



REPUBLIC OF MALAWI

IN THE SUPREME COURT OF APPEAL

MSCA MISC CIVIL APPLICATION NUMBER 63 OF 2024

*(Being High Court, Commercial Division, Lilongwe, Commercial Cause No. 180 of 2024)*

**BETWEEN**

DAVID ONYANGO MOYL.....1<sup>ST</sup> APPLICANT  
DAUD SEAUTON LIMITED.....2<sup>ND</sup> APPLICANT

**AND**

JESSE NDAMBALA.....1<sup>ST</sup> RESPONDENT  
AFRICAN ENERGY SUPPLIERS LIMITED.....2<sup>ND</sup> RESPONDENT

**CORAM** : HON. JUSTICE F.E. KAPANDA SC, JA  
G. Taumbe & W. Chiwaya, Counsel for Applicant  
S. Chirwa & M. Banda, Counsel for the Respondent  
E. Minikwa, Recording Officer

**ORDER**

After reviewing the application, affidavits, and skeleton arguments, the Applicants have presented a compelling case for a continuation of the stay of execution. Why does the Court say so?

**Serious Issues or Meritorious Appeal**

The Applicants assert that the judgment rendered by the lower court is fundamentally undermined by procedural flaws that merit careful examination on appeal. They emphasize that the court failed to articulate the reasons underlying its decision, which not only lacks transparency but also denies them an understanding of the basis for the ruling. This absence of reasoned judgment raises serious concerns about the judicial process, as it hinders the Applicants' ability to effectively challenge the decision.

Moreover, the Applicants argue that their defence was not given adequate consideration during the proceedings. They contend that key arguments and evidence presented were overlooked or inadequately addressed, suggesting a potential miscarriage of justice. This raises questions about

the fairness of the trial and whether the Applicants were afforded their right to a proper hearing, which is a cornerstone of the judicial system.

In addition to these claims, the Applicants point to procedural irregularities in the execution process undertaken by the Respondents. These irregularities could potentially illustrate a pattern of disregard for due process, further complicating the case. The Applicants contend that such irregularities not only call into question the legitimacy of the Respondents' actions but also add another layer of complexity that should be examined by the appellate court.

The legal implications of these claims are significant and warrant thorough appellate scrutiny. Should the Applicants be able to substantiate their assertions of procedural flaws and inconsistencies during the appeal, they may lay a strong groundwork for overturning the lower court's judgment. However, it is essential to note that merely highlighting procedural shortcomings may not be sufficient for a successful appeal. The Applicants must demonstrate that these irregularities had a substantial impact on the final outcome of the case. If they can effectively establish a direct correlation between the procedural errors and the harm suffered, the appellate court may be inclined to grant relief.

Ultimately, the strength of the Applicants' appeal will depend on their ability to connect procedural flaws to substantive injustices in a compelling manner. This entails not only identifying the errors but also articulating how those errors influenced the decision-making process, thereby affecting the substantive rights at stake.

### **Risk of Irreparable Harm**

The Applicants present a compelling case, emphasizing the severe consequences that could arise from the execution of the judgment against them. They articulate that such action would not only freeze their accounts but also bring their entire operational framework to a standstill, particularly for the 2nd Applicant, whose global enterprise heavily relies on maintaining financial fluidity to manage its various cross-border transactions and investments effectively.

This scenario goes beyond mere inconvenience, as the Applicants argue that the paralysis of a multinational operation would have cascading effects, potentially leading to widespread disruptions in their supply chain, delayed project timelines, and the inability to fulfil contractual obligations. The reputational damage stemming from such operational setbacks could be substantial, as business partners, clients, and stakeholders may question the reliability and stability of the 2nd Applicant, thereby undermining trust and future business opportunities.

