



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION**

**ELECTION CASE NO. 70 OF 2025**

**RAMUZANI JUMA MAHOMMED ..... PETITIONER**

**AND**

**MALAWI ELECTRAL COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THOMSON KAMANGIRA ..... 2<sup>ND</sup> RESPONDENT**

**CORAM: HON. JUSTICE E. CHANZA**

Mr K B Soko, Counsel for the Petitioner  
Mr Lungu and Mr M'mbaya for the 2<sup>nd</sup> Respondent  
Ms. F. Ngoma, Court Clerk

**Ruling on an Application for a Stay of the Judgment of the Court *Chanza. J***

1. This is the Court's ruling in respect of the 2<sup>nd</sup> Respondent's application for a stay of this Court's judgement delivered on 22<sup>nd</sup> December 2025 declaring that the 2<sup>nd</sup> Respondent was not duly elected to the office of Member of National Assembly for Nsanje South Constituency; and directing the 1<sup>st</sup> Respondent to hold fresh elections for the parliamentary seat for the said constituency.
2. The 2<sup>nd</sup> Respondent's application has been brought under **Order 10 of the Courts (High Court) (Civil Procedure) Rules ("CPR")** as read with **Order 1 Rule 18 of the Supreme Court of Appeal Rules** and the inherent jurisdiction of the Court.

3. The application is being opposed by the Petitioner on two fronts. One based on procedure and another on the substance of the application itself. On the procedural front, Counsel avers that the 2nd Respondent has brought the application for the stay of judgement under the wrong provisions of the law/ procedural rules.
4. Specifically Counsel argues that Order 10 of the CPR being an omnibus provision for all interlocutory matters cannot stand on its own as a basis for making an application and that it needs to be accompanied by a law or rule that speaks to the relevant interlocutory application being made before the Court.
5. He further argues that Order 1 Rule 18 of the Supreme Court of Appeal Rules cannot be the basis for bringing this application as the said Rules cannot apply to proceedings in the High Court. In this respect he has cited the case of The Registered Trustees of Khushi Trust v Force Ngwira MSCA Misc Civil Application No. 18 of 2023 which quoted with approval the legal position as stated in case of Violet Phiri v Amos Phiri Matrimonial Cause No. 45 of 2015) [2021] MWHC 354 (30 March 2021) (unreported).
6. He also argues that the application herein cannot be brought pursuant to the inherent jurisdiction of the Court because it is inappropriate for a party to do so where there is a specific provision under which an application can be brought. He further submits that where a party invokes the inherent jurisdiction of the Court, it is imperative that the party demonstrates a solid or genuine reason for doing so.
7. This Court agrees with Counsel for the Petitioner's submissions in this respect in their entirety. While the High Court and Supreme Court have concurrent jurisdiction on matters of stay or suspension of a judgement of the High Court, the applicable rules of practice when the application is being heard in the High Court are the Courts (High Court) (Civil Procedure) Rules 2017 and not the Supreme Court of Appeal Rules.
8. This Court also notes that while Order 10 Rule 1 and 3 of the CPR generally allow any party to apply during a proceeding for an interlocutory order at any stage of the proceedings, Order 10 of the CPR has provisions pertaining to the various specific interlocutory proceedings over and above the general provision under Order 10 of the CPR, and suspension or stay of judgement is not amongst those interlocutory applications provided for under this Order.

