IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA MISCELLANEOUS CIVIL APPLICATION NO. 42 OF 2025

[Being Miscellaneous Civil Appeal No 24 Of 2025, High Court of Malawi, Principal Registry]

BETWEEN

PRESS CORPORATION PLC	APPLICANT
AND	
BENARD NDAU	1ST RESPONDENT
ELIZABEHT MAFENI	2ND RESPONDENT
DR GEORGE PATRIDGE	3RD RESPONDENT

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

Mpaka, P [Mr.] of Counsel for The Applicant

Suzi J B [Mr.] of Counsel for The Respondents

C Masiyano [Mr.], Clerk

RULING/ORDER

BACKGROUND

The three respondents were at all material times the applicant's employees. Their services have since been terminated. The Industrial Relations Court[IRC] found such termination unfair and awarded damages therefor as follows:

a. MK2,684,872,389.87 for the first respondent;

b. MK8,258,294,707.52 for the second respondent; and

c. MK3,274,349,696.10 for the third respondent.

The sum total was MK14,117,516,793.49 payable within 10 days from the date of the compensation opinion namely April 25, 2025.

Citing inability to pay within the stipulated time and a general dissatisfaction with the totality of the IRC's judgment the applicant sought a stay of the above judgment/order.

In a ruling dated May 15, 2025, the IRC granted a stay but only on condition that the applicant pays each of the respondents 70% of their award.

The applicant escalated the matter to the High Court. They not only sought to appeal against the IRC's judgment but also applied for a total stay of the said judgment pending the determination and hearing of the contemplated appeal.

Following an *inter partes* hearing at which the respondents prayed for the vacation of the above order and the applicant for a complete stay the High Court, in a ruling dated August 11, 2025, sustained the stay but only on condition that the applicant paid 75% of the compensation awarded in the IRC to the respondents *pro rata*. Up from the 70% ordered by the IRC.

The applicant further escalated the case to this court. They applied for a total stay of execution pending the determination of the appeal in the court below. The application was granted *ex parte* pending an *inter partes* application of the same ilk.

Before we could hear the said application, the respondents brought their own application. They prayed that we vacated the stay granted herein. The applicant

also brought in a preliminary objection. Because of what we say hereinafter about them we will not outline them.

We, several procedural hiccups notwithstanding, heard the applications and the preliminary objection. This is the ruling in respect thereof.

THE ISSUES

There are in truth two issue to be determined in this matter. First is whether or not to sustain the stay order granted *ex parte* to the applicant. If yes on what terms if at all. A simple enough question as matters goes in this court. Simple because the facts before us are largely not in dispute. Neither is the applicable law or practice of this court in relation to grants or vacation of stays.

Second is whether or not this court has the requisite jurisdiction to hear and determine the application before us.

For the record the merits of, more especially the applicant's application, will only become relevant if we come to the conclusion that we have jurisdiction to hear and determine this matter.

THE LAW/THE PRACTICE

Like we have stated above the law and practice of this court in relation to grants and vacations of stays is not in much dispute if at all. If we might reiterate it, it is to the effect that whether or not to grant a stay is in the judicious discretion of the court hearing the application. Further that a court will only grant a stay if it is, in the view of that court, in the interests of justice so to do. And where, as is the case herein, a court's exercise of its discretion is called into question such decision will not be set aside unless it is clearly untenable or against the law. See **Telekom Networks Malawi plc v Eric Thomson & 43 Others**, MSCA Miscellaneous Civil Application Number 21 of 2025[unreported], **Mike Appel & Gatto v Saulosi Chilima** 2013 MLR 231 and **Dr A P Mutharika & Electoral Commission v Dr S K Chilima & Dr L Chakwera** MSCA Constitutional Appeal Number 1 of 2020.

In exercising their discretion *vis a vis* stays courts take various relevant considerations/principles into account. The courts will therefore not, as a matter

of practice deprive successful litigants of the fruits of a legal tussle. Courts will also look at the prospects of the appeal. If it looks more likely to succeed a stay will most likely be granted. The reverse is equally true. A successful litigant's ability to pay back the judgment sums in the event of a successful appeal is also a relevant consideration. It they look less likely to pay back the court will grant a stay because courts generally frown upon nugatory appeals.

In view of the nature of the dispute before us and of how we intend to resolve it we think we should also say something about the Republican Constitution. Especially sections 41 and 104 thereof.

Section 41[2] provides that every person has the right to access any court of law or any other tribunal with jurisdiction for final settlement of legal issues.

