
(v) the court has made an order to strike out a defence under rule 3.4(2)(a) as disclosing no reasonable grounds for defending the claim; or
(vi) rule 45.4 applies;
(b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods, and the value of the claim exceeds £25;
(c) the claim is for the recovery of land, including a possession claim under Part 55, whether or not the claim includes a claim for a sum of money and the defendant gives up possession, pays the amount claimed, if any, and the fixed commencement costs stated in the claim form;
(d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant –
(i) has neither delivered a defence, or counterclaim, nor otherwise denied liability; or
(ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;
(e) the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured short hold tenancy) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability;
(f) the claim is a demotion claim under Section III of Part 65 or a demotion claim is made in the same claim form in which a claim for possession is made under Part 55 and that demotion claim is successful; or
(g) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.
(Practice Direction 7B sets out the types of case where a court will give a fixed date for a hearing when it issues a claim.)
(3) No sum in respect of legal representatives' charges will be allowed where the only claim is for a sum of money or goods not exceeding £25.
(4) Any appropriate court fee will be allowed in addition to the costs set out in this Section.
(5) The claim form may include a claim for fixed commencement costs'.

Part 45.2 of the Civil Procedure Rules provides:

> (1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(a) or (b) applies –
> (a) will be calculated by reference to Table 1; and
> (b) the amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in Table 1 that applies to the claim.
> (2) The amounts shown in Table 4 are to be allowed in addition, if applicable

After trial, costs are discretionary (section 30 of the Courts Act; Rule 44.3 (1) (a), (b) and (c) of the Civil Procedure Rules, 1998). Section 30 (1) of the Courts Act provides:

> Subject to this Act, the costs of and incidental to all proceedings in the High Court, including the administration of estates and trusts, shall be in the discretion of the High Court; and such discretion shall be exercised in accordance with the practice and procedure provided in the Rules of the Supreme Court:

The unsuccessful party, if costs are ordered, is not liable for any further costs other than party to party costs (Rule 44 (2) (1) (a). The unsuccessful party is not liable for the solicitor to client charges of the successful party or liable to such solicitor to client costs as are within the party to party costs.

Solicitor and own client costs are costs the solicitor charges own client for services the solicitor renders to own client. Solicitor to client costs are not paid by the unsuccessful party – who, despite losing, must bear solicitor client costs – but by the successful party to own solicitor. The solicitor for the successful party can only be indemnified for solicitor own client costs through party to party costs. The phrase 'on receipt of monies' cannot, therefore, mean that the successful party charges solicitor and own client charges on the judgment debtor.

That this is the case is confirmed by the proviso to Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 relating to liability for solicitor and own client charges before and after commencement of proceedings:

'Provided that where proceedings are co mmenced the percentage may only be charged on the amount up to the d te of commencement of such proceedings'.

The proviso provides that the percentage charge can be only on receipt of monies before commencement of proceedings. There is no principle on which a debtor, before proceedings are commenced, can pay for legal services of a solicitor who another engages. The solicitor can only charge the client for realization of the asset. That is why collection charges are a charge on own client. This is because after commencement of proceedings the unsuccessful party can only pay fixed costs under Order 5, rule 1 of the High Court Rules or party to party to party costs at the discretion of the court. The solicitor, therefore, before commencement of proceedings can only charge solicitor and own client costs – and only on own client – on monies received before that date. Costs, after commencement of proceedings are either fixed or discretionary. The only costs that a party can indorse on the writ of summons are fixed costs – for default or sun mary judgment. These are the only costs that the opposite party is liable to as of duty. They are a reasonable and fair remuneration for all legal work the legal practitioner performs up to judgment in default of notice of intention to defend or pleadings.

After trial the court could decline costs to a successful party or order that a successful party pay cost or either party bears its own costs (Rule 44.2 (1) (a), (b) and (c) of the Civil Procedure Rules, 1998. The effect of these orders is that the collecting party should not charge the unsuccessful party any costs or charges. If the phrase means that solicitor and own client charges should be charged on the judgment debtor or defendant on receipt of the money, these costs would be automatically payable. Solicitor and own client charges are charged on own client on money received by a solicitor for services rendered for or on behalf of own client. This is also confirmed by the last provision in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955:

'Solicitor may charge Solicitor and own client charges in addition to party and party costs but, subject to any special agreement between Solicitor and client not on a percentage basis'.

The opening words are telling – it is the solicitor who charges. First, after commencement of proceedings, the solicitor cannot charge solicitor and own clients costs on own client based on the rates in Table 6 of the Legal Practitioners (Scale

and Minimum Charges) Rules, 1955. The solicitor is entitled to charge full solicitor and own client costs on own client. A solicitor cannot charge solicitor and own clients charges on the opposite party. Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 then provides that in addition to solicitor and own client charges, the solicitor can, on receipt of client money, charge party to party costs on the money received. That solicitor and own client charges are on own client is further confirmed that the charge on money received of party to party costs is subject to agreement with own client – not the unsuccessful party. That the solicitor can also charge Table 6 charges in addition to party to party costs on own client clearly indicates that Table 6 charges cannot be charged on the other party.

The unsuccessful party can only be liable for party to party costs. The unsuccessful party is not liable for solicitor client costs of the successful party. Where a party succeeds, party to party costs are essentially a credit to own client solicitor client costs. The unsuccessful party is only liable for own solicitor client costs. In principle, solicitor to client costs are assessed more liberally than party to party costs and normally exceed party to party costs. The excess is never pushed on to the successful party. That is why under Part 6 costs are in addition to party to party costs as between client and solicitor.

The use of the term "on receipt of money" in Table 6 of Part 1 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 is to prevent a solicitor of a successful party from charging these fees if no money has been collected from the losing party.

It is these considerations that lead to the conclusions of this Court in the long passage that the respondent cites from *Liquidator, Import and Export (Malawi) Ltd v Kankhwangwa and others.* The main reasons, however, are in rules 2 and 3. Rule 2 provides:

> 'The charge of any services specified in the First Schedule performed by a legal practitioner after the coming into operation of these rules shall be in accordance with the tariff of these prescribed in the schedule'.

