



**IN THE SUPREME COURT OF APPEAL
PRINCIPAL REGISTRY**

MSCA CIVIL APPLICATION NUMBER 43 OF 2024

**[Being Miscellaneous Civil Cause Number 07 of 2020 before Honourable
Justice Kondowe, High Court, Mzuzu Registry]**

BETWEEN

GROUP VILLAGE HEADMAN KAULA

AND HIS SUBJECTS.....1ST APPELLANT

SENIOR VILLAGE HEADMAN

YAVUNDIKA NGWIRA.....2ND APPELLANT

VILLAGE HEADMAN JEREMAN.....3RD APPELLANT

VILLAGE HEADMAN CHAPOLA.....4TH APPELLANT

VILLAGE HEADMAN ZAMANI.....5TH APPELLANT

AND

AGRICULTURE DEVELOPMENT AND

MARKETING CORPORATION [ADMARC].....RESPONDENT

CORAM: HON JUSTICE F.E. KAPANDA, SC, JA.

Leonard Emmanuel Mbulo, of Counsel for the Appellants

William Chibwe, of Counsel for the Respondents

E. Minikwa Court Clerk | Recording Officer

Date of Hearing: 24 September, 2024

Date of Ruling : 16 December 2025

RULING ON APPLICATION FOR STAY OF EXECUTION PENDING APPEAL

INTRODUCTION

This is an inter-partes application brought before this Court under section 7 of the Supreme Court of Appeal Act, as read with Order I rule 18 of the Supreme Court of Appeal Rules, in which the Appellants seek an order staying the execution of the judgment of the High Court (Mzuzu Registry) delivered on 22 May 2024. The impugned judgment declared the Respondent, Agriculture Development and Marketing Corporation (ADMARC), the rightful owner of land held under Deed Number 52998 situated at Katoto Estate in the City of Mzuzu, and directed the Appellants to deliver vacant possession of that land within ninety days.

The Appellants, being dissatisfied with that determination, have filed a Notice of Appeal and now move this Court for a stay of execution pending the hearing and final determination of the said appeal. The application is supported by the sworn statement of Mr. Leonard Emmanuel Mbulo, learned counsel for the Appellants, and skeletal arguments filed on their behalf. The Respondent opposes the application and relies on a sworn statement and skeletal arguments filed through its counsel.

At the hearing of the application, both parties were afforded full opportunity to address the Court, and the documents filed herein were adopted as forming part of their respective cases. The task of the Court at this stage is not to engage in a determination of the merits of the appeal, but rather to consider whether the circumstances of the present matter justify the exercise of this Court's discretionary power to stay execution of the judgment of the court below. The jurisdiction invoked is supervisory in nature, and must be exercised cautiously, bearing in mind the well-established principles governing applications of this kind, including the need to balance the Appellants' right of appeal with the Respondent's entitlement to enjoy the fruits of its judgment.

FACTUAL BACKGROUND

The proceedings giving rise to the present application commenced in the High Court, Mzuzu Registry, where the Respondent, Agriculture Development and Marketing Corporation (ADMARC), issued a claim against the Appellants on 10 March 2020. The Respondent sought declaratory relief to the effect that it is the lawful owner of land held under Deed Number 52998 situated at Katoto Estate in the City of Mzuzu, and further prayed for an order compelling the Appellants to deliver vacant possession of the said land.

The Appellants entered a defence in which they, inter alia, contended that the Respondent's action was statute-barred and that the Respondent had proceeded against the wrong parties. The matter was thereafter referred to mandatory mediation. The mediation, however, proved unsuccessful, whereupon the case was returned to the court below for trial.

Following a full hearing, the High Court (Kondowe J) delivered its judgment on 22 May 2024. The court found in favour of the Respondent and issued declaratory orders affirming the Respondent's ownership of the land in dispute. The court further directed that the Appellants vacate and deliver possession of the land within ninety days from the date of judgment.

