

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 1006 OF 2006

BETWEEN:

THE STATE.....APPLICANT

-and-

MINISTER OF MALAWI GOVERNMENT

RESPONSIBLE FOR LAND MATTERS,

PHYSICAL PLANNING AND SURVEYS.....RESPONDENT

EX-PARTE: MPICO.....INTERESTED PARTY

CORAM: I.C. KAMANGA, JUDGE

Attorney General, Absent

Chilenga, Counsel for Appellant

Kafotokoza, Court Interpreter

RULING

This court has been moved by way of summons for stay of execution pending appeal in terms of Order 59 rule 13 of the Rules of the Supreme Court. The application was made inter party. The Attorney General however did not put any appearance. The court proceeded to hear the application.

Order 59 rule 13 of the Rules of the Supreme Court provides for stay of execution pending appeal. This stay of execution is specifically provided for in appreciation of the fact that an appeal does not operate as a stay on the Order appealed against. And service of notice of appeal and setting down the appeal does not, by itself, have any effect on the right of the successful party to act on the decision in his favour and to enforce the order of the court. (O59/13/2).

The application is supported by an affidavit sworn by Counsel Chilenga. In the affidavit, the appellant is aggrieved with the Court's declaration of 4th April 2008 that there was no issue for judicial review. The appellant had sought various Orders with regard to the statutory order made by the Minister under Section 55 of the Town and Country Planning Act (Cap 23:01) published in the Gazette as Government Notice No. 6 of 2006. The Order had declared as vacant land the land comprised of plot no. Bwaila 401. (formerly known as Youth House) at City Centre in Lilongwe. After hearing the matter and determining the laws applicable, my brother Justice Singini found no ground on which to declare the Vacant Land Order in issue to be invalid hence declined to grant reliefs sought by the appellant herein as an interested party.

Now, Counsel for the appellant has deponed that he has moved the Court of Appeal on my brother's decision. And that

there is a danger that the land in issue may be demarcated and be developed by some people in the event that there is no stay thereby rendering the appeal nugatory, as the land may no longer be available after the completion of the appeal process. Counsel further deponed that the appellant will suffer irreparable damage if it loses the rare piece of land in issue.

Order 59/13/2 provided a guideline of some sort when an application such as one before me is made. This is what is stated:

“If an appellant wishes to have a stay of execution, he must make express application for one. Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not make a practice of depriving a successful litigant of the fruits of his litigation^{ooo} But the Court is likely to grant a stay where the appeal would otherwise be rendered nugatory or the appellant would suffer loss which could not be compensated in damages”.

I have gone through the judgment that grieves the appellant. I have also considered the appellant’s submissions. At the end of the day what this Court has to consider are just two issues, will the appeal be rendered nugatory if the land is disposed of by the Minister or will the appellant suffer loss that cannot be compensated in damages. My finding is in the negative. The appeal will not be rendered nugatory: This is

because upon considering the issues that the appellant has raised as grounds of appeal and the Supreme Court makes a finding in the appellant's favour, the appellant will be able to recover from the Minister a monetary translation of the merchandise. Hence even in the absence of the kind, interpretation of the legal provisions can still be looked upon. The appellant may also recover damages. As the land in issue is capable of having a monetary translation, and the appellant has not demonstrated that damages cannot adequately compensate for the loss; nor has the appellant demonstrated that where decision is in the appellant's favour, there will be no reasonable prospect of recovering the monetary translation, there is no justification for stay. In a nutshell, the appellant has not satisfied this court to exercise its discretion in favour of staying execution as the appellant has not demonstrated that there are good reasons for so doing.

Application for stay fails.

Made in Chambers this 11th day of June 2008.

I.C. Kamanga (Mrs)
JUDGE