



REPUBLIC OF MALAWI



**IN THE SUPREME COURT OF APPEAL
SITTING AT BLANTYRE**

MSCA CIVIL APPEAL NO. 14 OF 2016

BETWEEN

SAKALANI MHANGO

1st APPELLANT

GROUP VILLAGE HEADMAN MAUWA

2nd APPELLANT

-AND-

IMAN LIMULA

RESPONDENT

Coram: HON. JUSTICE MZIKAMANDA SC, JA

Chirwa	Counsel for the Appellant
Chidothe	Counsel for the Respondent
Minikwa	Recording Officer

RULING

This is an application for stay of execution of judgment pending appeal. The application is contested.



The background to the matter shows that the present matter commenced on 3rd February, 2011. The appellant failed to file and serve a defence and a default judgment was entered against them on 3rd October, 2011. It took the appellant until 13th March 2013 to obtain a stay of execution of the default judgment ex parte pending an application for an order setting aside the judgment. The application to set aside judgment was never filed and the respondent filed an application for an order vacating the stay order. On 16th September, 2013 it was ordered that the appellants file within 14 days the application to set aside judgment failing which the order of stay would be vacated. The appellants did not comply and on 26th March, 2015, the High Court issued an order vacating the order of stay of execution of judgment. On 5th June, 2015 the appellants filed an application to set aside the order of 26th March 2015 and on 28th October, 2015 they filed a notice of appeal.

While the appeal was pending, appellants filed the present application for stay of execution pending the hearing of the appeal.

At the hearing of the present application Counsel Chirwa acknowledged that the lawyers who handled the matter on behalf of the appellants before he took over had failed the appellants in their manner of handling it. He however said that the ineptitude of Counsel should not prejudice the appellants but rather that justice must be seen to be done. He stated that his prayer was that the decision of the lower Court be reversed and that the appellants be given an opportunity to put forward their case. He adopted the affidavit and the skeleton arguments filed by Counsel Supedi on behalf of the appellants.

Counsel Chidothe for the respondent adopted his own affidavit and skeleton arguments. He was emphatic that since 3rd October, 2011 the appellants have not taken any step to have the judgment set aside even after being granted an order of stay of execution nearly two years after judgment was granted. Even after the grant of the order of stay of execution, the appellants did nothing. They did nothing even after being granted an unless order requiring them to file an application to set aside judgment within 14 days. The appeal subsequently filed to the Supreme Court of Appeal is premature. Counsel argued that the present application does not meet any

of the four tests set out in Anglia Book Distributors Ltd v Registered Trustees of Karibu Ministries t/a Karibu Academy Misc Civil Appeal No. 54 of 2015, namely that

- (i) there must be a serious matter to be tried
- (ii) damages would not be adequate remedy
- (iii) whether justice will be achieved by maintaining or altering that status quo
- (iv) the relative strength of the parties case must be such as would militate in favour of granting stay.

Counsel observed that the notice of appeal was filed on 28th October 2015 but up to now the appellants have not taken any steps to prosecute it. Counsel felt that the appellants did not come to Court with clean hands.

The present matter involves chieftaincy wrangles. The protracted nature of the wrangles even after a judgment was entered is not helping matters. The submissions by Counsel Chirwa that the appellants should not be made to suffer for the ineptitude of Counsel is correct. However the appellants cannot be entirely exonerated for their not showing interest in settling the matter prosecuted to the end for nearly five years after the judgment. Another order of stay of execution would unjustifiably postpone the enjoyment of the fruits of the judgment that the respondent obtained in 2011. There are no special circumstances shown to persuade me to grant the stay of execution of the judgment. I would refuse to grant such stay of execution. The appellants remain at liberty to pursue the matter in the Courts, but the respondent must enjoy the fruits of the judgment as it stands now.

In accordingly dismiss the application for an order of stay of execution with costs to the respondent.

Made in Chambers this 1st day of September, 2016 at Blantyre.


R.R. Mzikamanda SC
JUSTICE OF APPEAL