



IN THE SUPREME COURT OF APPEAL  
MISC CIVIL APPLICATION No. 22 OF 2025  
(*being High Court of Malawi, Civil Division, Principal Registry,  
Civil Appeal No. 86 of 2025*)

*BETWEEN:*

MANICA (MALAWI) LIMITED

APPLICANT

AND

RICHARD CHIKALIPO

RESPONDENT

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RULING

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*nyaKaunda Kamanga, SC*

1. The Respondents, Mr. Richard Chikalipo, filed a summons aimed at varying and/ or setting aside the order of stay, which was filed in accordance with section 7(b) of the Supreme Court of Appeal Act. The Respondent's summons is supported by a sworn statement executed by Counsel Ackim Ndhlovu, along with accompanying skeleton arguments. In opposition to the summons, the Applicant and intended appellant, Manica (Malawi) Limited, contests the Respondent's application, which is supported by a sworn statement prepared by Counsel Francis Kalonga and skeleton arguments.

*Background*

2. The Respondent commenced proceedings in the Industrial Relations Court to challenge the Applicant's decision to terminate his employment contract, claiming compensation for unfair dismissal and unfair labour practices. On the 11th of March 2022, the Industrial Relations Court rendered a judgment

favourable to the Respondent. On 20th September 2022, the Assistant Registrar delivered a compensation order, awarding the Respondent K426,422,500.00. Dissatisfied with this assessment order, the Applicant sought a review before the Chairperson of the Industrial Relations Court. On 27th of August 2024, a ruling on the review was delivered, ordering the Applicant to pay the sum of K171,139,500 within seven days. Subsequently, the Applicant sought a stay of enforcement of the order on review of assessment; however, the Chairperson denied the stay in a ruling issued on 2nd April 2025. The High Court granted the Applicant's request for an order to suspend the enforcement of the order on the re-assessment of compensation, subject to the condition that the Applicant pays 60% of the judgment sum of K171,139,500.00, as stated in its ruling dated 13th May 2025.

3. The Applicant subsequently sought leave to appeal to the Supreme Court of Appeal and for the suspension of part of the High Court's ruling dated 13th May 2025. The request for leave was granted, while the application for a stay was denied. Furthermore, the Applicant filed an *ex parte* application for a stay of the High Court's ruling pending appeal, which was granted on 22nd May 2025. Following the granting of the stay by this Court, the Respondent has applied to this Court to vary and/ or set aside the order of stay of execution of the judgment.

#### *Issues for determination*

4. The primary issues for determination are whether a single member of the Supreme Court of Appeal has the jurisdiction to set aside the order of stay and whether this Court should vary and/or set aside the order of execution pending the hearing and determination of the appeal.

#### *Whether the Supreme Court of Appeal's single member has the jurisdiction to revoke the stay order*

5. The Court will first address the issue raised by the Applicant regarding the jurisdiction of a single member to set an order of stay. The Applicant, in opposition to the summons, contends that a single member of the Court lacks

the jurisdiction necessary to entertain this application, asserting that it is fundamentally incompetent.

6. Section 7(b) of the Supreme Court of Appeal Act provides that:

*A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal:*

*Provided that—*

*(a) in criminal matters, if a single member refuses an application for the exercise of any such power, the applicant shall be entitled to have his application determined by the Court;*

*(b) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.*

7. In the case of *Jumbe v Kasema and Attorney General* (MSCA Miscellaneous Civil Application 46 of 2023) [2024] MWSC 2 (11 January 2024), the Supreme Court of Appeal stated this regarding Section 7 of the Supreme Court of Appeal Act;

*This provision addresses the authority of a single member of this Court to exercise certain powers that do not involve the hearing or determination of an appeal. As this Court understands it, the following are the key points from this provision: First, there is delegation of power to a single member of this Court. The provision allows a single member of this Court to exercise any power vested in the Court as long as it does not involve the hearing or determination of an appeal. Secondly, and as regards criminal matters, if a single member refuses an application for the exercise of any such power, the applicant is entitled to have their application determined by the full Court. This ensures a mechanism for review or reconsideration if the application is initially denied by a single member. Thirdly, in civil matters, any order, direction, or decision made or given by a single member in pursuance of the powers conferred by this section may be varied, discharged, or reversed by the full Court. This means that the decisions made by a single member are subject to review or modification by the full Court in civil matters. In summary, the*

