



REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
PRINCIPAL REGISTRY
MSCA Civil Appeal No 12 of 2021

BETWEEN:

EASY LOANS LIMITED.....APPELLANT

-AND -

MAXWELL REX MKUSA.....RESPONDENT

CORAM: HON CHIEF JUSTICE R.R. JUSTICE MZIKAMANDA SC, JA

HON JUSTICE L.P. CHIKOPA SC, JA

HON JUSTICE F.E. KAPANDA SC, JA

HON JUSTICE J.N. KATSALA JA

HON JUSTICE H.S.B. POTANI JA

HON JUSTICE I.C. KAMANGA JA

HON JUSTICE M.C.C. MKANDAWIRE JA

I. Kumpita, Counsel for the Appellant

Chayekha, Counsel for the Respondent (Absent)

W. Shaibu, Judicial Research Officer

Minikwa/ Masiyano, Court Clerks

Date of Hearing: 8 March, 2022

Date of Extempore Judgment: 8 March 2022

Date of Judicium curia advisari vult (Reserved judgment): 20 July 2026

JUDGEMENT

Hon. Justice F. E. Kapanda SC, JA:

INTRODUCTION

1. This is an appeal against the assessment of damages made by the High Court (H/H Nkhata) in Civil Cause No. 126 of 2017 between the same parties. The appeal is confined to the quantum of damages and does not relate to liability, which had already been determined in the court below.

2. At the hearing, *Mr. Kumpita* appeared for the appellant. The respondent, though duly served, was absent and unrepresented. The Court therefore proceeded to hear the matter on the submissions of counsel for the appellant, limited to questions of procedural compliance and the proper scope of the appeal.

FACTUAL BACKGROUND

3. On 10 March 2017, while the respondent was absent, the appellant seized the respondent's motor vehicle, alleging that it had been used as collateral for a loan obtained by the respondent's wife without his knowledge. At the time, the respondent's marriage was experiencing

difficulties. The wife had forged the relevant documents for the purpose of securing the loan.

4. Upon learning of the seizure, the respondent, through his legal representatives, wrote to the appellant demanding the return of the vehicle, asserting that he was not a party to the loan agreement. The appellant, however, refused to comply with this demand.

5. In pursuit of the return of his vehicle or, in the alternative, damages, the respondent commenced proceedings seeking relief for conversion, loss of business, defamation, and the costs associated with the action. The matter proceeded to trial, during which the appellant admitted liability, resulting in a consent judgment being entered in favour of the respondent. This judgment provided for the release of the vehicle, damages for loss of business and defamation, as well as costs of the action.

6. After a period of sixteen months, the vehicle was eventually returned to the respondent. However, disagreement between the parties regarding the quantum of damages necessitated assessment by the court.

7. In submissions concerning damages, the respondent sought an award totalling K39,500,000.00. Having considered the evidence, Assistant Registrar Nkhata exercised judicial discretion and awarded the respondent K22,200,000.00 on 7 January 2019.

8. The appellant, dissatisfied with the award, lodged the present appeal. Out of the total sum of K22,200,000.00, the appellant has paid K5,000,000.00 to the respondent directly, with a further K5,000,000.00 paid into court.

9. With respect to the evidence adduced at the assessment of damages, only the claimant presented evidence; the defendant did not offer any. The claimant's principal evidence was that he was the owner of the vehicle in question, which was wrongfully seized by the defendant. He informed the court that prior to the seizure, he was subcontracted by Chikowi Investment and was engaged in transporting various items for World Vision, earning an average of MK2,000,000.00 per month. He produced a copy of a cheque issued by Chikowi Investment as evidence of payment for services rendered.

10. Supporting correspondence confirmed that the claimant had been subcontracted by Chikowi Investment during the 2016/17 contract season, which commenced on 23 October 2016. The vehicle ceased operation in early 2017. The claimant explained the limited documentary evidence by stating that he did not maintain comprehensive records and was only able to produce such documents as he had managed to obtain.

