



**IN THE SUPREME COURT OF APPEAL
PRINCIPAL REGISTRY
MSCA MISC CIVIL APPLICATION NO. 34 OF 2025**
(Being High Court, Civil Division, Principal Registry, Civil Appeal No. 16 of 2024)

BETWEEN:

MALAWI SAVINGS BANK (FDH BANK LIMITED).....APPELLANTS

AND -

JUSTIN CHIKAONDA & 211 OTHERS.....RESPONDENTS

CORAM: HON JUSTICE F.E. KAPANDA, SC, JA.

C. T. Gondwe, of Counsel for the Appellants

A. Ndhlovu, of Counsel for the Respondents

E. Minikwa Court Clerk | Recording Officer

Date of Hearing: 30 July 2025

Date of Judgement: 30 August 2025

RULING ON APPLICATION FOR STAY OF EXECUTION PENDING APPEAL

INTRODUCTION

This Court is seized with an application by the Appellant seeking an unconditional stay of execution of the judgment of the High Court delivered on 31st January 2025 and the subsequent order on assessment of damages dated 30th April 2025, pending the determination of the appeal lodged herein.

The High Court, in its ruling of 30th June 2025, granted a conditional stay of execution requiring the Appellant to pay twenty percent (20%) of the judgment sum, amounting to MK993,000,000.00, on or before 7th July 2025. The Appellant contends that this condition is unjust and renders its right of appeal nugatory.

FACTUAL BACKGROUND

Chancy Thomu Gondwe asserts that the matter is urgent due to imminent enforcement proceedings that may render the appeal nugatory if the conditional payment of 20% of the judgment sum is enforced. He states that the Appellant had previously paid the minimum compensation ordered by the Industrial Relations Court, but that the High Court failed to consider this payment during its assessment of damages.

The Appellant argues for an unconditional stay on several grounds. It is contended that the sum payable under the conditional stay (MK993 million) is substantial, and its recovery would be logistically impracticable if dispersed among the 212 respondents nationwide. Gondwe emphasizes that the Appellant, as a prudentially regulated bank, does not pose any insolvency risk, and thus can easily satisfy the judgment should the appeal ultimately fail.

Further, Gondwe submits that the High Court erred in simultaneously awarding both severance allowances and redundancy benefits, contrary to the Employment Act's principle against double compensation. Additionally, he states that the High Court unjustifiably increased compensation by 40% without a lawful basis. Gondwe points out that three of the Respondents (Gladys Kamoto, Patricia Namacha, and Pilirani Kamoto Masingani) were incorrectly included in the judgment due to inadequate proof of employment.

Gondwe emphasizes that a prima facie case has been demonstrated, indicating strong prospects of success on appeal. He further argues that the balance of convenience supports maintaining the status quo, as the Respondents have already received their minimum compensation. The Appellant contends that payment of the 20% conditional amount would cause irreparable prejudice due to practical difficulties associated with recovery in the event of a successful appeal.

Moreover, Gondwe highlights that the Appellant has proactively taken steps to expedite the appeal process, including securing a date for settlement of the appeal record on 6th August 2025. This, he argues, demonstrates the Appellant's commitment to prompt resolution and judicial efficiency.

Summary of Facts from the Affidavit of Ackim Ndhlovu (Respondents)

Ackim Ndhlovu, for the Respondents, opposes the stay application, asserting that the grounds advanced by the Appellant lack merit and do not justify depriving the Respondents of the fruits of their successful litigation. Ndhlovu challenges the Appellant's claim regarding the irrecoverability of the conditional payment, pointing out that the Appellant has not substantiated the allegation that the Respondents would be unable to repay the money if the appeal is successful. He further argues that the conditional payment is relatively modest when distributed among 212 individuals.

Ndhlovu contends that the Appellant's financial standing or regulatory status is not a valid legal justification for withholding the Respondents' entitlement, as assertions of financial stability must be supported by credible evidence. He emphasizes the maxim "justice delayed is justice denied," pointing out that litigation has been ongoing since 2016 and any further delays would exacerbate the hardship suffered by the Respondents.