Dissatisfied with that decision, the Appellants lodged a Notice of Appeal challenging the judgment of the High Court. They subsequently applied to the court below for a stay of execution of the judgment, but that application was dismissed. With the expiry of the ninety-day period imminent, the Appellants assert that they face the risk of demolition of their structures—comprising houses and business premises—situated on the land, and contend that such loss would be irreparable should their appeal ultimately succeed.

The Respondent disputes the existence of any irreparable harm, arguing that any loss is compensable, and further alleges that the Appellants continued to erect structures on the land in defiance of subsisting injunctive orders. It is against this background that the Appellants now seek a stay of execution from this Court pending the determination of their appeal.

Summary of Facts from the Affidavits

The Respondent commenced proceedings in the High Court, Mzuzu Registry, in March 2020 seeking declaratory relief that it is the lawful owner of land comprised in Deed Number 52998 situated at Katoto Estate, Mzuzu, together with an order requiring the Appellants to deliver vacant possession. Mandatory mediation proved unsuccessful and the matter proceeded to trial, culminating in a judgment delivered on 22 May 2024 in which the High Court upheld the Respondent's claim and ordered the Appellants to vacate the land within ninety days.

Following the judgment, the Appellants lodged a Notice of Appeal. They previously sought a stay of execution before the High Court, but that application was dismissed, leading to the present application before this Court. The Appellants state that they and their subjects reside on the land and have erected residential houses and business structures. They contend that enforcement of the High Court's judgment will result in demolition of these structures, exposing them to severe and irreversible hardship.

The evidence shows that the Respondent obtained interlocutory injunctions on 15 May 2020 and 22 July 2021 restraining both parties from developing or interfering with the land pending determination of the action. The Respondent has produced reports and photographic documentation indicating that new buildings, extensions, and other developments continued to be carried out on the land between 2020 and 2024. The Appellants do not dispute the existence of these structures, though they do not address the timing or extent of the developments.

The Respondent alleges that the Appellants and their subjects continued building, demarcating plots, cutting trees, and carrying out various activities on the land in defiance of the subsisting court orders. The Appellants deny any wrongdoing and emphasise that no court has yet made a finding of contempt against them. The Respondent's evidence records that several new structures appeared after the injunctions were granted, that some buildings were nearing completion by August 2023, and that additional occupants were allocated land as late as October 2021. These matters are not specifically rebutted by the Appellants.

It is not disputed that the ninety-day period for the delivery of vacant possession has expired and that the Appellants now face imminent enforcement of the judgment, including the possibility of demolition of their structures. The Appellants assert that such demolition would cause irreparable harm, while the

Respondent maintains that any loss is compensable by damages and that the Appellants have not shown that the Respondent lacks the means to satisfy such damages.

The Respondent further contends that the Appellants' conduct following the issuance of the injunctions demonstrates disregard for court orders, whereas the Appellants insist that their conduct cannot be impugned in the absence of a judicial finding of contempt. These facts, as established from the affidavits and supporting materials, form the basis upon which the present application must be determined.

THE GROUNDS OF APPEAL

The Appellants contend that the Learned Judge erred in law and in fact in holding that the Respondent is the lawful owner of the land comprised in Deed Number 52998 situated at Katoto Estate, Mzuzu. It is argued that the court below misapprehended the evidence and improperly construed the Respondent's alleged title, thereby reaching findings not supported by the record.

The Appellants further aver that the Learned Judge erred in failing to uphold their plea that the Respondent's claim was statute-barred. They maintain that, on the facts and the applicable law on limitation of actions, the claim was incompetent and ought to have been dismissed.

It is also asserted that the Learned Judge erred in proceeding with the matter against the Appellants notwithstanding the objection that the Respondent had sued the wrong parties. The Appellants contend that the court failed to properly determine whether they were the correct defendants to the action, thereby committing a material procedural irregularity.

The Appellants further submit that the Learned Judge misdirected himself in the evaluation of the evidence relating to their occupation, use, and development of the land. They argue that the findings concerning the nature, extent, and legality of their occupation were unsupported by, or contrary to, the evidence before the court.

