



**REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
MSCA CIVIL APPEAL NO. 09 OF 2025**

(Being High Court, Civil Division, Principal Registry, Civil Appeal No. 21 of 2021)

BETWEEN

CHARLES NSALIWA-----APPELLANT

AND

MALAWI COMMUNICATIONS

REGULATORY AUTHORITY-----RESPONDENT

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

S. PHIRI, Counsel for the Appellant

Dzimphonje, Counsel for the Respondent

C. Fundani, Court Clerk

RULING

1. This is a Notice of Motion for leave to extend time of filing an appeal and leave to appeal. The notice is brought under section 23(2) of the Supreme Court of Appeal Act as read with Order III rule 4 of Supreme Court of Appeal Rules.
2. The motion is supported by an affidavit made by Maziko Sauti-Phiri. There are also skeleton arguments filed by the appellant.
3. The respondent opposes the application. There is filed an affidavit in opposition made by Edward Dzimphonje. The respondent has also filed skeleton arguments in support of their position.
4. The background to this motion is that on the 19th of February 2026, the appellant brought this case for hearing an appeal before the full Court. The respondent however raised a preliminary objection, contending that there was no valid appeal before the Court on the basis that the notice of appeal dated

25th March 2025 had been filed outside the prescribed time and without a prior application for extension of time.

5. After hearing the parties on the objection, the Court sustained the objection and dismissed the matter as then constituted.

6. The affidavit by the appellant has given a road map of what transpired in this matter. It starts by stating that judgment in the Court below was delivered on 17th December 2024.

7. That the civil registry of the Court below was closed for Christmas vacation from 20th of December 2024 and only opened on 6th January 2025.

8. The statutory six week period within which to file the notice of appeal was therefore due to expire on 31st January 2025.

9. Acting within the period, Sauti-Phiri said he caused a Notice of Appeal to be filed on 22nd January 2025 and paid the prescribed filing fee of MK10,000.00 which was duly receipted under Government Receipt Number 0012013. A copy of the receipt is annexed and marked as MSP1.

10. Subsequently, he was informed by one of the registry staff that the notice of appeal had been lost or misplaced within the registry.

11. Unfortunately, the messenger from his chambers who had filed the document did not retain a duplicate or dummy copy.

12. As a consequence of the registry's inability to locate the document, there followed a period of waiting whilst attempts were made to trace it.

13. Unfortunately after approximately two months, a replacement notice of appeal was filed on 25th March 2025.

14. With the benefit of hindsight, I candidly accept that a further precautionary step which might have been taken would have been to file another notice before 31st January 2025. However, at the time, I reasonably relied on the fact that the original notice had already been filed and receipted by the registry itself.

15. On prospects of success in the appeal, Maziko Sauti-Phiri says that as per the proposed grounds of appeal, marked as MSP2, the appeal raises substantive issues. The issues have been listed in paragraphs 6.2.1 to 6.2.3.

16. In light of the above circumstances, I respectfully submit that it is in the interest of justice that the Court exercises its discretion to extend time so that the appellant may fully ventilate his appellate rights. That this Court may also

have an opportunity to pronounce its authoritative guidance on important questions of law.

17. The appellant further says that should this Court be minded to grant the extension sought, I will also apply for leave for the grounds of appeal to be filed afresh so that the appeal may proceed in an orderly way.

18. The respondent as already stated relied on the affidavit of Edward Dzimphonje.

19. The respondent says that the full bench of this Court at the hearing of 19th of February 2026 was moved to hear the appellant's "Notice of Motion for Leave to Extend Time of filing an Appeal, and the appellant's Notice of Motion for leave to amend grounds of Appeal" to which the respondent gave notice of its objection to proceeding with the appeal and opposed the appellant's motions. The said motions and the attendant paper work are already on the Court's record.

20. That after hearing everything, the full bench sustained the respondent's preliminary objection and dismissed the appellant's matter with costs.

21. That the proposed appeal by the claimant was dismissed with costs by the full bench.

22. That I have reviewed the appellant's documents and the law under which the present motion is being made and have observed that this Court has no jurisdiction to entertain the present motion when it already determined and heard the appellant's motion couched in similar fashion on 19th February 2026.

23. That the appellant has no good cause and substantial reason and that this application is frivolous, vexatious and an abuse of the Court process.

24. That this application is inordinate and inexcusable delay. The application has also no good prospects of success.

25. That leave to amend grounds of appeal would prejudice the respondent.

26. I have looked at the wording of section 23(2) of the Supreme Court of Appeal. I have also looked at Order 111 rule 4 of the Supreme Court of Appeal Rules. I am satisfied that this motion is properly before me.

27. Let me first put it on record that the fully constituted Court on 19th of February 2026 dismissed the matter and not the appeal.

28. Going through the affidavit of Sauti-Phiri, it is clear that the confusion on the filing of the Notice of Appeal originated at the Court Registry. There is unchallenged evidence on record that something went wrong at the registry

and for weeks, the documents could not be traced. There is evidence that the court clerk even communicated to the appellant side about this very sad event.

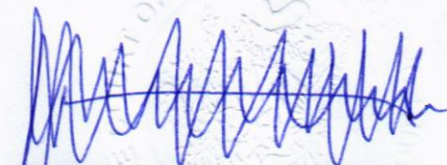
29. Much as I do note that the appellant's counsel should have acted promptly to rectify the issue, I however take it that this is an exceptional incident where this Court should not punish a party where it is clear that the Court has also contributed to the chaos.

30. I have looked at the arguments given by both sides on the prospects of this appeal being successful. My view is that the appellant is raising some crucial issues which should be ventilated on.

31. I therefore order that time be extended within which the appellant should file his Notice of Appeal and prosecute the appeal. I do not grant the other reliefs. The appellant should file the Notice of Appeal within 14 days from the date of this ruling.

32. Costs to the appellant.

Made in Chambers this 20th day of May 2026 at Blantyre



M.C.C. MKANDAWIRE SC

JUSTICE OF APPEAL