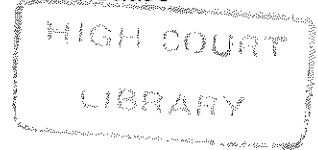


IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE  
MSCA CIVIL APPEAL NO. 26 OF 2019

[Being High Court, Commercial Division, Blantyre Registry, Commercial Cause  
Number 187 of 2016]



BETWEEN

CEMENT PRODUCTS LTD

RESPONDENT[APPELLANT]

AND

RELIANCE CEMENT TRADING COMPANY

APPLICANT[RESPONDENT]

CORAM: THE HON. MR JUSTICE L P CHIKOPA SC JA

Jangale of Counsel for the Applicant/Respondent

Chalamanda/Gondwe/Mapemba/Dikiya of Counsels for the  
Respondent/Appellant

Minikwa Mr., Clerk

RULING/ORDER

The Applicant registered in the Court below against the Respondent a foreign arbitral award in the sums of US\$414580.84, GBP 15959.58, European Union Euros 32581.43 and GBP2254.38 plus interest. The Applicant appealed to this Court and was granted a stay of enforcement pending the hearing and determination of such appeal.

On April 6, 2021 we heard an application from the Applicant seeking to discharge, vary or reverse the order of stay referred to above. The application was made under Order III rule 26 of the Supreme Court of Appeal Rules.

Going by the affidavit[there is no reference to this on the face of the summons itself] sworn by the Applicant's Counsel in support of the application, specifically paragraph 16 thereof, it is clear that the application is premised on the Respondent's failure, post settlement of the record in readiness for the appeal, to

take any steps to move this Court to hear and determine the appeal. In the Applicant's view the alleged failure is clear enough evidence that the Respondent has lost interest in the appeal and is now delaying the proceedings with a view to unduly denying the Applicant the fruits of a successful litigation which will in turn affect the latter's business operations. It is in those circumstances that the discharge, variation or reversal[not reservation] is prayed for.

The application is opposed. There is before us in that regard an affidavit sworn by one of the Respondent's Counsels setting out the reasons for such opposition.

We will not belabour the issues. In our view an application such as the one before us should only be granted where the party allegedly at fault has failed to do that which they should have done in furtherance of a timeous disposition of the appeal. In the instant case the question therefore is what is this that the Respondent should have done that they have not done.

Above we have referred to paragraph 16 of the affidavit in support of this application. In it the Applicant alleges that after a stay of enforcement was granted in this matter the Respondent has '*not taken any steps to move this Court to hear and determine the appeal*'. During the hearing of the application we specifically asked the Applicant's Counsel what steps are these that the Respondent has not taken but was supposed to take. There was nothing about specifics. Instead we were told something about the Respondent not having done enough to move the Court to hear the matter quickly enough.

In their opposition to the application the Respondent informed us that the record herein was settled by consent on October 4, 2019 and served on the Respondent by the Registrar of this Court in February 2021. The Respondent further deponed that they are now waiting for the Court to advise of the date of hearing. Their argument in opposition in so far as we understood it is therefore that they have discharged their statutory duties relating to this appeal. That if there has been any delay it has not been as a result of any tardiness or neglect on their part. The Respondent therefore prayed that the application be dismissed with costs on an indemnity basis.

We largely agree with the Respondent. There have been no facts put before us proving on a balance of probabilities that the Respondent have failed to do something they should have done towards having the appeal timeously heard. On the contrary the evidence shows that the time lines set out in the stay order were complied with. The record was settled. It is the preparation of the record by the Registrar of this Court that has occasioned any delays herein.

The application before us is to the extent that it was premised on the above delay clearly without merit. It is hereby dismissed.

The Respondent asked that the dismissal be with costs on an indemnity basis.

Costs are in the discretion of the Court. The general rule is that they follow the event. While we therefore agree that the Respondent should have the costs herein we do not think they should be on an indemnity basis. This after all is an ongoing matter.

We so order.

Dated at Blantyre this 16<sup>th</sup> day of April, 2019.

L P CHIKOPA SC

JUSTICE OF APPEAL

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