9. The CPR has specific provisions for various applications post the issuance of a judgement or an order under Order 28. In this respect, Order 28 Rule 48 of the CPR specifically provides for an application for suspension of enforcement of an order by an enforcement respondent, i.e. stay of execution of a judgement or an order.
10. Once an application is made under Order 28 Rule 48 CPR, the Court has the power under Order 28 Rule 50 of the CPR to, among others, suspend the enforcement of all or part of the order or make other orders as it considers appropriate, including another enforcement order. Order 10 of the CPR cannot stand as a basis for making the application for a stay or suspension of a judgement and/ or the orders made therein in view of the specific provisions on the subject matter under Order 28 Rules 48 and 50 of the CPR.
11. Furthermore, the Court's inherent jurisdiction cannot be called upon by a party in circumstances where there are specific provisions on the subject matter application; and where the Court is moved to invoke its inherent jurisdiction, it is imperative for the applicant to demonstrate a solid or genuine reason for doing so. [See: The registered Trustees of Youth and Society v Greizeder Jeffrey and others MSCA Appeal No. 70 of 2018, Alenga Limited v Ecobank Malawi Limited Commercial Cause No. 320 of 2022, and Standard Bank v Maone Mills & Others Commercial Cause No. 302 of 2017 for this submission].
12. This Court therefore finds the commencement of the application for stay of the judgement herein on the provisions of Order 10 of the CPR, or the Malawi Supreme Court Rules or indeed under the inherent jurisdiction of this Court to be marred with irregularities.
13. Counsel for the 2<sup>nd</sup> Respondent has implored this Court to invoke the provisions of Order 2 Rule 2 of the CPR and its inherent jurisdiction to cure these irregularities. He argues that Order 2 Rule 2 of the CPR prioritises the substance of the matter over minor technicalities, preventing parties from losing out due to inadvertent errors. He argues that the Petitioner has not been prejudiced by the misstatement of the provisions under

which the application herein has been brought as he has been able to file his response to the application for stay.

14. In this respect the 2<sup>nd</sup> Respondent submits that the Supreme Court in the appeal case of Mutharika & Another v Chilima & Another MSCA Presidential Election Appeal No. 1 of 2020 has made it clear that election matters must be resolved on substantive compliance with the Constitution and electoral law, not technical or procedural objections. He therefore urges this Court to disregard these irregularities as they are minor procedural errors, and instead proceed to deal with the substance of the application, as this is an election matter.

15. It is important that, at this point in the ruling, that this Court makes the following observations, and state some settled legal principles on the subject matter application as a context within which an application for stay or suspension of execution of a court judgement or order are ordinarily considered by courts:

15.1. The matter which is before this Court is an interlocutory application for a stay or suspension of a judgement of a court which, under our jurisprudence is valid and enforceable until and unless it is set aside by the Supreme Court.

15.2. An intention to appeal against the said judgement or indeed the appeal itself is not ordinarily dependent on an application for a stay or suspension of the judgement. The appeal must be proceeded with even in the absence of the application for stay or suspension of the judgement, and regardless of the outcome of the application.

15.3. This Court, having dealt with the substantive matter of the Petition that was before it, the relief being sought by the 2<sup>nd</sup> Respondent in this application is one which is at the discretion of this Court upon being satisfied that all legally settled principles and conditions on the subject matter have been satisfied by the party seeking the relief.

15.4. The relief is therefore granted as a matter of exception, as the general principle is that a successful litigant should not be denied the fruits of his litigation.

16. Notwithstanding that Order 2 Rule 2 of the CPR provides that an irregularity in a proceeding or document or a step taken or order made shall not render such a proceeding, document, step or order (as the case may be) a nullity, Order 2 Rule 3 of

the CPR grants this Court power in the event of non-compliance with the Rules to, among other things, set aside all or part of the proceeding or a step taken in the proceeding when moved by a party.

17. Furthermore, it is the view of this Court that the sentiments of the Supreme Court in Mutharika & Another v Chilima & Another regarding election matters were not meant to do away with procedural rules as are legally applicable; nor were they meant to sanction non-compliance with the rules especially where such non-compliance arises from mere slackness, flagrant disregard of specific statutory provisions, not based on any good excuse or for a good cause. The Supreme Court's sentiments also do not in any way take away the powers reposed in this Court under Order 2 Rule 3 of the CPR
18. This Court finds what was stated by the Supreme Court of Appeal in Standard Bank Limited v Maone Mills [Supra] on pages 3 and 4 of its judgement on the issue of procedural vis a vis substantive issues instructive in the present application, and equally applicable in this Court and indeed in election matters. The Supreme Court stated as follows:

*“The law and practice of this Court is clear enough. Parties seeking audience before it must adhere not only to substantive laws engaged but also its rules of procedures. There should, in other words, be adherence not only to substantive justice but also procedural justice. And where a party does not adhere to one or the other appropriate sanctions will be applied. Such sanctions include the denial of audience to the offending party. That is obvious from Practice Direction Number 1 of 2010, this Court's decision in Chipeta v Banda & FDH Bank MSCA Civil Appeal Number 27 of 2020[unreported] and also the dissenting opinion of Hon Katsala JA in Ngwira & Another v Ngwira MSCA Civil Appeal Number 16 of 2020[unreported] which has now, as matters turn out, been adopted as the official position of this court on issues to do with procedural justice.*

*Where however a party seeks to be pardoned for non-adherence and spared sanctions it behoves them to show cause why they should be so forgiven. This invariably involves the offending party showing, on a balance of probabilities, that the noncompliance was in the circumstances for good cause and further that there*

*will be no injustice thereby caused to the innocent party that cannot be cured by an award of costs and more importantly that it is in the interests of justice that the offending party be allowed to further participate in the case the procedural transgression[s] notwithstanding.”*

19. Applying the principles stated in Standard Bank v Maone Mills and Another [Supra] to the instant application, the facts on record show that the application was filed by the 2<sup>nd</sup> Respondent on 24<sup>th</sup> December 2025 as an urgent matter on a without notice basis. This Court therefore set the 19<sup>th</sup> January 2026 as the date for the hearing of the application. However, when the matter came up for hearing on 19<sup>th</sup> January, 2026, Counsel for the Petitioner also appeared before this Court and filed a Sworn Statement in opposition to the Application.
20. At the instance of the 2<sup>nd</sup> Respondent, the Court adjourned the hearing of the application to 23<sup>rd</sup> January, 2026 to allow the Petitioner to respond to the issues that had been raised by the Petitioner in his sworn statement in opposition to the application and the skeleton arguments. The Court also directed that the matter would be dealt with by the Court on an inter partes basis.
21. On 21<sup>st</sup> January, 2026, the 2<sup>nd</sup> Respondent filed a sworn statement in reply to the sworn statement in opposition and supplementary skeleton arguments. On 23<sup>rd</sup> January 2026, the Court therefore heard the parties’ oral arguments in addition to the written skeleton arguments that were filed and adopted in their entirety by both parties during the hearing.
22. Given the possibility that the 2<sup>nd</sup> Respondent may have filed the application on 24<sup>th</sup> December 2025 in haste, it is the view of this Court that the period of close to a month which elapsed before the hearing of the application was sufficient for Counsel for the 2<sup>nd</sup> Respondent to cross-check the correctness of the application in the light of the procedures and/or rules that needed to be complied with for this application.
23. Even after the hearing of the application did not take place on 19<sup>th</sup> January, 2026 and the Petitioner highlighted these irregularities (when the Petitioner’s sworn statement of facts and skeleton arguments were served on the 2<sup>nd</sup> Respondent prior to the scheduled hearing on 23<sup>rd</sup> January, 2026), Counsel in his Sworn Statement of Facts in Reply, and

the Supplementary Skeleton Arguments in support of the application chose to trivialise the irregularities raised as minor technical issues, and no effort was made to have these irregularities regularised.

24. The fact that this is an election matter does not per se amount to a good reason for non-compliance, notwithstanding that it is a factor that this Court would ordinarily favourably consider. It is also incumbent upon the 2<sup>nd</sup> Respondent to show that the non-compliance was in the circumstances for a good reason or cause; and that the irregularities could not be regularised in time for the hearing of the application, if he is to be pardoned for the non-compliance and the irregularity condoned. This Court cannot condone errors, irregularities or omissions that border on sheer slackness in the handling of an application, or blatant disregard for specific provisions of the law.
25. It is therefore the finding of this Court that the 2<sup>nd</sup> Respondent's application for a stay of this Court's judgement that was delivered on 22<sup>nd</sup> December, 2025, and the orders made therein is incompetent and improperly before this Court, the same having been filed under the wrong provisions of the law.
26. Accordingly, this Court hereby dismisses the 2<sup>nd</sup> Respondent's application for an order of stay of judgement pending the hearing and determination of appeal with costs to the Petitioner.

Pronounced in Chambers this 29<sup>th</sup> day of January, 2026



**Lady Justice Etness Chanza**  
**Judge**