11. In addition to the loss of business, the claimant stated that the public seizure of his vehicle led to the perception that he had defaulted on a loan with the defendant, thereby damaging his reputation. Under cross-examination, the claimant maintained that, in addition to the contract work, he also transported sand and bricks for other clients but did not keep records of such activities. He further insisted that the vehicle was not out of service except for a brief period due to tyre issues, and that the last payment from Chikowi Investment related to the contract in question. In re-examination, he reiterated his contractual engagement with Chikowi Investment and confirmed that he was earning an average of MK2,000,000.00 per month.

THE GROUNDS OF APPEAL : Issues for Determination Arising from the Grounds of Appeal

12. The appellant's grounds of appeal raised the following issues that need to be decided:

1. Whether the Assistant Registrar erred in awarding MK19,200,000.00 as special damages for loss of business profits, specifically addressing whether the respondent adequately proved such losses with sufficient and credible evidence.
2. Whether the award of damages for defamation was proper, considering whether the respondent produced cogent evidence, including the testimony of peers or other supporting witnesses, to establish reputational harm.
3. Whether the Assistant Registrar complied with the applicable procedural rules in making the award, particularly in relation to the correct appellate forum for decisions made by a Registrar or Assistant

Registrar acting as a Master—namely, whether the appeal should have been brought before the Supreme Court of Appeal rather than the High Court.

13. These issues require the Court to undertake a thorough evaluation of several interconnected aspects of the case. First, the Court must assess both the sufficiency and the credibility of the evidence adduced during trial, considering whether the claimant's documentation and oral testimony provide a reliable foundation for the damages claimed. This includes scrutinising the nature and extent of the documentary evidence, such as contracts, payment records, and any supporting correspondence, as well as evaluating the claimant's explanations for any gaps or deficiencies in record-keeping.

14. Secondly, the Court must apply the correct legal principles governing the award of special damages, which necessitate precise proof of actual losses suffered. In relation to the claim for business profits, the Court is required to determine whether the claimant has established, on a balance of probabilities, that the losses claimed are both quantifiable and directly attributable to the defendant's conduct. Similarly, with respect to defamation, the Court must consider whether the claimant has provided cogent and credible evidence—potentially including the testimony of peers or other witnesses—that his reputation was materially harmed as a result of the defendant's actions.

15. Thirdly, the Court must ensure strict compliance with the procedural framework prescribed by the relevant rules and Practice Directions, particularly in relation to the filing of skeleton arguments and supporting authorities, as well as the proper identification of the appellate forum. Adherence to these procedures is vital to safeguard the fairness and integrity of the appellate process. The Court must confirm that all procedural requirements have been fully satisfied before it can proceed to adjudicate the substantive merits of the appeal. Any failure in this regard may result in the appeal being rendered fatally flawed and subject to summary dismissal, regardless of its substantive merits.

16. In summary, the Court's deliberations encompass: (1) a rigorous appraisal of the evidence presented, (2) the faithful application of the law concerning special damages and defamation, and (3) unwavering

observance of procedural rules, all of which are essential to the proper determination of the appeal.

ANALYSIS OF THE APPLICABLE LAW (FINDINGS AND CONCLUSIONS OF THE COURT)

Nature and Scope of the Appeal

17. The appeal, as filed, was directed solely against the quantum of damages awarded by the lower court. During argument, however, counsel for the appellant sought to reopen issues pertaining to liability. The Court observed that such issues were not properly before it, as the notice of appeal and record of appeal were limited to the question of assessment of damages. Accordingly, the Court confined itself strictly to the issue of damages and compliance with procedural rules.

Procedural Irregularities

18. At the inception of its deliberations, this Court identified a significant and substantive breach of Practice Direction No. 1 of 2010, which sets forth the mandatory procedure governing the filing of skeleton arguments and the lodgement of supporting authorities before this Court. The record unequivocally demonstrates that the appellant, while having submitted skeleton arguments before the subordinate court, failed to comply with the essential requirement to file both a comprehensive list and a bundle of authorities with this Court, as expressly mandated by the aforementioned Practice Direction.

19. Notably, although the respondent was duly served in accordance with procedural requirements, they were neither present nor represented at the hearing. In light of these circumstances, the Court proceeded to adjudicate the matter solely on the basis of submissions advanced by counsel for the appellant, with the scope of inquiry narrowly confined to questions of procedural compliance and the proper delimitation of the appeal's ambit.

