

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA CIVIL APPEAL NO. 11 OF 2013

[Being High Court of Malawi[GENERAL Division], Principal Registry, Civil Cause
Number 474 Of 2012]

BETWEEN

ATTORNEY GENERAL

APPELLANT

AND

SUNRISE PHARMACEUTICALS LTD

1ST RESPONDENT

CHOMBE FOODS

2ND RESPONDENT

CORAM:

JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

Thabo Nyirenda Hon Attorney General of Counsel for the Appellant

Chokhotho/Gondwe of Counsel for the Respondents

Maluwa[Mr.], Clerk

RULING/ORDER

On Wednesday October 23, 2024 we virtually heard an application from the Hon Attorney General for leave to file supplementary skeleton arguments. The application was supported by affidavits sworn by The Honourable the Attorney General and a Mr. Tembo who is a Process Server in the Honourable Attorney General's office.

The Honourable The Attorney General informs us that some of his case files herein went missing. He was therefore unable to prepare and file fitting arguments. Now that he has located the full complement of the files and has had occasion to take a look at them, he has come to the conclusion that he needs, in the interests of justice, to file supplementary arguments. Hence this application.

The application was opposed. The reasons advanced therefor were a bit more sophisticated. The respondents contend that the appellant has not, technically, filed any skeleton arguments in this case. Those that are said to be were filed out of time and cannot be on record without the leave of this court. In the respondent's view the Hon the Attorney General should not therefore be talking about filing supplementary arguments. But arguments. Supplementary presupposes the existence of other arguments which is not the case in this matter. They thus prayed that the application from The Honourable the Attorney General should be dismissed with costs.

We have looked at the application and the arguments for and against it. We realize that whether or not to grant the application is entirely in our judicious discretion. And while in the judicious exercise of such discretion it has come to our attention that this matter is actually coming up for hearing on Tuesday October 29, 2024. This application was only filed on Friday October 18, 2024. When the files in relation to the appeal were already with Their Lordships in readiness for the hearing of the appeal.

At least two things appear to us. First that whatever decision we make will impact on whether or not the appeal next week will proceed as scheduled. Secondly, whether, and in view of such impending impact, in deciding this application this or that way, we would not sitting as a single member of this court effectively be deciding on the procedural viability of the appeal now before the full bench of this court.

It is our view, in the light of the immediately above questions, that The Honourable the Attorney General's application should be made before and determined by the full bench of this court at the commencement of the hearing of the appeal herein.

Accordingly, it is our order that The Honourable the Attorney General should produce 15 copies of the application presently before us for distribution to the rest of the members of this court. This should be done by close of business i.e. 1700hours Central African Time[CAT] on Friday October 25, 2024. Otherwise, the application shall automatically stand dismissed without further action from this court.

The Honourable the Attorney General is at liberty to serve the application electronically.

Costs in the cause.

Dated at Blantyre this 24th day of October, 2024.



L P CHIKOPA SC
DEPUTY CHIEF JUSTICE