It is additionally contended that the Learned Judge erred in granting an order of vacant possession within ninety days without due regard to the circumstances of the case, including the existence of residential houses and commercial structures

erected by the Appellants. The Appellants argue that the order was disproportionate, unduly harsh, and failed to balance the equities of the matter.

The Appellants further maintain that the Learned Judge erred in law by failing to consider or properly apply the legal consequences of the Respondent's conduct in the management, enforcement, and protection of its alleged title over the land. They contend that such conduct materially affected the equities and the Respondent's entitlement to the reliefs granted.

It is also submitted that the judgment of the court below is against the weight of the evidence. The Appellants argue that, when the evidence is properly evaluated, the decision reached by the Learned Judge cannot be sustained.

Finally, the Appellants contend that the Learned Judge erred in law and fact by failing to give adequate or proper reasons for critical findings that formed the basis of the orders made, thereby rendering the judgment unsafe.

PARTIES' POSITIONS

It is now necessary that this Court looks at the arguments that have been raised by the parties in answer to these questions. We shall start with the appellants' arguments then move on to consider those put forward by the respondent.

Appellants' Arguments

The Appellants submit that they have an arguable appeal against the judgment of the High Court delivered on 22 May 2024, and that a stay of execution is necessary to preserve the subject matter of the appeal. They contend that they and their subjects have long resided on the disputed land and have constructed residential homes and business premises thereon. They argue that if the Respondent proceeds to enforce the judgment by demolishing these structures, the resulting harm will be irreparable and impossible to reverse should the appeal succeed. It is their case that such destruction would render the appeal nugatory and defeat the purpose of the appellate process.

The Appellants rely on the sworn statement of Mr. Leonard Emmanuel Mbulo, which they adopt in full, and maintain that the balance of convenience weighs in their favour. They assert that the appeal raises legitimate and substantial questions, including whether the matter was statute-barred, whether the Respondent sued the correct parties, and whether the trial court properly evaluated the evidence

relating to the Respondent's title and their occupation of the land. These issues, they say, demonstrate prospects of success sufficient to warrant an order preserving the status quo pending the appeal.

The Appellants acknowledge the general principle that a successful litigant should not lightly be deprived of the fruits of judgment, but they submit that the courts have consistently recognised that where there is a real risk of an appeal being rendered abortive, the interests of justice favour the grant of a stay. They cite the Mulli Brothers decision as authority for this proposition. They further maintain that the structures on the land are unique and integral to their homes and livelihoods, and that monetary compensation would not adequately remedy the loss.

In response to the Respondent's allegations that they acted in defiance of court orders, the Appellants argue that such matters are premature, as no court has adjudged them to be in contempt. They submit that the mere pendency of contempt allegations cannot be used to deprive them of the right to seek relief from this Court. They insist that equitable considerations cannot be invoked against them in the absence of a judicial finding of misconduct.

The Appellants therefore urge the Court to exercise its discretion in favour of granting a stay, preserving the land and the structures thereon until their appeal is heard and determined.

Respondents' Arguments

The Respondent opposes the application for a stay of execution and submits that the Appellants have not satisfied the legal requirements for the grant of such relief. It is the Respondent's position that the general rule—that a successful litigant should not be denied the fruits of its judgment—ought to prevail, as the Appellants have failed to demonstrate any special circumstances warranting departure from that principle.

The Respondent argues that the Appellants have not shown irreparable harm. It is submitted that any loss arising from the demolition of structures on the land is quantifiable and compensable in damages, and that the Appellants have not provided evidence suggesting that the Respondent lacks the financial capacity to meet such damages in the event the appeal succeeds. The Respondent emphasises that mere assertions of hardship do not amount to irreparable harm.

A central plank of the Respondent's case is that the Appellants have engaged in unlawful conduct by proceeding to construct houses, business premises, and other structures on the land despite subsisting injunctions issued by the High Court restraining further developments. The Respondent relies on inspection reports, photographs, and annexed documentation indicating that substantial construction activity took place between 2020 and 2024, including after the injunctions of 15 May 2020 and 22 July 2021 were granted. On this basis, the Respondent submits that the Appellants are not approaching the Court with clean hands and should not be permitted to benefit from an equitable remedy such as a stay.