20. The Court underscores, in the strongest possible terms, that adherence to procedural rules is not a mere technicality or trivial formality; rather, it constitutes a substantive and indispensable prerequisite for the orderly and efficient administration of appellate proceedings. Compliance with Practice Directions is integral to safeguarding the fairness, transparency, and predictability of the judicial process. Any failure by a party to observe these mandatory requirements amounts to a grave disregard for the procedural framework established to ensure justice is properly administered.

21. Where a party neglects or wilfully ignores the Practice Directions, such conduct undermines the integrity of the proceedings, compromises the rights of the parties, and threatens the proper administration of justice. The Court reiterates that procedural requirements are designed not only to facilitate the effective presentation and consideration of appeals, but also to uphold the foundational principles of fairness and due process. In consequence, any substantive non-compliance with these requirements warrants judicial intervention, including, where appropriate, the summary dismissal of an appeal regardless of its substantive merits. This position serves both as a caution and an imperative to all litigants and counsel appearing before this Court: strict and timely observance of all procedural rules is essential and cannot be dispensed with under any circumstances.

22. The Court emphasises that the question of procedural compliance is not a secondary or peripheral concern, but rather a fundamental and preliminary issue that must be resolved before any engagement with the substantive merits of an appeal is even contemplated. Procedural compliance operates as a jurisdictional gateway: unless and until it is demonstrated that all procedural requirements have been fully and properly observed, the Court is precluded from considering the substance of the appeal. In other words, failure to meet these procedural prerequisites renders the appeal fatally flawed from the outset—incapable of being entertained or adjudicated upon by the Court.

23. Moreover, it is crucial to appreciate the foundational tenet that procedural rules are far from being mere formalities or technicalities; rather, they function as indispensable vehicles for the attainment of substantive justice. These mechanisms are not simply box-ticking exercises but are integral to ensuring fairness, order, and reliability within the judicial process. As was underscored by the Supreme Court of Appeal in **Ngwira**

and Chiumia v Ngwira (MSCA Civil Appeal No. 16 of 2020), strict and accurate compliance with procedural requirements is mandatory and non-negotiable. The Court was unequivocal in its insistence that any deviation from these rules cannot be lightly excused, as doing so would undermine the very fabric of justice.

24. Additionally, this principle was reaffirmed by the Court in the case of **Cement Products Limited v Reliance Cement Trading Company, Miscellaneous Civil Appeal No. 03 of 2021 (arising from Commercial Cause No. 187 of 2016 in the Commercial Division, Blantyre Registry)**. There, this Court reiterated that procedural stipulations are not optional guidelines but binding obligations that all parties must observe meticulously. The Court made it clear that the integrity and effectiveness of the appellate process depend on unwavering adherence to these procedural frameworks. Any failure to comply, whether inadvertent or deliberate, risks rendering the proceedings defective and jeopardising the administration of justice.

25. Thus, the message from these authorities is unambiguous: procedural compliance is fundamental to the judicial process and is a prerequisite to the consideration of substantive issues. This Court will not hesitate to enforce these requirements strictly, recognising that procedural discipline is essential to upholding the rule of law and the credibility of the legal system.

26. It is further observed that, even where an appeal is confined to a discrete issue such as the assessment or quantum of damages, this does not absolve the appellant from the responsibility to comply meticulously with all procedural stipulations laid down by law and by the Court's Practice Directions. The obligation to adhere to procedural rules applies with equal force regardless of the limited or specific nature of the grounds of appeal. Thus, strict and timely compliance with every procedural requirement is not merely advisable but is an absolute necessity; any lapse or omission in this regard will deprive the Court of jurisdiction and result in the summary dismissal of the appeal at the threshold, irrespective of any arguable merit in the underlying claim.

27. The Court proceeds to deliberate on whether it retains any discretion to condone or overlook the appellant's failure to comply with the prescribed

procedural requirements in this instance. Upon careful reflection, the Court is firmly of the view that the habitual or repeated failure to comply with the Practice Directions cannot and should not be excused. To permit such latitude would have the effect of reducing mandatory procedural rules to mere recommendations, thereby inviting inconsistency and undermining the procedural safeguards that are integral to the appellate process. The Court stresses that judicial discretion in matters of procedural compliance is not unfettered; rather, it is bounded by the overriding need to uphold the integrity, predictability, and orderly administration of justice.

