

**IN THE HIGH COURT OF MALAWI**

**LILONGWE DISTRICT REGISTRY**

**CIVIL APPEAL NUMBER 99 OF 2017**

**(Being Civil Case Number 22 of 2016 in the First Grade Magistrate  
Court sitting at Lilongwe)**

**BETWEEN:**

**CHARLES MVULA-----APPELLANT**

**AND**

**JANE NYIRONGO-----RESPONDENT**

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

**Ndalama, Counsel for the Applicant**

**Mwenelupembe, Counsel for the RESPONDENT**

**Itai, Court Interpreter**

**RULING**

On 11<sup>th</sup> of May 2017 I ordered for stay of execution of judgment of the lower court pending determination of the appeal. In November 2017 the applicant filed an application to have the order of stay of execution set aside. The application is supported by an affidavit deposed by counsel Pachalo Nomsa Mwenelupembe. In a nutshell, the basis of this application is that before judgment herein was obtained in favour of the claimant, the claimant's mother died. Two older children obtained an order of Limited Grant to allow them to proceed with the matter on behalf of the other beneficiaries of the deceased. The applicant has heavily attacked the affidavit that was used to obtain the stay. In particular, it has been deposed that the sale agreement PNM5 is fraudulent. It is also alleged that there are no grounds warranting stay of execution of the judgment. That the defendant has not disclosed grounds on how the appeal will be rendered nugatory. The applicant further said that since May 2017, no further steps have been taken to hear the appeal.

I have looked at the response that was made by counsel Ndalama in relation to the application herein. I am aware that the stay order was granted through an ex-parte application. After giving the case the best of its scrutiny, I hereby order that the order of stay should be set aside. Let the judgment be executed to the letter. I am indeed not satisfied that execution of the judgment would render the appeal nugatory. Costs to the applicant.

**MADE THIS                      DAY OF JANUARY 2018 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**