



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
CIVIL APPEAL CAUSE NO. 4 OF 2020
(Being IRC Matter No. 96 of 2018 at Principal Registry)
(Before Honourable Justice Mambulasa)

BETWEEN:

PLAN INTERNATIONAL MALAWI.....INTENDED APPELLANT

-AND-

PATRICIA MUKAWA.....INTENDED RESPONDENT

CORAM: HON. JUSTICE MR. MANDALA D. MAMBULASA

Mr. Sameer Chilumpha, Advocate for the Intended Appellant

Mr. Patrick Khuleya, Advocate for the Intended Respondent

Ms. Caroline Machado, Court Clerk/Official Court Interpreter

RULING

MAMBULASA, J

Introduction

- [1] On 27th February, 2018 the Intended Respondent commenced an action against the Intended Appellant in the Industrial Relations Court at the Principal Registry seeking compensation for unfair dismissal.
- [2] On 11th May, 2020 the Industrial Relations Court found in favour of the Intended Respondent for unfair dismissal.
- [3] On 8th July, 2020 the Assistant Registrar of the Industrial Relations Court assessed compensation payable to the Intended Respondent at MK7,941,179.25.
- [4] On 15th July, 2020 the Intended Appellant paid to the Intended Respondent the sum of MK7,941,179.25 as ordered by the Industrial Relations Court.
- [5] Being dissatisfied with both the Judgment and Order on Assessment of Compensation of the Industrial Relations Court, the Intended Appellant filed a Notice of Appeal and Grounds of Appeal on 28th August, 2020 in the lower court.
- [6] On 27th August, 2020 the Intended Appellant filed with the High Court an application to enlarge time within which to appeal.

- [7] The application was taken out under rule 25 (1) of the Industrial Relations Court (Procedure) Rules as read with section 65 (2) of the Labour Relations Act.
- [8] The main reason why the Intended Appellant is seeking to enlarge time within which to appeal is that its Country Director was not available in the country at the time in order to decide on the matter.
- [9] The original documents that were filed by the Intended Appellant in the High Court could not be traced. What is available are photostat copies of the application.
- [10] The record shows that the last time that the application came up for hearing was on 20th June, 2024. However, it was postponed to a date to be fixed.
- [11] The application came up again today, 1st April, 2025 for hearing.

Issue for Determination

- [12] There is only one issue to be determined by this Court at this stage and it is whether this Court can enlarge time within which to appeal against the Judgment and the Order on Assessment of Compensation rendered by the Industrial Relations Court.

The Law

[13] Rule 25 (1) (a) of the Industrial Relations Court (Procedure) Rules provides as follows:

(1) Without prejudice to the decision-making power of the Court under section 67, the Court may on application or of its own motion at any time-

(a) before or after the expiry of any period condone any failure to comply with any rule including time periods save for the time within which an appeal may be lodged with the High Court and may abridge any time prescribed by these Rules;

[14] Rule 2 of the Industrial Relations Court (Procedure) Rules interpret the word, “Court” to mean the Industrial Relations Court established under section 110 (2) of the Constitution and includes any person authorized to preside over or to serve as a member of the Court in terms of section 66.

[15] Section 65 (2) of the Labour Relations Act¹ is couched in the following terms:

A decision of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction within thirty days of the decision being rendered.²

Application of the Law to the Facts

¹ Cap. 54:01 of the Laws of Malawi.

² This is the way that the provision stood in the year 2018 when the action was commenced in the Industrial Relations Court. However, it was amended by the Labour Relations (Amendment) Act, No. 16 of 2021 by inserting immediately after the word, “law”, the words, “and fact”.

- [16] The first point to be made is that when the Industrial Relations Court (Procedure) Rules refer to “Court” it means the Industrial Relations Court and includes any person authorized to preside over or to serve as a member of the Court.
- [17] The second point to be made is that the Industrial Relations Court (Procedure) Rules are applicable in the Industrial Relations Court. They certainly, do not apply in the High Court of Malawi.
- [18] The third point to be made is that in terms of rule 25 (1) (a) of the Industrial Relations Court (Procedure) Rules, the Industrial Relations Court does not have the power to entertain applications for abridgment or enlargement or extension or condonation of the time within which an appeal may be lodged with the High Court.
- [19] The fourth point to be made is that section 65 (2) of the Labour Relations Act provides a specific limitation period for lodging appeals in the High Court from the Industrial Relations Court. That period is within thirty (30) days of the decision being rendered.
- [20] It is curious that Parliament in its wisdom decided to use the word, “may” in a section providing for limitation period for lodging of appeals to the High Court. Arguably, this is one of those provisions in a statute where “may” has the same effect as “shall” in that there is really no discretion given to the aggrieved person in that section. An appeal shall have to be filed or lodged with the High Court within thirty (30) days of the decision being rendered.

[21] It should be noted that section 65 (2) of the Labour Relations Act or any other section under it, has not given any power to the High Court to enlarge the period within which to appeal as it were. That means that if an aggrieved person is unable to file his or her appeal within thirty (30) days, then, under the Act, the period cannot be enlarged by the High Court.

[22] In *The State (On the application of Wellington Kazembe t/a Mackenzie and Patricks Associates) -and- Malawi Law Society*³ this Court opined as follows:

In other words, the principle is that Courts may only extend time allowed under a statute for doing a thing where it is so allowed by the relevant statute or law. Put differently, a court has no residual or inherent jurisdiction to extend or enlarge a period laid down by statute.⁴ Another formulation of the principle would be that where a statute imposes limitation for the filing of an action, unless the very statute makes provision for extension of time to enable the action be filed out of time, the court would be without power to grant the prayer for extension of time for filing a belated action.⁵

[23] This Court concluded as follows:

³ Judicial Review Cause No. 21 of 2024 (High Court of Malawi) (Principal Registry) (Civil Division) (Unreported).

⁴ *The State and The Electoral Commission, ex-parte Friday Anderson Jumbe & 3 others* Judicial Review Cause No. 38 of 2014 (High Court of Malawi) (Principal Registry) (Unreported).

⁵ See for instance, *Audu -vs- Wada* (2016) 12 NWLR Part 1527 p 382 at 394-395 Para H-A, Per M. D. Muhammad JSC.

The salient effect of a limitation is that either a claimant initiates the legal action within the period of time prescribed and limited by the statute or they keep their peace forever.

[24] In view of the foregoing, this Court holds that it has no power under rule 25 (1) (a) of the Industrial Relations Court (Procedure) Rules to condone or enlarge time within which to lodge an appeal in the High Court as they are not applicable in the High Court.

[25] Similarly, the Court further holds that no power or jurisdiction has been conferred on the High Court under section 65 (2) of the Labour Relations Act to enlarge or extend time within which to lodge an appeal in the High Court.

[26] One aspect of the concept of the rule of law is that even the High Court does not have all the powers to do as it likes. It can only do that which the law allows it to do.

[27] Consequently, this application must suffer one fate. It is dismissed.

[28] Made in Chambers this 1st day of April, 2025 at Blantyre, Malawi.


M. D. MAMBULASA
JUDGE