28. In the present case, the Court finds that to excuse the appellant's non-compliance—particularly where it reflects a pattern or persistent disregard for established procedural rules—would set a dangerous precedent. It would risk encouraging future litigants and counsel to treat Practice Directions as optional, thereby eroding respect for the Court's authority and compromising the fairness and reliability of appellate proceedings. Accordingly, the Court determines that such non-compliance must attract the sanction of dismissal, irrespective of any potential merits of the underlying appeal. This approach serves as a clear signal to all parties that strict adherence to procedural requirements is not only expected, but demanded, as a precondition to the proper invocation of the Court's appellate jurisdiction.

DETERMINATION

Judicial Rationale for Summary Dismissal Due to Procedural Non-Compliance

29. After a comprehensive and meticulous review of the entire record, the Court is satisfied that the appellant has, by their own unequivocal admission, failed to comply with the mandatory requirements set forth in Practice Direction No. 1 of 2010. In addition, the appellant has not adhered to other procedural rules and protocols that govern appeals before this Court. This failure to observe the necessary procedural framework is not a trivial oversight but a substantive defect that fundamentally affects the competency of the appeal. The Court reiterates that strict compliance with all procedural requirements is a prerequisite to invoking its appellate jurisdiction.

30. Consequently, and as a matter of law, the Court is compelled to dismiss the appeal at the threshold—in limine—on the basis of procedural non-compliance. It must be stressed that this dismissal is strictly limited to procedural grounds; the Court has not, and does not, engage with or reach any determination regarding the substantive merits of the appellant's underlying claim. The dismissal should not be interpreted as an adverse finding on the factual or legal arguments advanced in support of the appeal, but rather as an enforcement of the procedural rules that ensure the orderly administration of justice.

31. The Court further notes that, although the respondent was properly served in accordance with the established procedures, they neither appeared nor arranged for legal representation at the hearing. Moreover, no submissions have been made regarding the issue of costs. In these circumstances, and in line with established practice, the Court considers it appropriate to make no order as to costs in this matter.

32. This outcome should serve as a clear and unequivocal reminder to all parties and legal practitioners that procedural compliance is not a mere technicality; it is a fundamental obligation that underpins the integrity and effectiveness of appellate proceedings. Failure to adhere to these requirements will inevitably preclude the Court from considering the substance of any appeal, regardless of its potential merits.

Consequences of Procedural Non-Compliance for Legal Practitioners

33. The Court takes this occasion to reiterate, in the strongest terms, that Counsel appearing before appellate courts are under a continuing obligation to observe the highest standards of diligence, professionalism, and decorum. This responsibility extends beyond mere compliance with procedural rules; it encompasses the thorough preparation of cases, timely submission of all required documents, and unwavering respect for both the letter and spirit of the Court's Practice Directions. Counsel must ensure that all arguments are properly framed within the scope of the appeal, and that every procedural step is scrupulously observed. Such conduct is not only a matter of individual reputation but is integral to the integrity of the judicial

process itself. The orderly administration of justice depends upon advocates upholding these standards, as any lapse may jeopardise the fairness and efficiency of proceedings, potentially resulting in the summary dismissal of appeals irrespective of their substantive merits. The Court therefore calls upon all members of the Bar to approach their appellate responsibilities with the utmost seriousness, recognising that their actions serve not only their clients but also the broader interests of justice and the rule of law.

34. Compliance with procedural rules and Practice Directions is not to be regarded as a mere technicality, but as a fundamental and indispensable safeguard for the integrity, predictability, and orderly conduct of judicial proceedings. It is incumbent upon all Counsel to ensure full and timely observance of all procedural requirements prescribed by law and by the Practice Directions of this Court.

35. The importance of adhering strictly to these procedural requirements cannot be overstated. Such compliance forms the very backbone of the appellate process, ensuring that all parties are afforded a fair opportunity to present their cases within a framework that is transparent, consistent, and just. When Counsel neglects or overlooks these requirements, the consequences are not merely procedural; they strike at the heart of the administration of justice, potentially resulting in the dismissal of an appeal without any examination of its substantive merits.

