



**REPUBLIC OF MALAWI  
IN THE SUPREME COURT OF APPEAL  
AT BLANTYRE**

MISCELLANEOUS CIVIL APPEAL NO. 43 OF 2025

**(In the matter of an application for an interim stay pending appeal)**

BETWEEN:

**JOHN CHISOMO KALAMPA**

*(In his capacity as Interim Administrator of Transglobe Produce Exports Limited)*

.....**APPLICANT/APPELLANT**

-and-

**FDH BANK PLC** *(a creditor)* ..... **RESPONDENT**

**CORAM: THE HON. MR JUSTICE FE KAPANDA SC, JA**

**Kalampa , Counsel for the Appellants**

**Dr. K Kaphale SC, Counsel for the Respondent**

**E. Minikwa , Court Clerk**

**Date of Hearing: 8 September 2025**

**Date of Ruling: 27 April 2025**

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## **RULING**

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**Kapanda SC, JA:**

### **INTRODUCTION**

This is an application arising in the course of an appeal against the decision of the High Court (Commercial Division) made in insolvency proceedings concerning Transglobe Produce Exports Limited. The Applicant/Appellant, in his capacity as Interim Administrator of the company, seeks the continuation of an interim stay of the High Court's ruling and consequential orders pending the determination of the appeal.

The impugned decision set aside the appointment of the Interim Administrator, directed an inquiry into his conduct, and further ordered that various creditor proceedings be treated as winding-up petitions. The effect of those orders is to bring the reorganisation process to an end and to expose the company to insolvency proceedings.

Following the grant of an interim stay by this Court, the present application has arisen for consideration whether that stay ought to be continued, varied, or

discharged. The Respondent opposes the continuation of the stay, contending, inter alia, that the reorganisation process had lapsed by operation of law and that the appeal is devoid of merit.

Accordingly, the issue presently before the Court is whether, in the circumstances of this case, it is appropriate to continue the interim relief granted, or to make such further directions as are just, including whether the matter ought properly to be determined by the Full Court.

## **FACTUAL BACKGROUND**

The dispute arises from insolvency proceedings concerning Transglobe Produce Exports Limited (“the Company”). The Applicant/Appellant, Mr. John Chisomo Kalampa, was appointed as Interim Administrator pursuant to an order of the High Court (Commercial Division) made in the context of a company reorganisation process under the Insolvency Act.

Following his appointment, the Applicant assumed control of the Company’s affairs with a view to facilitating its reorganisation. However, concerns were raised by creditors, including the Respondent, FDH Bank plc, regarding the conduct of the reorganisation process and the Applicant’s compliance with the statutory framework governing administration.

The matter returned to the High Court, where, by a ruling delivered on 29 July 2025, the Court made a number of consequential orders. In particular, the Court set aside the appointment of the Interim Administrator, directed that an inquiry be conducted into his conduct, and ordered that creditor proceedings be treated as winding-up petitions. The effect of that ruling was to terminate the reorganisation process and to place the Company on a trajectory towards liquidation.

Aggrieved by that decision, the Applicant lodged an appeal to this Court and, contemporaneously, sought interim relief to stay the execution and implementation of the High Court's orders pending appeal. On 15 August 2025, this Court granted a conditional interim stay, preserving the status quo for a limited period and directing that the matter be set down for inter partes hearing on the question whether the stay should be continued or discharged.

Pursuant to that direction, the Respondent filed submissions in opposition to the continuation of the stay. The Respondent contends, among other matters, that the reorganisation process had already come to an end by operation of law, that the Applicant failed to comply with mandatory provisions of the Insolvency Act and the Insolvency Rules, and that the continuation of the stay would amount to sustaining an unlawful process and delaying creditors' lawful remedies.

It is against that background that the present application falls for determination.

## **PARTIES' ARGUMENTS**

### **Applicant/Appellant's Arguments**

The Applicant/Appellant seeks the continuation of the interim stay pending appeal. The core of his case may be summarised as follows:

First, the Applicant contends that the appeal is arguable and raises serious questions of law, particularly regarding the High Court's decision to terminate the reorganisation process, set aside his appointment as Interim Administrator, and convert creditor proceedings into winding-up petitions. It is argued that these orders were made in error and ought to be scrutinised on appeal.