Ndhlovu further highlights that not all Respondents have received the minimum compensation ordered by the Industrial Relations Court. He specifically identifies three individuals (Gladys Kamoto, Patricia Namacha, and Pilirani Kamoto Masingani) who remain unpaid, despite clear orders in their favor.

He argues that determining the merits of the appeal is solely within the jurisdiction of the appellate court, and it is not appropriate for the Appellant to pre-judge the merits. The Respondents describe the application for unconditional stay as vexatious and frivolous, deliberately aimed at unjustifiably prolonging their suffering and withholding their lawfully adjudicated compensation.

Appellant's Reply Affidavit (Gondwe)

In response to the Respondents' affidavit, Gondwe reiterates that the prospects of success of the appeal are a legitimate and critical consideration. He notes that an earlier interim relief granted by the Supreme Court recognized the appeal as raising substantial legal questions, thereby establishing a prima facie case for the Appellant.

Gondwe addresses the three unpaid Respondents' claims separately, stating that these individuals could pursue separate enforcement measures. He regards their inclusion as a diversionary tactic and argues it should not impede the granting of a general stay of execution. Furthermore, he refutes the Respondents' characterization of the conditional payment as "small," emphasizing that MK993 million is substantial by any measure and contending that there is no reliable evidence provided by the Respondents regarding their capacity to repay.

He reaffirms the substantial prejudice to the Appellant should the conditional amount be paid, highlighting logistical impossibilities of recovering such a significant sum dispersed among numerous individuals. Gondwe reiterates the Appellant's genuine intention to expedite the appeal and notes the proactive steps already undertaken, further underscoring the seriousness with which the Appellant views the matter.

In conclusion, the Appellant seeks an unconditional stay of execution to preserve the status quo and prevent irreparable prejudice, emphasizing logistical challenges in reclaiming any conditional payment post-appeal. Conversely, the Respondents insist there is no credible prejudice to the Appellant and highlight their longstanding pursuit of justice, requesting immediate payment of the awarded 20%. The determination before the Court involves carefully weighing the competing considerations of irreparable harm, financial prejudice, potential success of the appeal, and fairness to both parties.

THE GROUNDS OF APPEAL

The appellants, Malawi Savings Bank (FDH Bank) Limited, being dissatisfied with the decision of the Court below, appeal to this Court on the following grounds:

1. Consultation Prior to Retrenchment:

The Court below erred in law in holding that the appellants were under an obligation to consult the respondents before effecting retrenchment,

whether by operation of law or by virtue of any unequivocal undertaking allegedly made to the respondents.

2. Nature and Sufficiency of Consultation:

The Court below erred in law in finding that the meetings held between the appellants and the respondents in April 2016 did not amount to proper consultation and genuine engagement as required by law.

3. Change Champions and Ulalo Magazine:

The Court below erred in law in holding that the introduction of "Change Champions" and the dissemination of the "Ulalo Magazine" did not constitute genuine consultation within the meaning of the law.

4. Binding Nature of Management Assurances:

The Court below erred in law in holding that the appellants were bound by assurances allegedly made by management to certain employees regarding the security of their employment, and that such assurances constituted enforceable undertakings.

5. Finding of Unfair Dismissal:

The Court below erred in law in holding that the lack of consultation by the appellants amounted to unfair dismissal contrary to the spirit and letter of section 57 of the Employment Act.

6. Consideration of Employee Contribution:

The Court below erred in law in holding that the respondents' lack of contribution to their termination by way of retrenchment ought to be a factor in determining the amount of compensation payable.

7. Entitlement to Redundancy Benefits and Severance Allowance:

The Court below erred in law in holding that the respondents were entitled to both redundancy benefits pursuant to the appellants' Conditions of Service and severance allowance under section 35(1) of the Employment Act.

8. Just and Equitable Compensation:

The Court below erred in law in holding that the respondents were entitled to just and equitable compensation under section 63(4) of the Employment Act, contrary to established legal principles.