Rule 2 refers to a charge 'for any services ... performed by a legal practitioner." Indeed, all items from 1 to 16 in Part 1 of the First Schedule at table one through to 16 in part I and tables I – III in part two relate to charges and for work which a solicitor performs for or on behalf of own client.

Specifically, therefore, the nature of work in Part I, Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 relates to charges and for services the solicitor performs for or on behalf of the own client. The principal item of work in Part I table six of the first schedule is collection of money. This nature of work is not distinct from other works in Part I of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 that a solicitor may perform for a client for which the solicitor must charge own client: Sales Purchases, first and subsequent Mortgages (including Debentures and further charges), leases (including Rights of Occupancy and Sub-leases, Agreement for Rights of Occupancy and Agreements for Sub-leases) when no further document is to be executed, the Tenancy Agreements other than Leases, Agreements for Leases and Tenancy Agreement(Table1); Re-conveyance of Mortgage whether acting for one party or both parties and chargeable only by the Mortgage's Legal Practitioner, the Mortgagors not being liable for any charges of the Mortgagee's Legal Practitioner (Table 2)p; Equitable Charges and Equitable Further Charges (Table 3); Releases of Equitable Charges and Releases of Equitable Further Charges (Table 4); Deeds of Arrangement requiring registration under the Deeds of Arrangement Act including all incidental work(Table 5); Probate and Administration of deceased persons' Estates including all work done in order to obtain and obtaining the issue of a grant including completion of assessment of gross value and obtaining final discharge from Estate Duty Commissioners, attending to the stamping of any documents at the Registrar General's office, attending to stamping and registration of any document, formation of Companies to include all work up to date of Certificate of Incorporation, except such work as is included in other Tables in this schedule, Application for Naturalization, Registration of Particulars under the Business Name Registration Act, Application for Passports, Bill of Sale (other than Absolute Bills of Sale) requiring registration under the Bills of Sales Act, including attending to registration, attending to stamping and incidental matters, Conveyances of Assignments by deed of any property by way of gift. All these works, including collection of money are activities the solicitor performs for and on behalf of the client. All items of services in the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 are those that a solicitor performs for and on behalf of own client and eventually charges own client for. Concerning collection of money, therefore, the solicitor charges own client – not the opposite party – for.

Rule 3 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 provides:

> 'Where a legal practitioner performs the services specified in the first column if the Second Schedule acting for and on behalf of a client specified in a Second Column of that Schedule in relation or for the purposes of, a project or scheme of national interest specified in the Third Column of that Schedule the charges payable to the legal practitioner shall be the corresponding charges specified in the Fourth Column of that Schedule'.

Once again, the statement refers to services performed for or on behalf a client for which the solicitor charges own client. These are not services against a party of the client in litigation.

Consequently, the legal practitioner for the defendant cannot charge own client because, although the nature of the activity is collection of money, there is no receipt of money collected from the party paying. If that were the case, the defendant would suffer two collection charges, for own solicitor and the solicitor of the collecting party. Moreover, the word 'receipt' means that the charge can only be made when the legal practitioner receives for or on behalf of the client money collected.

The assumption, following what has just been said, is that the party from whom the money is collected pays into the Legal Practitioners' account on behalf or for own client. The charges, therefore, will not be made where client deliberately or inadvertently pays the amount direct to the legal practitioners' own client. Once the legal practitioner collects money for or on behalf of own client, there is an obligation, under Rule 3 of the Legal Practitioners Accounts' Rules to immediately pay the money into client's accounts:

> Subject to rule 9, every legal practitioner who holds or receives client's money, or money which under rule 4 he is permitted and elects to pay into client's account, shall without delay pay such money into a client's account

There is an obligation not to draw any monies except as prescribed by Rule 7 of the Legal Practitioners Accounts Rules. Under Rule 7 (a) (ii) and (iv) there may be drawn from the client's account money properly required for or towards payment of a debt due to the legal practitioner from the client or in reimbursement of money expended by the legal practitioner on behalf of the client and money properly required for or towards payment of the legal practitioner's costs where there has

been delivered on client a bill of costs or other written intimatio of the amount of the costs incurre' and it has thereby or otherwise in writing bee made clear to the client that mor ey held for him is being or will be applied towards or in satisfaction of such costs. The charge, therefore, is on money received by the legal practitioner, not on the person on who the money is collected.

Table 6 of the First Schedule of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 must, therefore, be understood, consistent with Rule 3 and 7 (a) (ii) (iv), of the Legal Practitioners Accounts Rules, as authorizing the legal practitioner to charge, according to the rate in the Third Column of the First Schedule. These charges, therefore, are not made against the party paying the costs. They are made by the legal practitioner on receipt of monies collected from the defendant.

Table 6 of the First Schedule of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 also distinguishes between payment made before the proceedings and after the proceedings. This difference, however, confirms that the collection charges are between client and legal practitioner:

> 'Provided that where proceedings are commenced the percentage may only be charged on the amount up to the date of commencement of such proceedings. Where proceedings are commenced Solicitor may charge Solicitor and own client charges in addition to party and party but, subject to any special agreement between Solicitor and client not on a percentage basis'.

Before the proceedings, therefore, the legal practitioner can charge on the amount received according to the rates. On the amount remaining or the amount unpaid, it is important that this provision actually says that the legal practitioner can charge on a special agreement between the client and the legal practitioner on a percentage basis. It cannot have been the intention of the delegated legislator that this agreement on a percentage basis must be made by an adversary party and own solicitor against the paying party.

Consequently, if the rule was construed differently, as to comport that the adverse party must pay, the adverse party cannot pay according to the rate but on a rate agreed either with the adverse party or a rate agreed between the adverse party and their solicitor. This is absurd. Legislation is never intended to countenance absurdity. A court when interpreting a statute, will not, unless the construction

produces real uncertainty, opt for an interpretation that produces absurdity. Where the intention is clear, the meaning conveyed by the legislation must be understood to be the intention unless there are hardships from that rendition.

