



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
PRINCIPAL REGISTRY
MSCA MISCELLANEOUS APPLICATION NO 68 OF 2024
[Being High Court Mzuzu Registry Miscellaneous Application No. 8 of 2024]

Before Justice Kondowe]

CASTLE MALAWI LTD.....APPELLANT

-and-

JOSEPH MPHANZA.....RESPONDENT

Coram; **Hon. Mr Justice D. Madise SC JA**

Mr. Gondwe for appellant

Mr. Mbulo for the respondent

Reporter: Mr Chinkono

RULING

1. On 23rd December 2024 I granted the appellant an ex-parte order for leave to appeal and an order of stay of execution of the judgment of the Industrial Relations Court [IRC] which awarded the respondent the sum of MK 609,089,720 as compensation for unfair dismissal. The application was brought pursuant to Section 7 of the Supreme Court of Appeal Act as read with Order 1 rule 18 of the Supreme Court of Appeal rules. On 29th January 2025 I heard both parties and the order of stay was sustained on condition that the appellant must prosecute the appeal within 21 days.
2. On 18th March 2025 the respondent filed a notice of non-compliance. According to the affidavit of counsel Mbulo the appellant had failed to prosecute the appeal within 21 days as directed by the court on 29th January 2025. That the appellant did not seek leave to extend time within which to appeal. Counsel Mbulo stated that the appellant had not taken any step to prosecute the appeal. In that regard the respondent filed an application for an order vacating the stay. In response Counsel Victor Gondwe for the appellant stated that they were unable to prosecute the appeal within 21 days because the record of appeal was not ready. That since the order of 29th January of 2025, the appellant has been following up with the IRC to ensure that the record of appeal is ready. Unfortunately, due to circumstances beyond the appellants control the record is still being vetted by the Industrial Relations Court.
3. That the duty to prepare the record of appeal falls squarely on the IRC and the appellant has no control of the process whatsoever. The appellant denied that they had delayed in finalizing the preparations of the record of appeal to enable them to prosecute the appeal. The appellant stated that in the interest of justice the order of stay of execution be sustained pending the hearing of the appeal.
4. Having listened to both sides I'm of the considered view that the appellant did all they could to ensure that the record of appeal was ready by following up with the registrar of the IRC but to no avail. The fact that the record of appeal is not ready and the appeal has not been

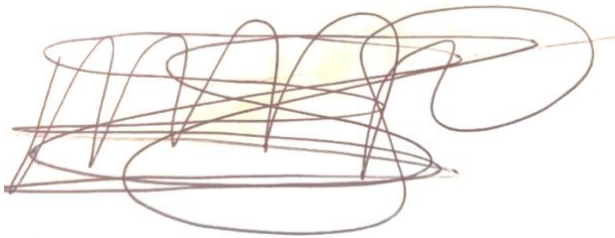
prosecuted is not the fault of the appellant. In these premises I decline to grant the application to vacate the order of stay. The order of stay is hereby sustained on the following conditions.

1. The registrar of the IRC is hereby ordered to produce the record of appeal within 14 days.
2. The appellant must prosecute the appeal within 14 days thereafter.
3. The appellant must deposit into court the remaining judgment sum, within 7 days so that neither party benefits.

Each party to pay their own costs.

I so order

Made in chambers at the Malawi Supreme Court of Appeal at Blantyre on 14th April 2025



Dingiswayo Madise SC JA