



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

**CIVIL APPEAL NUMBER 64 OF 2017 (Being Civil Cause
Number 05 of 2017 In the First Grade Magistrate
Court Sitting at Ntchisi)**

BETWEEN:

ROSEMARY MKANTHAMA-----APPLICANT

AND

MERCY BANDA-----RESPONDENT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Nkhono, Counsel for the Appellant

Ndalama, Counsel for the Respondent

Itai, Court Interpreter

RULING

This is an application to discharge the order of stay pursuant to Order 59 of the Rules of the Supreme Court. The application is supported by an affidavit together with skeleton arguments. The main ground for this application is that the respondent had misrepresented the facts when she obtained an order of stay of execution of the judgment by presenting to the court that the applicant had uprooted their crops when she was only clearing the demarcation. The applicant also referred to several other misrepresentations that the respondent had made to the court. It is also the applicant's view that the appeal herein was wrongly commenced. The applicant filed a supplementary affidavit in which she disclosed that the respondent intended to sell the land in issue and that she had reported this matter to the police. It is also in her affidavit that relatives of the respondent

invaded the land and started cultivating the land. The respondent filed an affidavit in opposition.

I have looked at the affidavit that was used to obtain the stay of execution. At that time the persuasive prayer by the respondent was that if judgment was executed in March 2017, the respondent's crops would be destroyed. I am sure that by virtue of the stay, those crops were spared in March 2017 and the respondent should not have cultivated there in the 2018 season. The respondent was also worried about her two houses which form the matrimonial home. In paragraph 22 of her affidavit, the applicant has assured this court that she has no intention to either destroy the houses or sell the land. Having given the case the best of its scrutiny after hearing both sides, I order that the stay order should be immediately discharged. The applicant should however stick to her undertaking not to destroy the respondent's houses and not to sell the land pending the appeal herein. Costs to the applicant.

MADE THIS DAY OF JANUARY 2018 AT LILONGWE

M.C.C MKANDAWIRE

JUDGE