9. Consideration of Minimum Compensation Paid:

The Court below erred in law in failing to take into account the minimum compensation of MK 440,756,121.41 that had already been paid by the appellants to the respondents pursuant to a prior order of the court.

10. Augmentation of Award Without Legal Justification:

The Court below erred in law by “boosting” or increasing the award of compensation to the respondents without any legal justification for such enhancement.

11. Excessive and Punitive Nature of Award:

The Court below erred in law in making an award of MK 4,966,586,473.71, which the appellants contend is excessive and punitive, and failed to properly balance the interests of both employer and employees as required by law.

12. Award of Costs:

The Court below erred in law in awarding costs against the appellants, contrary to the dictates of labour law and the circumstances of the case.

These grounds collectively form the foundation upon which the appellants challenge both the judgment and the subsequent orders rendered by the Court below. In advancing their appeal, the appellants emphasise that each ground represents a significant departure from established legal principles and statutory requirements, thereby calling into question the fairness and accuracy of the Court’s reasoning.

Not only do these points underscore specific errors in the interpretation and application of the Employment Act, but they also address broader concerns surrounding procedural justice and the appropriate balancing of interests between employer and employee. The alleged augmentation of compensation without legal justification, the excessive and punitive nature of the award, and the failure to account for payments already made highlight core issues of proportionality and equity, which are intrinsic to sound judicial decision-making in labour disputes.

Moreover, the challenge to the award of costs and the approach taken towards redundancy benefits versus statutory severance allowances further illustrate the appellants' contention that material aspects of the case have been misapprehended. Together, these grounds invite a comprehensive and searching review by the appellate court, with a view towards rectifying any misdirection and ensuring that principles of justice and fairness are upheld.

The foregoing grounds of appeal raise substantial questions of law and fact that go to the heart of the decision by the Court below. The appellants contend that the judgment is marred by material misdirection in the interpretation and application of employment law, particularly concerning consultation obligations, the enforceability of alleged management assurances, the proper assessment of compensation, and the alleged excessiveness of the award. These alleged errors, if proven, would render the decision unjust, inequitable, and contrary to established legal principles.

The appellants' grievances are not merely technical but strike at the fairness and legal correctness of the proceedings before the Court below. They assert that the Court below misapplied statutory provisions, disregarded material considerations—such as prior payments made to the respondents—and imposed an award that is not only disproportionate but also punitive in nature. Furthermore, the appellants challenge the legal basis for the augmentation of compensation, the award of costs, and the alleged conflation of redundancy benefits with statutory severance allowances.

Given the gravity of these grounds, it is imperative for this Court, at the hearing of the appeal, to subject the reasoning of the Court below to rigorous scrutiny. The issues raised will demand a careful examination of whether the judgment aligns with the Employment Act, relevant case law, and fundamental principles of fairness in labour disputes.

ISSUES FOR DETERMINATION

The issues for determination in this application for stay of execution pending appeal are as follows:

1. Whether the Appellant (Malawi Savings Bank—FDH Bank Limited) has demonstrated a prima facie case and substantial prospects of success on appeal, sufficient to justify granting an unconditional stay of execution.
2. Whether payment of 20% of the judgment sum (approximately MK993 million) by the Appellant as ordered by the High Court would result in irreparable prejudice, considering the practical difficulties of recovery from the 212 Respondents dispersed nationwide, should the appeal succeed.
3. Whether the Respondents have provided sufficient evidence to show their capacity and willingness to repay the conditional payment, should the Appellant prevail in the appeal.
4. Whether the balance of convenience and the interests of justice favor granting the unconditional stay of execution sought by the Appellant, or dismissing the application and allowing the Respondents immediate access to the fruits of their successful litigation.
5. Whether granting the stay would unjustly prolong the hardship and delay justice for the Respondents, given the duration of the litigation since 2016 and the fact that not all Respondents have received the minimum compensation previously ordered.

These issues collectively require the Court to undertake a nuanced and balanced assessment of the merits presented by both sides. In considering whether an unconditional stay of execution should be granted pending appeal, the Court must not only weigh the immediate impact on the parties, but also ensure that its decision serves the broader purpose of justice and equity in employment litigation.

