



**REPUBLIC OF MALAWI  
IN THE SUPREME COURT OF APPEAL  
MISCELLANEOUS CIVIL APPEAL NO. 65 OF 2025**

*(Being High Court, Civil Division, Lilongwe District Registry, Civil Cause No. 77 of 2021)*

**BETWEEN**

**TRADITIONAL AUTHORITY CHIDZUMA-----1<sup>ST</sup> APPELLANT**  
**HARLOD SPORTS-----2<sup>ND</sup> APPELLANT**  
**PATRICK CHISALE-----3<sup>RD</sup> APPELLANT**  
**JAMES CONJEX-----4<sup>TH</sup> APPELLANT**  
**WILLIAM ANAFI-----5<sup>TH</sup> APPELLANT**  
**CONNEX MITTAWA-----6<sup>TH</sup> APPELLANT**  
**GROUP MIJONI-----7<sup>TH</sup> APPELLANT**  
**MR. KAMENYA-----8<sup>TH</sup> APPELLANT**  
**MR. SMART-----9<sup>TH</sup> APPELLANT**  
**MR. DAISON-----10<sup>TH</sup> APPELLANT**

**-AND-**

**IMPALA FARMING COMPANY LIMITED-----1<sup>ST</sup> RESPONDENT**  
**PYXUS AGRICULTURE LIMITED-----2<sup>ND</sup> RESPONDENT**

**CORAM: HON. JUSTICE M.C.C. MKANDAWIRE SC, JA**

Paul Jonas Maulidi, Counsel for the Appellant

Innocentia Ottober SC, Counsel for the Respondent

C. Fundani, Recording Officer

## **RULING**

1. This is a summons for the discharge/setting aside of a stay pending appeal brought by the Respondents pursuant to Section 7 and 16 of the Supreme Court of Appeal Act, Order 1 rule 18 and Order 111 rule 19 of the Supreme Court of Appeal Rules and under the inherent jurisdiction. The application is supported by an affidavit made by Innocentia Ottober SC.
2. The affidavit in support of this application is very concise and to the point. On the 18<sup>th</sup> of December 2025, the High Court of Malawi sitting in Lilongwe delivered a judgment in a land cause number 77 of 2021 in favour of the Claimants/Respondents.
3. The Defendants/Appellants sought to stop implementation of the judgment and filed an application in the High Court seeking suspension/stay of the judgment pending appeal. The application is tendered as exhibit 'IO1". The judge in the Court below directed that the application should be heard inter-parte.
4. Before the matter could be heard inter-parte in the Court below, the Defendants/Appellants approached this Court and obtained an ex-parte order granting a stay/suspension of enforcement pending appeal.
5. Following the grant of stay by the Court, Defendants/Appellants withdrew the High Court application that had been set down for an inter-parte hearing. The notice of withdrawal is exhibit 'IO2'.
6. The Respondents say that the stay order was procedurally and jurisdictionally irregular. Under Order 1 rule 18 of the Supreme Court of Appeal Rules, where an application may be made either to the Court below or to this Court, it must be first made to the Court below and only if the Court below refuses does an applicant become entitled to have the application determined by the Court.
7. It is the Respondents' position that there was no refusal in this case by the High Court. Thus the condition precedent to this Court's jurisdiction to entertain a stay under the sequential rule was therefore absent. The stay was therefore accordingly granted pre-maturely and without the jurisdictional trigger required by the rules.
8. The Respondents also referred to the operation of Order 111 rule 19 of the Supreme Court of Appeal Rules and Order 20 of the Courts (High Court) (Civil Procedure) Rules 2017. I have deliberately not delved into these Rules because they only become relevant once the issue of jurisdiction of the Court is settled.

9. The Respondents prays to the Court for the following reliefs:

a) To discharge, set aside and/or vacate the order of stay pending appeal granted in favour of the Appellant suspending the enforcement of the High Court judgment delivered on 18<sup>th</sup> December 2025.

b) A declaration that the said order of stay was irregular and without jurisdiction granted.

c) An order restoring the parties to their original positions with the judgment of the High Court remaining enforceable in accordance with the law.

d) An order awarding costs of this application to the Claimants/Respondents and

e) Such further or other reliefs as this Honorable Court may deem just and appropriate in the circumstances.

11. The Defendants/Appellants opposed this application. There is filed an affidavit made by Mr Paul Jonas Maulidi in support of the opposition.

