

IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE  
MSCA MISCELLANEOUS CIVIL APPLICATION 31 OF 2024

[From High Court, Principal Registry, Civil Division, Appeal Number 19 of 2022  
Being IRC Matter No 84 of 2018]

BETWEEN

TELECOM NETWORKS MALAWI PLC

APPLICANT/APELLANT

AND

DAN CHIDZANJA & 46 OTHERS

RESPONDENTS

CORAM: HON. L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

Bhana Mr. of Counsel for the Applicant/respondent

Mwangomba Mr. of Counsel for the Respondent/applicant

Masiyano Ms. Court Clerk

RULING/ORDER

We heard four applications in this matter. First was an *ex parte* application from the applicant for a stay of execution. We granted the order and *inter alia* further ordered that an *inter parties* application be filed within 14 days of the immediately foregoing order to decide on the continued subsistence of the order of stay.

Second we heard an *inter parties* application whether or not to extend the order of stay. We reserved the ruling.

Third was an application from the applicant praying for an order for 'disclosures/production of documents'. It was heard together with the second application. The ruling was also reserved.

Fourth was an application from the respondent seeking a vacation of the order of stay granted *ex parte*. The ruling was also reserved.

Both parties filed affidavits in support and against the applications together with written arguments for which we are most thankful.

The factual context is not complicated. The respondents were awarded, by the Industrial Relations Court, the sums of K625,998,475.22 and K68,026,356 in relation to their claims against the applicant. The total amount was on appeal in the High Court reduced to K610,170,401.38. Half of that sum has already been paid by the applicant. They now pray that payment of the balance be stayed pending the hearing of an appeal against the judgment of the High Court. A prayer opposed by the respondents.

From the applicant we have heard the usual arguments about their appeal having merits, about the respondents' impecuniosity, nugatory appeals and how the interests of justice weigh more towards the sustenance of the stay than a vacation. We also heard that the prayer for disclosures and documents was vital in view of the fact that the respondents have been unwilling to voluntarily make full disclosures about their financial position.

The respondents on the other hand think that the applicant's applications are no more than a gimmick to delay these proceedings and further keep them away from the proceeds of a successful litigation. Specifically about the prayer for disclosures and documents they think that this should have preceded the application for stay and the allegation that the respondents are persons without means. As it is the application is brought *mala fides* and should therefore be dismissed with costs.

When everything is said and done whether or not to grant a stay, indeed any prayer, is in the judicious discretion of the court before whom the application is made. Guided primarily by what is deemed by the court to be in the interests of justice.

In the instant case we already granted a stay. We did that because we believed it was in the interests of justice that a stay be granted. We have now heard the respondents. And the applicants again. We are still of the view that the interests

of justice weigh more towards continuing the stay than vacating it. The stay will therefore continue subject to our further orders/directions hereinbelow. Meaning as of necessity that the respondents' application to vacate the stay has failed.

Coming to the application for 'disclosures/production of documents' it is in the circumstances of this case otiose. It was meant to support an application for a stay. The stay has been granted notwithstanding the presence/absence of the information/documents sought. The application is dismissed for irrelevance.

Having determined as above it is our further order that the parties should within 28 days from this day present themselves before the Registrar of this court and thereat agree on a roadmap towards the determination of the appeal herein. Needless to say the roadmap will be an order of this court. Any disregard thereof will therefore attract sanctions.

This matter is continuing. Costs will therefore be in the cause.

Dated at Blantyre this of 30<sup>th</sup> day of October, 2024.

L P CHIKOPA SC

DEPUTY CHIEF JUSTICE