



**THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
Civil Appeal NO. ....OF 2016**

**(Being High Court Matter No. 835 of 2009)**

**BETWEEN**

J.J. Makuluni..... Plaintiff/ Respondent

and

Ted Jailosi & another.....1<sup>st</sup> Defendant/ 1<sup>st</sup> Appellant

Mulli Brothers.....2<sup>nd</sup> Defendant/2<sup>nd</sup> Appellant

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<b>CORAM:</b>	<b>Madalitso Khoswe Chimwaza</b>	<b>ASSISTANT REGISTRAR</b>
	<b>Rex Mapira</b>	<b>Counsel for the Plaintiff/ Respondent</b>
	<b>Chancey Gondwe</b>	<b>Counsel for the Defendants/Appellants</b>
	<b>Mpandaguta</b>	<b>Court Clerk</b>

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**RULING ON APPLICATION FOR DISMISSAL FOR WANT OF PROSECUTION**

**Introduction:**

This is a ruling on a summons to dismiss an appeal for want of prosecution filed by the plaintiff/respondent in this matter. It was supported by an affidavit and skeleton arguments. The summons was opposed and the defendants now appellants, filed affidavit in support.

The brief facts of the case are that the plaintiff commenced an action in November 2009, against the defendants now appellants claiming repair costs and loss of use of a motor vehicle pursuant to a motor vehicle accident. The court found in favour of the respondent on the 16<sup>th</sup> of June 2015 . An order of assessment was made on 10<sup>th</sup> May 2016, awarding the respondent the sum of K55,687,030.20 plus costs of the action, which is now the subject of appeal before the Supreme Court.

Being dissatisfied with an award of damages the defendants/appellant filed notice of appeal and a summons for stay of execution of assessed order which was granted on 15<sup>th</sup> December,2016. Since then the appellants have not taken any steps to have the appeal prosecuted, no summons to settle record of appeal has been heard or agreed upon.

This court has noted that the respondents are indeed in a tricky situation where if the appellants are not going to take steps in prosecuting the appeal they stand a chance of being prejudiced by being denied to enjoy the benefits of successful litigation which have been gagged by a stay order until the appeal is heard.

The court has noted that the appellants filed a summons to parties to settle record on 27<sup>th</sup> July, 2017 which was after the respondent had filed the present summons to dismiss the appeal for want of prosecution on 16<sup>th</sup> June, 2017. This court is quite mindful that for a long time civil litigation has been conducted in an adversarial manner where the parties are left to battle it out and the court does not on its own motion move step in favour of a party. This is clear from the fact that the appellant filed a summons to settle record after the respondent had taken out the present summons to dismiss appeal for want of prosecution.

This court is satisfied that indeed the appellant has taken too long to take any step towards prosecuting the appeal. The delay is indeed inordinate and inexcusable as there is no valid reason given for such delay. This court is quite mindful that the proceedings were commenced using the now repealed Rules of the Supreme Court, however it is being compelled to make a decision having in mind that the new High Court Civil Procedure Rules, 2017 advocate for case management which includes ensuring that matters are dealt with speedily and at minimal costs.

This court will not grant the application by respondent to dismiss the appeal, however it is proceeding to make the following orders for directions:

The summons to parties to settle record should come for hearing before Registrar within **7 days from day of this order**. **Within 30 days** from date of hearing the summons for the settlement of the record, the record of appeal should be prepared and paid for by the appellants.

Unless this order is not complied with within the given period, the respondent will be at liberty to apply for dismissal for want of prosecution before the Supreme Court and to have the stay of execution vacated and proceed to execute the assessed order.

Either party aggrieved by the ruling has the right to appeal.

Made in Chambers this 18<sup>th</sup> day of October, 2017



Madalitso K. Chimwaza

**ASSISTANT REGISTRAR**