

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA civil appeal NO. 22 OF 2016

[Being High Court of Malawi[Commercial Division], Lilongwe Registry, Commercial Case Number 202 of 2008]

BETWEEN

FINANCE BANK OF MALAWI[IN VOLUNTARY LIQUIDATION] APPELLANT

AND

RESERVE BANK OF MALAWI

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

CORAM:

JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

Mpaka/Kita, Of Counsel for The Appellant

Matsimbe of Counsel for the 1st Respondent

Thabo Nyirenda Hon Attorney General/Khunga/Masiye/McJessie of Counsel for the 2nd respondent

Minikwa [Mr.], Clerk

RULING/ORDER

This is a very long outstanding matter. The events under complained of took place between 1999-2005. The action was commenced in the High Court in 2008. The

judgment was delivered on October 27, 2014 while the notice of appeal is dated October 28, 2014. The grounds of appeal were filed on March 9, 2015.

Thrice we have set the substantive appeal for hearing. We could not proceed. We decided to call the parties so that together we can map the way forward.

Listening to the parties it soon became clear that as the wheels of justice slowly trudged along there was an application from the respondents seeking to dismiss the appeal for noncompliance, want of prosecution and a lack of capacity [the appellant having been voluntarily wound up] on the one hand and to stop the proceedings unless and until the appellant furnished security for costs on the other. The latter application was heard by a single Justice. The Justice has since retired. The ruling in respect thereof however remains unwritten undelivered. The former application was heard by a panel of three Justices. Two of the Justices have also since retired. The ruling remains unwritten undelivered. The parties were however of the view that the rulings should be delivered before the appeal could proceed further.

To try and retrieve the situation a case management conference was called by the then Judge President of this Court. On August 16, 2021. All parties were represented at this meeting. After due consideration of the matter the Judge President promised to revert to the parties with directions. He accordingly placed this matter before the then Registrar of this court, Her Honour Bodole [as she then was], to give actual directions on the way forward in view of the undelivered rulings. The parties attended her on March 23, 2022.

After hearing all the parties, the Registrar directed that the matter proceeds to hearing. The matter of non-compliance and want of prosecution would be resolved by the appellant serving the first respondent with the record and skeleton arguments. The issues of capacity and security for costs were left open. The respondents were at liberty to raise and argue the question of capacity during the hearing of the substantive appeal. The matter of costs could be raised at any appropriate time.

The matter was then set down again. The Honourable the Attorney General protested. By his letter dated April 29, 2024 he resurrected the small matter of the

undelivered rulings referred to above. He preferred them delivered before the substantive appeal could be heard.

There was a response from Counsel Mpaka on behalf of the appellant. In a letter dated May 29, 2024 he opined that the matters raised by the Honourable the Attorney General were resolved by the directions given by the Registrar on the instructions of The Hon the Chief Justice. The matter should in his opinion therefore proceed to hearing.

We thought it best in those circumstances to remove the appeal from the cause list and summon the parties to a case management conference that would endeavour to deal with the above impediments to finality.

Maybe unsurprisingly the appellant maintained its view that the appeal should proceed. The two outstanding rulings became a non-issue courtesy of the Registrar's directions above. The respondent further contended that the security for costs issue could easily be sorted by the appellant issuing a bond in a given sum so that the respondents could resort to such bond if need arose. On the question of capacity, the appellants reiterated their contention that this could be argued during the hearing of the substantive appeal.

The respondents on the other hand insist that the outstanding rulings should first be delivered before the substantive appeal can be heard. In the alternative that the applications that necessitated the rulings be reheard and rulings delivered before the substantive appeal itself can be heard.

We will not belabour the issues. The starting point must be that there should be finality to matters in the courts. Justice can be slow we agree but we also hold the view that all should be done to ensure that a case's journey through the justice system takes the least time possible and costs the least possible amount while off course allowing no compromising on quality.

It is also trite in our view that court orders should be obeyed unless set aside. And talking about setting aside court orders it is equally trite that they must be set aside for good cause.

Coming back to the instant case it cannot be denied that it has been on our books for far too long. It should be a crying shame if we were to delay it further. We should instead be scrambling to dispose of it as quickly as possible.

While we therefore pay the greatest respect to The Honorable the Attorney General's herein it must be said that the issues so raised have been debated before. By all parties. A way forward was charted. And orders/directions for the further conduct of this matter made/given by this very court acting through its Registrar. Those orders/directions must, as The Honourable the Attorney General graciously agreed be abided by unless and until set aside for good cause which, there being no good cause, has not been done.

We are aware that there were issues about unserved records and arguments. That has since been remedied. There was also the question of whether the appellant can sustain these proceedings in view of the appellant having been liquidated. We agree that this can be raised during the substantive appeal. If the argument succeeds the appeal will fall away. If it does not the appeal shall be decided on the basis of the other grounds of appeal. About security for costs, we make an order hereunder.

It is therefore our order that the orders/directions made by Her Honor Bodole[as she then was] still stand. This matter will proceed to hearing. We further direct that within thirty[30] days from the date hereof the parties should ensure that all protocols necessary for the hearing of the appeal have been finalized. Arguments filed. List and copies of authorities filed and highlighted. Chronology of events filed.

On the question of security for costs the appellants will file with the court an acceptable bond or bank guarantee in respect thereof in the sum of K100,000,000 to cater, if need be, for costs of this appeal and the proceedings in the court below.

Dated at Blantyre this 18th day of October, 2024.



L P CHIKOPA SC

DEPUTY CHIEF JUSTICE