*provision allows a single member of the Court to handle certain matters that do not involve the hearing or determination of an appeal. However, in criminal matters, if the single member refuses an application, the applicant has the right to have the application reviewed by the full Court. In civil matters, any decision made by a single member can be reviewed, modified, or overturned by the full Court. This mechanism helps ensure checks and balances within the judicial process.*

8. The essence of the matter is that a litigant is precluded from seeking relief from another single Justice of the same court. In the case of the *Anti-Corruption Bureau v Chinkhadze and Kantema* [2002–2003] MLR 288 (SCA), the Court noted that the appropriate procedural approach for challenging an order made by a single member of the Court is to either bring an application before the same justice or appeal to the full bench.
  
9. Section 7 of the Act stipulates that a single member of the Court can exercise any power that does not involve the hearing or resolution of an appeal. Therefore, the summons to vacate the order of stay does not constitute the principal appeal but rather an interlocutory issue. The Respondent's summons to set aside the stay order stems from the Court's previous ruling dated 13th May 2025, making this Court the appropriate forum to adjudicate the application to vacate the stay. If a single member of this Court grants a stay and the opposing party seeks to contest that order, they must make an application to vacate the stay to the same single member of this Court. Consequently, if this Court dismisses the summons to set aside the order staying execution, the aggrieved Respondent retains the option to pursue a review of the single-member's decision before the full bench of this Court. For the reasons mentioned previously, the Applicant's arguments lack merit as a single member of the Court possesses the authority and jurisdiction to revoke a stay order that they have previously granted to the Applicant.

*Whether to vary or set aside the order of stay*

10. Secondly, this Court will consider whether the stay order of execution should be overturned based on the arguments presented by the Respondent. Established jurisprudence states that the Court will only grant a ‘stay order’ if it is satisfied that valid reasons exist for such a determination, as the Court does not typically deprive a successful litigant of the benefits of their litigation and withhold funds to which they are *prima facie* entitled while awaiting an appeal. Case law is clear that an appeal does not inherently stay the execution of orders issued by the court below unless specifically directed by the court: refer to the cases of *Mike Appel & Gatto Limited v Saulos Chilima* [2014] MLR 231 (SCA); *State v Council of the University of Malawi, Ex parte Phiri and another (on their own behalf and on behalf of students of Chancellor College)* [2011] MLR 395 (SCA); *Kadzipatike and Kamwera t/a KAM Building Contractors v Zhejiang Communications Construction Group Company Limited* (MISC Civil Application 29 of 2023) [2023] MWSC 37 (14 July 2023) and *Dalitso General Suppliers Limited v National Bank of Malawi* (MSCA Misc. Application 19 of 2023) [2023] MWSC 42 (7 August 2023).
  
11. According to the cases of *Mike Appel & Gatto Limited v Saulos Chilima* [2014] MLR 231 (SCA); *Press Corporation Limited and another v Rolf Patel and others* [2014] MLR 272 (SCA); *PUMA Energy (Malawi) Limited v Simama and Simso oil and transportation company ltd* (MSCA Civil Appeal 19 of 2018) [2018] MWSC 12 (22 May 2018) and *Registrar of Financial Institutions v Mpinganjira and Others* (MISC Civil Appeal 4 of 2023) [2023] MWSC 13 (28 March 2023) the court’s discretion in granting a stay considers the risk of injustice to the parties, specifically evaluating the potential impact on both the appeal and the enforcement of judgment. The Court's discretion in the granting of a stay order considers the risk for injustice to both parties, with a particular emphasis on assessing the potential implications for both the appeal and the enforcement of the judgment. This case raises questions concerning what the risk is and what should happen if a stay is denied, especially in terms of the Appellant’s ability to recover any monies paid to the Respondent if the judgment is enforced and the appeal is successful.

