

NICO General Insurance Company v George Jivason Kadzipatike t/a Jivason & Company

Summary

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| Court: | High Court of Malawi |
| Registry: | Commercial Division |
| Bench: | Honourable Justice Gloria Alinafe Namonde |
| Cause Number: | Commercial Case No. 15 of 2024 |
| Date of Judgment: | June 24, 2025 |
| Bar: | Lupande, Counsel for the Applicant. Kambalame, Counsel for Respondent. |

The Applicant sought a review in the High Court, Commercial Division, of a ruling by the Resident Magistrate Court in which the Magistrate declined to transfer a matter to the Commercial Division. The Applicant, who was the defendant in the lower court, contended that the claim, arising from a lawyers' professional indemnity insurance contract, was a commercial matter and therefore fell under the exclusive jurisdiction of the Commercial Division of the High Court. The Respondent, the claimant in the lower court, argued that the correct procedure was an appeal, not a review, and that the monetary value of the claim was too low for the Commercial Division to handle.

The Court was called upon to determine whether the application correctly was correctly brought before the court and whether the matter was a commercial one and, if so, whether the magistrate court had jurisdiction to hear it.

The Court held that its supervisory and revisionary jurisdiction under section 26 of the Courts Act allows it to review the matter, regardless of the Respondent's argument about appeal procedure, noting that the Court had already issued an order for review. The Court then considered the jurisdictional issue, finding that a claim arising from a professional indemnity insurance contract is a commercial matter as defined by section 2 of the Courts Act, falling under 'insurance services.' The Court distinguished between 'civil matters,' which are within the jurisdiction of the Magistrate's Court, and 'commercial matters,' which are exclusively for the High Court's Commercial Division. It rejected the argument that the monetary value of a claim determines jurisdiction, stating that the nature of the transaction is the decisive factor. The Applicant's application was allowed and the Court stated that the matter was commercial, the Magistrate Court lacked jurisdiction, making all its proceedings null and void, thereby, nullifying all steps and decisions taken by the Resident Magistrate Court. The Court ordered the Respondent to commence proceedings afresh in the High Court, Commercial Division, should they wish to continue with the matter. The Court awarded costs to the Applicant.