



REPUBLIC OF MALAWI
THE JUDICIARY
IN THE MALAWI SUPREME COURT OF APPEAL
MISCELLANEOUS CIVIL APPLICATION No. 30 OF 2026
*(being an application from the judgment of the High Court, Principal Registry,
Civil Division, Judicial Review No. 49 of 2020)*

BETWEEN:

NOAH DALASI CHISAFALI NGABU

APPLICANT

AND

BASITOLE DALISON MAKWALU

1st RESPONDENT

PRESIDENT OF THE REPUBLIC OF MALAWI

2nd RESPONDENT

RULING

(nyaKaunda Kamanga, SC, JA., 5th September 2026)

Introductory background

1. This is an *ex parte* application by Noah Dalasi Chisafali Ngabu (the intended Appellant) brought by a Notice of Motion pursuant to sections 21 and 23 of the Supreme Court of Appeal Act and Order III, Rule 3 of the Supreme Court of Appeal Rules. The Applicant seeks two forms of relief: first, leave to appeal against the High Court's judgment of 29th May 2026 in Judicial Review Case No. 49 of 2020; and second, an enlargement of time to file and serve a Notice of Appeal.
2. The litigation stems from a long-standing chieftaincy dispute in Chikhwawa District. The Applicant was appointed Senior Chief Ngabu in 1999 by the President of the Republic of Malawi and reigned without controversy for twenty years. In 2019, following a Commission of Inquiry, the President of the Republic

of Malawi removed the Applicant under Section 11 of the Chiefs Act by a written instrument dated 12th December 2019. Consequently, Basitole Dalison Makwalu (the First Respondent) was appointed Chief Ngabu on 8th June 2020. Following a change of government, a second Commission of Inquiry in August 2020 cleared the Applicant of misconduct, and the President of the Republic of Malawi reinstated him on 9th September 2020.

3. The First Respondent challenged this reinstatement in the High Court through judicial review. On 29th May 2026, the High Court dismissed the application upon finding that no direct presidential decisions under signature or hand (as required by section 90 of the Constitution and section 4 of the Chiefs Act) were produced for either the appointment of the First Respondent or the reinstatement of the Applicant. Therefore, the office of Senior Chief Ngabu remained vacant. The Applicant alleges that the judgment was not communicated to him by his previous legal practitioner and that he discovered the decision on social media on 6th June 2026.
4. Aggrieved by this vacancy finding, the Applicant resolved to appeal. He claims that he mobilised resources and instructed Messrs Soko & Co. on 17th July 2026. It is averred that the newly appointed legal practitioners retrieved the case file on 22nd July 2026. The statutory six-week appeal window expired on 10th July 2026, while this motion was filed on 28th July 2026, representing an 18-day delay.
5. The present application brings before this Court two main legal issues that must be resolved to determine the proper course of justice: first, whether the Applicant's application for leave to appeal is competent and necessary before this Court and second, whether the Applicant has demonstrated good and substantial reasons to warrant this Court exercising its discretion to enlarge the time within which the Applicant may institute an appeal.

Whether the application for leave to appeal is competent and necessary

6. On the application for leave to appeal, under Malawian civil procedure, there is a statutory concurrent jurisdiction between the High Court and the Supreme Court of Appeal regarding applications for leave to appeal. Order I rule 18 of the Supreme Court of Appeal Rules stipulates the framework for concurrent jurisdiction and has been discussed in the cases of *Illovo Sugar (Malawi) PLC v*

Malawi Revenue Authority (SCA Civil Appeal No. 8 of 2025)(9 October 2025); *Chalimba t/a Krisken General Suppliers v Standard Bank PLC* (MISC Civil Application No. 50 of 2022) [2023] MWSC 28 (22 December 2023); *Chathila and Others v Central East African Railways Limited* (Miscellaneous Civil Application No. 53 of 2023) [2023] MWSC 48 (10 November 2023).

