

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

Judgment

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.

1. The Applicant made an application before this Court for a review of the ruling of the magistrate court in civil cause number 1201 of 2024 between the two parties herein, where the Applicant is the Defendant and the Respondent is the Claimant. The Claimant had commenced proceedings in the magistrate court claiming MK11,086,800, MK 3, 695, 600.00 as interest, a refund MK7, 391, 200 as costs that the Respondent had paid to another party in a different case, MK2,000,000 being costs of the proceedings that were before the magistrate court which this application is stemming from. The application was made under Order 10 rule 1 of the Courts (High Court) (Civil Procedure) Rules 2017, (the CPR)

as read with section 2 of the Courts Act and section 26 of the Courts Act.

2. The Applicant averred that the claim arises out of a contractual relationship for the provision of insurance services, and as such it is a commercial matter that ought to have been commenced in the Commercial Division of the High Court. With this position, it had made an application before the registrar to transfer the matter to the commercial division but that the Magistrate Court declined to grant the application.

3. In opposition, the Respondent responded that the Applicant was supposed to appeal against the magistrate's decision and not make an application for review.

4. Further, the Respondent argues that the claims made before the magistrate court were basic and general civil claims which could be properly determined by the Magistrate Court. As such, the Applicant's position that the matter should not have been commenced in the magistrate court is incorrect.

5. We note from the Court record that on 2nd October, 2024, this Court, the Honourable Assistant Registrar, issued an 'Order calling for the record of George Jivason Kadzipatike t/a Jivason & Company vs NICO General Insurance Company Limited Mzuzu PRM Criminal Case No. 1201 of 2024 to be reviewed by the High Court.' The Court went on to direct that the Magistrate Court was to immediately forward a record of the parties herein for a review of the order that had been made on 3rd September, 2024. The Order went on to stay the hearing of the

matter before the Magistrate Court pending the determination of the review by the High Court, Commercial Division.

6. In light of this Order, this Court neither saw any step taken by the Respondent challenging its legality nor validity. Despite the Order quoting the citation as having being registered as a criminal case, everything else points to the fact that the review pertains to the same matter that is not criminal and is before this Court. We believe this was the problem of Counsel copying and pasting from other similar orders. Nevertheless, the substance of the Order dated 16th October, 2024 is crystal clear that this Court is to review the decision of the Magistrate Court made on 3rd September, 2024. The Order does not speak of an appeal. We therefore find irrelevant the arguments advanced by the Respondent that this application should have come by way of appeal and not a review as the Court had already pronounced itself. Accordingly, we proceed to review the decision and all steps taken at the Magistrate Court.

7. The Applicant quoted section 26 of the Courts Act. It is in the following words:

(1) In addition to the powers conferred upon the High Court by this or any other Act, the High Court shall have general supervisory and revisionary

jurisdiction over all subordinate courts and may in particular but without prejudice to the generality of the foregoing provisions, if it appears desirable in

the interest of justice, either of its own motion or at the instance of any party or person interested at any stage in the matter or proceeding, whether

civil

or criminal in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to such subordinate court

directions as to the further conduct of the same as justice may require.

(2) Upon the court calling for any record under sub-section (1) the matter or proceeding in question shall be stayed in the subordinate court pending further

orders from the court.

8. The issue to be reviewed is whether surrounding facts qualifies the matter that it was supposed to be commenced in the Commercial Division of the High Court and not the Magistrate Court.

9. We begin by looking at the law giving jurisdiction to the Magistrate's Courts as well as the High Court, Commercial Division.

10. Section 39(1) of the Court's Act Provides that '*subject to this or any other written law, in exercise of their civil jurisdiction of the courts of magistrates shall have jurisdiction to deal with, try and determine any civil matter whereof the amount in dispute or the value of the subject matter does not exceed...*' and as provided for under the amendment to the Court's Act, 2022, the new amount is MK50,000,000 for the Resident Magistrate Court..

11. Section 2 of the Court's Act defines 'civil matter' as, 'a civil matter that is not commercial, criminal, family or probate matter.'

12. The same section 2 has defined a commercial matter as 'a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including -

- a. the formation or governance of a business or commercial organization;
- b. the contractual relationship of a business or commercial organization;
- c. liabilities arising from commercial or business transactions;
- d. the restructuring or payment of commercial debts;
- e. the winding up of companies or bankruptcy of persons;
- f. the enforcement or review of commercial arbitration award;
- g. the enforcement of foreign judgments of commercial matters subject to the provisions of the law;
- h. the supply or exchange of goods and services;
- i. banking, negotiable instruments, international credit and similar financial services;
- j. insurance services; or
- k. the operation of stock and foreign exchange markets,

I. the operation of stock and foreign exchange markets, in the event of doubt as to whether a matter is commercial or not, the judge at the outset or during the course of the action, shall have power to resolve the issue;"

13. Section 6A (1) (b) of the Courts Act provides, *'the High Court shall have the following divisions- the Commercial Division which shall hear any commercial matter;'*

14. Both parties quoted the case of *Lilongwe City Council v Khuleya*, Civil Cause Number 668 of 2018 at length. Of more importance to us is the issue of cut-off point as a determining factor of whether a matter should be deemed one of commercial significance or not. The Court reasoned thus, *'I am fortified in my view that the sum of K2,000,000.00 should be the cut-off point by the fact that the maximum civil jurisdictional limit of the Magistrate's Court in terms of monetary value is K2,000,000.00. I have no doubt that Parliament had this fact in mind when it chose to define a commercial matter as "a civil matter of commercial significance"'.*