Furthermore, the Applicants assert that the Respondents lack significant assets in Malawi, raising serious concerns regarding the viability of recovering any sums would they ultimately be owed if the appeal is successful. This point strengthens their position, as the threat of being unable to recoup the financial losses incurred from the execution of a judgment further compounds the risk of irreparable harm. If the appeal is ruled in favor of the Applicants, the absence of recoverable

assets from the Respondents suggests that pursuing justice through legal channels would ultimately be futile.

In light of these arguments, the Applicants maintain that the potential harm resulting from the execution of the judgment exceeds any perceived benefits and underscores the necessity for a stay of execution pending the outcome of the appeal. They assert that protecting their operational integrity, financial health, and reputation is paramount, and that allowing the execution to proceed would have catastrophic and far-reaching implications for their organization and its stakeholders.

Freezing business accounts and paralyzing operations constitutes a credible risk of irreparable harm, particularly for the 2<sup>nd</sup> Applicant, whose multinational operations depend on financial fluidity. The recoverability argument is persuasive, as the Respondents' financial status and lack of assets in Malawi cast doubt on their ability to reimburse funds if the appeal succeeds.

### **Balance of Convenience**

The Applicants assert that a stay of enforcement would effectively preserve the existing state of affairs while the appeals process unfolds, which they argue is critical to protecting their business from adverse effects. By maintaining the current situation, the Applicants can continue their operations without the looming threat of immediate enforcement actions that could disrupt their activities and lead to significant financial losses. They contend that such disruptions might not only affect their short-term operational capabilities but could also jeopardize long-term relationships with clients and stakeholders, ultimately threatening the sustainability of their business.

Conversely, the Respondents emphasize that any delay in enforcement would unfairly infringe upon their rights and interests established through the litigation process. They argue that the timely enforcement of the court's decision is essential to ensure they receive the remedies they are entitled to. Moreover, the Respondents have provided evidence demonstrating their financial stability and adherence to compliance measures, suggesting that they are well-positioned to absorb any temporary delay. This evidence serves to counter the Applicants' claims regarding potential recoverability, highlighting that the Respondents have taken steps to mitigate any risks associated with prolonged litigation.

In weighing the arguments, it becomes apparent that the Applicants face a significant risk of irreparable harm if the stay is not granted. This risk, which includes potential loss of business operations and damage to reputation, is a compelling reason to prioritize their request for a stay. On the other hand, while the Respondents may face inconvenience due to delayed enforcement, they have retained legal avenues through which they can ultimately seek payment if the appeal does not succeed. This means that, although the Respondents may experience some level of frustration, their rights will still be protected, and any financial interests they have can be pursued in due time.

In conclusion, the balance of hardships leans in favour of the Applicants, as their demonstrated risk of irreparable harm outweighs the Respondents' inconvenience of delayed enforcement. The Applicants' need to safeguard their business operations during the appeals process presents a compelling case for granting the stay. Meanwhile, the Respondents' financial stability and legal

options provide sufficient assurance that their interests will not be unduly compromised in the interim. Therefore, the arguments suggest that granting the stay is a prudent measure that upholds the principles of fairness and justice while allowing the legal processes to unfold without immediate prejudice.

### **Additional Considerations**

The Applicants have brought to the forefront the assertion that the Respondents commenced the execution process prematurely, thereby flouting established procedural norms that govern such actions. This claim is significant, as it not only raises questions about the legitimacy of the Respondents' actions but also underscores a fundamental aspect of legal proceedings: the importance of adhering to proper procedure.

By initiating execution before all requisite conditions and protocols were met, the Respondents may have compromised the integrity of the judicial process, which is designed to ensure fairness and due process for all parties involved. The Applicants argue that this procedural impropriety is not merely a technicality but rather a serious violation that undermines the legitimacy of the execution itself.

This point is particularly crucial in the context of their request for a stay of execution. Courts are generally reluctant to condone or reward parties who engage in conduct that disregards established legal protocols. By highlighting this premature action on the part of the Respondents, the Applicants strengthen their case for a stay, as they call upon the court to consider the implications of allowing procedurally flawed actions to proceed unchecked.

