

IN THE MALAWI SUPREME COURT OF APPEAL

SITTING AT BLANTYRE

MSCA CIVIL APPEAL NO. 23 OF 2015

(Being High Court Principal Registry Civil Cause No. 253 of 2012)

BETWEEN

JEAN CHIRWA.....APPELLANT

AND

ALEXKA HOLDINGS LIMITED.....RESPONDENT

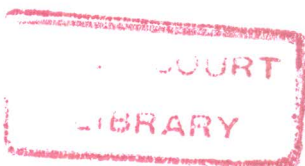
Coram: Honourable Justice E.B. Twea SC, JA
Honourable Justice R.R. Mzikamanda SC, JA
Honourable Justice A.C. Chipeta SC, JA
Mpaka..... for the Appellant
Msisha SC..... for the Respondent
Mthunzi (Mrs).....Recording Officer

ORDER

Mzikamanda SC, JA (Twea SC, and Chipeta SC, JJA concurring)

This is an appeal against an interlocutory order of Mbvundula J. discharging the respondent from being a party to the proceedings under the above cause number commenced by the appellant in the Court below. In this appeal, the appellant invites this Court to make an order reversing the decision by the Court below in its entirety and dismissing the respondents summons with costs here and below. The Court is further asked to make an order remitting the matter to the High Court for full trial or such other further process as may be appropriate with the respondent as one of the defendants. The respondent challenges the appeal.

There are six grounds of appeal which we reproduce immediately below. These are that:



1. The Honourable Judge in the Court below erred in law when he decided to attempt to resolve under the genus of the summary procedure under Order 18, rule 19 of the Rules of the Supreme Court (RSC) the triable substantive issues of fraud or knowledge of fraud or neglect as to fraud attendant to the registration of the respondent as proprietor over Title Number BC 276 as joined through the pleadings between the appellant and the respondent.
2. The Honourable Judge in the Court below erred in law in failing to apply the tests under Order 15, rule 6(2) of the RSC and under Order 2, rule 2 of the RSC or to answer the key procedural questions raised by the parties as to (i) the necessity of the presence of the respondent as a party to these proceedings or (ii) the existence between the appellant and the respondent of questions or issues arising out of or relating to or connected with the relief claimed in the cause, and (iii) statement of grounds for summons before the Court.
3. The Honourable Judge in the Court below erred in law and acted in breach of the principle of procedural fairness between the Court and parties or the rule of *audi alterem partem* as it applies to issues of law and of fact in civil proceedings by (i) resorting to evidential analysis and doing so with reference only to partial evidence on record on each point considered in judgment on evidence and by (ii) relying on the Court's own private research on legal points on which none of the parties were heard at the hearing of the summons before the Court.
4. The Honourable Judge in the Court below erred in fact in (i) assuming that the dealings between the respondent and the 2nd defendant as transferee and transferor over BC 276 were prior to the annulment of the letters of administration obtained by the 1st defendant, and in (ii) failing to answer the question of the Court below as to whether the 2nd and 5th defendants proceeded to register the transfer title after learning of the fraud herein.