Central to this exercise is the principle that a stay of execution is an exceptional remedy, only to be granted where the applicant demonstrates a compelling case—one that goes beyond mere assertions of inconvenience or financial strain. The Court must scrutinise the arguments to determine whether denying the stay would inflict irreparable prejudice on the appellant, and conversely, whether granting it would unjustly deprive the respondents of timely access to their lawfully awarded compensation, especially in light of the lengthy duration of the proceedings.

Attention must be paid to the practical realities outlined by the appellants, who argue that the dispersal of respondents across the country renders recovery of any

conditional payment virtually impossible should the appeal succeed. The Court must also consider whether the respondents have provided credible assurances or evidence of their ability to refund such payments if circumstances change upon appeal. This practical consideration is intertwined with legal principles that safeguard the integrity of the appellate process and prevent its frustration due to logistical obstacles.

Equally important is the need to examine the proportionality and fairness of the conditional order imposed by the Court below—specifically, whether it took full account of prior payments and the statutory framework governing compensation. If the assessment of damages is found to be excessive or punitive, and if statutory provisions were indeed misapplied, these factors could tilt the balance in favour of preserving the status quo while the appeal is adjudicated.

Ultimately, the Court’s task is to ensure that its decision reflects both the letter and the spirit of the Employment Act, relevant judicial precedents, and the foundational concept of fairness in labour relations. This calls for a deliberate and reasoned approach—one that respects the rights of both appellants and respondents, safeguards against irreparable harm, and upholds the integrity of the judicial process.

With these considerations in mind, the Court shall now turn to a detailed examination of the parties’ respective submissions, beginning with the arguments advanced by the appellant, Malawi Savings Bank (FDH Bank) Limited, followed by the positions articulated by the respondents. It is through this rigorous analysis that the Court will address each of the pivotal issues for determination and arrive at a just and equitable resolution.

PARTIES’ POSITIONS

It is now necessary that this Court looks at the arguments that have been raised by the parties in answer to these questions. We shall start with the appellants’ arguments then move on to consider those put forward by the respondent.

Appellants’ Arguments (Malawi Savings Bank (FDH Bank) Limited)

The appellants submit before this Court an application for an unconditional stay of execution pending the hearing and determination of their appeal. It is their contention that the conditional order imposed by the Court below, requiring the appellants to deposit 20% of the total judgment sum, calculated to be

approximately MK993,000,000, places an excessive financial burden upon the appellants. They contend this burden is particularly unjustifiable given the undisputed fact that the respondents have already received substantial payments, being the minimum compensations previously awarded by the Industrial Relations Court. In this regard, the appellants argue that the substantial prior payments made to the respondents ought to have been fully considered by the Court below in arriving at its conditional order, and the failure of the Court below to do so has resulted in manifest unfairness and an inflated financial obligation imposed on the appellants.

Furthermore, the appellants advance the argument that execution of this substantial interim payment would render their appeal nugatory, thereby causing irreparable prejudice to their interests. They submit that the respondents, numbering 212 individuals, are widely dispersed across the country, creating significant logistical and financial barriers to recovering any portion of this sum in the event of a successful appeal. This dispersion and multiplicity of respondents is such that reclaiming the sums paid would be practically impossible, thereby effectively frustrating the appellants' right to appeal and rendering the appellate process an exercise in futility.

In reinforcing their position, the appellants assert their financial stability and capacity as a prudentially regulated commercial banking institution. They submit before this Court that there exists no real or perceived risk of insolvency on their part. Accordingly, they contend they are fully capable of complying with any eventual judgment obligations in the event the appeal is unsuccessful, and as such, there is no genuine prejudice or financial insecurity that would necessitate an immediate conditional payment.

Additionally, the appellants submit that the Court below erred fundamentally by improperly exercising its discretion in relation to the compensation awarded. Specifically, they contend that the Court below's assessment failed to appropriately account for the payments previously made under the orders of the Industrial Relations Court, leading to an unjustifiable inflation of the damages awarded. They assert that the Court below's decision to enhance compensation by an additional 40% lacked any legal justification under applicable employment law principles, and consequently resulted in a miscarriage of justice which ought to be corrected upon appeal.

