Republic of Malawi

IN THE SUPREME COURT OF APPEAL

MISCELLANEOUS CIVIL APPLICATION NUMBER 68 OF 2024

(Being High Court of Malawi, Mzuzu Registry, Miscellaneous Application Number 8 of 2024)

BETWEEN

CASTEL MALAWI LIMITED ..... APPLICANT

AND

JOSEPH MPHANZA ..... RESPONDENT

CORAM: HON. JUSTICE F. E. KAPANDA SC, JA
HON. JUSTICE H.S.B. POTANI SC, JA
HON. JUSTICE J. KATSALA SC, JA
HON. JUSTICE M.C.C. MKANDAWIRE SC, JA
HON. JUSTICE D. MADISE SC, JA
HON JUSTICE R.S. MBVUNDULA SC, JA
HON. JUSTICE D. KAMANGA SC, JA
L. Mbulo, of counsel for the Applicant/Respondent
V. Gondwe/Kamvazina, of counsel for the appellant /respondent
C. Fundani/Chinkono, Court Clerks/Recording Officers
B. Pendame/E. Banda, Court Reporters

RULING

Katsala SC, JA.,*(All other Justices of Appeal concurring)*

1. Mr Joseph Mphanza, who is the respondent herein, took out an application before this Court seeking a review of the decision made on 14 April 2025 by a single member of this Court, refusing to vacate an order staying the execution of a judgment of the Industrial Relations Court which awarded him the sum of K609,089,720.00 as compensation for unfair dismissal.

2. The history of this matter is, to some extent, a bit troubled. This is mainly due to how this matter was handled in the court below.

3. The brief background to the matter is that on 3 July 2020, the respondent commenced an action against the applicant in the Mzuzu Registry of the Industrial Relations Court (hereinafter "the IRC") claiming damages for unfair dismissal, severance allowance, salary and benefits differences, and interest on judgment debt under section 65 of the Courts Act. After a full trial, on 21 October 2023 the Deputy Chairperson of the IRC found that though the applicant had reasons for dismissing the respondent, the reasons were not sufficient to warrant the sanction of dismissal in terms of section 61(2) of the Employment Act and held that the dismissal was unfair and proceeded to enter judgment in favour of the respondent on the claims made and granted the reliefs sought. He ordered that the Registrar of the IRC should assess damages.

4. Following the assessment, on 14 February 2024 the respondent was awarded a total sum of K609,089,720.00 as compensation for the claims made. On 19 February 2024, the applicant filed a notice of appeal against the judgment of the IRC (including the order on assessment) alleging errors of law and fact. The applicant also applied before the Deputy Chairperson for an order staying execution of the judgment pending the determination of the appeal.

5. By an order made on 5 March 2024 the IRC granted a partial stay of execution of its judgment by ordering that the applicant should pay half of the judgment debt pending the determination of the appeal. The applicant was ordered to pay the said half (amounting to K304,544,860) within three days from 5 March 2024.

6. The applicant was dissatisfied with the order of partial stay of execution of the judgment and on 6 March 2024 brought an application in the High Court, Civil Division at Mzuzu Registry seeking a full stay of execution of the judgment of the IRC pending the determination of its appeal by the High Court.

7. This is where the trouble began.

8. The matter was brought before Honourable Lady Justice Kondowe of the Civil Division who ordered that the matter be transferred to the Commercial Division of the High Court. It was her view that being a labour matter, it fell under the jurisdiction of the Commercial Division of the High Court.

9. Consequently, on 20 June 2024 the matter was heard *ex parte* by Honourable Lady Justice Namonde of the Commercial Division who granted an interim order staying execution of the IRC judgment and ordered that the matter be transferred back to the Civil Division of the High Court since in terms of section 6A of the Courts Act, it was not a commercial matter. The Judge also ordered that the matter should come inter partes. By this time, the applicant had already paid half of the damages as ordered by the IRC.

10. The inter partes application in the Civil Division was heard by Honourable Lady Justice Kondowe who, on 13 December 2024, vacated the interim order of stay granted by Honourable Lady Justice Namonde and ordered that the respondent was at liberty to execute on the judgment of the IRC because, in her view, there was no appeal pending before the High Court. She also refused leave to appeal against her decision.

11. Dissatisfied with the order of the Judge, the applicant came to this Court and applied *ex parte* for leave to appeal against the order of Honourable Justice Kondowe and also an order staying the execution of the judgment of the IRC pending the hearing of either the appeal against the IRC's judgment or the appeal against the order of the Judge made on 13 December 2024 or both.

12. The application was heard on 23 December 2024 by Honourable Justice of Appeal Madise SC sitting as a single member of this Court (herein after "the single member"). He granted an interim order staying execution of the judgment of the IRC and ordered that the application be heard inter partes on 29 January 2025. On this day, having heard from both parties, the single member sustained the order of stay he made *ex parte* and directed the applicant to prosecute the appeal in the court below within 21 days.