12. In *Speaker of the National Assembly ex parte v Hon. John Z. U. Tembo* [2010] MLR 358 (SCA), the following principles on stay of execution were laid down:

*"Stay of execution of judgment pending appeal has become common place in our courts and over the years clear principles for consideration have emerged. The guiding principles however are in Order 53 r. 13/1 of the rules of the Supreme Court. That Order cites a number of cases specifically dealing with stay of execution of judgments. Some of the cases have been referred to by counsel in this matter from which the following cardinal principles resonate:*

*i. The court does not make the practice of depriving a successful litigant fruits of his judgment.*

*ii. The court should then consider whether there are special circumstances which militate in favour of granting the order of stay and the onus will be on the applicant to prove or show such special circumstances.*

*iii. The court would likely grant stay where the appeal would otherwise be rendered nugatory or the appellant would suffer loss which would not be compensated in damages.*

*iv. Where the appeal is against an award of damages the established practice is that stay will normally be granted where the appellant satisfies the court that if the damages were paid, then there will be no reasonable prospect of recovering them in the event of the appeal succeeding".*

13. In *Mike Appel & Gatto Limited v Saulos Chilima* [2014] MLR 231 (SCA) at 238, commenting on these principles, the court observed as follows:

*"Once an applicant has brought forward solid grounds for seeking stay, the court is then called upon to weigh the risks inherent in granting a stay and the risks inherent in refusing stay. This balancing process is what is here referred to as the court's discretion. Much as the court will start from the premise that courts will not make the practice of depriving successful litigants fruits of their judgment and much as the mere filing of an appeal and probability of success will not qualify as stay of execution; while a court will be concerned about the appeal not being*

*rendered nugatory, ultimately it is about how the court weighs these considerations and what they translate to in the particular case".*

14. The courts have held that the paramount consideration should be that a court must strike a balancing act as to whether justice and injustice will be achieved by granting or refusing a stay of execution while an appeal is underway: *AR Osman and Co v Nyirenda* [1995] 1 MLR 13 (SCA). In *AR Osman and Co v Nyirenda*, it was observed that the staying execution of a judgment is not always dependent on the respondent's inability to repay; however, evidence showing the respondent is unlikely to repay awarded funds can qualify as "special circumstances" for requesting a stay. In *re: Citizen Insurance Company Limited and The Registrar of Financial Services Act, 2010; ex parte the Registrar of Financial Institutions* [2012] MLR 138 (SCA). In *re: Citizen Insurance Company Limited and The Registrar of Financial Services Act, 2010; ex parte the Registrar of Financial Institutions*, the Supreme Court found that under the circumstances of the case, the High Court's denial of the application for stay resulted from a wrongful exercise of discretion through an incorrect application of the relevant law to the facts regarding the insolvency of the Respondent, and that, should the appeal succeed, it would be rendered nugatory. Therefore, the court below should have granted a stay. In *Chitakale Plantations Co Ltd v Mary Woodworth and another* (1)[2010] MLR 57 (SCA), it was held that a court would be persuaded to stay execution if it was convinced that a possible successful appeal would cause considerable inconvenience to the applicant that would be difficult to remedy.
  
15. In the cases of *Anti-Corruption Bureau v Atupele Properties Limited* [2005] MLR 6 (SCA), *Press Corporation Limited and another v Rolf Patel and others* [2014] MLR 272 (SCA), and *Kadzipatike and Kamwera t/a KAM Building Contractors v Zhejiang Communications Construction Group Company Limited* (MISC Civil Application 29 of 2023) [2023] MWSC 37 (14 July 2023), this Court observed that an order of stay is an exception and requires substantial grounds from the Applicant. When evaluating potential injustices, a court typically considers the impact of irreparable harm if a stay is refused. Temporary inconveniences do not usually justify granting a stay to appeal unfavourable judgments.

16. The summons filed in this Court arises from the ruling rendered by the court below dated 13th May 2025. Regarding issues pertinent to the stay of execution of judgment, the law clearly states that the courts cannot deny the successful litigant the benefits of their litigation. In the present case, it is observed that the court's ruling was ambiguous in stating whether it granted or denied the stay of execution as requested by the Applicant. It is crucial to refer to paragraph 11 of the High Court's ruling, where it is stated that:

*“This Court is of the view that the opening of an escrow account would prejudice the Respondent who is a successful litigant, thus far. He will be kept out of the fruits of his litigation which has spanned over three years. The Respondent prayed that he be paid 80% of the compensation. However, this Court considers that 60% of the compensation would be just. MANICA shall pay the same within the next 7 days. It is ordered.”*

