



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**JUDICIAL REVIEW CAUSE NO. 94 OF 2015**

**THE STATE**

**AND**

**THE COUNCIL OF THE UNIVERSITY**

**OF MALAWI ..... RESPONDENT**

**EX-PARTE:        JASTON BULAULA ..... 1<sup>ST</sup> APPLICANT**  
**TIMOTHY PHILIP CHEMBE ..... 2<sup>ND</sup> APPLICANT**  
**ROGERS NYIRONGO ..... 3<sup>RD</sup> APPLICANT**  
**IAN KAMWENDO ..... 4<sup>TH</sup> APPLICANT**

**CORAM: HON. JUSTICE R. MBVUNDULA**

Micheus, Counsel for the Applicants

Roka, Counsel for the Respondent

Mithi, Official Interpreter

**RULING**

This is an application by the 4<sup>th</sup> applicant (hereinafter referred to as “the applicant”) for an order of stay of execution of a judgment of this court, pending appeal, in a judicial review application brought against the respondent in which this court upheld a decision by the respondent suspending the applicants from the respondent’s constituent college, The Polytechnic, in Blantyre, following violent demonstrations

which took place at the college campus and extended to adjoining places, in the month of January 2015.

The grounds of appeal are appended to the application for stay and this court has duly paid attention to the same.

The applicant submits that the appeal has high chances of success “as demonstrated in the grounds of appeal because there is not much to connect the applicant to the charges that were levelled against him”. In addition thereto the applicant states that the college has since opened and on account of the suspension upheld in the judgment the appellant will not be able to attend classes and assignments, and that in the event of the appeal succeeding the applicant will not be able to catch up with his colleagues, hence the need for the stay order prayed for. He also submits that unless the stay is granted, the appeal, if successful, will be rendered nugatory.

The onus lies upon the applicant to show special circumstances which militate in favour of a stay: *City of Blantyre v Manda* Civil Cause No. 1131 of 1990. The court must not interfere with the successful party’s right to enjoy the fruits of his litigation unless it is demonstrated that the appeal has high prospects of succeeding. And if upon examination of the facts of the case, an order for stay of execution would be utterly unjust, the court will decline to grant a stay. It lies in the broad discretion of the court to grant or refuse an application for stay of execution. *Anti-Corruption Bureau v Atupele Properties Ltd* MSCA Civil Appeal No 27 of 2005. The applicant must demonstrate that there are exceptional circumstances justifying a stay: *Circle Plumbing Ltd v Taulo* [1993] 16(1) MLR 63.

The applicant made reference to the issue of damages which is not relevant to the facts of this case.

This court found as a fact that the applicant expressly admitted committing the offences for which he and his colleagues were suspended and that they were in the wrong in the manner they conducted themselves. Further the applicant admitted that every action was agreed upon and that they were instrumental to, and spearheaded, the activities of the day, which were wrongful, and for which they were eventually suspended. These are facts which came from the applicant himself and stand

undisputable. In my assessment, therefore, the appeal has no prospects of success. The suspension, as rightly submitted by counsel for the respondent, is a natural consequence of the applicant's own actions. Consequently the issue whether or not the same would be rendered nugatory does not arise.

I therefore dismiss the application with costs.

Made in chambers at Blantyre this 26<sup>th</sup> day of April 2016.

  
R. Mbvundula  
**JUDGE**