

# Chawezi Banda (a.k.a 'Cha-Cha') v. Hana Jabesi (a.k.a 'Tamiya Ja')

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice M.A Tembo
<b>Cause Number:</b>	Civil Cause Number 70 of 2025
<b>Date of Judgment:</b>	July 11, 2025
<b>Bar:</b>	C. Gondwe, Counsel for the Claimant S. Chirwa, Counsel for the Defendant

The Defendant sought the dismissal of the Claimant's interlocutory injunction application in the High Court, Principal Registry, by filing a Notice of Preliminary Objections and a Cross-Application. The Claimant and the Defendant, both social media influencers, became embroiled in a dispute after the Defendant published statements on her online platforms that the Claimant, who is ordinarily resident in the United States of America, deemed defamatory. The Claimant commenced proceedings seeking damages and an injunction. The Claimant initially sought an interlocutory injunction without notice, but the Court declined due to the need to balance freedom of speech against the right to reputation, ordering the

application to be brought with notice. Upon the Claimant filing the application with notice, the Defendant sought its dismissal for non-compliance with the Rules. The Court noted that the "Notice of Preliminary Objections" was procedurally irregular, but held that the accompanying Cross-Application brought under Order 2 of the Courts (High Court) (Civil Procedure) Rules cured the defect, thus allowing the matter to proceed.

The principal issues for the Court were whether the Claimant's application was fatally defective for lack of a validly taken sworn statement and whether service of the originating process via WhatsApp constituted effective service under the Rules.

The application for the interlocutory injunction was dismissed on both grounds. Firstly, the Court held that the sworn statement supporting the application was a nullity. Evidence adduced showed that the Claimant, while in the United States, had not taken the oath before the Commissioner for Oaths in Malawi through the statutory process laid out in the *Commissioner for Oaths Rules*. The Court found that the attempted virtual oath-taking was ineffective as it failed to comply with the physical presence requirement, nor did it meet the electronic signature and authentication conditions stipulated in Section 8 of the *Electronic Transactions and Cyber Security Act*. The absence of a validly taken Oath was held to be a fatal defect and not a curable irregularity under Order 2. Secondly, the Court held that service of the application via WhatsApp was ineffective and invalid as it did not comply with the formal service methods prescribed by the *Courts (High Court) (Civil Procedure) Rules*. The Court nevertheless proffered that virtual oath-taking should be allowed in the future, provided that real-time video link

interaction and strict compliance with the *Electronic Transactions and Cyber Security Act* are observed, in line with the overriding objective of the Rules to encourage technology for case management. The successful Defendant was awarded the costs of the application