The intention of the legislation was that the legal practitioner must, on an action for collection of money, charge on receipt of monies for and on behalf of the client charge collection charges based on the rate. Secondly, the legal practitioner was to charge on the money received for and on behalf of the client, in addition to party to party costs, solicitor's own charges, not based on the rates.

After commencement of proceedings, subject to Order 5 of the Rules of the High Court, party to party costs are discretionary, a court could not order them. Consequently, it cannot have been the intention of the legislation that the court having refused them, they should be mandatory under these rules and be paid by the opposite party, in any event. The requirement, therefore, that party to party be charged on money received by a legal practitioner becomes necessary where the court has not ordered costs for the receiving party or the court having not ordered them the defendant cannot pay them or pay them immediately. The legal practitioner is entitled to charge party to party costs as part of client to solicitor costs to own client on money received although party to party costs are, under the indemnity principle, claimable against the adverse party.

The paying party is not responsible for counsel to client costs for services the receiving party received from own counsel. The only principle on which the paying party for costs is liable is the indemnity principle – the paying party must indemnify the receiving party for services rendered to the receiving party by a legal practitioner. As earlier stated, it is in the discretion of the court whether or not to award these costs. When they are ordered, they are assessed on a different principle from the more liberal one as between client and legal practitioner. Under party to party costs, it is only those costs that are reasonably incurred that are allowed. Consequently, party to party costs will not be covered and will invariably be higher than party to party costs. The costs principle is that the excess will be paid by the client of a successful party – not the adverse party. That, under Part I, Table 6, party to party costs can be charged on receipt of money confirms that they are charged on own client, not the adverse party.

It is the intention of the legislation that these scale charges will apply compulsorily. The legal practitioner cannot charge anything more or less than

respectively, the maximum or minimum prescribed. Section 21 (1) (e) of the Legal Education and Legal Practitioners Act provides:

> The High Court, either of its own motion and after such inquiry as it thinks fit, or on an application made by the Attorney "General, may make an order suspending any legal practitioner off the Roll, or may admonish any legal practitioner in any of the following circumstances ...if without the previous written consent of the Malawi Law Society, he has made any charges for professional services (where such are prescribed) other than those which have been prescribed as scale charges, or less than those prescribed as minimum charges.

The Legal Education and Legal Practitioner Act caters for situations not covered by the scaled charges. Once again, the provision stresses that the charges are legal practitioner vis-a-vis a client. At III of the Scale Charges (excluding Disbursements to Be Met by Legal Practitioner Rules, Rule (1) provides:

> Where scale charges are not applicable, the legal practitioner can charge such sum as may be fair and reasonable having regard to all the circumstances of the case and in particular to-

(a) The complexity of the matter or the difficulty or novelty of the questions raised;
(b) Where money or property is involved, its amount or value;
(c) The importance of the matter to the client;
(d) The skill, labour, specialized knowledge and responsibility involved, therein on the part of the legal practitioner;
(e) The number and importance of the documents prepared or perused, without regard to length;
(f) The place where the circumstances in which the business or any part thereof is transacted; and
(g) The time expended by the legal practitioner.

Moreover, the amounts in the scales are taxable or assessable. Rule (2) of part III of the legal practitioners (Scale and Minimum Charges) Rules provides, "The client may apply to the Taxing Master for taxation of costs."

One would have thought these elementary from both theory and practice on remuneration of a Legal Practitioner concerning a client. This Court in *Liquidator, Import and Export (Malawi) Ltd v Kankhwangwa and others* comes to the same

conclusion in a long passage the respondent cites. Indeed, this was the understanding until Government Notice No 49/1999. The amendments introduced by this Government Notice never affected the general areas of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. In a complete reversal, for the first time, the amendment, inconsistent with other un-amended provisions, required that collection charges be paid by a debtor before and after proceedings were commenced: Table 6, in the nature of work column was amended as follows:

> Provided that the 15 percent costs shall also be recoverable from the debtor whether proceedings are commenced or not and where proceedings are commenced, it shall be recoverable as part of the judgment."

It amended the scale and replaced it with a flat 15% for all claims for collection of money. This amendment by Government Notice Number 49/1999 was included in the Law Revision Order, 2000. Law Revision Order, 2000, ordered removal and replacement of previous pages 27-33 of the Legal Education and Practitioners Act with contents of Government Notice 49/1999. Laws of Malawi based on Law Revision Order, 2000 were affected accordingly.

As we see shortly, there was judicial criticism of the 1999 amendment in the court below in *Preferential Trade Area Bank v Electricity Supply Commission of Malawi and others* [2002-2003] MLR 304. This led to the amendment and repeal of the government notice 49/1999 by Government Notice No 6/2002, virtually reverting to the previous rule. Table 6 on the nature of work had the following amendment:

> 'Provided that where proceedings are commenced the percentage may only be charged on the amount up to the date of commencement of such proceedings. Where proceedings are commenced Solicitor may charge Solicitor and own client charges in addition to party to party costs but subject to any special agreement between Solicitor and client not on a percentage basis'.

In terms of the explanation of the charges, Government Notice 6/2002 reintroduced the previous original ones, eventually repealing the one introduced by Government Notice 49/1999. Government Notice 6/2002 also changed the Scale.

All these changes were captured by the Law Revision Order, 2003. Law Revision Order, 2003, at page 20, required replacement of pages 29-32. The Laws of Malawi Edition of the time incorporated these changes. The Laws of Malawi, properly cited Government Notice 6/2002 as effecting the repeal or amendment of Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The Laws of Malawi, until Law Revision Order, 2010, carried the amendment.

Between 1999 and 2010, Government Notices 49/1999 and 6/2002 were the regulations passed under sections 4, 16 and 17 of the General Interpretation Act. Revision Orders, 2000 and 2003 were the only Revision Orders.

The problem arises in the Laws of Malawi after Law Revision, 2010. The Laws of Malawi after the Law Revision Order, 2010, however, retained as to the narration, the contents of Government Notice 49/1999, and as to scale, what was in Government Notice 6/2002. On the face of it, there is no congruency between the narration and the Scale. The narration seems to refer to the 15% in (f) of the Scale. The suggestion cannot be that 15% is the only cost that would be recoverable from a danger and form part of the judgment debt. The scale has up to 6 items (paragraphs (a) to (f)) where amounts are expressed in money and paragraph (H) where there is 10 and 3%, respectively, for amount between five hundred thousand kwacha and one million kwacha and the balance.

