

Chikondi Banda v Satemwa Tea Estate Company (Personal Injury 219 of 2016) 2018 MWHC 781

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Nriva
Cause Number:	Personal Injury Case Number 219 of 2016
Date of Judgment:	June 18, 2018
Bar:	Counsel for the Claimant not mentioned Counsel for the Defendant not mentioned

Head Notes

Civil Procedure – Appeals from Registrar – Jurisdiction of a Judge to hear an appeal from a Registrar – No jurisdiction exists under the Courts (High Court) (Civil Procedure) Rules 2017.

Civil Procedure – Inherent Jurisdiction – Scope of inherent jurisdiction – Inherent jurisdiction cannot be used to assume jurisdiction over an appeal.

Summary

The Defendant applied to the High Court, Principal Registry, for an order setting aside a default judgment that had been dismissed by the Assistant Registrar. Following the dismissal, the Defendant obtained a stay of execution from the Senior Deputy Registrar pending an appeal to a judge in chambers. The issue before the Court was whether the Judge had the inherent jurisdiction to hear an appeal from a registrar's decision.

The Court, after careful consideration, determined that while the Courts (Exercise of Jurisdiction of Registrar) Rules previously allowed for such appeals, these rules were revoked by the Courts (High Court) (Civil Procedure) Rules 2017. The Court found no provision within the new rules that conferred jurisdiction on a judge to hear appeals from a registrar. The Court further clarified that inherent jurisdiction cannot be invoked to assume jurisdiction where none is provided for by law. The appeal was therefore dismissed for want of a statutory or procedural basis. Consequently, the stay order obtained from the Senior Deputy Registrar was also vacated, as it was made in anticipation of the appeal.

Legislation Construed

1. Courts (High Court) (Civil Procedure) Rules 2017.
2. Courts (Exercise of Jurisdiction of Registrar) Rules (r 3).

Ruling/Judgment

The defendant made an application, which the Assistant Registrar dismissed, for setting aside default judgment. The defendant obtained from the Senior Deputy

Registrar stay of execution of the order pending an appeal against the decision.

The defendant lodged an appeal to a judge in chamber. The application is brought under the court's inherent jurisdiction.

The issue of jurisdiction has exercised my mind. It does not appear to me that a court can use inherent jurisdiction to assume jurisdiction to determine an appeal.

Before October 2017, Judges had jurisdiction of appeal over decisions of Registrars. That was under the authority of Court (Exercise of Jurisdiction of Registrar) Rules rule 3. See *Anwar Ghani v Chande* [2006] MLR 25.

The Courts (High Court) (Civil Procedure) Rules 2017 revoked the Court (Exercise of Jurisdiction of Registrar) Rules. As the rules stand now, there is nothing in the Courts (High Court) (Civil Procedure) Rules conferring on a Judge jurisdiction to determine appeals from Registrars.

In a Canadian decision of *PM v MA* 2017 ONCA, on the ground that there was no statutory basis, the court rejected the argument that the Court of Appeal had original jurisdiction to hear an appeal of an interlocutory order of a superior court.

I believe that Courts have to exercise powers according to the statutes and rules. Inherent jurisdiction is only exercisable for the Courts to take certain steps with regard

to the conduct of proceedings. Inherent jurisdiction represents a body of default powers which enables a court to fulfil, suitably and efficiently, its procedures as a court of law.

Inherent jurisdiction applies to the facilitation of the Court to exercise its full judicial power in all matters concerning the general administration of justice as a part of the procedural law of the court and not as a matter of gaining jurisdiction.

The objective in having an inherent jurisdiction is to ensure that courts perform their powers in order to maintain its character as a court of justice. Inherent jurisdiction is exercised in limited circumstances. See Lord Diplock, *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp* [1981] AC 909, at 977. It cannot be invoked by a court to assume jurisdiction where the law does not provide for jurisdiction.

Aims of inherent jurisdiction include:

- to ensure convenience, expedience and fairness in legal proceedings;
- to prevent steps being taken that would render judicial proceedings ineffective;
- to prevent abuse of process.

In this matter, I find no statutory or procedural basis on which to hear the appeal against the order of the Assistant Registrar. I, therefore, dismiss the notice of appeal. In the same vein, the stay order of the Senior Deputy Registrar cannot stand since the

stay was made in anticipation of this appeal. I vacate the stay order.