



REPUBLIC OF MALAWI

IN THE SUPREME COURT OF APPEAL

SCA MISC CIVIL APPLICATION No. 28 OF 2024

(Being Civil Cause No. 97 of 2023, Before the High Court of Malawi, Lilongwe Registry)

In the matter between:

PACIFIC LIMITED

APPELLANT

-AND-

ZAIFE INVESTMENTS

1ST RESPONDENT

MALAWI HOUSING CORPORATION

2ND RESPONDENT

RULING

1. This is an application by Pacific Limited, the Appellant, to adduce fresh evidence during the appeal which is taken under section 7 of the Supreme Court of Appeal Act and the following rules: Order I rule 4 and Order III rule 24 of the Supreme Court of Appeal Rules; Order II rule 1 of the Supreme Court of Appeal Rules as read with Order 10 rule 1 of the Court's (High Court)(Civil Procedure) Rules, 2017 and the Court's inherent jurisdiction. In this case, the Appellant seeks to be allowed to admit a Certificate of Lease for Title Number Bwaila 6/290, dated 16th October 2008, which the Appellant claims could not be located during the High Court proceedings. Both Zaife Investments, the First Respondent, and the Malawi Housing Corporation, the Second Respondent, strongly contest the application.

2. The core dispute in this matter is the ownership of land located on plots known as Bwaila 6/290 and Bwaila 6/282, located in the city of Lilongwe. In April 2024, the High Court struck out the Appellant's claim, determining that the Appellant had ceased to have an interest in the plots due to a 2011 swap agreement and failed to show legal title. The Appellant filed the present application with this Court after locating the 2008 Certificate of Lease on the 28th of June 2024. The Appellant claims that the document was found after the High Court concluded the case, and the Appellant had filed a notice of appeal following the granting of leave to appeal on 9th May 2024.
3. Order III rule 24 of the Supreme Court of Appeal Rules gives this Court the power to permit a party to introduce new evidence during appeal proceedings. The three-pronged test for the admission of fresh evidence on appeal is detailed in the seminal case of *Ladd v Marshall* [1954] 3 ALLER 745 and elaborated in the local case of *Knight Frank and Blantyre Synod v Steven Aipira Achaje t/a Mvumba Investments*, MSCA Civil Appeal No. 38 of 2000 (unreported). In the case of *Puma Energy Limited v Simama* (MISC Civil Application 74 of 2019) [2022] MWSC 9 (26 September 2022), this Court applied these principles, which require that the evidence must satisfy the following criteria: First, it could not have been obtained with reasonable diligence for use in the trial; second, it is material and would greatly impact the outcome of the case, and third, it is credible. This Court also granted leave to adduce fresh evidence in the cases of *Auction Holdings v Sangwani Judge Hara & Others* (MSCA Civil Appeal 69 of 2009) [2010] MWSC 30 (10 November 2010) and *Alexious Dera, Liquidator of Afrasia Kingdom Zimbabwe Limited v Registrar of Financial Institutions, M Developments and Old Mutual Life Assurance Co. Ltd* SCA Miscellaneous Civil Application No. 35 of 2024 (24 February 2025)(unreported).
4. The Respondents object to the application and argue that the Appellant did not meet the diligence requirement since a Certificate of Lease is a public document accessible through the Land Registry. Additionally, the Respondents contend that the Appellant should have applied for a replacement certificate under the provisions of section 29C of the Registered Land Act if the original certificate was lost.

5. After reviewing the court record and hearing the parties as well as examining the documents filed for and against the application, this Court finds the Appellant's explanation for the missing document to be convincing. The misplacement of documents is understandable given the Appellant's statement that they relocated their operations from five warehouses to a new location, a process which they claim involved the transfer of numerous files. The Appellant has stated that a daily search for the missing file was conducted since the commencement of these proceedings. In the context of such a logistical task, the discovery of the document in a family archive on the 28th of June 2024 is considered by this Court an exercise of reasonable diligence. The Appellant raises a reasonable point that it would be unjustified to apply for a replacement certificate under the provisions of section 29C of the Registered Land Act, since the document was not lost but was merely misplaced within the appellant's warehouses. Furthermore, it appears that the Appellant was not given adequate time and opportunity to locate and present the document because the proceedings ended early as the action was struck out on 22 April 2024, after an *ex parte* order of interim injunction was discharged, and did not proceed to a hearing or trial.