Subsection 3 provides that every person has the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him or her by the Constitution or any other law.

Section 104[1] establishes the Supreme Court of Appeal[SCA] and grants it such jurisdiction and powers as may be conferred on it by the Constitution or any other law.

In subsection 2 the Constitution establishes the SCA as the highest appellate court in Malawi having jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe.

There are other laws/practices applicable in this court. Rather than set them out now we think it best that they, where necessary, be referred to in the body of this ruling.

THE PARTIES' ARGUMENTS

The Respondents

They pray that the stay be vacated. In the alternative that we should not tamper with the conditions attached to it by the court below. Not necessarily in that order they raised four grounds therefor.

Firstly, that this court has no jurisdiction to hear the application before us. To the respondent this is an appellate court. It deals with appeals. Anticipated or actual. When it deals with applications other than appeals it deals with them in the context of such appeals.

In the present instance there is no appeal, actual or pending, in this court between the parties. If anything, there is an appeal from the IRC in the court below between the parties. We should not, according to the respondents, therefore be entertaining an application for stay in this court relating to a matter that is still pending determination in the court below. On that basis alone the respondents urged us to dismiss this application with costs.

Secondly the respondents contend that the application now before us is not the same one that was in the court below. And because we are, when we are sitting on appeal, supposed to rehear the dispute, in other words to proceed on the very material that was before the court below, the application before us is to that extent incompetent/irregular and should be dismissed with costs. See **Christina Chithila & Others v Central East African Railways Ltd** Miscellaneous Civil Application Number 13 of 2021[unreported].

Thirdly the respondents contend that the above issues notwithstanding this application should be dismissed in any event. It is without merit. The justice of this matter in their view tilts towards not granting a stay or not varying the conditions on which the court below granted the stay herein. See **Mike Appel and Gatto v Saulosi Chilima**[supra]. According to the respondents the applicant's appeal has no prospects of success. The facts and the applicable law leave little doubt that any appeal will be without success.

Lastly, the respondents contended that the applicant should not be allowed to use its own or the respondents' alleged impecuniosity as basis for being granted a stay. The applicant's alleged impecuniosity remains unproven. The respondents on the other hand cannot, by any stretch of the imagination, be described as persons of little or no means. To the contrary the respondents are persons of substantial means. They are more than capable of paying back any monies paid to them

pursuant to this case should it become necessary to do so. The specter of a nugatory appeal does not therefore even arise.

The respondents, accordingly pray that the applicant's prayer for a stay be dismissed and also that their application for a vacation be granted with costs.

The Applicant

Its arguments are the reverse of the respondents'. It contends that this court has jurisdiction to hear and determine this application. In its view this is an application for stay pending an appeal in the High Court. The High Court and this court have concurrent jurisdiction in so far as stay is concerned. To that extent this application is properly before us.

The applicant is also of the view that this court as the ultimate court in this jurisdiction has or should have supervisory powers over the courts below it. It therefore retains the power to order a stay of execution or proceedings in matters that are substantively on appeal in the High Court or the courts below it.

On whether or not the application before us is the very same one that was before the court below the applicant responds in the positive. The substance of the application is the same. The facts in support thereof are also the same.

Fourthly the applicant contends that this is a proper case in which a stay of execution pending appeal should be granted. The interests of justice tilt more towards the grant of a stay than a denial. The applicant made mention of the high prospects of their appeal's success and of the quantum of the money involved being so large it is unrealistic to expect the respondents to be in a position to refund it in the event of a successful appeal.

The applicant thus prays on the one hand that the respondents' application be dismissed and on the other that the stay granted herein should not only be sustained but also that the 75% condition be removed the status to subsist until the appeal in the High Court is heard/determined. Or until further order of this court.

THIS COURT'S CONSIDERATION OF THE ISSUES

Like we have said above shorn of the staggering amounts of money involved, the voluminous paperwork and lengthy addresses what we have before us is just another application for a stay. The applicant is looking for an order allowing it not to pay the sums awarded in the IRC until the appeal in the High Court is heard and determined. The respondents on the other hand want to be receive the proceeds of their success in the IRC yesterday.

We will endeavor not to belabour the issues.