Without any Gazette notification (as required by section 4, 16 and 17 of the General Interpretation Act), it is easy, because of Government Notice No 6 / 2002, to detect the source of the error. Government Notice 6/2002, however, removed the amendment in Government Notice No 49/1999. The laws of Malawi, therefore, retained the error in the narration, retaining only the scale. The Laws of Malawi after the Law Revision Order, 2010, just as its predecessor based on the Law Revision Order, 2003 and the successor Law Revision Order, 2015, refer to Government Notice 6/2002.

Trying to discover what must have caused the error is speculation at best. Two things, however, are true. The Laws of Malawi after Law Revision Order, 2010, refers to Government Notice 6/2002. There was, therefore, no other Government Notice on Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 after Government Notice No 6/2002. Moreover, the Law Revision Order, 2010 never recommended replacement of pages 29-32 which contained Part 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 as amended by Government Notice 6/2002 and replaced according to Law Revision Order, 2003. Law Revision Order, 2010 recommended replacement of pages 1-6, 6a-6b, 7-8 and 19-22 that were unrelated to Part 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 as amended by Government Notice 6/2002.

On 1st May 2016, the Minister of Justice and Constitutional Affairs issued the latest Law Revision Order. Paragraph 1(1) of the Law Revision Order, 2015, provides

> 'This Order may be cited as the Law Revision Order, 2015 and contains new legislation and amendments made to the Laws of Malawi from 1st May, 2010 to 31st December, 2014 and may be referred to on the pages contained in the Laws of Malawi as L.R.O. 1/2015'.

According to Law Revision Order, 2015, the Order was to take effect and actually took effect on 20th May 2016. At page 152, Law Revision Order, 2015, removes page 1 to 6, 21 to 22, 35 to 36, 69 to 78. Law Revision Order, 2015 does not call for replacement of page 31 that covers table 6 of Legal Practitioner (Scale and Minimum Charges) Rules. Effectively, it removes the contents of Government Notice No 49/1999 and the Laws of Malawi replaces them with contents of Government Notice 6/2002.

The Laws of Malawi following Law Revision Order 1/ 2015 on Table 6 of Part I of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, reads

> 'Provided that where proceedings are commenced the percentage may only be charged on the amount up to the date of commencement of such proceedings. Where proceedings are

commenced Solicitor may charge Solicitor and own client charges in addition to party to party costs but subject to any special agreement between Solicitor and client not on a percentage basis'.

Judicial decisions

There have been three decisions of this Court on Table 6 of Part 1 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955; *Mbendera Chibambo and Associates v Electricity Supply Commission of Malawi and others* (2004) Civil Appeal Number 34 of 2004 (MSCA) (unreported); *Kankhwangwa and others v Liquidator of Import & Export (Malawi)* (2003) Civil Cause No 4 (MSCA) (unreported) and *Liquidator, Import & Export (Malawi) Ltd* ([2008] MLR 26. In *Preferential Trade Area Bank v Electricity Supply Commission of Malawi and others* [2002-2003] MLR 304 the court below declined for many reasons, confirmed by this Court, to order payment of collection charges in favour of the claimant' legal practitioners.

The court below, however, strongly criticized the amendments in Government Notice 49/ 1999 that collection charges – which in principle are a legal practitioner's charges on own client for realizing (an asset) which was in fact a bad debt or uncertain damages – should be made paid by the opposite party. This court in *Mbendera Chirambo and Associates v Electricity Supply Commission of Malawi and others* refused to be drawn into the criticism. This Court cited the following statement from the Court below:

'Under the indemnity principle on an action for collection of money different cost implications for the collecting and paying party emerge. The paying party pays costs, party to party costs, the collecting party incurs to prosecute the action and her own solicitor's costs, the solicitor client costs. The paying party does not pay the costs of the collecting party's solicitor. Generally, the paying party can have the court tax the party to party and her solicitor client costs. The paying party has not to pay the full cost of the collecting party. The collecting party does not pay the paying party's costs. The collecting party pays her solicitors costs. The paying party indemnifies the collecting party the costs of litigation only to the extent of the party costs. The paying party does not indemnify the collecting party the full costs of her solicitor. Consequently, the collecting party pays her legal practitioner excess

costs beyond party to party costs the paying party pays the collecting party. The collecting party can have the court tax her solicitor client costs'.

This statement, which this Court called 'confusing,' explained why – under the indemnity principle – collection charges cannot be paid by the unsuccessful party.

Mbendera Chirambo and Associates v Electricity Supply Commission of Malawi and others, and *Preferential Trade Area Bank v Electricity Supply Commission of Malawi and others* were decision under Government Notice 49/1999. *Liquidator, Import & Export (Malawi) Ltd* was decided after 2002 and before 2010. Government Notice 6/2002 that reigned. This Court, therefore, characteristically, held that the debtor was not to pay collection charges after commencement proceedings. There has not been any decision on this Court after Law Revision Order, 2010. There, however, been many of the court below.

Post 2003 to 2014 the Court below has followed Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 on Laws of Malawi based on Law Revision Order, 2003 and 2010. *Mchenga v Standard Bank Ltd* (2005) Civil Cause No 1061 (MHC) (PR) (unreported) was decided after Law Revision Order, 2003 and before Law Revision Order, 2010. *BP Malawi Ltd v Mohamed t/a Ninkawa Bulk Logistics* (2010) Case No 160 (HCM Com Div (Bt) (unreported); *National Bank of Malawi Ltd v Central Africana Produce Ltd* (2014) Case No 74 (HCM Com Div (Bt) (unreported); and *Shire Ltd v City Building Contractors Ltd* (2012) Civil Cause No 437 (HCM (Bt)) (unreported) assumed, because the Laws of Malawi based on Law Revision Orders 2 Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 based on Law Revision Orders, 2003 and 2010, that Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 as it appears in Laws of Malawi was the law. In *BP Malawi Ltd v Mohamed t/a Ninkawa Bulk Logistics*, where Government Notice 6 of 2002 was recognised, the court below determined that, because Government Notice No 6 of 2002 was omitted by the Law Revision Orders 2003 and 2010, Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 was 'recast' as it appears in the Laws of Malawi under the Law Revision Orders, 2010. The court below concluded, therefore, that the case of the same court of *Mchenga v Standard Bank Ltd* (2005) Civil Cause No 1061 (MHC) (PR) (unreported) and the decision of this Court in the case of

Kankhwangwa and others v Liquidator of Import & Export (Malawi) (2003) Civil Cause No 4 (MSCA) (unreported) were anachronistic.