6. The Respondents argue that the evidence intended to be adduced is irrelevant because the statement of case at page 13 of the record mentions "beneficial and equitable ownership" as opposed to legal leasehold title, and that admitting the certificate would "substantially change the dispute". However, an examination of the record of the proceedings indicates that the Appellant pleaded the issue of title in its reply to the Respondents' defences. In civil procedure, a reply to a defence is part of the formal exchange of pleadings, allowing a claimant to clarify disputed facts. Therefore, it is recognised legally as a pleading. For example, the Appellant (as the Claimant in the High Court) has pleaded in his reply, which appears on page 49 of the court record, that it is the "sole legitimate legal and equitable owner of Title Number Bwaila 6/290" and that its title was "first-in-time" and "earlier-in-time" holder of the lease, since it was issued in 2005. In addition, the Appellant produced a copy of the relevant page from the land register during the High Court proceedings to substantiate their claim. This Court is inclined to agree with the Appellant that the Certificate of Lease issued in 2008 is not a new issue; instead, it could be the determinative proof of the title that has been at the centre of the dispute. If admitted, it might prove that the Appellant

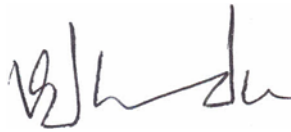
obtained legal title 12 years before the First Respondent, and it could challenge the Second Respondent's authority to grant another leasehold for a piece of land that potentially had an unextinguished leasehold.

7. It is also noted that the intended evidence is credible since the Respondents have not challenged the document's authenticity. The Exhibit marked "GC1" appears to be a formal Certificate of Lease, issued on 16th October 2008 by the Lilongwe District Land Registry, and the Respondents have not advanced any reason to doubt its authenticity. It is also noteworthy that the Appellant has indicated his willingness to produce the original for the Court's inspection.
8. The Second Respondent's reliance on the doctrine of approbation and reprobation, by arguing that the Appellant's stand is "diametrically opposed" to its previous position, seems inapplicable in the context of this case. The Appellant's claim of legal title in their reply to the defences is consistent with the evidence which they plan to adduce. This Court believes that admitting this evidence does not prejudice the Respondents, but justice requires reopening the matter to ensure that the Court has all the material and relevant evidence.
9. The Appellant's application has satisfied all the requirements of credibility, availability, and impact for the admission of fresh evidence on appeal. The Court notes that despite diligence, the intended evidence was unavailable; it is credible and material and likely decisive to the central issue of proprietary priority. The Court, exercising its discretion, grants leave to the Appellant to adduce the Certificate of Lease issued in 2008 as fresh evidence. The same is to be done by way of affidavit and should be filed and served by 11th March 2026. The fresh admitted evidence will be incorporated into the record for the appeal and may be used to determine the substantive appeal, scheduled for hearing on 24th March 2026.

10. Furthermore, the parties are granted leave to file and serve supplementary skeleton arguments by 13 March 2026, with a word count not exceeding 1,000 words.

11. The application's costs will be determined with those of the appeal.

DATED and DELIVERED this 9th day of March 2026.



Dorothy nyaKaunda Kamanga
JUSTICE OF APPEAL

Case information:

Date of hearing	:	Friday 6 th March 2026.
Date of ruling	:	Monday, 9 th March 2026.
Mr. Phokoso	:	Legal practitioner for the Appellant.
Mr. Kadyampakeni & Mr. Nkhoma	:	Legal practitioners for the First Respondent.
Mr. Y. Soko	:	Legal practitioner for Second Respondent.
Mrs. Mthunzi	:	Law Clerk.
Mr. Chiwoni	:	Systems Analyst.
Mr. Maluwa	:	ICT Technician.