17. From the preceding quotation, the court below was not explicit about whether it granted or denied the stay of execution pending appeal. Nevertheless, the High Court granted the Applicant an order of stay on the condition that they pay 60% of the adjudicated sum of K171,139,500 within a period of seven days. This implies that the stay pending appeal granted by the High Court requires the applicant to pay 60% of the determined amount. It is difficult to believe the assertions made by the Respondent, which allege that the Applicant suppressed material information; however, the ruling failed to clarify whether the stay was granted or denied, resulting in the Applicant's uncertainty regarding the denial of the stay. Following the ruling from the court below, the Applicant sought permission to appeal in this Court and requested a stay of the ruling. The court below granted the Applicant permission to appeal but denied the stay on the basis that it had been adjudicated. The court below, on 21 May 2025, made the following order:

*“Leave to appeal granted; however, suspension to be sought in the Supreme Court of Appeal since it was already considered by this Court.”*

18. Clearly, when the court below declined to grant an order for a stay, as stated in the order quoted above, it effectively dismissed the Applicant's summons to suspend the ruling dated 13th May 2025. Consequently, due to that court's refusal to grant a stay, the Applicant subsequently sought relief from this

Court, applying for an order to stay the ruling which this Court duly granted, thereby directing the Applicant to expedite the appeal process.

19. Furthermore, the Respondent in paragraph 18 of their sworn statement in support of their summons to set aside the stay states that there are two appeals, one pending resolution of the other before this Court. In this regard, the Applicant challenges the ruling that ordered the Applicant to pay 60% of K171,139,500. The appeal before the High Court pertains to the ruling concerning the review of the assessment of compensation amounting to K171,139,500.
20. The two appeals are based on different factual circumstances, as the appeal in the court below relates to the final decision regarding the review of the assessment of the compensation, while the appeal before this Court concerns an interlocutory ruling from the court below mandating the Applicant to remit 60% of the judgment sum. Consequently, there is no multiplicity of appeals as these appeals are categorically distinct. Should the Court elect to set aside the order of stay, it would inevitably prejudice the Applicant and render the Applicant's appeal essentially ineffective. If the stay were to be revoked, the Respondent would be enabled to execute the judgment, considering that an appeal does not automatically operate as a stay of execution of the rendered judgment.
21. Nonetheless, this Court is reminded of its discretionary power to either set aside the stay or to uphold it: *In re: Citizen Insurance Company Limited and The Registrar of Financial Services Act, 2010; Ex Parte the Registrar of Financial Institutions* [2012] MLR 138 (SCA); *Mike Appel & Gatto Ltd v Saulosi K Chilima and another* [2013] MLR 231 (SCA); *State v Council of the University of Malawi, Ex parte Phiri and another (on their own behalf and on behalf of students of Chancellor College)* [2011] MLR 395 (SCA); *City of Blantyre v Manda and others* [1992] 15 MLR 114 (HC). In this case, the Respondent seeks that this Court vacate the orders of stay, whereas the Applicant contests the summons to vacate the stay, as the ruling under consideration for the stay is the same ruling against which they are appealing. The argument is that, should this Court opt to set aside the order of stay, it would likely culminate in an injustice to the Applicant, as the Respondent would then proceed to execute the ruling of the court below, thereby reaping

the benefits conferred by the judgment. Moreover, should this Court decide to set aside the order of stay, it would imply that the Applicant's appeal would be rendered nugatory, and they would invariably suffer injustice as the Respondent would have already proceeded with the execution of the judgment.

