



**IN THE MALAWI SUPREME COURT OF APPEAL  
SITTING AT BLANTYRE**

**MSCA CIVIL APPEAL NO. 4 OF 2023**  
(Being High Court Principal Registry Civil Cause No 17 of 2021)

**BETWEEN:**

**ARNOLD MALINDA AND 55 OTHERS ..... APPELLANTS**

**AND**

**CARLSBERG MALAWI LTD ..... RESPONDENT**

**CORAM: HON. JUSTICE R. MBVUNDULA, J.A.**

Mumba, Counsel for the Appellant

Chikaonda, Counsel for the Respondent

Mnthunzi, Recording Officer

**ORDER**

On 20<sup>th</sup> February 2023 I heard and granted, *ex parte*, an application made by the respondent for security for costs in the appeal pending in this Court. The appellants subsequently filed an *inter partes* application to have the order set aside on the ground that except where special circumstances are shown, orders for costs are not granted in labour matters such as the present. The Supreme Court decision in *First Merchant Bank v. Mkaka* MSCA Civil Appeal No. 53 of 2013 was relied upon by the appellants.

The respondents' main counter-argument is that the powers of this Court upon the hearing of an appeal as contained in section 22 of the Supreme Court of Appeal Act include the power and discretion to "make such other order as the interests of justice may require" and as such the Court retains the power to make orders for security for costs and that for that reason Order III rule 12 of the Supreme Court of Appeal Rules expressly maintains the power to of this Court to order security for costs.

The respondent goes further to doubt the decision in *First Merchant Bank v. Mkaka* arguing that the case is either *per incurium* section 22 of the Act and Order III rule 12 of the Rules of the Supreme Court, or that the case was decided on its own facts. This point has not been elaborated. It is further submitted that the decision only represents one school of thought as regards costs in employment matters in the Supreme Court as other cases, not considered in the *Mkaka case*, went the other way. Transcripts of the said cases have not been availed to me and I have not been able to access them elsewhere. Counsel for the respondent is, however, not emphatic or unequivocal that the *Mkaka case* is in fact *per incurium*. He only expresses doubt. I am thus not persuaded by the suggestion.

The principle in the *Mkaka case* which must guide the outcome of this application is that bearing in mind the provisions of section 72 of the Labour Relations Act which generally proscribes the granting of costs in the Industrial Relations Court, equally no costs should be awarded on appeal; that each party must bear their own costs. There are specific exceptions under section 72 which do not cover the facts of this case.

In consequence of the above position I am persuaded that an order for security for costs such as the one I granted herein is a futile order as no costs would be awarded at the end of the day. I accordingly set it aside my previous order and grant the appellants' prayer.

Made in chambers at Blantyre this 23<sup>rd</sup> day of October 2023.



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**HON. JUSTICE R. MBVUNDULA**  
**JUSTICE OF APPEAL**