



**REPUBLIC OF MALAWI**

**IN THE SUPREME COURT OF APPEAL**

**MISCELLANEOUS CAUSE NUMBER 41 OF 2024**

**(Being Judicial review Number 2 of 2020, High Court, Mzuzu District  
Registry)**

**BETWEEN:**

**THE STATE (On Application of MARY BESSIE MWALE) -----APPELLANT**

**AND**

**MZUZU CITY COUNCIL-----RESPONDENT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE SC, JA**

Mtokale, Counsel for the Appellant

Ghambi, Counsel for the Respondent

Fundani, Recording Officer

### **RULING**

**1.** This is an inter-parte notice of motion for review of taxation of costs. The application is brought by the Appellant pursuant to section 7 of the Supreme Court of Appeal Act as read with order 1 Rule 16 of the Supreme

Court of Appeal Rules. The application is supported by an affidavit made by Oswald Mtokale a legal practitioner in the firm of Nicholls and Brookes. There are also skeleton arguments in support of the same. This application has been vehemently opposed by the respondent.

2. The brief background to the matter is that the appellant unsuccessfully sought the leave of the court to enlarge time within which to appeal against the judgment of the Court below. Through its decision dated 18<sup>th</sup> December 2024, the Court declined to extend the time and dismissed the application with costs.

3. The respondent filed a taxation bundle claiming costs at about MK24 million. On 7<sup>th</sup> May 2025, the Honourable Registrar heard both parties and taxed the costs at Mk12 million through a ruling dated 27<sup>th</sup> June 2025.

4. Being unsatisfied with the ruling of the Honourable Registrar, the applicant seeks the review of the decision of the Registrar.

5. The appellant has raised 14 grounds of objections which are clearly listed in the affidavit. In a nutshell, the appellant says that the costs of Mk12 million is heavily extravagant for one chamber application that lasted less than half an hour.

6. Let me put it on record that on 31<sup>st</sup> of July 2025, the respondent filed an ex-parte application for seizure and sale order following the Registrar's ruling of 27<sup>th</sup> June 2025. On 8<sup>th</sup> of August 2025, I declined to grant the application.

7. Before we could delve into the matter, there was an intensive debate as to whether this application was properly before the Court.

8. The applicant was of the view that pursuant to section 7 of the Supreme Court of Appeal Act as read with Order 1 Rule 16 of the

Supreme Court of Appeal Rules, the Court was properly seized of this matter.

**9.** The respondent on the other hand submitted that a reading of Order 31 Rule 17 of the Civil Procedure (High Court) Rules 2017, this application was pre-maturely before the Court. That the applicant should first have filed the application before the Honourable Registrar in the Court below.

**10.** It is imperative to refer to the law in order to avoid a deliberate misunderstanding. Section 7 of the Supreme Court of Appeal Act provides:

“A single member of the Court may exercise any power vested in the Court not involving the determination of an appeal.”

Order 1 Rule 18 of the Supreme Court of Appeal Rules provides:

“Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, if the Court below refuses the application, the Applicant shall be entitled to have the application determined by the Court.”

**10.** If one reads the above legal provisions together, it is very clear in my view that the scheme of the law here is that whilst the Court and the Court below have been bestowed with concurrent jurisdiction, this concurrent jurisdiction is however only triggered when the Court below refuses the application.

**11.** I have also looked at Order 31 Rule 17 of the Civil Procedure (High Court) Rules 2017. It provides:

“A party to assessment of costs who is dissatisfied with any decision of the Court may, within 21 days after the decision, apply to the Court to review its decision.”

**12.** It is crystal clear from the above legal Rule that there is a mechanism in place on how the aggrieved party may address the issue of review of costs. My understanding is that the applicant should have first gone to the Court below and apply to the Registrar to review the taxation costs. This the applicant did not do.

**13.** This Court shall not allow parties to a dispute not to respect the legal imperatives that have been put in place. Matters should be taken to the Apex Court once there has been exhaustion of all the legal mechanisms that are in place.

**14.** I therefore find that this application is prematurely before the Court. I dismiss it with costs. The applicant should go back to the Court below and file an application for review before the Registrar.

Made this 16th day of October 2025 at Blantyre



M.C.C. MKANDAWIRE

JUSTICE OF APPEAL