



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MISCELLANEOUS CIVIL APPLICATION No. 16 OF 2025
(being High Court of Malawi, Commercial Division, Lilongwe District Registry,
Commercial Cause No. 111 of 2016)

BETWEEN:

CHRISTIAN MAJAVINA

APPLICANT

AND

COSTA ALISEN

1ST RESPONDENT

Dr. LEONARD G.K. MSEKA

2ND RESPONDENT

RULING

(Dorothy nyaKaunda Kamanga, SC, JA.)

21st April 2025

UPON considering the documents filed by Counsel Edgar Kachere seeking urgent interim relief in the form of a stay of execution and/or enforcement of the High Court ruling of 27th January 2025 and a motion for an enlargement of time, which were filed on 17th April 2025 on behalf of the applicant, this Court hereby issues the following order:

IT IS NOTED that both the Supreme Court of Appeal and the High Court possess concurrent jurisdiction to determine the Applicant's *ex parte* notice of motion for an order enlargement the time within which to appeal taken under Section 23(2) of the Supreme Court of Appeal Act and Order III Rule 4 of the Supreme Court of Appeal Rules. The notice of appeal was irregularly filed without leave of the High Court and in the absence of a settlement and the actual record of appeal, an appeal has not yet been entered in this matter; therefore, this Court cannot handle the motion as it has

no control over proceedings in the High Court: *Jumbe v Kasema and another* (MSCA Miscellaneous Civil Application 46 of 2023) [2024] MWSC 2 (11 January 2024); *Roads Authority and another v AL-Abdulhadi Engineering Consultancy* (Civil Appeal 22 of 2023) [2024] MWSC 7 (14 March 2024). This procedural requirement is not abrogated by the Applicant’s invocation of the proviso to Order III rule 3(2) of the Supreme Court of Appeal Rules, which states “that nothing in this subrule shall be deemed to prohibit an appellant from filing a notice of appeal prior to the hearing of the application for leave to appeal.” The proviso appears to assume that a motion for leave to appeal has been filed and is pending hearing, which does not seem to have been the situation in this matter. The established procedure and practice requires that the Applicant must file the motion in the High Court, should the motion be denied, he may then seek recourse to this Court through a fresh application: refer to Order I rule 18 of the Supreme Court of Appeal Rules; *Phiri v Phiri* (Matrimonial Cause 45 of 2015) [2021] MWHC 354 (30 March 2021) (unreported); *Malawi Communications Regulatory v Joy Radio* [2009] MLR 328 (SCA); *Chalimba t/a Krisken General Suppliers v Standard Bank PLC* (MISC Civil Application 50 of 2022) [2023] MWSC 28 (22 December 2023); *Chathila and Others v Central East African Railways Limited* (Miscellaneous Civil Application 53 of 2023) [2023] MWSC 48 (10 November 2023); *Kadzipatike and Kamwera t/a KAM Building Contractors v Zhejiang Communications Construction Group Company Limited* (MISC Civil Application 29 of 2023) [2023] MWSC 37 (14 July 2023).

THAT in the absence of a notice of appeal and order extending time to appeal, the *ex parte* notice of motion for a stay of execution and/or enforcement of the ruling of the High Court issued on 27th January 2025, pending appeal, lacks a foundational basis is also procedurally incompetent before this Court due to its premature nature and is thus dismissed.

Delivered and dated this 21st day of April 2025.



Dorothy nyaKaunda Kamanga, SC
JUSTICE OF APPEAL

TO: Mr. Edgar Kachere, M/s Whyte & Cross Law Consultants.