



REPUBLIC OF MALAWI

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

**MSCA CIVIL APPEAL NO. 14 OF 2016**

**BETWEEN**

**SAKALANI MHANGO**

**GROUP VILLAGE HEADMAN MAUWA**

**1<sup>st</sup> APPELLANT**

**2<sup>nd</sup> 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 3<sup>rd</sup> February, 2011. The appellant failed to file and serve a defence and a default judgment was entered against them on 3<sup>rd</sup> October, 2011. It took the appellant until 13<sup>th</sup> 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 16<sup>th</sup> 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 26<sup>th</sup> March, 2015, the High Court issued an order vacating the order of stay of execution of judgment. On 5<sup>th</sup> June, 2015 the appellants filed an application to set aside the order of 26<sup>th</sup> March 2015 and on 28<sup>th</sup> 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 3<sup>rd</sup> 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