13. On 21 March 2025 the respondent filed a Certificate of Non-Compliance in this Court on the ground that the applicant had not complied with the order of 29 January 2025 in that it had failed to prosecute the appeal within

the 21 days ordered by the single member. Further, on 26 March 2025 the respondent filed an inter partes application for an order vacating the order of stay of execution granted by the single member on the ground of the alleged non-compliance.

14. On 14 April 2025 the single member dismissed the application and further directed that the IRC should produce the record of appeal within 14 days of the order and that the appellant should prosecute the appeal within 14 days thereafter. The single member also ordered that the balance of the judgment sum should be paid into court within seven days from the date of his order.

15. The respondent was dissatisfied with the order and on 17 April 2025 took out the present application asking this Court to discharge, reverse or vary the decision of the single member made on 14 April 2025 refusing to vacate the order staying execution of the judgment of the IRC on the ground of the applicant's failure to comply with the order of the Court made on 29 January 2025.

16. The respondent has raised two grounds as the basis for the review. It is contended that the single member improperly exercised judicial discretion and violated settled legal principles when coming up with his decision. He erred in law by extending the 21 days' period for prosecution of the appeal in the court below: -

    a. *suo moto* without the applicant moving the Court for such relief; and

    b. when the said period had already elapsed and there was nothing to extend.

17. Briefly, the respondent argues that in his ruling of 11 April 2025, the single member acted *suo moto* and extended the period within which the applicant was to prosecute the appeal. This was an improper exercise of judicial discretion since, in our system, which is adversary, it is the parties that are supposed to move the court for a particular relief. Further, the extension was made after the 21 days' period had expired which meant that there was nothing to extend as the period had already elapsed. He cited the case of *Lilongwe Water Board and others v State, ex parte Malawi Law Society* [2017] MLR 176 in support of the arguments. The case of *State v Zomba City Council and Roads Authority,* ex parte *Sajib Mohamed* was also cited

- but sadly, we were not able to find it because the citation given is non-existent, that is, Judicial Review No. 26 of 2026 – considering that we are still in the year 2025, and no copy thereof was provided to the Court. This reinforces the need for parties to provide to this Court copies of the authorities they wish to rely on – to avert this kind of scenario.

18. On the other hand, the applicant argued that the single member was not in error to sustain the order staying execution of the judgment of the IRC and/or to give further directions on the prosecution of the appeal because, among other things, it was clear that the IRC had not done its part as required by Order XXXIII of the Subordinate Court Rules. The applicant had shown that it had made an effort to prosecute the appeal but failed due to the failure by the IRC to prepare the record of appeal. By extending time, the single member was only ensuring that the order he made on 29 January 2025 was not moot.

19. On the granting of a remedy not prayed for, the applicant argued that the order was ancillary to the refusal to discharge the order staying execution and that it was within the court's inherent jurisdiction to give directions as to the future conduct of the appeal in the lower court, as part of the Court's case management powers.

20. The application herein involves the exercise of powers of this Court by a single member as provided for under section 7 of the Supreme Court of Appeal Act, which provides as follows:

> "A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal:
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> Provided that—
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> (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."

21. Though the section gives power to a single member to exercise any power of this Court except the hearing or determination of an appeal, it also gives power to the Court to vary, discharge or reverse the decision made by the single member.

22. It must also be stated here that a decision of a single member is a decision of this Court. It is a decision of a member of this Court exercising the powers of this Court as an extension of the "full" Court. And when this Court sits to consider a decision of a single member, it does not sit as an appellate court. This means that the single member whose decision is being considered can sit in the matter together with the other members. See *Patel v Press Corporation Ltd* [2017] MLR 293.

23. In terms of practice and procedure under this section, it means that it is the same application/matter which was before the single member that the Court is asked to reconsider and, on good grounds, vary, discharge or reverse the decision made by the single member.

24. Having considered the application before the Court and all the arguments and authorities cited, we must say that we find that there is no merit in this application. We do not see any error in the decision made considering all the circumstances of the matter.

25. It is clear that the matter before the single member basically involved the exercise of discretion. It is our view that in such matters, when this Court is requested to vary, discharge or reverse the decision of a single member under section 7 of the Supreme Court of Appeal Act, which decision involved the exercise of discretion, the approach must be the same as where an appellate court is asked to review the exercise of discretion by a lower court. As this Court has repeatedly stated, the guiding principle is that an appellate court is reluctant to interfere with the lower court's exercise of discretion but will not fail to do so where the circumstances warrant it. An appellate court will only interfere where the lower court has incorrectly applied a legal principle, or the decision is manifestly wrong such that it amounts to an injustice. See *Willy Kamoto v Limbe Leaf Tobacco Co. Ltd.* [2010] MLR 467, *Mutharika and anor v Chilima and anor* [2020] MELR 406, *Kamwamba v JM Njala and Sons* [1971-72] MLR 75, *Ngwira and anor v Ngwira* MSCA Civil Appeal No. 16 of 2020 (unreported).