The Respondent further contends that the Appellants' alleged risk of hardship is self-created. It is argued that the buildings the Appellants seek to protect were erected in defiance of court orders and that any resulting loss should not be attributed to the enforcement of the judgment but to the Appellants' own decision to ignore the injunctions. In addition, the Respondent submits that the Appellants have failed to produce evidence that their appeal has any meaningful prospect of success, and that the grounds advanced do not reveal any substantial error on the part of the High Court.

The Respondent also points out that the injunction granted by Justice Kondowe led to an audit of the land, which at the time showed only a small number of structures. The substantial increase in buildings after that period, according to the Respondent, confirms ongoing and deliberate non-compliance by the Appellants and their subjects. The Respondent stresses that contempt proceedings are pending before the High Court, further highlighting the impropriety of the Appellants' conduct.

In light of these matters, the Respondent submits that the interests of justice do not favour maintaining the status quo but rather uphold the High Court's judgment. The Respondent therefore prays that the application for a stay be dismissed with costs.

In sum, the Appellants contend that the execution of the High Court's judgment—particularly the demolition of residential and commercial structures on the disputed land—will cause irreparable harm and render their appeal nugatory. They submit that the structures constitute homes and sources of livelihood, and that their destruction cannot be adequately compensated by damages. The Appellants further argue that their appeal raises substantial and arguable grounds, including issues of limitation, proper parties, and evaluation of evidence, which warrant preservation of the status quo pending determination of the appeal. They

maintain that equitable relief should not be denied on the basis of alleged disobedience of court orders, as no court has made a finding of contempt against them.

The Respondent, on the other hand, argues that the Appellants have failed to demonstrate irreparable harm, since any loss is quantifiable and compensable. It submits that the Appellants have not shown that the Respondent lacks the financial capacity to satisfy damages if the appeal ultimately succeeds. The Respondent further asserts that the Appellants are not entitled to equitable relief because a substantial portion of the structures they now seek to protect were constructed in violation of subsisting injunctions that prohibited developments on the land. The Respondent contends that the hardship claimed by the Appellants is therefore self-induced and should not form a basis for granting a stay. It maintains that the appeal discloses no meaningful prospects of success and that the principle entitling a successful litigant to the fruits of its judgment should prevail.

In essence, the Appellants emphasise the risk of irreversible harm to them and the need to preserve the subject matter of the appeal, while the Respondent stresses the compensability of any loss, the Appellants' alleged misconduct, and the need to uphold the finality of valid judgments. These competing positions frame the issues to be resolved in considering whether the interests of justice favour the grant or refusal of a stay.

ISSUES FOR DETERMINATION

The application before the Court is for a stay of execution pending appeal. Having considered the affidavits, the submissions advanced by both parties, and the applicable legal framework, the following issues arise for determination:

The first issue is whether the Appellants have demonstrated that, absent a stay, the appeal would be rendered nugatory or that the subject matter of the appeal would be destroyed in a manner incapable of restoration should the appeal succeed. This requires the Court to assess the nature of the harm apprehended by the Appellants, particularly the alleged risk of demolition of residential and commercial structures, and whether such harm is reversible or remediable by an award of damages.

The second issue is whether the Appellants have established the existence of irreparable harm. This entails an inquiry into whether the injury they fear is of a

kind that cannot be adequately compensated through monetary relief, bearing in mind the Respondent's contention that any loss is quantifiable and that it has the means to meet compensation should the appeal succeed.

The third issue concerns the balance of convenience and the broader interests of justice. In this regard, the Court must determine whether maintaining or disturbing the status quo better accords with justice in light of the competing considerations raised: namely, the Appellants' continued occupation of the land, the Respondent's entitlement to enjoy the fruits of a lawful judgment, and the impact of the alleged construction of structures during the currency of subsisting injunctions.

