

**IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE**

**MISCELLANEOUS CIVIL APPLICATION NO. 52 OF 2024**

[Being Commercial Cause Number 293 of 2022 High Court of Malawi  
Commercial Division Lilongwe Registry]

**BETWEEN**

**MULLI BROTHERS**

**APPLICANT**

**AND**

**NBS BANK PLC**

**RESPONDENT**

**ATTORNEY GENERAL**

**THIRD PARTY**

**CORAM:**

**HON. JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE**

Khonyongwa [Mr.], of Counsel for the Applicant

Kalua [Mr.] of Counsel for the Respondent

Third Party, Absent/Not Represented

Minikwa [Mr.], Court Clerk

**RULING/ORDER**

On November 8, 2024 we granted the applicant a stay of execution pending appeal. The application was brought *ex parte*. We also ordered that an *inter parte* application in relation to the stay be filed with this court within 21 days from

November 8, 2024. We heard the *inter parte* application on December 20, 2024. This is the ruling/order in respect thereof.

During the hearing there was also raised the question of a freezing order obtained by the respondent on December 2, 2024. We will comment it later herein.

For the record the application for a stay is opposed by the respondent.

At the center of this application is an order dated May 20, 2024 by the court below. The order is supposed to be the fruits a court supervised mediation between the parties. The applicant contend that the parties were still discussing when the Respondent's counsel took a draft order to the court below and presented the same as having been agreed to by both parties when such was not the case. Through an affidavit sworn by their counsel the applicant contend that the parties were still discussing the agreement which is the applicant not only refused to sign the draft order but also why eventually there is no mediation order signed by both parties. We were also shown WhatsApp exchanges testifying to the above narrative.

When they became aware of this order the claimant says they went to the court below and asked that the same be set aside. The court below refused. They were also refused a stay of the order in issue.

The applicant then approached this court for a stay of the order of May 20, 2024 pending an appeal against the ruling of September 3, 2024 refusing to vacate the said order.

The respondent through an affidavit filed by their counsel tells a completely different story. There is nothing irregular about the order of May 20, 2024 in their view. It is the product of an agreement arrived at via court supervised mediation. The court below was therefore correct in not only endorsing the order but refusing to set it aside for not being the product of mutual consensus. This court should equally refuse to stay the order pending any appeal against the refusal referred to above.

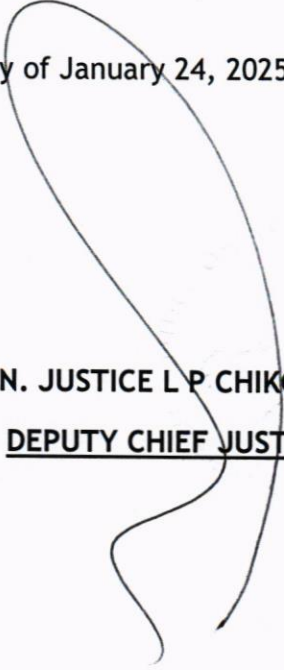
This matter is about the two stories told by counsel herein one of which must have economized with the truth. We are not at this stage able to say which story this is.

Suffice it to say that the order in question is, as it presently stands, as capable of being the product of less than full honesty as it is able of being the product of full candor. It is our considered view that in those circumstances the interests of justice weigh more towards granting a stay of the order of May 20, 2024 until the appeal against the Court below's refusal to set aside the said order is disposed of.

About the freezing order we made it clear during the hearing of this matter that both the respondent and the court below proceeded in error. In clear disregard of our hierarchy of courts and an order stay granted by this court. The freezing order is hereby discharged. Costs shall be in the cause.

We so order.

Dated at Blantyre this 24<sup>th</sup> day of January 24, 2025.



**HON. JUSTICE L P CHIKOPA SC**  
**DEPUTY CHIEF JUSTICE**