Secondly, the Applicant submits that, unless the stay is continued, the appeal will be rendered nugatory. In particular, the continuation of liquidation processes or

creditor enforcement would fundamentally alter the status of the company and defeat the very purpose of the appeal, which is to challenge the termination of the reorganisation.

Thirdly, the Applicant maintains that the purpose of the interim stay is to preserve the status quo ante pending the determination of the appeal. It is contended that the Court has jurisdiction, both under statute and its inherent powers, to grant such protective relief to ensure that the appeal is not rendered illusory.

Fourthly, the Applicant implicitly resists the contention that the reorganisation process has lapsed by operation of law or at least contends that such a question is properly one for determination on appeal, not at the interlocutory stage.

### **Respondent's Arguments**

The Respondent opposes the continuation of the stay and advances a fundamentally different position, grounded in statutory compliance, jurisdiction, and abuse of process.

First, the Respondent argues that the reorganisation process had automatically lapsed by operation of law, specifically under section 51 of the Insolvency Act, which limits the duration of an administrator's appointment. It is contended that no extension was sought or granted within the prescribed period, and therefore the process came to an end as a matter of statute.

Secondly, the Respondent submits that the Applicant failed to comply with mandatory provisions of the Insolvency Act and the Insolvency Rules, in that the Applicant did not furnish the requisite security as administrator, did not properly prepare and file a statement of affairs, did not convene and report on creditors'

meetings in accordance with the law, and did not submit the necessary proposals for the reorganisation.

On this basis, it is argued that the reorganisation process was irregular, unlawful, and a nullity.

Thirdly, the Respondent contends that the continuation of the stay would have the effect of reviving or sustaining a legally defunct process, which this Court has no jurisdiction to do. It is further argued that such a stay would operate contrary to mandatory statutory provisions and undermine the rights of creditors.

Fourthly, the Respondent submits that the Applicant does not come to equity with clean hands, having failed to comply with statutory obligations and procedural requirements. Accordingly, it is argued that equitable relief, such as a stay, ought not to be granted.

Fifthly, the Respondent argues that the appeal is academic, frivolous, or an abuse of the process of the Court, as subsequent events (namely the statutory lapse of the administration) have rendered the relief sought incapable of being granted. In such circumstances, the Court is urged to exercise its inherent jurisdiction to refuse or terminate the proceedings at an early stage.

In essence, the Applicant frames the matter as a conventional stay pending appeal, focused on arguability and preservation of the subject matter.

The Respondent, by contrast, reframes the dispute as one involving threshold legal invalidity and absence of a subsisting subject matter, contending that there is nothing left to preserve and that the appeal itself is untenable.

It is this fundamental divergence that gives rise to the central difficulty in the matter and necessitates careful judicial handling at the appropriate level.

In summary, the Applicant/Appellant seeks the continuation of the interim stay granted pending appeal. The essence of the Applicant's position is that the appeal is arguable and that, absent a stay, the appeal would be rendered nugatory. It is contended that the High Court erred in setting aside the interim reorganisation process and in making consequential orders affecting the status of the company and the office of the administrator. The Applicant maintains that interim protection is necessary to preserve the subject matter of the appeal pending its determination.

The Respondent opposes the continuation of the stay. It is contended that the stay has the effect of sustaining a process which has already lapsed by operation of statute, in particular the six-month limitation on the appointment of an administrator under the Insolvency Act. The Respondent further argues that the reorganisation process was marred by non-compliance with mandatory statutory provisions and procedural rules, rendering it unlawful. It is also submitted that the appeal is academic, incompetent, or otherwise devoid of merit, and that the continued stay constitutes an abuse of the process of the Court, improperly delaying lawful enforcement of a judgment.

## **ISSUES FOR DETERMINATION**

On the material before the Court, the application raises the following issues for determination:

1. Whether the interim stay granted pending appeal ought to be continued, varied, or discharged.
2. Whether the application for continuation of the stay raises matters that fall within the proper scope of a single Justice under section 7 of the Supreme

Court of Appeal Act, or whether they require determination by the Full Court.