The fourth issue is whether the conduct of the Appellants—particularly the Respondent's allegation that they continued to develop the land despite court orders—bears materially on their entitlement to equitable relief. This includes determining the extent to which unresolved allegations of contempt may properly influence the exercise of the Court's discretionary jurisdiction.

The fifth and final issue is whether, on the whole, the Appellants have shown sufficient grounds to justify the exercise of this Court's discretion in their favour, taking into account, though without determining, the arguability of the appeal.

These issues collectively guide the Court's assessment of whether the present circumstances warrant the grant of a stay of execution pending appeal.

ANALYSIS OF THE APPLICABLE LAW (FINDINGS AND CONCLUSIONS OF THE COURT)

It is a well-established principle of law that, upon the rendering of a final judgment, the successful litigant is *prima facie* entitled to the immediate benefits and fruits thereof. However, this entitlement is not unqualified; the jurisdiction of this Court encompasses the discretionary authority to grant a stay of execution pending appeal where circumstances so warrant. This discretion is to be exercised judiciously, with due observance to the facts of the particular case and the interests of justice.¹

¹ Hammond Suddard Solicitors v Agrichem International Holdings Ltd [2001] EWCA Civ 2065.

The Court’s jurisdiction to grant a stay of execution pending appeal is discretionary and must be exercised in accordance with settled principles of appellate practice. Both parties rely on the governing jurisprudence, notably *Mulli Brothers Ltd v Malawi Savings Bank*, MSCA Civil Appeal No. 48 of 2014, and *Tembo (JZU) v Chakuamba*, MSCA Civil Cause No. 230 of 2001. These authorities collectively articulate the contours of the Court’s discretion.

In *Tembo (JZU) v Chakuamba*, MSCA Civil Cause No. 230 of 2001 (31 October 2001), the Supreme Court emphasised that: “The general rule is that the grant of a stay is the exception rather than the rule, for the court does not readily deprive a successful litigant of the fruits of a judgment lawfully obtained.”

This pronouncement remains a foundational principle, and the Respondent strongly invokes it to resist the stay, contending that the High Court’s judgment should be enforced unless the Appellants clearly demonstrate circumstances justifying departure from this norm.

However, *Tembo* also accepted that the presence of an appeal necessitates a balancing act between two competing imperatives: the successful party’s right to enjoy the outcome of litigation, and the appellant’s right to pursue an appeal without it being rendered nugatory. This balance was further clarified in *Mulli Brothers*, where the Court held that the interests of justice may require preservation of the subject matter if execution would cause irreversible consequences or convert the appeal into an academic exercise.

Against that backdrop, the applicable principles may be summarised as follows:

First, a stay is exceptional. The Appellants must show “a proper basis” for disturbing the status quo established by the judgment. This requirement arises from both *Tembo* and *Mulli Brothers*, the latter holding that the onus rests squarely on the party seeking the stay.

Second, the Court must consider whether the appeal risks being rendered nugatory. The Appellants submit, through their skeletal arguments and sworn statement, that demolition of houses and business premises will destroy the appeal’s substratum and irreversibly prejudice their rights. The Respondent disputes this, arguing that any loss is fully compensable and that the land itself, the central subject of the litigation, will remain intact. The Respondent’s position is supported by the principle in *Tembo* that the successful party should not be obstructed unless necessary to protect the efficacy of the appeal.

Third, irreparable harm must be shown. The Appellants argue that damage to homes is inherently irreparable, while the Respondent points to the compensability of such harm and the absence of evidence challenging its financial capacity to satisfy damages. This aligns with the injunction in *Mulli Brothers* that irreparable harm must be assessed rigorously, not assumed.

Fourth, prospects of success may be considered, albeit in a limited way. The Appellants contend that their grounds—relating to limitation, misjoinder, and evaluation of evidence—are substantial. The Respondent counters that the appeal is weak. *Mulli Brothers* allows a preliminary assessment to determine whether the appeal is frivolous but cautions against encroaching upon the merits.