Finally, the appellants maintain that their appeal has considerable merit, presenting substantive questions of law and fact requiring detailed appellate

scrutiny. They submit that the issues raised are neither frivolous nor vexatious, and that the balance of convenience, equity, and justice clearly favours maintaining the status quo. Therefore, the appellants respectfully pray that this Court exercise its inherent discretion in granting an unconditional stay of execution to preserve the integrity of the appellate process and prevent substantial and irreversible prejudice.

Respondents' Arguments (Justin Chikaonda and 211 Others)

In opposition to the appellants' application for stay of execution, the respondents submit before this Court that the appellants have wholly failed to establish sufficient grounds or justifications to warrant depriving the respondents of the fruits of their successful litigation. It is their contention that the appellants' arguments lack merit, both in law and in equity, and accordingly, the application for stay ought to be dismissed.

The respondents argue forcefully that the appellants have provided no credible or persuasive evidence demonstrating that the respondents are financially incapable of repaying the judgment sums should the appellants succeed on appeal. The appellants' assertions regarding potential none recoverability are, according to the respondents, purely speculative, unsupported by any tangible or factual evidence. Moreover, the respondents contend that since the judgment sum represents only 20% of the total awarded, each individual respondent's proportional share is minimal, and thus any alleged risk of irrecoverability posed to the appellants is negligible and insufficient to justify a stay.

Further, the respondents specifically reject the appellants' purported assurance of financial stability. They submit that the mere status of the appellants as a commercial bank does not constitute a valid or recognised legal basis upon which to delay or deny the respondents the immediate enjoyment of their judgment award. They further highlight the absence of any authoritative or independent financial evidence, such as a regulatory confirmation from the relevant financial authorities, to substantiate the appellants' claim of solvency or absence of financial risk.

Additionally, the respondents emphasise that not all respondents have received the minimum compensation previously ordered by the courts. They highlight specifically the cases of three respondents—Gladys Kamoto, Patricia Namacha, and Pilirani Kamoto Masingani—who remain unpaid despite clear judicial orders mandating such compensation. The respondents argue that granting the requested

stay would prolong the unjust hardship already endured by these respondents, who have yet to receive even the minimum relief to which they were lawfully entitled years ago.

The respondents further argue that questions regarding the substantive merit of the appeal are exclusively within the jurisdiction and competence of the appellate court and are not matters appropriately determined by unilateral assertion by the appellants. Consequently, they submit that the appellants' claims regarding the merit or likelihood of success of their appeal are premature and irrelevant to the immediate question before this Court, being whether justice requires delaying execution pending appeal.

In conclusion, the respondents submit that granting the requested stay would result in ongoing, severe, and unjustified hardship for the respondents. This hardship, they note, has already been exacerbated by the extended period of litigation commencing in 2016. The respondents contend that the present application is, therefore, not only lacking in legal merit but constitutes a deliberate, vexatious, and frivolous attempt by the appellants to deny and frustrate the respondents' lawful right to timely compensation and severance allowance awarded by two competent judicial authorities.

Accordingly, the respondents pray that this Court exercise its discretion to dismiss the appellants' application for stay of execution, thereby affirming and safeguarding the respondents' entitlement to prompt enjoyment of the fruits of their successful litigation.

ANALYSIS OF THE APPLICABLE LAW (FINDINGS AND CONCLUSIONS OF THE COURT)

It is a well-established principle of law that, upon the rendering of a final judgment, the successful litigant is *prima facie* entitled to the immediate benefits and fruits thereof. However, this entitlement is not unqualified; the jurisdiction of this Court encompasses the discretionary authority to grant a stay of execution pending appeal where circumstances so warrant. This discretion is to be exercised judiciously, with due observance to the facts of the particular case and the interests of justice.¹

¹ Hammond Suddard Solicitors v Agrichem International Holdings Ltd [2001] EWCA Civ 2065.