Analysis

One must start from Government Notice Number 49/1999, not so much for its contents which, as noted, are, in part, replicated in the Laws of Malawi based on Law Revision Orders, 2010. All versions of Laws of Malawi after the Law Revision Order, 2003, concerning Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, refer to Government Notice 6 of 2002. The contents of that Notice are not those included in the Laws of Malawi after Law Revision Order, 2010 and before Law Revision Order, 2015. The contents of Government Notice 6 of 2002, by appearing in the Gazette, are and were, because of sections 4, 17 and 18 of the General Interpretation Act, the law – subsidiary legislation – repealing contents of Government Notice Number 49/1999. The contents of the Government Notice 6/2002 are irreconcilable with the contents in the Laws of Malawi under revision orders 2003 and 2010. It is this lack of reconciliation that prompted the court below in *BP Malawi Ltd v Mohamed t/a Ninkaya Bulk Logistics* to regard Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 recast. It was not.

The Revision of the Laws Act imposes a duty on the Law Revision officer to publish all current laws section 4 (1) of the Revision of the Laws Act provides:

> 'It shall be the duty of the Commissioner, in accordance with this Act to prepare and publish, or cause to be prepared and published, and edition to be known as the Laws of Malawi, containing all the written laws required to be contained therein'.

The duty is on the Law Revision Officer to include all laws required to be in the Laws of Malawi. The Law Revision Officer, when compiling the Laws of Malawi following Law Revision Order, 2003, was supposed to introduce into Laws of Malawi, the state of the law as it was. The law was in Government Notice 6/2002 – not Government Notice 49/1999.

The Law Revision Officer, because of Government Notice 6/2002, was under a duty to revise the laws. Section 4(2) of the Revision of the Laws Act provides:

> 'It shall be the duty of the Law Revision Officer from time to time, as directed by the Attorney General, to maintain and revise the Laws of Malawi'.

The Law Revision Officer could not, as happened here, introduce what, for all purposes, was not the law. The Gazetted law was Government Notice No 6/2002. There is no Government Notice for what was introduced in the Laws of Malawi. What was in the Laws of Malawi was not the law.

The Law Revision Officer must revise and maintain the Laws of Malawi. Certainly, review or maintenance of the law required discovering what the law was. In 2010, the law as confirmed by this Court in *Liquidator, Import & Export (Malawi) Ltd* was as in Government Notice No 6/2002, not a hermaphrodite of Government Notice Nos 49/1999 and 6/2002.

Section 8 of the Revision of the Laws Act provides what must be included in the Laws of Malawi:

> 'The Laws of Malawi shall in relation to any revision date contain;
>
> (a) Every Act in force in Malawi, unless omitted under section 9;
> (b) Such subsidiary legislation in force in Malawi as the Attorney General thinks fit to include therein;
>
> (c) A chronological list of Acts and table of contents;
>
> (d) A list of the Acts omitted under the authority of section 9 (d) and (e)'.

In relation to subsidiary legislation, which is what the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 are, therefore, subsidiary legislation, subject to the Attorney General's determination, must be included. The Attorney General could not, in the best judgment, acting under section 8 (b) of the Revision of the Laws Act, have determined not to include in the Laws of Malawi based on Revision Order, 210 the contents of Government Notice No 6/2002. The Laws of Malawi based on Law Revision Order, 2010 actually refers to Government Notice No 6/2002. The scale introduced by Government Notice No 6/2002 is the one captured by Laws of Malawi based on law Revision Order, 2010.

Section 11(1) of the Revision of the Laws Act provides for the powers of the Attorney General. A few such powers are pertinent to this case. The first is section 11 (1) (a):

'In the preparation of pages for inclusion in the Laws of Malawi, the Attorney General shall have power [t]o omit or remove from the Laws of Malawi [a]ll written laws or parts of written laws which have been repealed expressly or specifically or by necessary implication or which have expired, or have become spent or have had their effect '...

The Laws of Malawi based on Law Revision Order, properly, under this section, removed the contents of Government Notice No 49/1999 reflected in the Laws of Malawi based on the Law Revision Order, 2002. When the law Revision Officer prepared Law Revision Order, 2003, the written law in Government Notice No 6/2002 was neither repealed not spent. The law in Government Notice 6/2002 could not be removed or replaced. Actually, the contents of Government Notice 49/2000 were removed and replaced by Law Revision Order, 2003.

In omitting to affect the Laws of Malawi by introducing the contents of Government Notice No 6/2002 the Attorney General was not acting under the colour of any powers contained in section 11 (1) (r) or section 9 (f)of the Revision of Laws of Malawi. Section 11 (1) of the Revision of the Laws Act provides:

'In the preparation of pages for inclusion in the Laws of Malawi, the

Attorney General shall have power –

(a) To omit or remove from Laws of Malawi

(i.) All written laws or parts of written laws which have been repealed expressly or specifically or by necessary implication or which have expired, or have become spent or have had their effect.

