



IN THE SUPREME COURT OF APPEAL

MISC CIVIL APPLICATION NUMBER 22 OF 2024

(Being High Court of Malawi, Lilongwe civil Registry Civil Case No.278 of 2022)

BETWEEN

MARTHA CHIWAYA-----APPELLANT/CLAIMANT

AND

BANJA LA MTSOGOLO LIMITED-----RESPONDENT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE JA

Sauti Phiri, Counsel for the Appellant

Soko, Counsel for the Respondent

C. Fundani, Recording Officer

RULING

1. This is an application for a discharge of the order staying enforcement of judgment. The application is brought under Part 52.16(a) of the Civil Procedure Rules. The application is supported by an affidavit filed by Martha Chiwaya the Appellant.

2. The Appellant commenced a case of negligence against the Respondent. A default judgment was entered against the Respondent. The matter proceeded for assessment of damages and the Applicant was

awarded MK40 million to be honoured within 7 days. The Respondent ex-parte obtained a stay order.

3. The Appellant says that the stay order was granted based on wrong facts that were given by the Respondent. The facts presented by the Respondent were that the Appellant is a person without means to pay back the damages. On the 18th of April 2014, an application was brought in the Court below to vacate the order but the application was not granted. Instead, the Court below ordered that the Respondent should pay into court 50% of the damages assessed.

4. In her affidavit, the Appellant said that she got employed by Malawi Red Cross in 2013 as shown on exhibit MC1. In 2016, she was transferred to Luchenza in Thyolo District where this present matter arose.

5. In obtaining the stay order, the Appellant says that the Respondent had informed the Court below that the Appellant was self-employed and that she operates a tailoring shop in Area 25 in Lilongwe. The Appellant says that most of the bills associated with the scans and the surgery in issue were actually borne by herself and her employer as shown in exhibit MC2. That on 23rd of October 2023, she had sworn another affidavit opposing the stay in which she disclosed that she does not own a shop in Area 25 nor that she is self-employed.

6. The Appellant therefore says that since the order of stay was granted on erroneous facts, the same should be discharged.

7. The Respondent filed four pages of chronology of events, an affidavit by Dumisani Mwenitete, a notice of payment into court and skeleton arguments.

8. I have gone through the affidavit of Dumisani Mwenitete. My observation is that it does not at all respond to the issues that were raised in the affidavit of Martha Chiwaya the Appellant. For avoidance of doubt, the Appellant was saying that in obtaining the stay order, the Respondent had supplied erroneous facts to the court. My expectation was that the

Respondent would be rebutting this in the affidavit. Unfortunately, this was not done.

9. The Respondent has filed in a very impressive chronology of events as well as skeleton arguments. But the core issue was whether the stay order was granted through suppression of information by the Respondent. This fundamental issue was not at all addressed and is fatal to the Respondent's side.

10. I have looked at the issues raised by the Respondent as to whether this court has jurisdiction to entertain the Appellant's application pursuant to Order 1 Rule 18 of the Rules of the Supreme Court. In my considered view, i find that the order of the Assistant Registrar dated 18th of April 2024 was a refusal by the Court below to the application made by the Appellant. Therefore, the Appellant was entitled to re-apply before this Court.

11. My evaluation of the matter is that the Court below was misled on the financial capabilities of the Appellant. That might have been a deliberate road map taken by the Respondent in order to win the heart of the Assistant Registrar which they did.

11. I find that this application succeeds with costs to the Appellant.

Made this 19th day of June 2024 at Blantyre



HONOURABLE JUSTICE M.C.C MKANDAWIRE JA
JUSTICE OF APPEAL