Urban Mkandawire vs Isaac Nihaka and Others

Court:	Supreme Court Of Appeal
Bench:	The Honourable Justice L.P Chikopa SC JA
Cause Number:	Miscellaneous Civil Application No. 56 of 2023 (Being High Court of Malawi, Principal Registry, Miscellaneous Civil Cause Number 12 Of 2022)
Date of Judgment:	August 18, 2025
Bar:	The Applicant and Unrepresented. Kajawo, Counsel for the Respondents

Head Notes

Civil Procedure – Appeal – Procedural competence – Application to set aside High Court ruling – Dismissed for procedural incompetence.

Civil Procedure – Appeal – High Court decision – Proper procedure for challenge – Appeal to the Supreme Court of Appeal, not a motion to set aside.

Civil Procedure Courts – Judicial Resources – Wasting of court resources – Advice to serial litigant to conserve court time and treasury.

Summary

The Applicant approached the Supreme Court of Appeal by way of a motion to set aside a ruling delivered by Honourable Muhome J. on 14 May 2025. The dispute originated in the subordinate courts, where the Applicant, having sued the Respondents for K768,500.00, was successful and the principal sum was paid. The Applicant, however, remained dissatisfied because the trial court had not awarded him interest on the sum owing. He subsequently attempted to obtain this interest through various applications in the High Court and the Supreme Court of Appeal, arguing incorrectly that the trial court had, in fact, awarded the interest and the High Court merely needed to enforce it. The High Court, before Honourable Muhome J., reviewed the lower court record and found that the Applicant was never awarded interest; his claim for it was dismissed.

The Applicant brought a motion to the Supreme Court of Appeal to set aside Justice Muhome J.'s ruling on grounds of serious procedural irregularities, denial of the appellant's right to be heard and the court's failure to enforce a ruling. The Court, having dealt with the Applicant, dismissed the motion with costs. The Court held that the motion was without merit, ill-advised and procedurally incompetent. The decisive rationale was that if the Applicant was dissatisfied with the High Court decision of Honourable Muhome J., the proper procedure was to appeal to the Supreme Court of Appeal and not to bring a motion asking the Court to set aside the decision. The Court advised the Applicant, whom it noted was a serial litigant wasting valuable judicial resources, to decide exactly what relief he was seeking and to allow the courts to use their resources for other litigants. The Court consequently ordered that, going forward, the Applicant must appear before the Registrar of the court below within 28 days to determine what business he has and agree on how best to dispose of his case with due regard to time, procedure, and cost. The Court further ordered that the Applicant would thereafter only be allowed to come to the Supreme Court of Appeal in the

context of an appeal.

Legislation Construed

Constitution of Malawi (s 104(1))

Statute

Supreme Court of Appeal Act (s 7(b), s 8(b))

Subsidiary Legislation

Civil Procedure Rules 1998 (UK) Order 3 Rule 1(7)

Judgment

The applicant is a serial litigant.

By a motion returnabte on July 29, 2025 but that was eventually heard on July 31, 2025 he brought a motion to set aside a ruling dated May 14,2025 by Muhome, J on grounds '**of serious procedural irregularities, denial of the appellant's right to be heard and the court's failure to enforce its own ruling**'. We dismissed the motion with costs. We give the reasons therefor.

The motion was made '*pursuant to the procedural precedent established* in ***CA 16/2015 Urban Mkandawire v Council of the University of Malawi,*** *MSCA judgment Dated October 19, 2016; CPR[UK] Oder 3 Rule1[7] as read with Section 8[b] and Section B[b] of the Supreme Court of Appeal; as tread with the Court's general grant of power undersection 104[1] of the Constitution of Malawi*'.

The motion was supported by a long affidavit sworn by the applicant.

The motion is opposed and there is an affidavit in support thereof sworn by Counsel Kajawo who appeared for the respondents.

We have dealt with the applicant in relation to this very matter before. He continually refuses to be represented by counsel even though it is clear that such course of action does no good to either his case or the proper management of this case.

Be that as it may the very simple truth in this case is that the applicant sued the respondents for the sum of K768,500.00 in the subordinate courts. He was successful and the money has since been paid to him. He however was, and still is, unhappy that the trial court did not award him interest on the sum owing. He decided to bring the matter to the High Court.

There is some doubt as to how the question of interest was brought to the court below. It appears it was initially by way of appeal. In the course of his sojourn about the High Court it is clear that the applicant has effectively abandoned the appeal. He instead

has decided to get the interest on the back of various applications premised on the unfounded claim that the subordinate[trial] court in fact awarded him interest and that all the High Court needs to do is to somehow order payment of the same to him.

He has been with this matter before Hon. Madise J[as he then was), Hon Kayira, J. and most recently with Hon. Muhome J. He even appeared before us between January and March 2024. He was, just as now, all over the place as to exactly what he wanted from this court. We dismissed his application and, in a ruling dated March 19, 2024 advised him to go back to the High Court, finish whatever business he has there and only come back to this court on appeal or in the context of an appeal if he was dissatisfied with whatever decision the High Cort would be minded to make about his case.

He has since appeared before Hon. Muhome J. who in a ruling dated May 14, 2025 dismissed the applicant's claim for interest with costs. In the court's view and going by the record of the lower court the applicant was never awarded interest. His claim for interest was actually dismissed. The applicant, in the Judge's further view, should have appealed to the High Court if he was dissatisfied with the trial court's refusal to award him interest and not proceeded, as he did, via a summons.

It is Hon Muhome J's decision which the applicant prays we should set aside.

We will not belabour the issues. The motion is, like we informed the applicant on the date of its hearing, without merit, ill- dvised and procedurally incompetent. If he is dissatisfied with the decision of Hon Muhome J. the way forward is to appeal to this court and not through a motion asking this court to set aside such decision.

The above aside we have a few words for the applicant. We feel obliged to inform him that he is wasting the courts' valuable resources especially time and treasury. It is quite possible that he has time and money to waste. These courts do not. We thus most respectfully advise him to allow us use the little amount of resources we have for the benefit of those many others who are in need of our services.

It is also, if we might say so, time that the applicant made up his mind about exactly what it is that he is seeking from these courts. It was clear during the hearing of this application and before that the applicant was at sea not just about the processes of the courts, which is understandable, but also about the reliefs he was seeking. If one does not know where they are going, they will never get there. The applicant might wish to heed those words.

Going forward, and in the circumstances, it is also our order that the applicant should, within the next 28 days from this date appear before the Registrar of the court below, determine what business he has in that court and agree with the said Registrar on how best to dispose of his business whilst paying due regard to time, procedure and cost. Whichever way his business goes the applicant will then only be allowed to come to this court in the context of an appeal.

Dated at Blantyre this 18th day of August, 2025.