



MALAWI JUDICIARY

IN THE SUPREME COURT OF APPEAL

SITTING AT LILONGWE

MSCA CIVIL APPEAL NUMBER 55 OF 2017

(Being Civil Cause Number 995 of 2014 in the High Court Lilongwe District Registry)

BETWEEN

FRANK CHISAKALIME t/2 CHISAKALIME TRADERS.....APPELLANT

AND

CASSIM JAMES AND 19 OTHERSRESPONDENT

CORAM: THE HON. CHIEF JUSTICE A.K.C. NYIRENDA SC
THE HON. JUSTICE E.B. TWEA SC, JA
THE HON. JUSTICE DR J.M. ANSAH SC, JA
THE HON. JUSTICE R.R. MZIKAMANDA SC, JA
THE HON. JUSTICE A.C. CHIPETA SC, JA
THE HON. JUSTICE L.P. CHIKOPA SC, JA
THE HON. JUSTICE F.E. KAPANDA SC, JA
THE HON. JUSTICE D.F. MWAUNGULU SC, JA
THE HON. JUSTICE A.D. KAMANGA SC, JA

Soko , of Counsel for the Appellant

Kausi, of Counsel for the Respondents

Chimtande/Masiyano, Court Clerk

5 **Pindani, Court Reporter**

Shaibu, Judicial Research Officer

Date of Hearing of Appeal: 28 November 2018

10 **Date of Judgment: 28 November 2018**

ORDER

15 **Justice F.E. Kapanda SC, JA (with the Chief Justice A.K.C. Nyirenda SC, JA; Justice E.B. Twea SC, JA; Justice Dr. J.M. Ansah SC, JA; Justice R.R. Mzikamanda SC, JA; Justice A.C. Chipeta SC, JA; Justice L.P. Chikopa SC, JA; Justice D.F. Mwaungulu SC, JA and Justice A.D. Kamanga SC, JA concurring):**

20 We considered the Grounds of Appeal and the arguments that were filed by both parties and we have unanimously come to the conclusion that this appeal should be allowed. We take the view that the law governing the entry of summary judgment was not followed. As we understand it, summary judgement is typically entered when all the evidence put forward is such that no reasonable fact finder could disagree with the moving party. Sometimes this will occur when there is no real dispute as to what happened, but it also frequently occurs when there is a nominal dispute
25 but the non-moving party cannot produce enough evidence to support its position.

Our consensus opinion is that the summary judgment should neither have been entered nor should have the Court below upheld or confirmed the summary judgment. The issue of negligence was in very much in dispute and the evidence proving the value of the tobacco was suspect.

In terms of Section 22 (1) (a) of the Supreme Court of Appeal Act [CAP 3:01 of the Laws of Malawi] the judgment that was entered by the Senior Deputy Registrar; and later confirmed by the Judge in the Court below is set aside accordingly.

We further observed that this is a matter that has taken a long time, the same having arisen sometime in 2014. This Court also observes that although the matter was filed in the High Court, General Division, the matter relates to a commercial transaction as such it ought to have been commenced at the Commercial Division in accordance with section 6A of the Courts (Amendment) Act, 2016. Therefore, pursuant to Section 22 (1) (b) (iv) of the Supreme Court of Appeal Act we order that the matter be and is hereby remitted to the High Court, Commercial Division, Lilongwe for full disposal and expedited hearing.

As we said earlier on, the appeal has succeeded, and it has succeeded with costs to the appellant. However, it should be noted that the issue of costs is not a pre-condition to the expedited hearing of the case since remitted to the High Court, Commercial Division, Lilongwe.

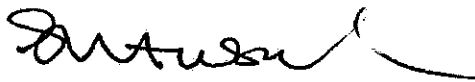
DELIVERED in Open Court at the Supreme Court of Appeal, sitting at Lilongwe on 28 November 2018.

Signed:

HONOURABLE THE CHIEF JUSTICE A.K.C. NYIRENDA, SC

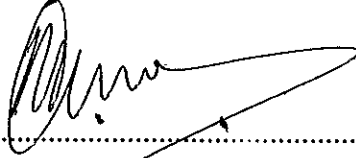
Signed:

HONOURABLE JUSTICE E.B TWEA, SC, JA



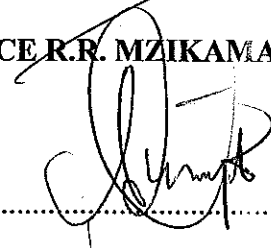
Signed:

HONOURABLE JUSTICE DR J.M ANSAH, SC, JA



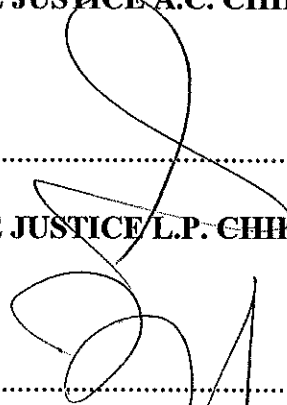
Signed:

HONOURABLE JUSTICE R.R. MZIKAMANDA, SC, JA



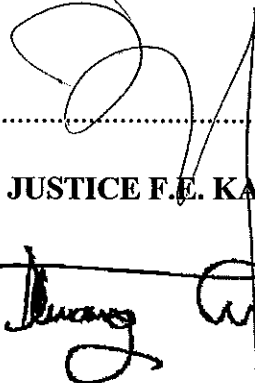
Signed:

HONOURABLE JUSTICE A.C. CHIPETA, SC, JA



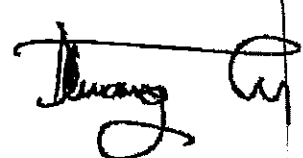
Signed:

HONOURABLE JUSTICE L.P. CHIKOPA, SC, JA



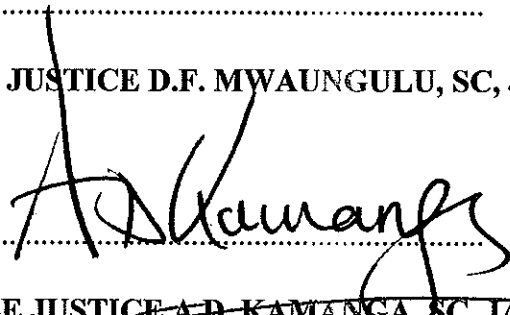
Signed:

HONOURABLE JUSTICE F.E. KAPANDA, SC, JA



Signed:

HONOURABLE JUSTICE D.F. MWAUNGULU, SC, JA



Signed:

HONOURABLE JUSTICE A.D. KAMANCA, SC, JA