



**IN THE MALAWI SUPREME COURT OF APPEAL
SITTING AT BLANTYRE**

MISC CIVIL APPLICATION NO 25 OF 2026

(Being Commercial Case No 284 of 2022, High Court, Commercial Division,
Lilongwe District Registry)

BETWEEN:

**NORMAN NYIRENDA APPELLANT
AND**

LAKE OIL LIMITED RESPONDENT

CORAM: HON. JUSTICE R. MBVUNDULA, SC, JA

Chilenga SC, Counsel for the Appellant

Respondent unrepresented

Chinkono, Recording Officer

RULING

1. This is this Court's Ruling on an ex-parte application brought by the appellant seeking the Court's leave to appeal against a decision of the High Court, out of time. The application is said to be brought (according to the reading of the heading of the application itself) pursuant to "Order III rule 4 of the Supreme Court of Appeal Rules (2) of the Supreme Court of Appeal Act and Part 52.3 of the Civil Procedure Rules". There are obvious typographical errors in this citation. However in the body of the application it is stated that the said application is brought in terms of section 21 of the Supreme Court of Appeal Act as read with Order III rule 4 of the Supreme Court of Appeal Rules. The same also appears in skeletal arguments in support of the application, although there are also cited, somewhat at length, some provisions in the Civil Procedure Rules of England and Wales.

2. The application is supported by an affidavit sworn by the appellant. He states therein that on 16th January 2024, the High Court made an order dismissing an application to set aside an arbitration award made by one Pempho Likongwe, SC, following which the appellant applied to the High Court for an order to set it aside on the ground that the arbitrator had executed his authority. The High Court, however, dismissed the application to set aside, on 16th August 2024. The High Court Ruling is exhibited to the affidavit and is marked “NN3”.
3. The High Court refused to grant the order on the ground that the appellant had filed his application after the time provided for filing an appeal had long elapsed, about one year and nine months later out of time, and no good reason had been provided by the appellant for the delay in filing the application. The reason he had given was that he had been out of town for some time attending to personal issues and was thus unable to instruct his legal practitioner to appeal within the prescribed time. The High Court formed the view that the appellant failed to act diligently, and that the application was frivolous and vexatious and an abuse of court process, and refused to grant the application. The High Court order is dated 29th May 2026.
4. The appellant states in paragraph 10 of his affidavit in support of the present application as follows:

“**THAT** I am desirous of appealing against the decision and seek a leave to appeal on the discretion of the court and it is in the interest of justice that the Court do hear an appeal on the matter. I produce a copy of the notice of appeal marked and exhibited as “NN3”” (sic)
5. I make two observations in this regard.
 - 5.1 The first is that the Ruling of the High Court having been marked “NN3”, there should not, therefore, be a second “NN3”. The notice of appeal, if logical sequencing would matter, should probably be “NN4”.
 - 5.2 The second, and more critically, is the fact that despite reference being made to the notice of appeal as aforesaid, no document purporting to be the notice of appeal has been exhibited to the appellant’s affidavit. The importance of exhibiting the notice and grounds of appeal will soon be explained below.

6. Section 21 of the Supreme Court of Appeal Act, relied upon in bringing the within application, contains no provision for applications for leave to appeal out of time. It provides for circumstances in which an appeal may, or may not, lie to this Court. The section is, therefore, irrelevant to the within application. Thus the application herein is brought under a wrong provision of the law.

7. The relevant provision of the Act is section 23 (as read with Order III rule 4 of the Supreme Court of Appeal Rules) and provides as follows:

“23. Time for appealing

(1) If a person desires to appeal under this Part from the High Court to the Court, he shall, in such manner as may be prescribed by rules of court, give notice to the Registrar of the High Court of his intention to appeal—

(a) within 14 days of the judgment from which he wishes to appeal if such judgment is an interlocutory order;

(b) within six weeks of the judgment from which he wishes to appeal in any other case.

(2) The Court may extend the time for giving notice of intention to appeal under this Part, notwithstanding that the time for giving such notice has expired.