7. Despite the Applicant stating in paragraph 22 of his affidavit in support of the motion that this Court or the court below must grant leave to appeal, the Applicant has not provided a legal explanation in his skeleton arguments for bringing the application for leave before this Court. An examination of the case file reveals that in paragraph 137 of the High Court judgment, it was stated that any dissatisfied party was at liberty to appeal. The Applicant's motion then raises issues of duplicative proceedings, abuse of process, and the absence of a live controversy regarding leave. The High Court having authorised the appeal, the Applicant already possesses the requisite judicial authority to institute the appeal. An application for leave before the Supreme Court of Appeal is entirely unnecessary, misconceived, and academic, as the relief was already granted. Litigating a leave application before this Court when the court below has already authorised the appeal constitutes an abuse of the court's process. Therefore, the application for leave to appeal before this Court is dismissed on the ground of incompetence.

Whether the application for an enlargement of time has merit

8. The record shows that the High Court authorised the appeal process, but the prescribed time for filing the notice of appeal expired; therefore, the Applicant requires an order extending time to resolve a procedural defect, namely the failure to appeal within time. The only issue requiring adjudication then is whether the Applicant should be granted an enlargement of time within which to institute the appeal. The jurisdiction of this Court to extend time to appeal is derived from Section 23(2) of the Supreme Court of Appeal Act, which explicitly provides that the Court may extend the time for giving notice of intention to appeal, notwithstanding that the prescribed time has expired. Order III, Rule 4 of the Supreme Court of Appeal Rules dictates that an application for extension of time must be supported by an affidavit setting forth two critical elements: first, a good and substantial reason for the delay; and second, grounds of appeal that *prima*

facie show a good cause why the appeal should be heard (that is, the appeal must be arguable or have prospects of success).

9. The principles governing the exercise of this judicial discretion are well-settled. In the case of *Tratsel Supplies Limited v Mwakalinga* [1987-89] 12 MLR 72, this Court held that what constitutes a sound or satisfactory explanation for delay is entirely a question of fact to be determined on a case-by-case basis. If the Applicant fails to clear this first hurdle of demonstrating a good reason for the delay, the Court may refuse the application outright without even assessing the prospects of success, as established in *Proprietary Engineering Co Ltd v Dwangwa Cane Growers Trust* [2008] MLR 249 (SCA). However, if a satisfactory reason is shown, the Court must conduct a preliminary assessment of the prospects of the proposed appeal to ensure that the appellate system is not clogged with hopeless or academic appeals that are doomed to fail.
10. The delay in this case is a mere 18 days from the expiration of the statutory six-week period on 10th July 2026 to the filing of the current motion on 28th July 2026. This is a very short period and does not represent an inordinate delay. The explanation provided by the Applicant—namely, that his previous counsel failed to communicate the delivery of the judgment to him, that he had to discover it indirectly through social media, that he faced immediate resource constraints in instructing new counsel, and that his new legal practitioners acted with great dispatch to photocopy and courier the court file once instructed—is satisfactory. The Applicant has demonstrated a good and substantial reason for his failure to appeal within the prescribed time.
11. In evaluating whether the proposed appeal is arguable and has prospects of success, this Court finds that the grounds of appeal raise serious and arguable legal questions. The Applicant has advanced several substantive legal principles from Malawian jurisprudence. These include whether the learned High Court Judge erred in law in disposing of the judicial review application on an unpleaded and uncontroverted issue. Under the adversarial system of litigation practiced in countries that follow the English common law, it is the parties themselves who frame the dispute through their pleadings, which strictly bind both the parties and the court. As noted by this Court in *Malawi Railways Ltd v Nyasulu* [1998] MLR 195, the court acts contrary to its own character and nature if it were to pronounce a claim or defence not raised by the parties. A perusal of exhibit marked as NN9,

reveals that the intended grounds of appeal do not seem frivolous, as they raise important constitutional and administrative law issues worth considering on appeal. The fact that the High Court itself authorised any dissatisfied party liberty to appeal reinforces this conclusion.

12. This Court is satisfied that the interests of justice heavily favour the granting of an extension. To shut out an arguable appeal on account of an explained 18-day delay could cause injustice. The application for enlargement of time is hereby granted. The time for appealing against the High Court decision is hereby extended, and the Applicant shall file a notice of appeal in the court below by **14th September 2026**.
13. The Court has treated the matter as only an application for an enlargement of time and dismissed the prayer for leave to appeal as incompetent and unnecessary.

DATED and DELIVERED at BLANTYRE this 5th day of September 2026.



Dorothy nyaKaunda Kamanga
JUSTICE OF APPEAL