The general rule remains that the mere filing of an appeal does not, in and of itself, operate as a stay of execution. Judgments are ordinarily meant to be immediately enforceable, ensuring that successful litigants are not unduly deprived of the remedies to which they have been found entitled. However, the law recognises that there are circumstances where the rigid application of this rule would result in substantial injustice, particularly where the very purpose of the appeal could be defeated by the execution of the judgment before the appellate process is complete.

Recognised exceptions to this principle thus exist—most notably in instances where there is a credible and substantiated risk that the immediate enforcement of the judgment would render a potential appeal nugatory or inflict irreparable harm upon the appellant. For example, where there is a real possibility that sums paid out to a multiplicity of respondents, who may be geographically dispersed and of uncertain means, could not reasonably be recovered should the appeal ultimately succeed, the courts have routinely exercised their discretion to grant a stay. In such circumstances, the concern is not only the practical difficulty of restitution but also the broader imperative to safeguard the integrity of the appellate process itself.

It is therefore incumbent on the courts, when faced with an application for a stay, to engage in a careful balancing of interests. On the one hand lies the successful party's right to enjoy the fruits of their judgment without undue delay; on the other, the appellant's right to a meaningful and effective appeal. The courts must weigh whether, in all the circumstances, the refusal of a stay would create a risk of injustice or irreparable prejudice of such magnitude that it outweighs the general presumption in favour of immediate enforcement.

In reaching this determination, the courts may consider, among other factors, the size of the judgment sum, the number and location of the respondents, the financial circumstances of the parties, the nature of the underlying dispute, and the likelihood of successful recovery in the event of a reversal on appeal. Only where these factors demonstrate a genuine risk that enforcement would thwart the proper administration of justice will the exception operate to justify a stay.

Accordingly, the authority to grant a stay is a vital judicial tool, to be deployed with caution and only upon a clear showing of need, so as to maintain both fairness to the parties and public confidence in the orderly administration of justice.

In such situations, the Court is enjoined to undertake a careful and balanced consideration of the competing interests of the parties, with particular regard to whether the refusal of a stay would result in substantial injustice or irreparable prejudice to the appellant, thereby compromising the efficacy and meaningfulness of the appellate process.

Accordingly, the determination of whether to grant a stay of execution pending appeal is a matter resting within the broad and equitable discretion of the Court. This discretion must be exercised in accordance with established legal principles, having due consideration to the need to preserve the integrity of the appellate process, to prevent the appeal from being rendered illusory, and to ensure that justice is not only done but manifestly seen to be done between the parties.

In the determination of whether the present application satisfies the established exceptions to the general principle governing stays of execution, this Court is guided by the imperative of conducting a meticulous and balanced assessment of the respective interests at play. Such a judicial approach is firmly anchored in precedent, notably as articulated by the Malawi Supreme Court of Appeal in *The Anti-Corruption Bureau v Atupele Properties Limited*, MSCA Civil Appeal Number 27 of 2005. There, the Court affirmed that the discretionary authority to grant or refuse a stay of execution derives its legitimacy from four foundational legal principles, each of which must be considered in turn.

In discharging its solemn responsibilities, it behoves this Court to undertake a rigorous and methodical assessment, weighing the immediate entitlement of the successful litigant to the proceeds of judgment against the imperative need to safeguard the efficacy and substantive purpose of the appellate process. The Court's discretion in granting or withholding a stay of execution must be exercised not arbitrarily, but in accordance with the tenets of justice and established legal doctrine, having regard to all attendant circumstances.

Specifically, the Court is called upon to determine whether, on the facts before it, there exists a credible and substantial risk that the refusal of a stay would occasion material injustice or result in irreparable prejudice to the applicant. Such prejudice may manifest, inter alia, where the fruits of judgment, if executed prior to the determination of the appeal, may be irretrievably lost or recovery rendered practically impossible in the event of a successful appeal. In these circumstances, the very integrity of the appellate process stands to be compromised, and the right of appeal may be rendered nugatory.