12. The Defendants/Appellants confirmed that they filed a without notice application for suspension of the enforcement/execution of the judgment of the Court below as a matter of extreme urgency. They tendered the application as exhibit 'PJM1'. The affidavit of Mr Maulidi in paragraph 5 gave reasons why their application in the Court below was necessary.

13. In paragraph 6 of their affidavit, Mr Maulidi said that the Appellants filed the without notice application for suspension of the judgment of 18<sup>th</sup> December 2025 and the Court below refused to grant the order sought and directed the Appellants' application to be heard on 8<sup>th</sup> January 2026. This order did not satisfy the Appellants as the urgency nature of the application was defeated with the order of the Court below that the matter be heard on 8<sup>th</sup> January 2026.

14. The Appellants therefore prayed to this Court for the following reliefs:

a) An order dismissing the Respondents' application for discharging/setting aside the stay pending appeal.

b) A Declaration that this Court regularly granted an order for stay on the 24<sup>th</sup> of December 2025 and the said order for stay remains in force.

c) An order sustaining an order of stay which this Court granted on 24<sup>th</sup> December 2025.

d) An order awarding costs to the Appellants.

e) Such other order as the interest of justice may require.

15. The respondents' application is anchored on the issue of jurisdiction. This issue has been a subject of discussion in many judgments of the Court. In the case of **Cassidy Chalimba t/a Krisken General Suppliers vs Standard Bank PLC MSCA Miscellaneous Civil Application No. 50 of 2022 (unreported)**, the Court said:

"Order 1 rule 18 of the Supreme Court of Appeal rules provides as follows:

"Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below, but if the Court below refuses the application, the Applicant shall be entitled to have the application determined by the Court."

The Court went on to say:

"I note that this rule is extremely clear and one wonders why it is being deliberately misunderstood or misapplied. Order 1 rule 18 confers on the High Court (Court below) and the Supreme Court of Appeal concurrent jurisdiction. This concurrent jurisdiction is however only triggered when the High Court (Court below) refuses to grant the application."

Also see the case of **Attorney General (Ministry of Health and Population) v Savenda Management Services** (MSCA Misc Cause No. 70 Of 2021)

16. Coming to the application before the Court, it is settled as a fact that the Appellant had filed an application with the Court below on the 19<sup>th</sup> of December 2025. At the time of filling this application there was no enforcement order in place. After looking at the documents, the Judge in the Court below directed that the matter should come inter-parte on 8<sup>th</sup> January 2026. On the same day, the Appellant filed a without notice application before the Court applying for the same order. A closer look at the affidavit in support of the application shows that the Appellant had concealed vital information that the Court below had directed that the matter should be heard inter-parte on 8<sup>th</sup> January 2026. The Appellant would like to convince the Court that by directing that the matter should come inter-parte on 8<sup>th</sup> January 2026, the Court below had refused to grant the application. With due respect, this type of interpretation of the word refuse leaves the Court perplexed. There is nowhere on Court record to show that the Court below had refused the application. By ordering that both parties should be heard did not mean that the Court below had refused to grant the application. I therefore wondered if

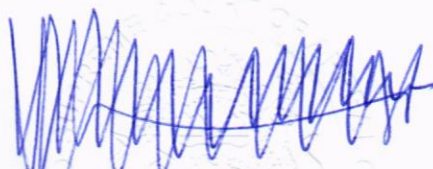
at all Counsel Maulidi was serious in the way he understands the term "refused". His interpretation of what refusal means is extremely pejorative.

17. The Appellant referred to the case of **George Jivason Kadzipatike and Another v. Zhejiang Communications Construction Group Company Limited** MSCA MISC. Civil Appeal Number 29 of 2023. In this case, a single member of the MSCA held that the Court had discretion to sustain an order for stay pending appeal which it earlier granted after the High Court had ordered it to be heard inter-parte if the discharge of the stay may create a great injustice to the Applicants. I have looked at the facts and circumstances of this case. They can clearly be distinguished from the **Kadzipatike** case.

18. I find that the Appellant pre-maturely brought this application to the Court. The refusal that triggers the jurisdiction of the Court had not yet materialized. The Appellant should have patiently waited for the inter-parte hearing of 8<sup>th</sup> January 2026. After all, there was nothing urgent at that time since the modalities of enforcing the judgment were not yet in motion. Counsel for the Appellants operated in a supersonic speed without serious reflection on the consequences of such an action.

19. The Respondents' application succeeds. I accordingly grant all the reliefs as listed in paragraph 9 of this ruling.

Made this 4<sup>th</sup> day of February 2026 at Blantyre



M.C.C. MKANDAWIRE SC

**JUSTICE OF APPEAL**