

IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

M.S.C.A. CIVIL NO. 6 OF 1988
(Being Civil Cause No. 597 of 1986)

BETWEEN: J.A. SAUZE APPELLANT
- AND -
ROSEMARY ARGENTE (MRS) RESPONDENT

Coram: MTEGHA, J.

Chizumira, Counsel for the Plaintiff
Msaka, Counsel for the Defendant
Kadyakale, Law Clerk

R U L I N G

This is an application on the part of the plaintiff, for an order that execution in respect of costs be stayed pending the outcome of an appeal which he has lodged. The application is supported by an affidavit taken out by the plaintiff.

On 5th April, 1988, an application by the plaintiff to set aside judgment was dismissed, and pursuant to that order, the whole judgment has been paid to Sacranie and Gow.

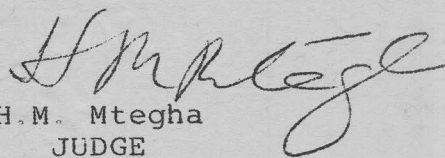
It is Mr. Chizumila's submission that he only wishes an undertaking from the lawyers that the costs, if paid, would be refunded in the event that the appeal succeeds.

Mr. Msaka has raised a preliminary point. He submits that when the application to stay execution of the judgment was dismissed, it also meant that an application to stay execution of costs was ipso facto dismissed, and therefore, this application is res judicata. He also submitted that the proper procedure would have been by way of appeal.

I do not subscribe to this reasoning. That application clearly dealt with the question of a stay of execution in relation only to judgment. Had the question of costs been considered, the court would have made an order in relation to those costs.

Coming to the present application, it is usual that solicitors have to take an undertaking to refund the costs in the event that an appeal succeeds. Accordingly, I grant the order prayed for, that the legal practitioners for the defendant do personally undertake to refund the costs in the event that the appeal lodged by the plaintiff succeeds.

MADE in Chambers this 14th day of February, 1989, at
Blantyre.


H.M. Mtegha
JUDGE