



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MSCA CIVIL APPEAL NO. OF 2021

(BEING COMMERCIAL CASE NUMBER 51 OF 2018)

BETWEEN:

SIS INSPECTION SERVICES LIMITED.....1ST APPELLANT

LARKCON INTERNATIONAL LIMITED2ND APPELLANT

AND

STANDARD BANK LTD.....RESPONDENT

Coram:	A.P KAPASWICHE	: ASSISTANT REGISTRAR (AR)
	Likongwe	: Counsel for the Respondent
	Mhango	: Counsel for the Appellant
	Nyirenda	: Court Clerk/Official Interpreter

ORDER ON SETTLEMENT OF COURT RECORD OF APPEAL

The present matter came before me for settlement of Court record for the Appeal that has been lodged by the Appellant to the Malawi Supreme Court of Appeal. The Appeal is against the ruling of the Justice Malonda dated 23rd November 2021 refusing to dismiss the Respondent's case for want of prosecution. The parties presented their respective lists of the documents that they think are relevant to form part of the record of Appeal. There is one aspect that the parties are not agreeing on whether the record should include the ruling by Honourable Justice Mtalimanja on the application to strike out the action. The Appellant argues that this ruling should form part of the record of appeal while the respondent is against this. The appellant argued that the basis for the inclusion of the ruling by Justice Mtalimanja is that in the second ruling by Justice Malonda stated that the application by the Appellant to dismiss the matter for want of prosecution was res judicata as she referred to the earlier ruling. The idea from the Appellant is that the Supreme Court should have both rulings to appreciate whether the second application is res judicata or not.

The Respondent cited Order 3 rule 9 (5) of the Supreme Court of Appeal Rules which requires that the record of Appeal should only include relevant documents. It was argued that the present Appeal is only against the ruling of the Justice Malonda that dismissed the application of the Appellant to have the matter dismissed for want of prosecution and nothing else. It was in this sense that the Respondent believes that the earlier ruling is not relevant. This court was also called to taken into consideration the fact that the Judge in the present ruling stated that it is immaterial to refer to the previous application for dismissal that was already dealt with by Honourable Justice Mtalimanja.

I have gone through the Judgment by Justice Malonda that is being Appealed at the Supreme Court. In that Judgment; the Court had observed that some grounds for seeking the dismissal of the matter had already been presented before Mtalimanja J in the earlier application which was dismissed. Justice Malonda essentially ruled that those reasons cannot be advanced before her again as reasons seeking dismissal of the matter as they are res judicata. Malonda J only based her ruling on the new issues that were not raised before Mtalimanja J. To that extent, I fully agree with Counsel for the Respondent that there is no need to have the ruling

by Mtalimanja J in the record of Appeal as the decision being appealed is the decision by Malonda J and this decision was based on the new issues raised pertaining to non-compliance of directions given by Malonda J. As far as this Appeal is concerned; there is no relevance of the ruling by Mtalimanja J and I order that the record to the Supreme Court should not contain the ruling by Mtalimanja J.

MADE IN CHAMBERS THIS 14th DAY OF FEBRAUARY 2022

A handwritten signature in black ink, consisting of a stylized 'A' and 'K' intertwined within an oval shape.

ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR