



Malawi Judiciary

**IN THE MALAWI SUPREME COURT OF APPEAL**

**AT BLANTYRE**

**MSCA CIVIL APPEAL NO 54 OF 2014**

BETWEEN:

**MAPETO (DWSM) LIMITED.....APPLICANT**

**-V-**

**MALAWI REVENUE AUTHORITY,,,,,,..... RESPONDENT**

**CORAM : THE HONOURABLE JUSTICE E B TWEA SC JA**

**COUNSEL FOR THE APPELLANT – Mr Msuku**

**COUNSEL FOR THE RESPONDENT – Mr Chungu**

**RECORDING OFFICER – Mrs Chimtande**

**RULING**

**TWEA SC JA**

Court

I wish to put it on record that, when I saw the Court users complaint and perused the file, I was of the view that I would not be able to come up with a ruling on the notes of Justice Chinangwa SC, retired, because I could not read most of his handwriting. I was of the view therefore that it would be best

that the matter be heard de novo. I did not consult you. I was of the opinion that I could solicit your views at this hearing.

Secondly and most importantly is, what is it that you are applying to be stayed in this application?

MSUKU: Before we proceed I consulted my colleague. I have just taken over the case from my senior colleague Mr Banda, He is away for medical attention in South Africa.

I am not comfortable to take up the matter. I would rather we adjourn to another date so that he could appear. I have not been able to secure any of my colleagues at our firm on the matter. I would thus pray for an adjournment.

We would seek first week of May. My colleague will be back end of April. If he is not I will consult to handle the matter. This is our prayer.

CHUNGU: We have heard what our colleague has said. It is understandable. However, as respondents, we are ready to proceed. I was seized of the matter throughout.

Without going into the merit of your questions the other questions that would be asked are, much as waiting for counsel Banda is ideal, is it worth it? What is it we wish to achieve? what is it we want to stay? This is from the summons of the applicants. According to the summons it was a summons for stay pending determination of an appeal by the Commissioner General.

At the time of the first adjournment of the summons, the Commissioner General had not yet communicated his decision to the Applicant. At the time of the hearing the Commissioner General had communicated his decision on the Appeal subject of the summons. This is on the Court file.

I would wish to pose a further question; with this background do we still have an issue pending? What would be the subject of the summons? With that in mind, much as it would be ideal, it would not be worth waiting. There are more issues than the ones I have described. The Court can make its decision and confirm with the contents of the matters. Summons came earlier but within 30 days the Commissioner General had responded. Thirty days is the statutory period for the Commissioner General to respond to a tax payer's appeal.

Unless the Court wishes to be addressed further that would be all.

I apply to dismiss the application.

MSUKU: I wish to state that I could only ask that the matter be adjourn for us address you on the merits. I would not wish to accede to the dismissal applied for.

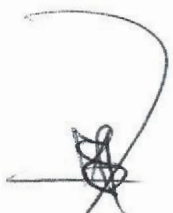
COURT ORDER: I have heard both parties, I am of the view that the Judgment of the court below to dismiss the application is not amenable to a stay. It is directive that the applicant should exhaust the alternative procedures available under laws

governing the tax regime. The status quo is that the respondents ~~and~~ are entitled to enforce the judgment and damages as assessed.

This court cannot stay the proceedings before Commissioner General. If it had such authority, the stay would frustrate the appeal that the applicant filed.

If the applicant wishes to pursue the appeal against the Judgment of the Court below, which is already on record, that would be a different matter. However, as the case now stands I am at pains to establish what needs to be stayed. I therefore order that unless the applicant shall file a process on a substantive matter that requires the Court to adjudicate upon within 15 days of this order this matter stands dismissed with costs to the respondents.

**Pronounced in chambers** this 24<sup>th</sup> day of April, 2017 at Blantyre.



**E. B. TWEA SC**  
**JUSTICE OF APPEAL**