(ii.) All repealing enactments contained in written laws and also all tables or lists of repealed enactments, whether contained in schedules or otherwise;

(iii.) All preambles or long titles to written laws where such omission can, in the opinion of the Attorney General, be conveniently made;

(iv.) All introductory words of enactment in any provision of any written law;

(v.) All enacting clauses;

(vi.) All provisions prescribing the date when any written law or part of a written law is to come into force, where such omission can, in the opinion of the Attorney General, be conveniently made;

(vii.) All amending written laws or parts thereof where the amendments effected thereby have been embodied by the Attorney General in the laws to which they relate;

(a) To consolidate into one written law or more written laws relating to similar matters making all the necessary alterations therefore and fixing such date thereto as may seem convenient;

(b) To alter the order of the provisions in any written law and, in all cases where it is necessary to do so, to renumber the provisions;

(c) To alter the form or arrangement of any provision by transferring words, by combining it in whole or in part with another provision or other provisions or by dividing it into two or more provisions;

(d) To divide any written law, whether consolidated or not, into Parts, Chapters and Divisions;

(e) To transfer any provision contained in any written law from that law to any other written law to which the Attorney General considers that it more properly belongs;

(f) To arrange written laws, whether consolidated or not, in any sequence or group that may be convenient, irrespective of the date of enactment;

(g) To add a long title, a short title or citation to any written law which may require it, and where the Attorney General considers it necessary, to alter the long title, short title or citation in any written law;

(h) To supply or alter marginal notes;

(i) To supply or alter ' bles and contents;

(j) To shorten and simplify the phraseology of any enactment;

(k) To correct any grammatical and typographical errors, or any clerical or printing errors in any written law and for that purpose to make verbal additions, omissions or alterations not affecting the meaning of any written law;

(l) To make such formal alterations as to names, locations, officers and otherwise as may be necessary to bring any written law into conformity with circumstances of Malawi;

(m) To make such adaptations or amendments to any written law as may appear proper as of a consequence of any change in the constitution of any Commonwealth country;

(n) To renumber any Part, Chapter or Division and to rearrange the order of Parts, Chapter or Divisions;
QA

(o) To classify or arrange all written laws under headings or otherwise, and to add to, alter or abolish any such classification or arrangement;

(p) To cause to be included in the Laws of Malawi any written law which has been omitted therefrom under the authority of this Act;

(q) To do all things relating to form and method which to the attorney General appear necessary for the perfecting of the Laws of Malawi'

The law in Government Notice 49/1999 was repealed expressly by Government Notice 6/2002. Law Revision Order, 2003 provided for removal and replacement of the pages. The Laws of Malawi pursuant to this Law Revision Order, omitted these pages. Having removed and replaced the pages under this Revision Order, Law Revision Order, 2010, never, in fairness ordered replacement of the pages of the Laws of Malawi harbouring contents of Law Revision Order, 2003.

On the other hand, the Attorney General in the Laws of Malawi based on Law Revision Order, 2015 acted under section 11 (1) (r), 11 (1) (m) and (s) in introducing in the Laws of Malawi the contents of Government Notice No 6/2002.

Section 11 (2) of the Revision of Laws provides: -

> 'In the preparation of pages for inclusion in the Laws of Malawi there shall be power to make such amendments, modifications, adaptations, qualifications, and exceptions to the written laws as may be necessary or expedient for bringing them into conformity with the provisions of the Republic of Malawi (Constitution) Act, or of the Constitution or any written laws replacing them or otherwise for enabling effect to be given to such provisions'.

The Attorney General, consistent with section 11 (2) of the Revision of the Laws Act, ensured that in the preparation of the pages for inclusion in the laws of Malawi, amendments were made so that there was conformity with the laws of Malawi – Government Notice 6/20002.

Moreover, the Minister, by Revision Order, 2015, in introducing the full content of Government Notice 6/2002, acted under section 14 of the Revision of the Laws Act:

> 'The Minister may at any time, by order, rectify any clerical or printing error appearing in the Laws of Malawi, or rectify in a manner not inconsistent with the powers of revision conferred by this Act any other error so appearing, or any other matter or omission requiring revision'.

If the Attorney General or the Law Revision officer was acting under section 9 (f), 11 (1) (r) (m) and (s) of the Revision of Laws in omitting part of Government Notice No 6/2002, this was beyond the powers conferred by the Act. Sections 11 (1) (m) and 12 of the Revision of the Laws Act. Section 12 of the Revision of the Laws Act provides:

> 'Subject to section 11 (2), nothing in this act shall confer any power to make any alterations or amendments in the substance of any law'.

Section 7 of the Revision of the Laws of Malawi Act confers the finality of the contemporary version of the Laws of Malawi to the exclusion of its predecessor versions. The section only deals with the version – not the substantive law:

'The written laws reproduced on the pages duly authorised for inclusion in the Laws of Malawi shall, in all courts, and for all purposes, constitute the sole and proper version of those laws in force on the last preceding revision date'.

The Revision of the Laws Act deals with omissions and errors in the Laws of Malawi. Section 6 (1) of the Revision of the Laws Act makes it peremptory that the Laws of Malawi contain "all the written laws which are required or authorised by this Act to be included therein and are in force on the relevant revision date:

'As soon as practicable after the 1st January, 1969, and after each subsequent revision date the Laws of Malawi shall be revised in accordance with this Act, and the necessary pages prepared for inclusion taken in or to replace pages in the Laws of Malawi, and the necessary steps taken to remove from the Laws of Malawi pages no longer required to the intent that the Laws of Malawi shall contain all the written laws which are required or authorised by this Act to be included therein and are in force on the relevant revision date'.

The Laws of Malawi based on Law Revision Order, 2003 included contents of Government Notice No 6/2002, the law at the time and since then. That written law was required to be included in the Laws of Malawi based on Law Revision Order, 2010 as the written law "in force on the relevant revision date." The Laws of Malawi based on Law Revision Order, 2010, instead, removed pages not authorised for removal by Law Revision Order, 2010 and replaced it with subsidiary legislation not promulgated and passed in accordance with the sections 4, 16 and 17 of the General Interpretation Act.

There was, obviously, an error in the Laws of Malawi after Law Revision Order, 2010. It is unclear if and whether the error was known to the Minister, the Attorney General or the Law Revision Officer. The court below, however, had numerously detected the problem. Section 6 (2) of the Revision of the Laws Act provides:

'Where any error in or omission from the Laws of Malawi comes to light and such error or omission cannot be conveniently corrected under section 14, the Law Revision Officer may, at any time, prepare the necessary pages and take the necessary steps which should have been prepared or taken in order to comply with subsection (1)'.