22. It is significant to note that the Respondent articulated the assertion that the Applicant did not provide evidence demonstrating the Respondent's impecuniosity. Furthermore, the Respondent contended that the Applicant has failed to establish that the Respondent would be incapable of reimbursing the judgment sum if the Applicant succeeds on the appeal. In response, the Applicant asserted that their only available information indicates that the Applicant's employment relationship concluded in December 2020, during which they received K18,068,945.45 in terminal benefits. Based on their investigations, they assert that the Respondent's last known financial resources were derived from the employment held with the Applicant. In their affidavit opposing the application for the annulment of the order of stay, the Applicant claims that the Respondent has not provided any evidence of their current financial standing, which would demonstrate the capacity to reimburse 60% of the judgment sum if the Court were to lift the stay. The legal precedent is unequivocal in stating that the onus rests upon the Applicant to demonstrate to the court that the Respondent would be incapable of repaying the judgment sum if the Applicant is successful in the appeal. Refer to the case of *Malawi Revenue Authority v Mwase and Others* MSCA Civil Application No. 28 of 2018. In the *ex parte* motion for stay of execution, the Applicant did not raise the issue of impecuniosity; however, in the present summons, the Respondent has introduced the matter of impecuniosity, to which the Applicant countered by asserting the Respondent's inability to repay the sum. It is evident that the Applicant was unable to procure further information to ascertain whether the Respondent would be able to reimburse the sum should the Applicant prevail in the appeal. Given that the Applicant failed to demonstrate the Respondent's impecuniosity in their *ex parte* motion, the Respondent, in raising the issue of impecuniosity in this present summons, ought to have presented evidence substantiating his capacity to repay the funds, yet he has not disclosed such information.

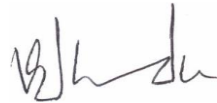
23. Furthermore, the Respondent brought forth the concern that the Applicant had not adhered to the court's ruling mandating the payment of 60% of the judgment, and this Court, having granted a stay pending the appeal of the ruling that requires the Applicant to remit 60% of the judgment sum, the issue of non-compliance by the Applicant should not have been raised. It may have been more pertinent for the Respondent to inquire as to why the Applicant is not expediting the appeal process.
24. When addressing matters regarding expediting the processing of an appeal, the onus is placed upon the Applicant. Nonetheless, the timeline remains contingent upon the court of first instance, as the responsibility for preparation of the record is vested in that court. In the earlier order of stay granted by this Court to the Applicant, it was directed that the Applicant ought to speed up the appeal process. Given the prevailing circumstances, it appears that the record of appeal has not been prepared; thus, it is within this Court's prerogative to deny the summons to vacate the order of stay, thereby affirming its continuation, as was ordered in the case of *Castel Malawi Ltd v Mphanza* MSCA Miscellaneous Application No. 68 of 2024.
25. The Court observes a discernible pattern in which courts, particularly in the IRC, issue orders to stay execution of judgment subject to the payment of a specified percentage of the awarded sum. This practice is fundamentally flawed as a party applies for a stay of execution precisely to ensure that the award remains unexecuted while an appeal is under consideration. The fundamental purpose of a stay of execution is undermined if the High Court or the IRC orders a party to pay a stipulated amount as a condition of granting a stay order. Proper case management also demands that a stay should be granted unconditionally, without the stipulation of paying a portion of the award sought to be stayed. The following principle, which was articulated in the case of *Chithira and Others v CEAR* Miscellaneous Civil Application Number 53 of 2023, was restated by the Court in *Castel Malawi Ltd v Mphanza* MSCA Miscellaneous Application No. 68 of 2024:

“By granting a stay of execution of a judgment it means that the court is satisfied that there is or are good grounds for doing so. One of such grounds is that the court is satisfied that if the judgment money is paid to the successful litigant, there is no reasonable prospect of recovering it in the event of an appeal succeeding”

26. As noted in the cases of *Chithira and Others v CEAR* and *Castel Malawi Ltd v Mphanza* a stay is granted only when the court is persuaded that the particulars of the case necessitate such a measure. If a party, in this instance, the Applicant, Manica (Malawi) Limited, is ordered to pay 60% of the total award as a precondition for the stay, it raises significant concerns regarding whether the circumstances of the case justified the grant of the stay.

27. Consequently, this Court, in the exercise of its discretion, determines that the Respondent's summons to vary and/or set aside the order staying execution of judgment lacks merit and is hereby dismissed with costs.

Dated and delivered this 17<sup>th</sup> day of December 2025.



Dorothy nyaKaunda Kamanga, SC  
JUSTICE OF APPEAL

Nkhata, Kalonga & Mtupa  
Mumba & Ndhlovu  
Mrs. Mthunzi & Mr. Maluwa

Counsel for the Applicant  
Counsel for the Respondent  
Recording Officers