3. Whether the issues raised by the Respondent—particularly those relating to alleged statutory lapse of the reorganisation process, jurisdiction, and legality—are of such a nature as to affect the viability of the appeal and, consequently, the appropriateness of interim relief.
4. Whether, in the circumstances, the Court should refer the matter for expedited hearing before the Full Court for determination of the application for continuation or discharge of the stay, or of the appeal itself.
5. What consequential orders ought to be made, including the status of the interim stay pending such determination and the question of costs.

In essence, the central question is whether this Court should determine the fate of the interim stay at this stage or defer that determination to the Full Court in light of the substantive and potentially dispositive issues raised.

## **LAW AND DISCUSSION**

The arguments advanced by the parties engage four principal areas of law, namely the principles governing the grant of a stay pending appeal, the statutory framework under the Insolvency Act, the inherent jurisdiction of the Court, and equitable principles, particularly the doctrine of clean hands.

In relation to the grant of a stay pending appeal, it is settled that such relief is discretionary. The Court is ordinarily guided by whether the appeal is arguable and whether, absent a stay, the appeal would be rendered nugatory<sup>1</sup>. Malawian appellate jurisprudence has consistently affirmed that the purpose of a stay is to preserve the subject matter of litigation pending appeal and not to determine the merits in advance. However, as emerges from the Respondent’s submissions, the

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<sup>1</sup> *Mulli Brother Ltd v Malawi Savings Bank Ltd* (MSCA Civil Appeal Nos. 48 of 2014) [2015] MWSC 467 (15 July 2015); *Kadzipatike and Kamwera t/a KAM Building Contractors v Zhejiang Communications Construction Group Company Limited* (MISC Civil Application 29 of 2023) [2023] MWSC 37 (14 July 2023)

jurisdiction to grant a stay presupposes the existence of a subsisting legal subject matter. Where it is contended that the underlying process has ceased to exist in law, the Court must first consider whether there is anything capable of preservation. This introduces a threshold inquiry which may transcend the ordinary principles governing the grant of a stay.

Turning to the statutory framework, the Respondent's primary argument is grounded in the Insolvency Act, particularly the provisions regulating administration. Section 51 of the Act provides that the appointment of an administrator ceases to have effect at the end of six months from the date of appointment unless extended by the Court. This provision establishes that administration is time-bound and self-terminating in the absence of judicial extension. Further, sections 14, 33, and 36 of the Act, read together with the Insolvency Rules, impose mandatory obligations on an administrator, including the duty to act expeditiously and efficiently, to prepare and submit proposals for reorganisation, and to convene and report on creditors' meetings. The Respondent contends that non-compliance with these provisions renders the process irregular or unlawful. If that contention is correct, the Court must consider whether it can, by interlocutory order, preserve or revive a process that has lapsed or was conducted in breach of statute. Malawian jurisprudence recognises that where a statute prescribes a mandatory time limit or procedure, the Court cannot act in a manner that defeats the legislative scheme, and judicial discretion must be exercised within the confines of the statute.

The Respondent further relies on the inherent jurisdiction of the Court to prevent abuse of its process. This jurisdiction is well established in Malawian law. It is a fundamental principle that where a court lacks jurisdiction, it must decline to proceed and cannot determine the matter on the merits<sup>2</sup>. It is equally well settled that proceedings which are frivolous, vexatious, or an abuse of process may be

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<sup>2</sup> *Connelly v DPP* [1964] AC 1254 (HL) : establishes that jurisdiction is a threshold issue: if the court lacks jurisdiction, it cannot determine the merits. Also foundational for the inherent jurisdiction to prevent abuse of process ; *DPP v Humphrys* [1977] AC 1 (HL) : confirms that jurisdictional limits are strict and that courts cannot assume powers they do not possess. Also reinforces the inherent jurisdiction to prevent misuse of process. These cases are repeatedly cited in modern abuse-of-process jurisprudence as the starting point for the rule that jurisdiction is a precondition to adjudication

terminated at an early stage<sup>3</sup>. The inherent jurisdiction extends to circumstances where proceedings are clearly untenable or where subsequent events render them academic. This reflects the broader common law principle that courts must prevent their processes from being used to achieve injustice or to sustain proceedings that cannot succeed.

Finally, the relief sought by the Applicant is equitable in nature. It is trite that a stay is an equitable remedy, and the Court retains discretion to refuse such relief where the applicant has acted improperly. The Court recognises the principle that a party seeking equitable relief must come with clean hands. In the present matter, the Respondent invokes this principle on the basis of alleged non-compliance with statutory duties. If established, such non-compliance may weigh against the grant or continuation of discretionary relief.

In sum, the applicable law reveals a tension between two competing considerations. On the one hand, the Court must preserve the integrity of the appellate process by ensuring that appeals are not rendered nugatory. On the other hand, the Court must not exercise its discretion in a manner that contravenes statute, sustains proceedings that may be legally defunct, or permits abuse of its process. Where, as in the present case, the application raises serious questions of statutory lapse, jurisdiction, and legality, the Court must be cautious not to determine those matters summarily under the guise of interlocutory discretion.

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<sup>3</sup> *Grepe v Loam* (1879) 39 Ch D 168 : a foundational English authority establishing the court's inherent power to restrain litigants from bringing repetitive, frivolous, or vexatious applications. The Court of Appeal prohibited further applications without leave, recognising the need to protect judicial process from abuse; *Connelly v DPP* [1964] AC 1254 (HL) : recognises the inherent jurisdiction to stay proceedings where continuation would amount to an abuse of process; *Attorney General's Reference* (No 1 of 1990) [1992] QB 630 (CA): confirms that the inherent jurisdiction to stay proceedings exists to prevent injustice and is exercised only in exceptional cases; *Attorney General's Reference* (No 2 of 2001) [2004] 2 AC 72 (HL) : reaffirms that the court may stay proceedings to protect the integrity of the justice system, but only where necessary; *Crawley & Others* [2014] EWCA Crim 1028 : emphasises that a stay is a remedy of last resort but confirms the power to halt proceedings that constitute an abuse.

These cases collectively establish that frivolous, vexatious, or abusive proceedings may be struck out or stayed at an early stage to protect the integrity of the court.

Accordingly, the legal framework demonstrates that the grant or continuation of a stay is not automatic but is conditioned by the existence of a subsisting legal subject matter, compliance with the statutory scheme, and the absence of abuse of process or inequitable conduct. Where those matters are seriously contested, the proper application of the law favours determination by the Court properly seized of the appeal rather than a conclusive ruling at the interlocutory stage.

## **DETERMINATION OF THE ISSUES**

Upon careful review of the entirety of the record, including all pleadings, affidavits, and exhibits, as well as a thorough consideration of the comprehensive submissions advanced by both parties, and in light of the applicable statutory and common law principles relevant to the application, the Court sets out its findings and determination on the key issues raised. In particular, this ruling addresses the substantive questions arising from the application to dismiss and the request for continuation or discharge of the interim stay currently in force. The Court has meticulously weighed the procedural history of the matter, the sequence of events leading up to the current application, and the contentions regarding statutory compliance and jurisdiction. It has further had regard to the principles governing stays pending appeal, the statutory scheme under the Insolvency Act, the Court's inherent jurisdiction to prevent abuse of process, and the equitable considerations, including the doctrine of clean hands, which collectively inform the exercise of judicial discretion in matters of this nature. Having evaluated the competing arguments and the legal framework, the Court proceeds to make a reasoned determination on each of the substantive and procedural questions, with particular emphasis on whether the interim stay should be continued, varied, or discharged, and whether the application falls within the competence of a single Justice or should be reserved for the Full Court. The findings and orders set out herein are intended to provide clarity and finality, subject to any further directions that may be issued by the appellate tribunal seized of the main appeal.

## **Whether the interim stay should be continued, varied, or discharged**

The starting point is straightforward: whether to grant or maintain a stay pending appeal is a matter of judicial discretion. But it is not an unfettered one. The Court must ask itself, in practical terms, whether the circumstances truly justify holding the line, whether by granting, continuing, or lifting the stay.

Two questions usually guide that exercise. First, is there a real appeal here—one that is arguable and raises issues worth the Court’s time? Second, if no stay is granted, would the appeal be rendered hollow? In other words, would success on appeal come too late to be of any real use to the appellant?