36. Procedural rules and Practice Directions serve several vital purposes. Firstly, they promote efficiency by providing clear timelines and expectations for the submission of documents, arguments, and supporting authorities. Secondly, they foster equality between parties, as both appellant and respondent are bound by the same obligations and standards. Thirdly, they safeguard the reputation and credibility of the Court itself, preventing arbitrary or inconsistent decision-making and ensuring that justice is dispensed in accordance with established principles.

37. The Court has repeatedly emphasised that compliance with such rules is not optional. Rather, it is a jurisdictional prerequisite, without which an appeal cannot be properly entertained. Habitual or even one-off disregard for Practice Directions risks eroding respect for the judicial process and undermining public confidence in the legal system. Accordingly, Counsel must treat these requirements with the utmost seriousness, recognising

that failure to do so may deprive their clients of the opportunity to have their grievances addressed, regardless of the underlying merits.

38. In summary, strict observance of procedural rules and Practice Directions is essential not only for the orderly conduct of proceedings, but also for upholding the integrity and fairness of the judicial system as a whole. It is a professional and ethical responsibility that all members of the Bar must discharge diligently and conscientiously, in the interests of justice and the rule of law.

39. This decision stands as a pointed and unequivocal warning to all members of the Bar regarding the paramount importance of full and scrupulous adherence to the Court's Practice Directions and procedural rules. Counsel and parties alike must appreciate that any lapse in compliance with these requirements may result in their cases being summarily dismissed at the outset, with no opportunity for the substantive issues to be considered. The Court wishes to stress that procedural compliance is not a mere formality, but a foundational aspect of the appellate process, designed to safeguard fairness and uphold the integrity of judicial proceedings. Ignoring or neglecting these obligations exposes parties to the real risk of forfeiting their right to have their grievances heard, irrespective of the merits of their claims. Let this outcome serve as a cautionary example, underscoring the necessity for all advocates to approach their duties with diligence, professionalism, and an unwavering commitment to the procedural framework established by the Court.

ORDER

40. In light of the foregoing observations and the Court's unwavering emphasis on the necessity for strict compliance with procedural requirements, the appeal is hereby dismissed due to the appellant's failure to adhere to Practice Direction No. 1 of 2010. This non-compliance constitutes a fundamental breach that precludes the Court from considering the substantive merits of the case. The dismissal serves as a clear reminder to all parties and Counsel of the paramount importance of observing the Court's Practice Directions and procedural rules in their entirety.

Furthermore, the Court makes no order as to costs in this matter. This outcome reflects the principle that procedural lapses, irrespective of the underlying merits of the appeal, may result in summary dismissal without further consideration of the issues raised. All parties are urged to treat these procedural obligations with the utmost seriousness, recognising that adherence to the established framework is essential for the fair and orderly administration of justice.

It is so ordered by the Court.

**Delivered in open Court at the Supreme Court of Appeal, Blantyre
this 20th day of July, 2026.**



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The Hon the Chief Justice R.R. Justice Mzikamanda SC, JA



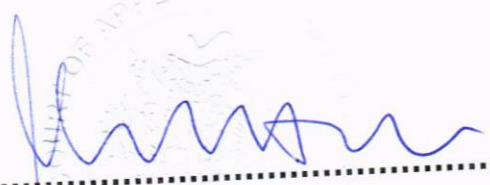
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Hon Justice L.P. Chikopa SC, JA



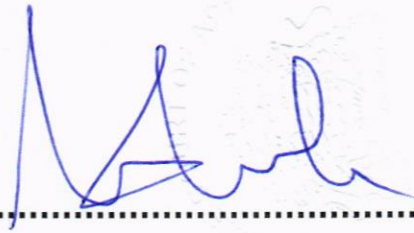
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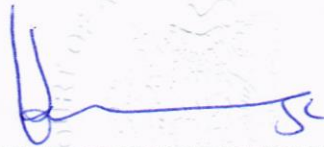


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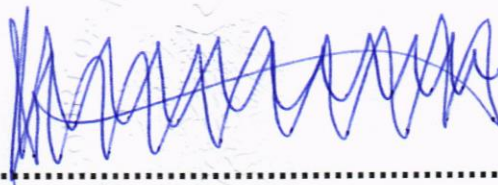
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