Accordingly, we will say it upfront that if it were not for the contestation about jurisdiction, we would have had no problem in granting a full stay in this matter. We have looked at the interests of justice, the merits/demerits of the appeal and the need not to keep successful litigants away from the fruits of their success. We came to the conclusion that the court below erroneously exercised its discretion. We are in agreement with the reasoning in **Christina Chithila v CEAR** to the effect that it is not in the best interests of justice to, with an appeal pending, hand over huge sums of money to successful litigants in the name of allowing successful litigants enjoy the fruits of their success. The question whether they would be able to return such sums in the event of a successful appeal always arises. And there is, in our judgment, more sense in withholding such sums than in paying them out. More harm would be caused by a failure to refund than a delayed pay out.

We agree that the respondents are not the poorest Malawians around and would, maybe, not have much difficulty in restoring the compensation. We have a slightly different perspective on the foregoing scenario. Because the respondents are not persons without means it must be that they do not need the compensation as much as necessitous persons would. In other words, they can, for some reasonable time, live without the awarded sums. But should they, because of passage of time thereby be occasioned any harm, we are sure that ways will be found to make good that harm. An award of interest is one such way. It would reimburse any financial loss. And so would managing the appeal herein with speed. It would keep any losses to the least possible minimum.

On whether this court has Jurisdiction to hear and determine this matter we, with the greatest respect, believe that there are factual and conceptual

misapprehensions that have muddied the jurisdictional debate and unfortunately led to the respondents coming to the wrong conclusion.

As we understand the story [and there is really no doubt about it] the IRC awarded the respondents compensation in the total sum of K14,117,576,793.49 the same to be paid within ten days from April 25, 2025. The facts also show that the IRC, on application by the applicant, granted a stay of the foregoing order on condition that 70% of the compensation awarded was paid to the respondents.

The applicant was dissatisfied. It escalated the matter to the High Court. On two fronts in our understanding of the facts. First on appeal against the totality of the IRC's decision i.e. against liability and compensation and secondly on an application for an order totally staying the IRC's decision of April 25, 2025.

The High Court upon hearing the application for stay sustained the stay but varied the condition upon which it was granted. It increased the amount of compensation payable upfront from 70% to 75% of the total sum awarded.

The applicant was unhappy still. It brought the matter of the stay into this court. We granted a temporary stay and called the parties for an *inter partes* hearing to determine whether or not the stay order should subsist until the appeal was fully disposed of.

A few things stand out from the above narration and the parties' arguments. First is that if there is an appeal in this matter it is the appeal by the applicant against the decision of the IRC on liability and the quantum of damages. That appeal is in the High Court. It will be with that court until final determination or it is otherwise disposed of.

Second is that the only question in this matter on which the High Court has, to our knowledge, expressed an opinion is that of stay pending appeal. We have hereinabove set out the nature and extent thereof.

Thirdly it is also a fact that the issue before this court is not the applicant's liability or level of compensation to the respondents. It is not, strictly speaking, even whether or not to grant a stay. The same has already been granted by the High Court and the IRC. The issue, in our view, is the propriety of the condition on

which the order of stay was granted. Namely that the applicant should pay upfront 75% of the compensation awarded. We must therefore disagree with the respondents' suggestion that there is, on appeal in this court, a decision of the IRC or of the High Court about the applicant's liability to the respondents or the quantum of damages payable to them.

Fourthly it is common knowledge, and again the parties hereto agree, that stay orders are by their very nature interim. They are meant to preserve the *status quo* while the substantive matter journeys around/along these courts.

Having looked at the arguments from both sides, the case and legislative authorities and having subjected all of the above to analysis we agree that this is an appellate court. That generally, matters indeed come here by way of actual or contemplated appeals.

It is equally true however that this court's jurisdiction goes beyond the above referred to narrow path. It is obvious from section 104 of the Republican Constitution that this court has original jurisdiction. It is also trite that there are instances where this court hears applications other than by way of appeal. Applications for leave for judicial review or to appeal are examples that easily come to mind. They do not come here by way of appeal. They are made afresh in this court. Applications for extension of time within which to appeal are another example. They are made in this court. But not by way of appeal. Yet another example are applications for stay. When the High Court refuses to grant them, they come to this court not on appeal because they are part of a class of matters over which this court and the one below enjoy concurrent jurisdiction. A recent example is the **Christina Chithila v CEAR** case referred to above.

Secondly, it appears to us that agreeing with the respondents' arguments on jurisdiction in the instant matter would produce legally untenable consequences. It would be against the spirit and intendment of the Republican Constitution. Section 41[2] and [3] provides that all persons are by law entitled to access the courts for final settlement/determination of their legal issues and thereafter to effective

remedies. Denying the applicant access to this court for a final determination on the stay issue clearly goes against section 41[2] and [3].