15. At time of deciding the *Khuleya* case, it is clear that the jurisdiction of the Magistrate's Court was MK2, 000,000.00. With the amendment of the Court's Act, the jurisdiction of the Magistrate Court was modified upwards to MK 50, 000, 000.00. It would seem to us that with the revision upwards, and the Respondent noting that their claim was below the threshold resorted to commence

proceedings in the magistrate court. This is also stated in paragraph 4.3 Respondent's skeleton arguments, it states, '*we recognize that the Commercial Division of the High Court has jurisdiction to hear any "civil matter of commercial significance". However, we strongly believe that the monetary value of the claim herein is very minimal for the Commercial Division to handle the matter.*'

16. We find the Respondent's quote in paragraph 4.3 rather too simplistic. It would be apparent that quoting the whole provision of the law would have resulted in an accurate outcome. What is noted is that the Respondent attempted to take some parts from the definition of a commercial matter in section 2 and slot it in section 6A 1 (b) of the Courts Act. However, as would be seen in the preceding paragraphs, there is more to what constitutes a commercial matter,

17. Again, looking at the phraseology of the section defining a commercial matter, nothing is said of there being a cut-off point in terms of monetary value of the claim. This is why in **Vanessa Thandeka Banda v Intercapte Bus Company**, Commercial Cause No. 174 of 2016, Mtalimanja, J deciding during the legal regime of the High Court (Commercial Division) Rules, 2007 stated that, '*an examination of the Statement of Claim is imperative in order to effectively determine whether this action is a commercial matter within the scope of O.1, r.5 of the Rules.*' By examining the statement of case, we are not focusing on the sum involved, but the nature of the case itself. This is because there would be businesses that have a small transaction and be commercial in nature, and then there would also be claims involving substantial sums of money that are not commercial at all.

18. In **Lovemore Moyo v Antonio de Almeida**, Commercial Case No. 23 of 2019, in discussing what the commercial matter entails, the Court identified key elements for a matter to qualify as such:

In my understanding, the definition consisted of three crucial elements. For a matter to qualify as a commercial matter, it must be:

- a) a civil matter;*
- b) of commercial significance; and*
- c) it must arise out of or it must be connected with any relationship of a commercial or business nature.*
- d) the relationship maybe contractual or not.*

In my considered view, elements (a), (b) and (c) must all be present for the matter to qualify as a commercial matter. It is only element (d) that is not a mandatory requirement. Thus, apart from being civil, the matter must of necessity have commercial significance and must arise out of or be connected with any relationship of a business or commercial nature. Commercial significance alone does not suffice. It is the combination of commercial significance and a commercial or business relationship that turns a civil matter into a commercial matter.

19. What is deduced from the law is that the definition of what qualifies as a commercial matter is more about the context and purpose of the transaction. Is it related to business or commerce? Nothing is said about the claim sum being a

determining factor. In fact, if the legislatures had wanted the claim sum to be a determining factor, the same could have been provided as it has been done by the jurisdiction of the magistrate courts, the distinction between the Resident Magistrate Courts and First Grade, Second Grade and so on.

20. In our view, the phrase '*commercial significance*' should not be read to not signify the claim sum but that the matter has a significant connection to business, trade, or commerce, that it has significant implications for business or commercial interests.

21. What can be clearly drawn from the law and the discourse is that all commercial matters are civil matters, but not all civil matters are commercial matters. 22. In fact, going back to section 2 of the Court's Act, looking at the definition of what is a commercial and a civil matter, the law could not have been clearer than it is, regarding what entails a commercial matter.

23. Reading together sections 39(1), and section 2 of the Court's Act, the outcome is that a magistrate court has jurisdiction to preside over civil matters. We find it very informative that the same Act has defined commercial and civil matter separately in the same provision and the distinction between the two has also been highlighted. Surely, if the framers of the provision had meant for the magistrates to adjudicate commercial matters, the provision would have indicated that. Besides, the word 'any' in section 6A 1 (b) of the Courts Act, '*the Commercial Division which shall hear any commercial matter*' would have been omitted. Hence our finding that the law has not accorded the magistrate courts

the powers to hear and determine commercial matters.

24. Coming to the nature of the claim before us, we looked at the statement of case that had been filed before the resident magistrate court. The claim arises out of a lawyer's professional indemnity insurance contract. The Respondent herein alleged that the Applicant in these present proceedings had breached the terms of the contract by failing to indemnify the Claimant. Aided by the contents of the statement of claim filed at the commencement of proceedings in the magistrate court, and keeping in mind that pleadings set the agenda before court, it is crystal clear that the claim arises out of a contractual relationship between the two parties herein, the parties having entered into a Lawyers Professional Indemnity Insurance Contract in or around January 2024. It is our finding that this is indeed a commercial matter as it falls under the definition of the commercial matter defined under section 2, especially sub-sections (b), (c) and (j) of the Court's Act.

25. On this premise therefore, and upon a finding that the magistrate court does not have jurisdiction to hear and determine commercial matters, we hold that this case ought to have been transferred to the commercial division of the High Court at the earliest opportunity.

26. We therefore proceed to nullify all the steps that were taken and decisions made by the Resident Magistrate Court. Let the Respondent if he so desires commence the proceedings in the Commercial Division, High Court. For the avoidance of doubt, the said commencement shall attract the prevailing fee for

commencement of proceedings in the Commercial Division.

27. As costs are a discretion of the Court, and that they follow a cause, the Applicant having emerged successful in its application is awarded costs.

Delivered in Chambers this 24th June, 2025