

# Attorney General v Msalika, MSCA Civil Appeal No. 38 of 2016

## Summary

<b>Court:</b>	Supreme Court Of Appeal
<b>Bench:</b>	The Honourable Justice AD Kamanga SC JA
<b>Cause Number:</b>	MSCA Civil Appeal No. 38 of 2016 (Being High Court - Lilongwe District Registry - Misc Civil Cause No. 357 of 2008)
<b>Date of Judgment:</b>	August 23, 2016
<b>Bar:</b>	Ms Itimu, for the Appellant Ms Ngwira, for the Respondent

The Respondent, in a matter originating from the High Court, Lilongwe District Registry, sought to have the Appellant's appeal dismissed for failure to set it down and for want of prosecution. The dispute arose from a default judgment obtained by the Respondent against the Appellant for damages suffered due to atrocities committed by State agents between 1972 and 1994. After the Appellant's attempts to set aside the default judgment failed, the matter proceeded to an assessment of damages, where a second assessment awarded the Respondent K6,500,000 plus costs. Dissatisfied with this award, the Appellant filed a notice of intention to appeal on 13 July 2015. However, nearly a year later,

the Appellant had not taken any action to advance the appeal. Consequently, the Respondent applied to have the appeal dismissed, citing inordinate and inexcusable delay that prejudiced him, an elderly man being deprived of the fruits of his litigation.

The principal legal question before the Court was whether the Appellant's delay in prosecuting the appeal was inordinate and inexcusable and whether it had caused serious prejudice to the Respondent, thereby justifying the appeal's dismissal. The Appellant argued against dismissal, citing a constitutional right of access to justice and claiming the delay was due to difficulties in obtaining a date for settling the record of appeal from the High Court Registry. The Appellant also contended that since the judgment had not been stayed, the Respondent could have executed it, and therefore was not prejudiced. The Court rejected the Appellant's arguments. It found the Appellant's explanation for the delay was not credible and noted that the Appellant only took action to settle the record after the Respondent's application to dismiss the appeal was filed. The Court concluded that the delay was both inordinate and inexcusable. The Court held that the Respondent, an elderly man who had waited a long time for compensation, had been seriously prejudiced by the delay. The Court also held that while the Appellant had a right to be heard, this right did not outweigh the serious prejudice caused to the Respondent. Accordingly, the Court granted the Respondent's application, dismissing the appeal for want of prosecution and condemning the Appellant to pay the costs of the application.