



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 1427 OF 2015

BETWEEN:

AMMON KASAMBALA-----1<sup>ST</sup> APPLICANT  
WESTON CHINULA-----2<sup>ND</sup> APPLICANT  
EDWARD KULINJI-----3<sup>RD</sup> APPLICANT  
GROUP VILLAGE HEADMAN CHAKHOMA-----4<sup>TH</sup> APPLICANT  
CONCERNED RESIDENTS-----5<sup>TH</sup> APPLICANT

AND

GEORGE NGOZO-----RESPONDENT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Chamwendo, for the Applicants

Malera, for the Respondent

Mrs Mbewe, Court Reporter

Itai, Court Interpreter

JUDGMENT

This matter commenced by way of originating summons filed by the applicants on 8<sup>th</sup> of February 2016. The applicants seek the determination of the court on the following matters:

- (a) A declaration that the applicants herein have a right to live in quiet environment free from any noise pollution that cause annoyance, inconvenience and interference with their comfort or exercise of their rights in common.

(Amendment) Act 2016 came into force but the Chief Justice has not provided for such rules.

It would appear that counsel for the defendant over relied on the ruling of the Assistant Registrar. In that case, the Assistant Registrar held that:

“ Under section 67 of the Courts Act Rules have been made by the Chief Justice which regulate certain aspects of practice in the High Court. Unfortunately the procedure for summary judgment is not covered by the available rules of practice in the High Court. The absence of the new rules therefore create a lacunae. Such a lacunae cannot be filled by applying the repealed law but by having the High Court rules of procedure (whatever name they may be called) in place. In the circumstances, there being no basis for summons for summary judgment in the High Court, the objection is allowed and the summons for summary judgment is conveniently dismissed with costs.”

It is however unfortunate that the Assistant Registrar had not gone on a legal adventure of the General Interpretation Act which should always be consulted in such situations. Section 13 of the General Interpretation Act provides:

**Where a written law repeals wholly or partially any former written law and substitute provisions for the written law repealed, the repealed written law shall remain in force until the substituted provisions come into operation.**

It is clear that the purpose of section 13 is to avoid a gap in the event when a written law repeals or replaces a former written law. In the present case section 7 of the Courts (Amendment) Act repeals and replaces section 29 of the Principal Act under which rules of the Supreme Court came in force. It is however clear that despite the fact that the Courts (Amendment) Act 2016 is in force, there is still a gap as the rules by the Chief Justice under section 67 are not yet in force. The repealed law should therefore operate until a new repealing law comes into operation.

More relevant to this case is section 14(1) of the General Interpretation Act. It provides as follows:

- 1. Where a written law repeals or re-enact with or without modification, any provision of any other written law, then unless a contrary intention appears;**

(e) any subsidiary legislation made under such repealed provisions shall remain in force, so far as it is capable of being made under the repealing law, and is not inconsistent therewith, until it has been revoked or repealed by any other written law, and shall be deemed for all purposes to be substantially legislation made under such repealing written law.

As I already said the Rules of Supreme Court are subsidiary legislation and that the repealing of section 29 did not automatically repeal the said Rules of Supreme Court unless they are replaced.

I therefore find that the Rules of the Supreme Court used by the plaintiff are not obsolete. This preliminary objection is therefore dismissed with costs.

**MADE THIS            DAY OF JULY 2017 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**