



Republic of Malawi

FROM : THE HONOURABLE THE CHIEF JUSTICE

TO : JUSTICES OF APPEAL

: JUDGES OF THE HIGH COURT

: THE HONOURABLE MINISTER FOR JUSTICE
AND CONSTITUTIONAL AFFAIRS

: THE HONOURABLE THE ATTORNEY GENERAL

: THE HUMAN RIGHTS COMMISSION

: THE ELECTORAL COMMISSION

: THE ANTI CORRUPTION BUREAU

: THE LEGAL AID BUREAU

: THE LAW COMMISSION

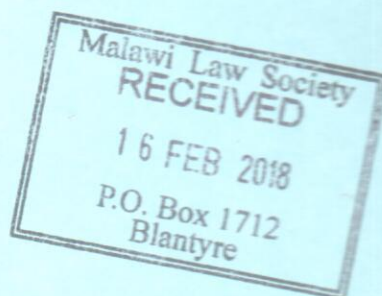
: THE OMBUDSMAN

: THE MALAWI LAW SOCIETY

: ALL LEGAL HOUSES

: THE REGISTRAR, SUPREME COURT OF APPEAL

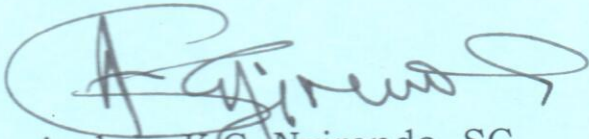
: THE REGISTRAR, HIGH COURT OF MALAWI



DATE : 6TH FEBRUARY 2018

SUBJECT: PRACTICE DIRECTION NO. 1 OF 2018

I hereby bring to your attention and forward to you the attached Practice Direction No. 1 of 2018 regarding the constitution of the Supreme Court of Appeal for the conduct and disposal of appeals before the Court effective immediately.



Andrew K.C. Nyirenda, SC
CHIEF JUSTICE



Republic of Malawi

IN THE SUPREME COURT OF APPEAL

PRACTICE DIRECTION NO. 1 OF 2018

CONSTITUTION OF THE SUPREME COURT OF APPEAL ON THE
CONDUCT AND DISPOSAL OF APPEALS

WHEREAS section 105 (2) of the Constitution provides that when the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of Justices of Appeal not being less than Three; and

WHILE the current composition of the Supreme Court of Appeal is Nine Justices of Appeal;

IT IS HEREBY NOTIFIED and **DIRECTED** for general information and guidance to all Legal Practitioners and the public that with effect from the date of this Practice Direction, the constitution of the Supreme Court of Appeal on the conduct and disposal of appeals shall be as follows:-

1. Constitution of the Supreme Court of Appeal:

- a) **WHEN** the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be constituted by the Chief Justice presiding and Eight other Justices of Appeal.
- b) **PROVIDED** that in the event where for any reason it is not possible or practicable to secure the presence of Nine Justices of Appeal, it shall be constituted by the Chief Justice presiding or other member presiding as may, by prior practice, be designated and Six other Justices of Appeal.

2. Filing of appellate briefs, court records, responses and skeletal arguments:

All rules of practice currently in force relating to the filing of appellate briefs, grounds of appeal, court records, responses and replies and skeletal arguments, as the case may be, shall remain in force.

3. Filing of case authorities to be relied on and other relevant authorities:

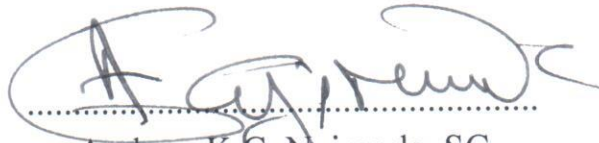
Each appellant and respondent before the Supreme Court of Appeal shall, in addition to any document, appellate briefs and skeletal arguments required under the appropriate rules, file copies in electronic format, of all case authorities and any other relevant authorities they intend to rely on at the oral hearing of the appeal, with the appropriate passages properly highlighted and marked.

4. Allocation of time for oral argument:

- a) Each appellant and respondent shall be allocated One Hour to argue their appeal or reply, inclusive of any and all questions that the Justices of Appeal may put to them for clarification or otherwise.
- b) It shall be in the discretion of the appellant or respondent, whoever shall be given the right of audience to argue first, to reserve part of their allocated One Hour for rebuttal.
- c) No further extension of time shall be allowed any appellant or respondent other than the equal One Hour allocated to each of them.
- d) Where the Court grants leave to any other party in addition to the appellant or the respondent to be heard in the appeal, it shall be in the discretion of the Court to allocate time within which such party is to present their oral arguments as the case may require.

This Practice Direction supersedes any Practice Direction previously issued that relates to the same subject matter as covered herein to the extent that any such Practice Direction conflicts or be at variance with this Practice Direction.

MADE this.....6th.....day of.....February.....2018


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Andrew K.C. Nyirenda, SC
CHIEF JUSTICE



Republic of Malawi

MEMORANDUM TO PRACTICE DIRECTION NO. 1 OF 2018

CONDUCT OF APPEALS AND ORAL ARGUMENTS BEFORE THE SUPREME COURT OF APPEAL

Background

The adoption of the 1994 Constitution and the appointment of the first Justices of Appeal to the Supreme Court of Appeal signified a departure from the composition and constitution of the Supreme Court of Appeal under the repealed 1966 Constitution. However, the constitution of the Supreme Court of Appeal has continued under section 3 (3) (a) and (b) of the Supreme Court of Appeal Act without giving due consideration to the **changes and spirit** introduced by sections 104 and 105 of the 1994 Constitution.

Section 67 of the repealed 1966 Constitution provided for the composition and constitution of the Supreme Court of Appeal that included sitting Judges of the High Court. In the 1994 Constitution, the Supreme Court of Appeal is established under section 104 while its composition and constitution is provided for in section 105. The 1994 Constitution creates One Supreme Court of Appeal with separate composition and constitution that excludes Judges of the High Court, thereby departing from the composition and constitution of the Supreme Court of Appeal under section 67 of the repealed 1966 Constitution. It was in this respect that a separate and larger Bench of Justices of Appeal was appointed.

The result of continuing with the constitution of the Supreme Court of Appeal under section 3(3) (a) and (b) of the Supreme Court of Appeal Act is that we have the undesired situation of having not one but as 'many' supreme courts as we can feasibly subdivide the current Justices of Appeal into panels (or groups) of Three or Five Justices of Appeal, depending on whether the matter under appeal involves or does not involve the interpretation or application of the Constitution, as the case may be.

It has further been observed that there have been instances of lack of clarity in or settlement of the law resulting from the combined effect of the Supreme Court of Appeal currently being constituted by Three or Five Justices of Appeal, as the case may be, and the Court not being bound by its own precedents. This has led to difficulties for legal practitioners to properly advise clients and litigants on the possible outcome of their claims in the courts. It has also resulted in the courts being inundated with claims that would otherwise not have merited litigation had proper advice been given if there was certainty and predictability of the law as settled by the Supreme Court of Appeal.

A clear and coherent reading of section 105 (2) of the Constitution lends no limitation nor restriction to the number of Justices of Appeal that should constitute the Supreme Court of Appeal, save that such number of Justices of Appeal always be an uneven number of the composition of the Justices of Appeal.

The Practice Direction and the Objective

Following the provisions of section 104 read with section 105 of the Constitution, it has been decided to issue a Practice Direction that in determining any matter, other than an interlocutory matter, the Court shall be constituted by the current composition of Nine Justices of Appeal. In the event where, for any reason, it is not possible or practicable to secure the presence of the Nine Justices of Appeal currently composing the Supreme Court of Appeal, the Court shall be constituted by Seven Justices of Appeal. The objective of the Practice Direction is to ensure certainty, predictability and settlement of the law in the Supreme Court of Appeal.

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

Andrew K. C. Nyirenda, SC

CHIEF JUSTICE