



REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
SITTING AT BLANTYRE
MISCELLENEOUS CIVIL CAUSE NO. 41 OF 2024
(Being Mzuzu District Registry Judicial Review Cause No 3 of 2020)

BETWEEN:

THE STATE (On application of Mary Mwale)-----APPLICANT

AND

MZUZU CITY COUNCIL-----DEFENDANT

CORAM : HON. JUSTICE M.C.C. MKANDAWIRE SC, JA
Mtokale, Counsel for Applicant
Ghambi, Counsel for the Respondent
C. Fundani, Recording Officer

RULING

1. This is a notice of motion for leave to appeal and enlargement of time in which to appeal against the judgment of the court below. The application is made pursuant to sections 7, 21 and 23 of the Supreme Court of Appeal Act and read with Order 111 rule 3 and rule 4 of the Supreme Court of Appeal Rules. The application is supported by a sworn statement made by Mary Mwale the Applicant. There are also filed skeleton arguments in support of the application.
2. The Applicant commenced the present proceedings through Messrs Mbulo Attorneys at Law on 21st Feb, 2020.

3. The respondent did not duly serve any documents in response to the Applicant's case. The court later found in favour of the Respondent despite the fact that the Respondent did not challenge the matter. The judgment of the court is exhibit "MM2". When the Applicant applied for leave to appeal, the court below declined to grant such leave.

4. On 26th July 2021, the Applicant through counsel filed a Notice of Appeal. The Notice of Appeal is exhibit "MM3".

5. Being displeased with the way counsel handled the matter, the Applicant engaged new counsel namely Messrs Lameck and Company to continue with the appeal process. However new counsel did not follow the Applicant's instructions in relation to the existing appeal and decided to start a fresh civil matter namely civil cause N0. 62 of 2022, Mzuzu Civil Registry in search for different remedies.

6. Due to the Applicant's elderly age, it was difficult to fully appreciate that counsel had not followed her instructions appropriately and had started an entirely new matter.

7. Upon discovery that the appeal of the initial matter had been abandoned, the Applicant sought Messrs Nicholls and Brookes as new counsel to advance the appeal of the initial matter.

8. The Applicant says that she has good grounds of appeal which necessitates the court to hear the appeal. The Applicant has listed the good grounds as follows:

i) The court below erred by not addressing key issues of whether the decision to evict her were lawful and reasonable.

ii) The court below erred by de facto acting as advocate for the Respondent despite their failure to provide a response.

iii) The court below erred by holding that the Applicant had no standing in the matter.

iv) That the court below erred by refusing to deal with all matters before it and insisting that a separate action be brought for the dispute between the Applicant and the Respondent.

9. The Applicant therefore humbly prays to this court for an order for leave to appeal against the judgment and further for leave to appeal against the aforementioned order out of time.

10. The Respondent filed a sworn statement and also a supplementary sworn statement. Both statements were made by Philimon Maseko who is the Director of Planning and City Services for the Respondent.

11. The Respondent confirmed that the Applicant indeed commenced Judicial Review proceedings against the Respondent.

12. The Respondent said that the Applicant has never owned the stated land and never owned any property on the said land. She only took advantage when the Director of Parks, Leisure and recreation of Mzuzu City left and no one was taking care of it for a long period of time and it became bushy.

13. Plot No. MZ/314 at Zongendawa belongs to Mzuzu City Council and was offered to the institution by Malawi Housing Cooperation. At the time of purchasing, there was a house and servants quarters used by the Director of Parks, Leisure and recreation of Mzuzu City Council in 1990.

14. The main house collapsed due to heavy rains in the 1990s. The servants quarters is still standing on the plots but the Applicant started using it as a private Primary School.

15. Malawi Housing Corporation subleased the said plot to Mzuzu City Council in 1986. The Respondent through a supplementary sworn statement tendered the certificate of official search as exhibit "PM4". That is why the Applicant decided to sue Malawi Housing Corporation and the Attorney General (Ministry of Lands, Housing and Valuation) as they could not figure out the custodian of proprietary rights.

16. The case referred to above is still in court and has not been withdrawn as per her assertions that it was contrary to her instructions, yet she is the one who was swearing the statements.

17. The High Court Judgment in this case was delivered on 22nd July 2021 and leave to appeal was declined. The Applicant never applied for leave to appeal in the Malawi Supreme Court of Appeal as is required by the law or appeal to this court for more than three years. Instead, she filed another suit on the same party and same subject. She as well attended the court proceedings on another case she commenced. It is not true that she did not provide such instructions or she was naïve.

18. The Respondent says that the Applicant has no valid reasons for not complying with the procedures for three years. In all the proceedings she actually blames either the Judge or the lawyers she appointed.

19. It is the respondent's prayer that this application should be dismissed with costs.

20. Both parties addressed the court at some considerable lengths. I am very indebted to them. The parties also referred me to several case authorities.

21. AS 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 as follows:

Every application for an enlargement of time in which to appeal shall be supported by an affidavit setting forth good and substantive 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. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal. (underlining is mine)

22. It is settled as a fact in this case that over 3 years have passed since the court below delivered its judgment on 22nd July 2021. Instead of appealing the matter to the court, the Applicant was busy with the recommenced of the same matter. Having realized that this route was not achieving anything, the applicant started chasing the appeal.


23. Order III Rule 4 of the Supreme Court of Appeal Rules requires that the applicant should have good and substantial reasons for the delay. From the totality of the evidence before me, the applicant was fully aware of the judgment in good time. Looking at the document filed with the court, the applicant has not served grounds of appeal so that the court can appreciate the merit of the case which the applicant has.

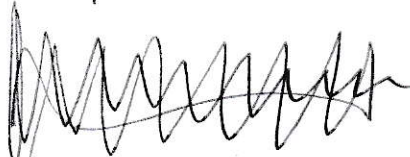
24. The applicant has stated that she was ignorant of the law yet she was fully legally represented. At first it was Counsel Davie Lameck then Counsel Mbulo. It is evident on record that the applicant swore a statement in support of the applications which her Counsel filed. It is also undisputed that she personally attended the same hearings which she later alleges that they were contrary to her instructions. The court finds that the blame on lawyers has no scintilla of truth. If the applicant is seriously of the view that Counsel had acted contrary to her instructions, which I have not believed, she can bring up a case of professional negligence against Counsel. I also find that

the attack the Applicant makes on the Judge in the court below has got no foundation. It would appear that everyone was wrong apart from herself yet she could not substantiate that. The fact that a Respondent has not entered any defence, it does not mean that the court will automatically find in favour of the Applicant. The court will first assess the evidence on record and come to its conclusion. This is what the Judge in the court below had done.

25. 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. Three years is on the higher side.

26. This application is dismissed with costs.

Made this  day of December 2024



M.C.C. Mkandawire SC

Justice of Appeal