



MALAWI JUDICIARY

IN THE SUPREME COURT OF APPEAL

Sitting at Blantyre

MSCA CIVIL APPEAL NO 25 OF 2013

(Being High Court, Commercial Division, Commercial Case No. 127 of 2012)

BETWEEN

CLC FOREX BUREAU.....APPELLANT

AND

RESERVE BANK OF MALAWI..... RESPONDENT

CORAM: HONOURABLE JUSTICE E. B. TWEA SC, JA

HONOURABLE JUSTICE DR. J. ANSAH SC, JA

HONOURABLE JUSTICE R. R. MZIKAMANDA SC, JA

Mrs. Chijere Counsel for the Appellant

Masumbu/Nyirenda..... Counsel for the Respondent

Minikwa.....Recording Officer

RULING

This is an appeal from the High Court, Commercial Division. The background of the case is that the parties executed a settlement agreement on liability with damages to be assessed. On motion to amend Writ of Summons and Statement of Claim before assessment to increase special damages, the Honourable Justice Kachale, denied appellant's motion on July 18, 2013 and a second motion on July 22, 2013. On appeal to the Supreme Court, Honourable Justice of Appeal Chinangwa sitting alone, denied appellant's motion for leave to appeal. On further application to a 3 Member Panel, Nyirenda SC, Twea SC and Mzikamanda SC, JJA, the Supreme Court again denied appellant's motion for leave. This is a subsequent appeal to yet another 3 Member Panel of the Supreme Court.

The facts in the substantive matter are not relevant to the present appeal. It suffices to say that the parties executed a settlement agreement on liability, with damages to be assessed. Before assessment, however, appellant sought to amend the Writ and Statement of Claim on the question of special damages. The Court denied leave to amend on two occasions premised on two different grounds, first, the constitutionality of O. 18 of the High Court (Commercial Division) Rules and second, on s. 21 of the Supreme Court of Appeal Act. The Supreme Court, Chinangwa, JA., sitting alone on the question of constitutionality, dismissed appellant's appeal for want of jurisdiction on the question of constitutionality, which was affirmed by a three-member panel, Nyirenda JA as he was then, Twea JA and Mzikamanda JA. This is a second appeal before the Supreme Court before another three-member panel, on question of s. 21 of the Supreme Court of Appeal Act and its relationship with O. 18 of the High Court (Commercial Division) Rules.

Whether the Supreme Court ought to grant leave to appeal against the Commercial Court's decision refusing leave to appeal is its denial of leave to amend the Writ and Statement of Claim, given that O. 18 of the High Court (Commercial Division) Rules prohibits appeals without leave of the Court or the Supreme Court in interlocutory matters.

It is rather difficult to properly contextualize the question before the Supreme Court in the present appeal. This is primarily because appellant appears to be appealing against an order of the Commercial Division on an interlocutory application, the motion to amend the Writ and Statement of Claim. The appeal is brought after a settlement agreement on liability was already executed and the only question left to be settled was damages which were to be assessed. THUS, the appellant's motion to amend the Writ and Statement of Claim raises the question as to whether that application was, in and of itself, an interlocutory application, given the fact that the settlement agreement would have, otherwise disposed of the matter substantively. In that regard, was the appellant competent to bring an application to amend the Writ and Statement in the first place? The Supreme Court, Nyirenda SC, Twea SC, and Mzikamanda SC, JJA appear to suggest that there was a final order which would negate any application or leave to appeal under O. 18 or under s. 21 of the Supreme Court Act. In that instance, the matter would have been *res judicata* and any applications should have been by way of appeal against the substantive order, which in this case was the settlement agreement.

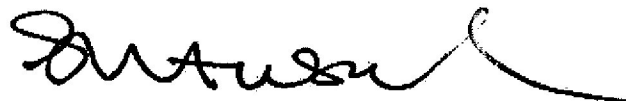
Looking at the settlement agreement, it is clear that the issue of liability was brought to finality. Indeed, the settlement agreement constituted a final order. We are therefore, in agreement with the finding of the Supreme Court that no appeals grounded on an interlocutory application under O. 18 or s. 21 of the Supreme Court Act can be entertained.

We dismiss the appeal on grounds that the settlement agreement constituted a final order which negates any appeals grounded on interlocutory applications since the matter is *res judicata*. The costs of the appeal are hereby awarded to the respondents.

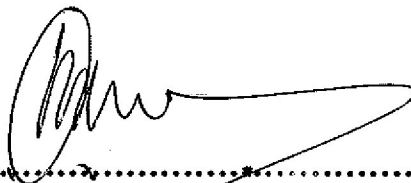
Made this 14th day of February, 2023 at Blantyre



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HONOURABLE JUSTICE E. B. TWEA SC, JA



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HONOURABLE JUSTICE DR. J. ANSAH SC, JA



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HONOURABLE JUSTICE R. R. MZIKAMANDA SC, JA