



**IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
COMMERCIAL CAUSE NO. 285 OF 2021
(Before Honourable Justice Manda)**

BETWEEN

MATINDI PRIVATE ACADEMY LIMITED.....CLAIMANT

AND

MARANATHA BOYS ACADEMY LIMITED.....DEFENDANT

Coram: E. M. Zidule : Assistant Registrar
S. Mponda : Counsel for the Claimant
S. Khan : Counsel for the Defendant
B. Ntonya : Court Clerk

**RULING ON CLAIMANT'S APPLICATION FOR STAY OF CIVIL PROCEEDINGS
PENDING CONCLUSION OF CRIMINAL PROCEEDINGS**

Brief background

The court is conducting proceedings for assessment of damages in the matter herein pursuant to a default judgment that was entered on Defendant's counterclaim. On 23rd October, 2023, the Claimant filed an application for stay of civil proceedings pending conclusion of the criminal proceedings that it has instituted against the 1st witness of the Defendant, namely, Dr. Ernest Kaonga. The application is supported by a statement

sworn by Counsel Kondwani Kunitengo and skeleton arguments. The Defendant opposes the application and requested the Court to consider the conduct of the Claimant throughout the proceedings for assessment of damages. According to the Defendant, the conduct of the Claimant has been to frustrate the course of justice by making sure that proceedings for assessment of damages should not continue. The Defendant also argued that there is no evidence that the criminal case against Defendant's 1st witness has been registered in the Subordinate Court. As such, Counsel argued that the Court should not stay the present proceedings pending conclusion of criminal proceedings that are non-existent.

The sole issue to be determined by this court is whether or not the order for stay of the present proceedings pending conclusion of criminal proceedings should be granted.

Analysis

The Claimant has provided the Court with several relevant case authorities in support of its application for stay. I have thoroughly reviewed the cases presented by the Claimant counsel and I appreciate the recurring principles that support the granting of an application for stay of civil proceedings pending the conclusion of criminal proceedings. A reading of various decisions indicates that it is incumbent upon the party making an application for stay of civil proceedings pending conclusion of criminal proceedings to convince the court to use its discretionary power to grant such an application. This is achieved by demonstrating the prejudice the criminal proceedings are to suffer if the civil proceedings continue or the prejudice either party is to suffer if civil proceedings are not stayed. In the case of **NBS Bank PLC vs. NICO General Insurance Company Limited** Commercial Case no. 362 of 2018 the court stated as follows;

*"What is clear from my reading of the above authorities and my understanding of the law and procedure is that it is not enough for an applicant applying to stay a civil proceeding pending determination of a criminal proceeding, for them to simply allege that there would be prejudice. **The law requires that the applicant must take a step further to demonstrate that there will be a real risk of injustice if the civil proceedings are allowed to proceed before the criminal case is determined. In other words, I do agree that the burden of persuading a court***

to stay civil proceedings always remains with the applicant” (emphasis provided).

However, it appears to this Court that the Claimant has not provided sufficient evidence of the prejudice it will suffer if the civil proceedings were to continue. The Claimant has submitted that there is a possibility that there may be contradictions in the findings of this court and the criminal proceedings since it may turn out that the Defendant has not fully paid the money to the Claimant. In paragraph 9 of Claimant's sworn statement in support of the application, a submission has been made that the interests of justice would be best served if the court grants the present application since the Defendant will not suffer any injustice as the matter will still proceed after criminal proceedings. A thorough analysis of Claimant's application shows that Claimant's application is based on the injustice that it will suffer if the findings of this court and the criminal proceedings are contradictory. However, the court is of the view that the Claimant has a remedy within the civil proceedings since it is yet to parade its witness and tender evidence in defence of the claim for damages.

Finding

Having considered the application herein and the arguments in opposition to the same, the Court sees no basis for granting a stay order since the Claimant has a remedy within the present proceedings. The Claimant argues that Defendant's witness lied by stating that he paid the Claimant all the money in full. Even though this is contrary to what is on record, the Court believes that the Claimant may rebut the evidence of Defendant's witness by parading its own witness and by adducing the evidence that it is relying on when it argues that the witness lied on oath when he was testifying on 17th October, 2023. However, the conduct of the Claimant shows that it is not ready to present its witness so that he can testify in this matter. This is evidenced by several excuses that the Claimant has raised since the Court started conducting proceedings for assessment of damages. Counsel who is seized with the conduct of this matter sends other lawyers to appear on brief. When the matter was first called for hearing of Defendant's case on assessment of damages, on 17th October, 2023, Counsel who appeared on brief on that particular day made it clear to the court, and it is on record,

that if the Court denies Claimant's application for an adjournment, he (Counsel) will not be able to cross examine the witness. On 24th October, 2023, the same Counsel appeared on brief, without the witness, to seek for an adjournment. The Court made it clear that after considering the seriousness of Defendant's claim for damages since it involves a huge sum of money, MK1, 011,139,097.40, the request for an adjournment will be allowed for the very last time. The Court was not surprised when another Counsel appeared on brief on 1st November, 2023 to argue the present application. It is very clear that the aim of this application is to delay the hearing of proceedings for assessment of damages. The Court cannot, therefore, grant such an application. The application is therefore dismissed.

Any party aggrieved by the decision of this Court is at liberty to appeal within 21 days from the date hereof.

Delivered in Chambers this 3rd day of November, 2023 at High Court, Commercial Division, Blantyre Registry.



E. M. Zidule
Assistant Registrar