



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI PRINCIPAL REGISTRY
CIVIL DIVISION
MISCELLANEOUS CIVIL APPLICATION NUMBER 147 OF 2020
(BEFORE JUSTICE JEAN KAYIRA)

BETWEEN:

VIZENGE KUMWENDA T/A WOP TRADING APPELLANT

AND

CALEB CHILANGWE.....RESPONDENT

CORAM: THE HONOURABLE JUSTICE JEAN KAYIRA

Counsel Jai Banda of Counsel for the Appellant

Counsel Victor Jere of Counsel for the Respondent

Ms. Chiphwanya Court Clerk and Official Interpreter

ORDER

Kayira J

This matter commenced in the lower court where a determination was made. The Appellant was aggrieved with the decision and filed an appeal. The matter has been pending for more than two years because the original file which was made by the lower court has been missing. As such, it is difficult to comply with Order XXIII of the Subordinate Court Rules in terms of how appeals are transitioned from the lower court to this Court. On the day of hearing the application to dismiss the present appeal for want of prosecution, it was abundantly clear that the Appellant had made efforts to secure the original court record. Despite making some progress, the file went missing again when it was brought to the Law Clerk. This Court finds the conduct of the Court officials as the main reason why there is no progress in this matter. It will therefore in my considered view be unfair and unreasonable

to hold the Appellant responsible for the wrong conduct of officers who are not under his control. In order to allow for fairness, this Court directs that the file must be brought to this Court by the Law Clerk within 7 days from today. That is by 2nd August, 2024. This Court after adjourning the matter was notified by the Court Clerk that the file has finally been brought by the Law Clerk. This being the case, this Court directs that the Appellant should file skeleton arguments within 14 days which is by 9th August, 2024. The Respondent has to file response within 14 days which is 23rd August, 2024. The matter will be heard on 4th September, 2024 at 9AM in open court.

The Court is aware that costs are within its discretion. The Court orders that costs of the present application should be in the cause.

PRONOUNCED IN CHAMBERS ON 25th JULY, 2024 @12:00PM.

**HONORABLE (MRS.) JEAN ROSEMARY KAYIRA
JUDGE**