It would also go against section 20 of the Republican Constitution. That section guarantees all persons, natural and legal, equality under the law. It prohibits discrimination on any basis. It is trite that a stay only seeks to preserve the *status quo* while a matter moves along the justice system. All litigants in the applicant's position are, at the very least and whatever the result might be, permitted a hearing and determination on the question of stay. Whether there should be a stay pending an appeal or not. They are granted one if the interests of justice so dictate. Conversely, it will be denied if the interests of justice weigh more towards a denial.

The applicant has an appeal in the court below. They are seeking a preservation of the *status quo* pending the hearing and determination of that appeal. That court has refused to grant them a stay pending that appeal. This court and the one below enjoy concurrent jurisdiction on stays. Refusing the applicant audience in this court for a final determination on the stay question would, in our view be tantamount to discrimination and unequal treatment of similarly placed persons. It would offend the spirit and intendment of the abovementioned section 20. Above all it would project two most unwelcome untruths. Firstly, that the applicant has been or is being denied a stay because it is not in the interests of justice that one be granted and secondly effectively constitute the court below as a court of last resort in this jurisdiction. A court whose decision is final. The legal reality is that such is not the case. The substantive law and the rules of procedure in this country should therefore be interpreted in a manner that reflects that legal reality.

We off course do appreciate that the Republican Constitution clearly stipulates that access is to courts with jurisdiction. See section 41[2] of the Republican Constitution. That the law does not allow every Jim and Jack to walk into a court of their fancy, papers in hand and demand that their matter be heard. All we are saying is jurisdiction as a concept should be applied in a manner that enhances access to the courts rather than inhibits the practical extents of sections 20 and 41[2] and [3] aforementioned. So that the only limitations on access to the courts and effective remedies allowable in terms of section 44 of the Republican

Constitution shall be those that are lawful, reasonable, recognized by international human rights standards, necessary in an open and democratic society and those that do not negate the very essence of the right to access to the courts and effective remedies.

Having therefore looked at all of the above including the **Christina Chinthila v CEAR** case we are of the most considered view that the respondents' contention that this court has no jurisdiction to hear and determine the application before us is without merit.

DETERMINATION

For the reasons outlined above we find conclude firstly that this court has jurisdiction to hear and determine the matter before us.

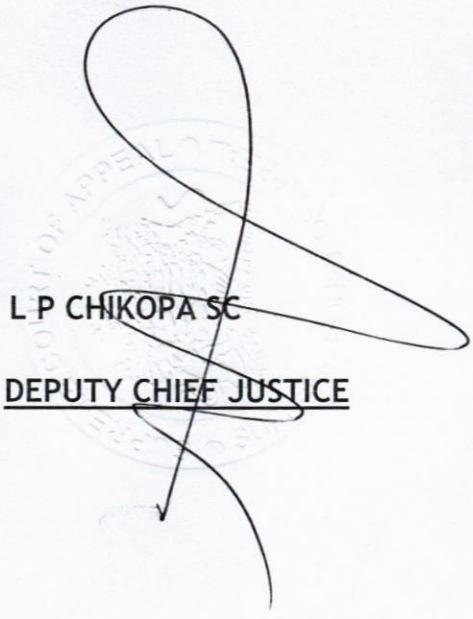
Secondly, that the court below wrongly exercised its discretion when it granted a stay order herein but only on condition that 75% of the compensation is immediately payable. The condition was and continues not to be, in our judgment, in the interests of justice.

Accordingly, and while we maintain the stay order granted by the court below in this matter, we set aside the condition on which it was granted. In its place is entered one requiring the applicant to, within 28 days from this date, deposit with the court below a guarantee from a fully registered, certified and prudentially regulated Malawian bank made out in favour of the Sheriff of Malawi in the sum of MK200,000,000.00 as security for any financial orders that maybe made herein against the applicant. This order will subsist until further order of this or any other court of competent jurisdiction.

And to ensure that these proceedings move with minimum delay we also order that the parties herein should before the expiry of 28 days from the date hereof attend the Registrar of the court below and with him/her agree on a timetable to, in keeping with the High Court's sentiments, speedily dispose of this matter.

Costs shall be in the cause.

Dated at Blantyre this day 12th day of May, 2026



L P CHIKOPA SC

DEPUTY CHIEF JUSTICE