The Minister, the Attorney General and the Law Revisio Officer, therefore, never detected the problem in the Laws of Malawi from the Law Revision Order, 2010. They have done so and remedied the error in the Laws of Malawi Revision Order, 2015.

In the circumstances, Law Revision Order, 2015 should have retrospective effect. Section 6 (2) of the Revision of the Laws Act is permissive:

> A Law Revision Order authorizing the inclusion, replacement or removal of pages for such purpose may have retrospective effect to the date of coming into operation of the Law Revision Order from which the error or omission resulted'.

This, as seen, is not a situation where the Law Revision Order, 2010 authorised inclusion, replacement or removal of pages. This is a situation where the Laws of Malawi never included the law in force and actually introduced in the Laws of Malawi material that was never the law promulgated under sections 6, 16 and 17 of the General Interpretation Act.

The appellant argues, based on section 10 of the Revision of the Laws Act, that Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955, as one included in the Laws of Malawi, is the valid law and that Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 that appeared in the predecessor Laws of Malawi, not appearing in the Laws of Malawi after Law Revision Order, 2010, was not enforceable. Section 10 of the Revision of the Laws Act provides:

> 'Any written law omitted from the Laws of Malawi under the authority of section 9 (a), (b) or (f), and any written law omitted from the Laws of Malawi under the authority of section 9 (c), (d) or (e) which is specified in the list referred to in section 8 (d) shall have the same and effect as if it had not been omitted, but otherwise no written law shall have force and effect in Malawi unless it is reproduced in the laws of Malawi or specified in the list referred to in section 8 (d)';

This situation is not one referred in sections 9 (a), (b), (c), (d), (e) and 8 (d) of the Revision of the Laws Act. The closest it comes to is section 9 (f) of the Revision of the Laws Act. As already discussed, Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 as affected by Government Notice No 6/2002 could

not fit for omission under section 9 (f) of the Revision of the Laws Act. It was omitted nonetheless. It can be presumed, therefore that the omission was under section 9 (f) of the Revision of the Laws Act. The same result arrives on the doctrine of the presumption – rebuttable - of regularity for actions by public officials. Public officials are presumed to act legally and regularly. The Law Revision officer, therefore, could not have intended to introduce in Laws of Malawi what clearly was not a law promulgated. The Law Revision Officer actually intended not to introduce contents of Government Notice No 49/1999.

The Law Revision Officer could not introduce Government Notice No 49/1999. It was repealed by Government Notice No 6/2002. Government Notice No 6/2002 has not been repealed. The Laws of Malawi could not, therefore, contain contents of the repealed law. Law Revision Order, 2010, itself never directed replacement of pages covering Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. Consequently, Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 based on Government Notice No 6/2002 should have remained. The Law Revision Officer, therefore, intended to omit the contents of Government Notice No 49/1999.

This is evidenced by inclusion in the Laws of Malawi after Law Revision Order, 2010 the scale introduced by Government Notice No 6/2002, despite the narration based on Government Notice No 49/1999. In an attempt to omit contents of Government Notice No 49/1999, the Law Revision Officer omitted Government contents of Notice Government Notice No 6/2002. The omitted Government Notice No 6/2002, therefore, retains its validity based on section 10 of the Revision of the Laws Act.

Section 10, if understood to mean that written laws, even if properly passed and Gazetted, are not valid unless reproduced in the Laws of Malawi, favours the respondent's contention that the correct law is Government Notice 6/2002 and not Government Notice No 49/1999. It is the assumption behind section 10 of the Revision of the Laws Act that the written law is one properly promulgated and passed. The purpose of the Revision of the Laws Act is that all valid laws compose in the Laws of Malawi. The Revision of the Laws Act was not intended to offer validity to invalid or laws or laws that have not been promulgated. Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 that is in the Laws of Malawi after the Law Revision Order, 2010 was ever passed by the Minister or the Chief Justice. It cannot, therefore, be clothed with validity merely by its

ntroduction in the Laws of Malawi. Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 introduced in the Laws of Malawi after Law Revision Order, 2010 was not the law at the time of the order. The law was the contents of Government Notice No 6/2002.

The contents of Government Notice No 6/2002 fulfilled section 10 of the Revision of the Laws Act. It was validated by its introduction in the Laws of Malawi after Law Revision Order, 2003 and remained in the statute books until the Laws of Malawi after Law Revision Order, 2010. It remains the law because even Law Revision Order, 2010 never ordered its removal or replacement. There was, moreover, no power to make any alteration or amendments to that law – by a law revision order. Section 12 of the Revision of the Laws Act provides:

> 'Subject to section 11(2) nothing in this Act shall confer any power to make any alterations or amendments in the substance of any law'.

If the Law Revision Officer intended to reintroduce contents of Government Notice No 49/1999, this was an amendment in the substance of the law. That, a Law Revision Officer cannot do.

Any reference in the Laws of Malawi to the repealed Government Notice No 49/1999 is subject to section 13 (1) of the Revision of the Laws Act:

> 'Where in any written law or in any document or whatever kind reference is made to any law repealed or otherwise affected by or under operation of this Act, such reference shall, where necessary and practicable, be deemed to extend and apply to the corresponding law in the Laws of Malawi'.

Any reference, therefore, to the repealed Government Notice No 49/1999 in the Laws of Malawi corresponds to the law as in the repealing Government Notice No 6/2002.

All Law Revision Orders, Law Revision Order, 2003, Law Revision Order, 2010 Law Revision Order, 2015 refer to Government Notice No 6/2002 as the last intervention on Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The Volume of the Laws after Law Revision Order, 2010, unlike previous Laws of Malawi after Law Revision Order, 2003 however, do not contain contents of Government Notice No 6/2002. The Laws of Malawi based on Law Revision Order, 2010, therefore, rendered inaccurate Table 6 of the Legal

Practitioners (Scale and Minimum Charges) Rules, 1955. Section 13 (2) of the Revision of the Laws Act provides:

> 'Whenever the coming into operation of a Law Revision Order renders inaccurate in any written law not incorporated in the Laws of Malawi any references by numerical or other designation to provisions in any written law so incorporated, such references shall be read and construed subject to such modifications as are necessary to result in their referring to such provisions as numbered or otherwise designated in the revision of the Laws of Malawi effected in accordance with such order'.

