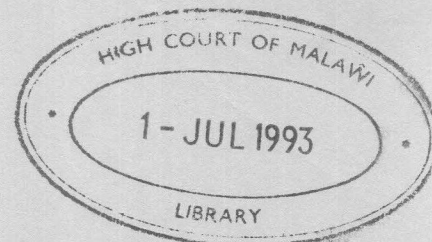


IN THE HIGH COURT OF MALAWI, BLANTYRE
CIVIL CAUSE NO. 208 OF 1984



BETWEEN:

VENETIAN BLIND SPECIALISTS LIMITED APPELLANT

- and -

BRIDGE SHIPPING (MALAWI) LIMITED RESPONDENT

Coram: MBALAME, AG. J.

Mbendera, Counsel for the Appellant
Hanjahanja, Counsel for the Respondent
Kadyakale, Law Clerk

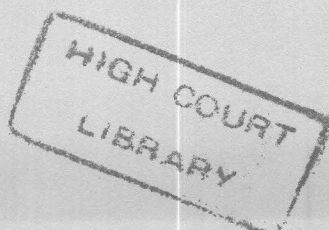
R U L I N G

This is an application by the respondents in this case, Bridge Shipping (Malawi) Ltd., first of all for leave to appeal from my judgment of 16th January, 1985, in which I allowed an appeal lodged by the appellants, Venetian Blind Specialists Ltd., and secondly for the stay of any further proceedings pending the appeal if leave is granted. Mr. Mbendera, who appears for the appellants, does not object to the granting of the leave to appeal but opposes the stay of further proceedings.

In arguing his case Mr. Hanjahanja, who appears for the respondents, would have this court stay any further proceedings. He rightly submitted that the powers of staying further proceedings are entirely in the discretion of the court. It was his contention, however, that if the court did not grant the application and the appeal was eventually successful then such appeal would be nugatory and would result into unnecessary further litigation. It was further his case that any further proceedings that took place before the disposal of the appeal would gravely prejudice the respondent's case.


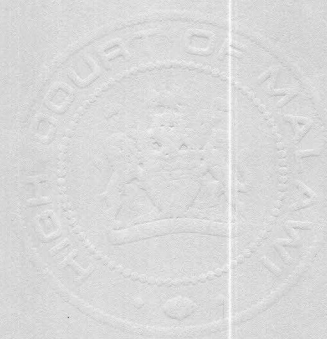
Mr. Mbendera's argument in reply is that it is a general rule that an appeal does not stay further proceedings. He argued that in the present case there were no special reasons for staying the proceedings. It was his contention that if it was the respondent's case that the appellant would not be able to refund costs in the event of the respondent winning the appeal, then there was no evidence to support such proposition for the court to go by.

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The law regarding the stay of execution or proceedings pending appeal is amply outlined in O.59/13/1 of the Rules of the Supreme Court. Generally an appeal is no stay of further proceedings except if the court so orders. Mr. Hanjahanja is asking this court to depart from that rule, general as it is. He has not, however, shown me any special circumstances in this case which afford a ground for so doing. It is settled law that if in any particular case there is a danger of the respondents not being repaid if their appeal is successful, for one reason or another, such fact must be shown by affidavit, and could form a ground for ordering a stay. See The Annot Lyle (1886) 11 P.D. 114, per Lord Esher M.R. page 116. In the instant case the respondent is the unsuccessful party and is asking this court to deprive the successful party of the fruits of its success until the appeal is determined. No affidavit has been filed on behalf of the applicants to show that either the appellant is a company of straw or that it will not be in a position to refund any money paid to it on the determination of the appeal if the applicant is successful. In the absence of such affidavit the court must hold that the respondents will be able to repay in such event. In the discretion of the court there are no special circumstances warranting the stay of the proceedings as applied for by the respondents. The application is dismissed with costs.

MADE in Chambers this 3rd day of April, 1985, at
Blantyre.



Rod Mbalame
ACTING JUDGE