In the present matter, however, the Respondent has taken a more fundamental point. It is said that the reorganisation process has already come to an end by operation of law. If that is right, it does not merely weigh against the grant of a stay. It calls into question whether there is anything left to preserve at all.

The statutory scheme under the Insolvency Act is clear enough. Administration is not meant to drift indefinitely. It is time-bound, subject to defined reporting obligations, and constrained by statutory deadlines. The design is deliberate: to ensure both discipline in the process and proper judicial oversight.

Against that backdrop, if it is credibly shown that the statutory period has expired, and that no extension was obtained from the High Court, the issue moves beyond discretion. It becomes a question of legal footing. The Court must then confront a more basic inquiry: is there still a live process capable of being preserved, or has it already lapsed in law?

Answering that question requires careful engagement with the statute. The Court must determine whether the administrator's appointment expired automatically, and, if so, whether there is any legal basis upon which the Court can preserve or revive the process through a stay.

Until that threshold issue is resolved, it is difficult to see how the Court can properly decide whether to continue, vary, or discharge the interim stay. The statutory and jurisdictional questions go to the root of the matter. They must be addressed first, and fully, before any meaningful decision can be made about the fate of the stay.

### **Whether the matter falls within the competence of a single Justice under section 7**

Section 7 of the Supreme Court of Appeal Act gives a single Justice the power to deal with interlocutory matters, but the line is a clear one. That power stops short of anything that would amount to hearing or deciding the appeal itself. The purpose is practical: urgent or procedural issues can be handled quickly, while questions that touch the merits or overall viability of the appeal are left for the Full Court.

This application does not sit comfortably on the interlocutory side of that line. It raises issues that go to the foundation of the appeal.

The first is whether the reorganisation process has, in fact, come to an end by operation of statute. That calls for a close look at the time limits under the Insolvency Act, whether they have expired, and whether any extension was

sought or granted. If the process has lapsed, that is not a side issue; it goes directly to whether the subject matter of the appeal still exists.

The second issue follows naturally from the first: if the process has ended, is there anything left to appeal? The question is whether the appeal has become academic or incompetent; whether it can still yield any meaningful relief. That is not a procedural point; it goes to justiciability itself.

Third, there is the argument that granting a stay in these circumstances would effectively breathe life back into a process that has already expired by law. That raises a more fundamental question about the Court's powers: can a stay preserve, or revive, something that no longer exists in law?

Finally, the Respondent says the proceedings amount to an abuse of process. Courts are not there to entertain disputes that are hollow, vexatious, or lacking in good faith. If there is no longer a live controversy, or no effective relief to grant, the Court must confront whether the appeal should be stopped at the threshold.

Taken together, these are not peripheral issues. They go to the very existence of a live dispute and the competence of the appeal. To deal with the stay application properly would require the Court to engage with those questions in a way that would, in substance, touch the merits or viability of the appeal itself. That is not something a single Justice of Appeal can do under section 7.

In those circumstances, the proper course is clear. The issues raised are of such weight and consequence that they must be considered by the Full Court.

## **Whether the Respondent's objections affect the viability of the appeal**

The Respondent's case is put plainly: the administration has already lapsed by operation of law, and no extension of the statutory timelines was ever sought or granted. If that is right, then the appeal has no real footing. It has become academic and cannot succeed.

Our courts have long been clear that they must guard against proceedings that are frivolous, vexatious, or amount to an abuse of process. The Court's inherent jurisdiction allows it to bring such matters to an end at the outset, not as a matter of convenience, but to protect the integrity of the judicial process and to ensure that its time is spent on disputes that genuinely require resolution.

There is also the settled principle that where events have overtaken a case, so that no effective relief can be granted, the Court may decline to entertain it. Courts exist to resolve live controversies, not to issue opinions on matters that have already run their course.

Seen in that light, the Respondent's objection is not a side issue. It goes to the heart of the appeal. If the administration under the Insolvency Act has indeed expired, and the statutory requirements were not complied with, then the Court must ask a basic question: is there still a justiciable dispute before it, and can any meaningful relief be granted?

In my view, those objections are both substantial and potentially decisive. They raise fundamental questions about the viability of the appeal itself. For that reason, they cannot be dealt with in passing or at an interlocutory level. They call for a full and considered determination by the Full Court, because they go directly to whether there is, in truth, any live controversy left to adjudicate.

