



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MATRIMONIAL CAUSE NO. 17 OF 2013**

BETWEEN:

DERLIN PHIRI.....PETITIONER

AND

EDWARD PHIRI.....RESPONDENT

CORAM: Hon. Justice M L Kamwambe

Gondwe of counsel for the Petitioner

Chipembere of counsel for the Respondent

Phiri....Official Interpreter

RULING

Kamwambe J

This is an application by the Respondent to stay execution of the order pending rehearing and determination of the appeal.

The determination of this matter delayed because when I was transferred to the Criminal Division of the High Court, I sent the case file to general civil section of the High Court. Later I reclaimed it seeing that I was better placed to handle it to avoid further delays.

I delivered judgment in respect of distribution of matrimonial property on 18th January, 2016 after divorce was granted by the Senior Resident Magistrate Court sitting at Blantyre. On 26th January, 2016 the Respondent applied under Order 47 Rule 1 RSC for stay of execution of judgment on the ground that he did not attend the high court hearing on distribution of matrimonial property because

his counsel informed him that it was not necessary for him to appear in person as counsel would do everything for him. When counsel was asked about the position of the matter Appellant was told that all was in good hands. This clearly shows that counsel misled the Respondent who now feels that he has no any remedy but to stay execution.

In **Wilma Annie Roscoe Losacco v Ricardo Losacco** Matrimonial Cause No.7 of 2005 Nyirenda J said:

*"Stay of execution is a practice well established. It is also well established that neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so...Courts do not make a practice of depriving a successful litigant the fruits of his litigation see **Monk v Bartram** [1881] 1 QB 346. The question whether or not to grant a stay is entirely in the discretion of the court (**Becker v Earl's Court Ltd** (1911) 56 S.J. 206). In the exercise of the discretion, a court should endeavour as far as possible to maintain a fair and proper balance between the needs of the successful litigant and those of the applicant."*

The Respondent should show good cause or reason to warrant court's exercise of discretion in his favour. The onus lies on him to show proper basis for a stay which will be fair to all parties. That his counsel misled him is not good reason to warrant the court to grant the stay sought. The Respondent has a remedy by suing his lawyer, or by lodging an appeal. Lastly but not least, the judgment on distribution of property was not irregular so as to attract the attention of this court.

I decline to grant the relief sought.

Made in Chambers this 24th day of April, 2018 at Chichiri, Blantyre.


M L Kamwambe
JUDGE