Law Revision Order, 2010 had the effect of rendering reference to Government Notice No 6/2002 inaccurate by introducing in the Laws of Malawi content that had not been promulgated and removing and replacing correct content of correct law. Laws of Malawi after Law Revision Order, 2010 must be construed accordingly.

All this is probably unnecessary. There is now Law Revision Order, 2015. Law Revision Order, 2010 never ordered removal or replacement of pages 31-32 of the Laws of Malawi after this order which contained the erroneous Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. Law Revision Order, 2015 orders replacement of the erroneous Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The Laws of Malawi after Law Revision Order, 2015 contain Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 according to Government Notice No 6/2002. Section 14 of the Revision of the Laws Act provides:

> 'The Minister may at any time, by order, rectify any clerical or printing error appearing in the Laws of Malawi, or rectify in a manner not inconsistent with the powers of revision conferred by this Act any other error so appearing, or any other matter omission requiring revision'.

The error after Law Revision Order, 2010 can only have a printing or clerical one: The Law Revision Officer, thinking that Government Notice No 6/2002 only changed the scale, could have retained the narration. Whatever the case, there was an error. The Minister, by Law Revision Order, 2015, rectifies the error. Section 14 of the Revision of the Laws Act, does not specify the time in which such an error can be rectified. Section 46 of the General Interpretation Act provides:

'Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without undue delay, and as often as due occasion arises'.

On the presumption of regularity, it can be assumed that the Minister saw the error at the time of the Law Revision Order. It is not demonstrated that the Minister knew of the discussions in the court below and this Court on the matter.

This rectification must have retroactive effect because of section 6 (2) of the Revision of the Laws Act:

'A Law Revision Order authorizing the inclusion, replacement or removal of pages for such purpose may have retrospective effect to the date of coming into operation of the Law Revision Order from which the error or omission resulted'.

In this case, the rectification should have retrospective effect from the date of the Law Revision Order, 2010.

The appeal must be dismissed. It is obvious from this detailed analysis that the law on collection charges is in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 based on Government Notice No 6/2002. The law in Government Notice No 6/2002 is, but for the scale the same as Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 in 1955. The underlying principal in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 is that collection charges – charges on money received on behalf of or for a client – are charges on own client. Collection charges, therefore, are not charges on the person from whom money is collected. Once money is collected, according to Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 and section ... of the Courts Act and Section ... of the Legal Education and Practitioners Act, the client charges collection fees.

Until Government Notice No 49/1999, effected by Law Revision Order, 2000, collection charges could only be charged on own client on money received for or on the client's behalf up to commencement of procedure. After commencement of proceedings on client could only be charged, on collection of money for solicitor's costs – not collection money under Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 – and party to party costs. The assumption being that collection charges in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 was adequate for legal services rendered before

commencement of legal proceedings. Solicitor's own costs after commencement of proceedings are at large. They could or could not equal to costs in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. To the extent that they are equal, the solicitor loses nothing. Where they exceed however, the scheme in Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 was that a solicitor would charge and recoup from money received (which including party to party costs). Where solicitor and own clients exceeded party to party costs, the scheme under Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 was that those extra costs would be subject to agreement between the solicitor and own client. Solicitor and own client could agree that full costs, subject to taxation of solicitor and own client costs, be paid only an agreed perc00tage should be paid or no extra costs be paid. The debtor, therefore, never bore solicitor and own client costs on, like on any other contemptuous matter, beyond party to party costs, if there was full trial, or fixed costs under Rule ... of the High Court Rules. The flirt of less than three years where, under Government Notice No 49/1999, affirmed by Law Revision Order, 2000 was, after judicial comments removed by Government Notice No 6/2002.

Government Notice No 6 2000, repealing Government Notice No 49/1999 was the law when the laws of Malawi were revised under Law Revision Order, 2010. There was no other law promulgated or passed to affect Government Notice No 6/2002. Government Notice No 6/2002 was validated by Law Revision Order, 2003 which required replacement of pages ... based on Government Notice No 49/1999 validated by Law Revision Order, 2000. Curiously, Law Revision Order, 2010 never required replacement of pages ... Introduced in the Laws of Malawi under Law Revision Order, 2003. Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 introduced after Law Revision Order, 2010 was not based on any law promulgated or passed. It should not have been in the Laws of Malawi. The law remained, therefore as Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955 based on Government Notice No 6/2002 and introduced into the Laws of Malawi under Law Revision Order, 2003. The minister, acting under Section 14 has corrected the error and the correction must have retrospective operation to the time of the error.

The law therefore is that no collection charges can be heard or charged on client or account after commencement of proceedings. The upshot of all this is that the plaintiff in an action for collection of money has no power or basis for including collection charges under Table 6 of the Legal Practitioners (Scale and Minimum

Charges) Rules, 1955 either in the originating process or the pleadings. Collection charges are not payable after commencement of proceedings. The opposite party will be ordered, whether costs were claimed or not to pay party to party costs in the court's discretion. A claim for party to party costs will include solicitor's own client costs. Those solicitor own client costs should not include collection charges under Table 6 of the Legal Practitioners (Scale and Minimum Charges) Rules, 1955. The collecting party cannot claim them after commencement of proceedings; the opposite party cannot be ordered to pay them. The conclusions of the court below were opposite and propitious. They cannot be interfered with.

The appeal should be dismissed with costs. The respondent should lodge the statement of cots with this Court within 30 days for the Court – not the Registrar – to make a summary cost order.

Dated this 14th day of February, 2023 at Blantyre

Hon. E. B. Twea SC

JUSTICE OF APPEAL

Hon. L P Chikopa SC

JUSTICE OF APPEAL

Hon. D F Mwaungulu SC

JUSTICE OF APPEAL