Moreover, the Applicants can argue that granting the stay aligns with the principles of justice and fairness. Allowing execution to continue, despite the procedural breaches, could set a precedent that diminishes the role of proper legal procedures in safeguarding the rights of individuals. Courts exist not only to deliver judgments but also to uphold the rule of law, and this situation provides an opportunity for the court to reinforce that principle by granting the stay.

In summary, the argument posited by the Applicants regarding the premature initiation of execution by the Respondents serves to bolster their request for a stay. It serves as a reminder that adherence to procedural norms is essential in the pursuit of justice, and that any actions taken in violation of these norms should not receive judicial endorsement.

### **Conclusion**

The application should succeed for the following reasons:

1. The Applicants have demonstrated that the appeal raises serious legal questions that merit consideration.
2. The risk of irreparable harm to the Applicants, particularly financial paralysis and the uncertainty of recoverability, outweighs the Respondents' inconvenience.
3. The balance of convenience favours preserving the status quo until the appeal is determined.

The Court hereby grants the order for the continuation of the stay of execution, ensuring that no irreversible harm occurs while the substantive issues are resolved on appeal. However, the Applicants should be cautioned about future procedural diligence.

Further, to ensure that no irreversible harm occurs while the substantive issues are resolved on appeal, and to balance the interests of both parties, the Court will impose conditions for granting the stay of execution and it will adopt measures that secure the Respondents' interests. Thus, to protect the Applicants while the appeal is pending, the Court grants a conditional stay of execution. Furthermore, the Applicants are allowed limited access to the funds in frozen accounts, subject to judicial supervision, to continue their business operations. Thus, the Applicants will be required to provide periodic financial statements to the Court to demonstrate that the funds are not being misused. The Court further orders expedited proceedings for the appeal so as to minimize delays and resolve substantive issues swiftly. It is the view of this Court that such an order will reduce prolonged uncertainty.

The Court desires to address the Respondents' concerns. Thus, to safeguard the Respondents' interests in light of the Applicants' foreign status and alleged lack of assets in the country, it makes the following orders:

**Order Security for Costs:** The Applicants should deposit 60 % of the equivalent to the judgment sum or provide a bank guarantee as security. This will ensure that the Respondents can recover the judgment amount if the Applicants lose the appeal, even if they lack assets in Malawi.

**Restriction on Asset Disposal:**

The Court hereby imposes an injunction preventing the Applicants from disposing of or transferring any assets outside Malawi without court approval during the pendency of the appeal. The Court is of the view that this will prevent the Applicants from evading liability by moving assets out of reach of the Respondent.

It is hereby further ordered that the Applicants should provide a formal undertaking to comply with any judgment against them, enforceable in Malawi. Further, the Court orders the Applicants to disclose their financial position, including any assets in Malawi or abroad, to reassure the Court about their ability to satisfy the judgment.

Further, in order to ensure compliance and protect both parties, there shall be periodic reporting to this Court requiring the Applicants to submit periodic updates on their financial and operational positions. Any changes in circumstances should be reported immediately so as to prevent abuse of the stay herein.

In sum, this Court Orders as follows:

1. A conditional stay of execution is hereby granted.
2. The Applicants are required to:
  - a. Deposit security in the form of cash or a bank guarantee within 7 days of this Order;
  - b. Refrain from transferring or disposing of assets without prior Court approval; and
  - c. Provide periodic financial disclosures to the Court every 30 days.
3. The Respondents retain the right to enforce the judgment immediately if the Applicants fail to comply with these conditions.
4. The appeal is to be expedited so as to minimize delays and resolve substantive issues swiftly. It must be set down in the next session.
5. Costs are in the cause

Each party is directed to comply with these orders within the specified timelines.

Made at the Supreme Court of Appeal at Blantyre

Dated this 19<sup>th</sup> day of December 2024.

  
**HON JUSTICE. F.E. KAPANDA, SC**  
**JUSTICE OF APPEAL**