8. Under Order III rule 4 of the Supreme Court of Appeal Rules it is provided as follows:

“Every application for an enlargement of time in which to appeal shall be supported by an affidavit setting forth *good and substantial reasons for the failure to appeal within the prescribed period, and by grounds of appeal which prima facie show a good cause why the appeal should be heard.* When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal.” (emphasis supplied)

9. The substantive arguments in support of the application are very brief. It will not require substantial effort to reproduce them. They read as follows:

“Arguments

1. The Claimant is seeking an order to leave (sic) to appeal against a decision of the Court dated 14th August 2024 out of time.

2. The Claimant delayed in giving instructions on the Appeal.

3. The Claimant has an arguable appeal that should be heled (sic) by the Supreme Court of Appeal. The appeal has some prospects of success on the ground that the arbitrator had executed his powers.

4. It is just and equitable that leave to appeal out of time be granted.

Submission

It is respectfully submitted that leave to Appeal out of time be granted.”

10. In the case of *Tratsel Supplies Limited v Mwakalinga* (1987-89) 12 MLR 72, 74-75, Unyolo JA, sitting as a single member of this Court then, said the following with regard to the provisions of Order III rule 4 of the Supreme Court of Appeal Rules:

“the two provisions here can be condensed to this: this Court has a discretion to grant or refuse an extension of time for filing a notice of appeal, provided there are: (a) good and substantial reasons for the failure to appeal within the prescribed period; and (b) grounds of appeal which *prima facie* show a good cause why the appeal should be heard...With regard to point (a), what would be “good and substantial reasons” is in my judgment a factual matter. The phrase here must be construed literally and the words given their ordinary meaning. The reasons advanced to explain the delay must simply be good and substantial – sound or satisfactory, in other words. With regard to point (b), the essential consideration is, in my view, whether upon the grounds of appeal presented, there are prospects of the intended appeal succeeding if time for appealing is extended. The grounds of appeal must not, to use a familiar expression, be frivolous or vexatious.

It must be pointed out, therefore, that *in order for an application to succeed, the applicant must do two things, namely, provide to the Court–*

(a) *good and substantial reasons for the failure to appeal within the prescribed period; and*

(b) *grounds of appeal which prima facie show a good cause why the appeal should be heard.*

Thus, the application will be rejected, and therefore dismissed by the Court, if the applicant stumbles on either point (a) or (b) and indeed on both of them. (emphasis supplied)

11. The grounds advanced by the appellant for failing to commence the appeal proceedings within the time stipulated under statute are the self-same ones he advanced in the High Court, namely, that he was “out of town for some time attending to personal issues and could not instruct [his] legal practitioner to appeal in time.” As has been earlier stated, the period that elapsed between the Ruling sought to be appealed against is one year and nine months. In this age of advanced technological communication systems I take the view that it is idle for the appellant to claim that for such a long period he was unable to communicate with his legal practitioner to give instructions merely because he was “out of town”, whatever meaning may be ascribed to that expression. Without hesitation, I form the view that

the appellant's excuse for the delay is not sound or satisfactory, to use Unyolo JA's expression. In addition a delay of one year and nine months to bring an application required to be brought within 14 days, just because the applicant was "out of town" is, by all standards, inordinate and inexcusable, amounting to an insurmountable hurdle. Thus the first requirement stipulated in *Tratsel Supplies Limited v Mwakalinga* is not satisfied.

12. Coming to the second requirement which the appellant must satisfy in order for the Court to consider whether or not to grant him leave, namely, to present grounds of appeal which prima facie show a good cause why the appeal should be heard, as earlier observed, the applicant has not exhibited the grounds of appeal he intends to rely upon. This Court, therefore, is deprived of the opportunity to examine the same and form an opinion as to whether or not the same would satisfy the requirement for the appellant to show that the grounds prima facie show a good cause why the appeal should be heard.
13. The application fails, firstly, for being brought under an inapplicable provision of the law, secondly, for showing no good and substantial grounds for bringing the same way out of time and, thirdly, for failure to demonstrate prima facie why the appeal should be heard.
14. The application is accordingly dismissed.

Made in chambers this 15th day of July, 2026.

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JUSTICE R. MBVUNDULA, SC
JUSTICE OF APPEAL