26. We have put the application before us to a fresh scrutiny and have considered the arguments put forward by the respondent and have found that there is nothing which shows that the single member exercised the discretion improperly or erroneously. The respondent has failed to demonstrate to our satisfaction that there is any injustice which will be occasioned by the orders made by the single member in exercise of his case management powers which are discretionary.

27. It is our judgment that the single member was entitled to make such orders as would have facilitated the proper and expeditious management and prosecution of the appeal in the court below. Further, such orders were not dependent upon a party's application for them because the modern approach to dealing with cases is that court has the responsibility to actively manage cases. As such, the court does not have to wait for a party to move it into action. The court must deal with a matter in a way that will facilitate its just and speedy conclusion. See *Patel v Press Corporation Ltd* (supra) and Order 1, rule 5 of the Courts (High Court) (Civil Procedure) Rules.

28. In any case, the fact that the IRC failed to prepare the record of appeal as required by the rules can never be attributed to the applicant. Thus, the applicant cannot be made to suffer as a result of the IRC's default.

29. In the result, we find that there is no legal basis for this Court to interfere with the single member's exercise of discretion.

30. On the issue of the payment of the balance of the judgment debt into court, we find that there is no basis for such an order. In this respect, we wish to adopt and reiterate with emphasis what was said in *Christina Chithila and others v Central East African Railways Limited* MSCA Miscellaneous Civil Application Number 53 Of 2023 (unreported).

> "... as courts, we need to consider seriously the circumstances of each case before we order payment of a judgment debt into court. 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. See *Thomson v CGU Insurance Ltd* [2008] MLR 402.

Therefore, … there must be special reasons why the court should go a step further to order a payment of the judgment debt into court. An order for payment into court cannot be and should never be ordered as a matter of course. It should not be ordered as a consolation to the successful litigant whose judgment has been stayed pending the determination of an appeal. It must be ordered only where there are good grounds justifying it. For instance, evidence that the appellant will not be in a position to pay the judgment money in the event that the appeal fails would constitute good ground. Evidence showing that the appellant is a non-resident and/or has no assets within the jurisdiction, or that he is about to flee the jurisdiction, or that he or it is dissipating his or its assets with the intention of defrauding his or its creditors, or defeating the course of justice, or that an entity is winding up its business may persuade a court to make an order for payment of the judgment sum into court. Obviously, it is a matter which is in the discretion of the court and is a question of fact. Consequently, it will vary from case to case, and it would be a futile exercise to attempt to compile an exhaustive list of the factors.

… a court must not be quick to order a payment into court. It must drag its feet. It must be appreciated that such payments can have a huge and/or devastating impact on the cash flow of a person or an entity especially when the amount involved is huge. When paid into court, the money is locked up thereby depriving the person or entity of the cash which could have been used for day-to-day operations, investments, and debt servicing, just to mention a few. No solace should be found in the fact that, in most cases, the court orders that the money be invested in an interest earning bank account. What the court needs to know is that interest on a bank deposit is not the best investment especially in an economy like ours where the currency is constantly depreciating in value. Where the amount involved is substantial, as in the present case, the court should be hesitant to order a payment into court unless there are good grounds to justify such an order."

31. From the record before us, we do not see any good reasons to warrant ordering the applicant herein to pay the balance of the judgment debt into court. There is no evidence to justify the order. Therefore, we set the order

aside and order that the money paid into court must be paid back to the applicant forthwith.

32. Lastly, but certainly not least, we wish to express our disappointment with the manner in which the applicant was handled in the court below. We find it difficult to appreciate why the applicant was tossed between the Civil and Commercial Divisions of the High Court. Reading section 6A of the Courts Act which creates the divisions of the High Court together with section 2 which clearly defines what matters will go to which Division of the High Court, what transpired on this matter becomes inexplicable. We fail to appreciate where the confusion came from. What happened here, to say the least, is embarrassing. We would therefore, urge all judges to familiarise themselves with these two sections in order to avoid a repeat of what happened here.

33. Costs of the application are awarded to the applicant.

Pronounced at Blantyre this 3rd day of July 2025.

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Hon. Justice F.E. Kapanda SC., JA

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Hon. Justice H.S.B. Potani SC, JA

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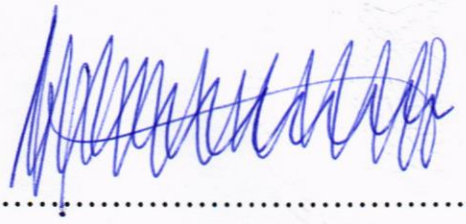
Hon. Justice J. Katsala SC, JA



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Hon. Justice M.C.C. Mkandawire SC, JA

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Hon. Justice D. Madise SC, JA

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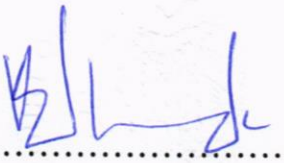
Hon. Justice R.S. Mbvundula SC, JA



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Hon. Justice D. Kamanga SC, JA