



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
IRC APPEAL CAUSE NO. 2 OF 2016
(Being IRC Matter Number 170 of 2011)**

BETWEEN:

IT CENTRE APPELLANT

-AND-

CHRISTONE RABSON AND OTHERS RESPONDENTS

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Appellants, absent and unrepresented
Mr. Dziwani, of Counsel, for the Respondents
Ms. Doreen Mkangala, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is the Respondents’ Summons for an order that the ex-parte Order staying the enforcement of the judgement made by the Industrial Relations Court sitting at Blantyre (lower court) pending appeal be discharged or varied [hereinafter referred to as the “Stay Order”] on the grounds that the Stay Order:

- “i. Is not in the interests of justice and only serves to perpetuate injustice against the Respondents.*
- ii. The Appellant will not suffer any irreparable harm if his appeal would succeed*
- iii. Is an abuse of Court process, the Appellant having previously made an application to pay the judgement debt by instalments and further that the*

Appellants have over a year failed to take steps to prosecute the inter-partes application for the continuation of the Ex-parte Stay Order.”

The application is supported by an affidavit sworn by one of the Respondents, namely, Mr. Allan Nkunule. It might be useful to set out the material part of the affidavit:

- “3. *I and my fellow Respondent commenced this action in the Industrial Relations Court.*
4. *By an Order made by the deputy Chairperson N’riva on 2nd November, 2015 exhibited hereto as “ANI” it was ordered that the Appellant do pay us compensation for unfair dismissal made up of:*
 - i. *Lost earnings covering the period of 43 months during which we had been out of employment.*
 - ii. *Severance Allowance and;*
 - iii. *Pay in lieu of leave days not taken for each year worked less the pay lieu of leave which has been proven as payable to us.*
5. *The said order was made pursuant to a Court hearing on the assessment of damages that took place on 29th October, 2015 and was attended by the Appellant’s Human Resources Manager, Mr. V. Sinjani*
6. *I repeat the content of paragraph 5 above and further state that as the Order shows:*
 - 6.1 *What remained was the arithmetic computation of sums payable to me and colleagues in respect of lost earnings, leave in lieu of leave days not taken and severance pay.*
 - 6.2 *On page 1 and 2, part of our testimony which was unchallenged related to our monthly earnings and the period during which we had been in the employment of the respondent.*
7. *As one of my colleagues called Bonnex Gogoda was absent, the court directed the parties to submit their respective computations in respect of each head that the court had ordered as payable.*

Whilst I and my colleagues submitted our computations the appellant did not. Attached hereto is a copy of computations indicating sums payable to me and each of my colleagues and the same is marked “AN2” thereon.
8. *The copy of computations marked AN2 was:*

- 8.1 *Based on the variables mentioned in paragraph 6.2 above which variables were not challenged by the Appellant.*
- 8.2 *Duly served on the Respondent as evidenced by the Affidavit of Coldwell Mdala. The Appellant choose to take no action.*

STAY ORDERS

9. *Ever since we sought to enjoy the fruits of our litigation, the Appellant has moved to block our right by:*
- 9.1 *First apply for an order of stay of execution pending the hearing of summons for payment of judgment debt by installments. I attach hereto copy of the said application together with the Affidavit which was filed in support and the Notice of Motion to pay Judgment Debt by Installments marked "AN3" thereon.*
- This order of stay was discharged due to the Appellant's failure to prosecute the motion to pay judgment by installments which came for hearing on 19th January, 2016.*
- 9.2 *Upon the stay order mentioned above being vacated the Appellant sought and was granted ex-parte a further Order of Stay pending the hearing of the appeal on condition that it be heard inter-parte and the judgment sum be paid into Court*
- Over a year has now gone without and inter-partes application for the continuation of the said Stay Order is yet to be heard.*
10. *I am aware that in bringing the application for the Stay Order mentioned in paragraph 10 above the appellant:*
- 10.1 *Did not disclose that they had hitherto applied to pay the judgment debt by installment.*
- 10.2 *Apart from barely asserting that I and my colleagues had no means to repay the judgment sum if paid to me and my colleagues without first providing proof that we have no means to repay should the appeal be determined in favour of the Appellants.*
- 10.3 *Furthermore the appellant does not seem inclined to prosecute both the inter-partes application for continuation of the Order of Stay as well the appeal herein.*

11. *I believe that it is in the interests of justice that the order of stay pending appeal be discharged and that the money that was paid into Court be paid out to me and my fellow respondent.*

WHEREFORE *I humbly pray that the Stay Order be discharged and that the money paid into Court be paid to me and my fellow applicant together with costs."*

In his submissions, Counsel Dziwani advanced three principal reasons in support of his contention that the Stay Order be discharged. Firstly, he submitted that the Stay Order was obtained as a result of suppression of material facts as set out in the affidavit.

Secondly, Counsel Dziwani submitted that more than two years have elapsed without the Appellant prosecuting the appeal. Counsel Dziwani stated that the non-action on the part of the Appellant stems from the fact that it is fully content with the status quo, having obtained the Stay Order. Counsel Dziwani invited the Court to note that the Respondents have being denied enjoyment of the fruits of their litigation for such a long period of time.

Thirdly, Counsel Dziwani also contended that the prospects of the appeal succeeding are very slim, particularly when regard is had to the fact that the Appellant had applied to pay judgement by instalments. Counsel Dziwani also drew the Court's attention to the fact that the Appellants are not contesting liability but the quantum. That being the case, it was argued that the Respondents would be entitled to compensation in any event.

Having carefully perused all documents on the Court file, including the application, its supporting affidavit and submissions by Counsel, I am satisfied that a good case has been made out for the discharge of the Stay Order. The Stay Order is, accordingly, discharged with costs. For avoidance of doubt, the money paid into Court has to be paid to the Respondents. It is so ordered.

Pronounced in Chambers this 21st day of August 2018 at Blantyre in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE