



REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
SITTING AT BLANTYRE
MSCA MISC CIVIL APPLICATION NO. 51 OF 2024
(Being High Court, Civil Division, Lilongwe Registry, Land Cause No. 67 of 2021)

BETWEEN:

DELIPHER KANJIRA

(Suing through the Estate of the Late Mr. Kanjira)-----APPELLANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI----RESPONDENT

CORAM : HON. JUSTICE M.C.C. MKANDAWIRE SC, JA

G. Mtilatila, Counsel for the Appellant

T. Kayira, Counsel for the Respondent

C. Masiyano, Recording Officer

RULING

1. The Applicant (Appellant) brought this matter for extension of time for giving notice of appeal pursuant to section 23(2) of the Supreme Court of Appeal Act as read with Order 111 rule 4 of the Supreme Court of Appeal Rules. The application is supported by an affidavit made by the Applicant. There are also skeleton arguments in support of the same.

2. The Applicant in the Court below brought an action against the Respondent through a writ of summons. Pending hearing of the matter the Applicant also brought an injunction against the Respondent. The Respondent filed an application claiming that the matter which the Applicant had commenced was statute barred. On 19th of April 2022, the Court below heard the application to strike out the matter. On 15th April 2024, the Court below struck out the matter. The Applicant instructed her Attorneys to appeal against the ruling. After some time, her Attorneys advised that they had no basis for appealing against the decision.

3. The Applicant not convinced with the legal opinion of her Attorneys approached Messrs. Namanja and Associates who agreed with her opinion and offered to handle the appeal.
4. The Applicant therefore contends that in the interest of justice, and considering the reasons that occasioned the delay in filing the appeal, the court should allow the Applicant to file and appeal out of time.
5. The Respondent opposed this application. There is in place the affidavit in opposition made by Yamikani David Kambauwa.
6. The Respondent says that initially, the Applicant in the Court below filed Civil Cause Number 40 of 2021 which was dismissed as Counsel for the Applicant had no valid license to practice law at the time of commencement of the proceeding. The Applicant later recommenced the action under Land Cause Number 67 of 2021. On 15th April 2024 the Court below ruled that the proceeding was statured barred and proceeded to dismiss the proceeding.
7. The Applicant being dissatisfied with the ruling has now lodged an application for extension of time for giving notice of appeal and has alleged in ground 4 of her grounds of appeal that the Court below misapplied the law on limitation by ignoring the fact that the Claimant (now the Appellant) was under a disability and lacked capacity to sue at the time of commencing the proceeding as she was only granted letters of administration in March 2022. Based on the revelations, the Respondent contends that the proceedings in the Court below was a nullity as it was commenced when the Applicant lacked the requisite capacity to sue on behalf of Mr. Kanjira.
8. The Respondent further says that there has been inordinate delay to bring this application as over five months elapsed before she could take steps to file the application.
9. On 25th of November 2024, the Respondent filed a Notice of Intervention to rely upon preliminary objections. The Respondent contends that the proceeding in the Court below was a nullity on account that at the time of commencement, the Applicant lacked legal capacity to sue as she did not have letters of administration which were only granted to her in or around March 2022 after the proceedings had already been commenced.
10. I have looked at the preliminary objection. It is a very straight forward issue. From ground number 4 of the Appellant's grounds of appeal, it is clear that in the Court below, the Applicant had no legal capacity to sue in 2021. The proceedings

were therefore a nullity. This on its own should have closed the chapter in this application. I have however decided to look at the entire application so that there is no deliberate misunderstanding at the end of this ruling. Much as it may look time wasting, but it is important as I had allowed both parties to ventilate on all the issues.

11. Since this application is anchored on the Supreme Court of Appeal Act, it is imperative to refer to the relevant Order which is Order 111 rule 4 of the Supreme Court of Appeal Rules. It provides:

Every application for an enlargement of time in which to appeal shall be supported by an affidavit setting forth good and substantial reasons for the failure to appeal within the prescribed period, and by grounds which prima facie show a good cause why the appeal should be heard. (underlining is mine).

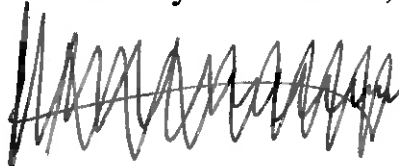
12. It is settled as a fact here that the Applicant brought this application five months after the ruling of the Court below. The Applicant was busy disagreeing with her Counsel on the merit of the appeal. Order 111 rule 4 of the Supreme Court of Appeal Rules requires that the Applicant should have good and substantial reasons for the delay.

13. From the totality of the evidence before me, the Applicant was aware of the ruling in good time. She was legally represented and her legal Counsel was aware of the legal limitations. What is critical in this matter is that Counsel had candidly advised her that there was no merit in appealing this matter. She defiantly disagreed with Counsel. I have also looked at the grounds of appeal. I fail to appreciate any merit in them.

14. I find that the Applicant has not advanced good and substantial reasons for her failure to appeal within the prescribed period. There was also inordinate delay. Five months is on the higher side.

15. This application is dismissed with costs.

Made this 31st day of December, 2024



M.C.C. MKANDAWIRE

JUSTICE OF APPEAL