Fifth, the Court must not resolve contested factual questions at this stage. The affidavits conflict on whether the Appellants constructed most of the structures after injunctions were issued; the Respondent's sworn statement (pages 4–6) asserts that **80% of the structures were erected in contempt of court orders**. The Appellants deny wrongdoing but offer no specific rebuttal. Consistent with *Laboratoire Pentagone* (cited in *Mulli Brothers*), the Court must leave such matters for the full appeal.

Sixth, equity requires clean hands. The Respondent argues that the Appellants should not benefit from equitable relief because the structures at the centre of this application were erected in breach of injunctions. The Appellants argue that no contempt finding has been made. Nonetheless, *Tembo* and *Mulli Brothers* both recognise that conduct inconsistent with court orders is relevant to the discretionary analysis even absent a formal conviction for contempt.

Seventh, the overarching test, reaffirmed in *Mulli Brothers* (supra), is what the interests of justice demand. This requires a holistic assessment of the risk of futility, the nature of the alleged harm, the conduct of the parties, the preservation of respect for court orders, and the competing rights at stake.

Applying these principles to the circumstances as established from the affidavits and the skeleton arguments, the legal framework compels the Court to evaluate the stay application not mechanically but contextually. Each party has correctly stated the law; the dispute lies in its application to the facts as found.

The governing jurisprudence, especially the dictum in *Tembo (JZU) v Chakuamba* (supra), therefore provides the controlling framework within which the Court must determine whether the Appellants have met the high threshold for the exceptional remedy of a stay.

Having considered the affidavits filed by both parties, the skeleton arguments, the oral submissions, and the governing principles on applications for stay of execution pending appeal, the Court must determine whether the Appellants have discharged the onus of demonstrating a proper basis for the exceptional relief sought.

The primary considerations are whether the appeal would be rendered nugatory absent a stay, whether the Appellants will suffer irreparable harm, where the balance of convenience lies, and what the broader interests of justice require.

In the present matter, the Appellants assert that execution of the judgment will result in the demolition of homes and business structures, thereby destroying the substratum of the appeal and causing irreparable harm. However, the evidence before the Court does not sufficiently establish that such harm is incapable of compensation. The Respondent has not been shown to lack the financial capacity to satisfy damages should the appeal ultimately succeed. The claim of irreparability is therefore not sustained.

Further, the Appellants' reliance on the present state of the land as the "status quo" is significantly undermined by the Respondent's evidence—unchallenged in its material particulars—that much of the development on the land occurred after the issuance of binding injunctions restraining such activity. While no finding of contempt has yet been made, the Court cannot disregard credible evidence that the circumstances now invoked as hardship may have been materially contributed to by the Appellants' own conduct. Equity does not readily assist a litigant whose hands appear unclean in relation to the subject matter of the relief sought.

In relation to the prospects of success, the Court reiterates that it is not appropriate at this stage to delve into the merits of the appeal. It is sufficient to observe that the Appellants have not demonstrated a prima facie case strong enough to tip the discretionary balance in their favour.

When all these factors are weighed cumulatively, the Court is not persuaded that the interests of justice require the interruption of the High Court's judgment. The Appellants have failed to establish that the appeal will be rendered nugatory or that irreparable harm will result if execution proceeds. Conversely, the Respondent, as the successful litigant, is entitled—consistent with long-standing authority including *Tembo (JZU) v Chakuamba*, MSCA Civil Cause No. 230 of 2001—to enjoy the fruits of its judgment unless compelling reasons dictate otherwise. No such compelling circumstances have been shown.

The Court therefore finds no proper basis upon which to grant the order sought.

ORDERS

1. The Appellants' application for a stay of execution of the judgment of the High Court dated 22 May 2024 is **dismissed**.
2. The dismissal is with **costs to the Respondent**, such costs to be taxed if not agreed.
3. For the avoidance of doubt, this order does not preclude the Appellants from pursuing their appeal in the ordinary course.

It is so ordered by the Court.

Handed down in Chambers at the Supreme Court of Appeal, Blantyre this 16th day of December 2025.



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HON JUSTICE F.E. KAPANDA, SC, JA.
JUSTICE OF APPEAL