## **Whether the matter should be referred to the Full Court**

Having considered the submissions and the circumstances of this application, it is clear that a number of central issues arise. Issues that go well beyond what can properly be dealt with at an interlocutory stage.

To begin with, the dispute turns on the proper interpretation of key provisions of the Insolvency Act. That is not a routine exercise. The statutory scheme lies at the heart of the matter, and its application calls for careful, considered analysis. It is not something that can be resolved in a summary way.

There is also a real jurisdictional question in play. The objections raised are not technical or procedural in nature; they go to the competence of the appeal itself and, in turn, to the Court's authority to entertain it. Issues of that kind must be approached with care, in a way that respects both the statutory framework and the Court's constitutional role.

Just as importantly, any decision on the stay would inevitably overlap with the merits of the appeal. The issues are so tightly bound up with the substance of the case that ruling on them now would risk deciding the appeal in all but name. That is a line the Court must be careful not to cross at this stage.

Indeed, there is a real prospect that the outcome of this application could dispose of the appeal entirely. Where an interlocutory question has that kind of consequence, it ought not to be determined by a single Justice of Appeal. It should be dealt with by the Full Court, which is properly seized of the appeal as a whole.

In those circumstances, it would be inappropriate for a single Justice of Appeal to take the matter any further. The issues, statutory interpretation, jurisdiction, and the very viability of the appeal, are of sufficient weight that they must be considered by the Full Court.

The proper course, therefore, is to refer the matter for full determination by that Court. This ensures that the parties have a fair opportunity to address the substantive questions, and that the appeal is dealt with in accordance with the governing law and established practice.

Given the nature of the issues raised, the matter should proceed on an expedited basis. To that end, the Court directs as follows. Any further written arguments or supplementary submissions are to be filed within fourteen days of this referral. Any persons likely to be affected by the outcome, including creditors, are to be notified within seven days, and may apply to intervene or make representations within a further fourteen days. The matter is then to be listed before the Full Court at the earliest practicable date after the close of submissions, ideally within twenty-one days, subject to the Court's diary.

That approach strikes the right balance. It allows the issues to be fully ventilated, ensures that affected parties are heard, and preserves the integrity of the appellate process.

### **Consequential Orders**

With the matter now going to the Full Court, it is necessary to deal with the interim stay already in place.

In the circumstances, the stay will remain but for a limited and practical reason only. It is there to hold the position steady and to ensure that no party is prejudiced while the substantive issues are being resolved. Nothing more should be read into it. This is a temporary measure, designed to preserve the status quo and to protect the integrity of the appellate process.

It does not give either side an advantage, and it does not say anything about the merits of the appeal. The stay is neutral in its effect and non-determinative in character. Whether it should be varied, continued, or discharged is a matter for the Full Court, which will have the benefit of full argument on the issues.

For the avoidance of doubt, the continuation of the stay should not be taken as expressing any view on the merits or as anticipating the outcome of the appeal.

Accordingly, the interim stay is maintained on a strictly provisional basis, pending determination by the Full Court. Costs of this application are reserved and will abide the outcome of the appeal.

## **CONCLUSION**

Having reviewed the record and the parties' submissions, it is clear that this is not a routine application for a stay pending appeal. The issues raised go much deeper. They touch on the validity of the underlying process, the Court's jurisdiction, and, ultimately, whether there is a viable appeal at all. These are not side issues. They sit at the very core of the matter and bear directly on whether the Court can properly deal with it at this interlocutory stage.

The Respondent's objections reflect that shift in focus. This is no longer just about the exercise of discretion in granting interim relief. The objections raise

threshold questions of law: whether the time for appeal has lapsed, whether the High Court's orders are open to challenge, and whether the process itself is legally sound. Those are not preliminary points in any meaningful sense. If resolved one way, they may well dispose of the appeal altogether. They go to whether there is any live issue left to preserve by way of a stay.

There is also the nature of the High Court's orders to consider—setting aside the interim administrator and converting the proceedings into winding-up petitions. Those are not minor procedural steps; they are substantive decisions with far-reaching consequences. To decide whether the interim stay should continue or fall away would inevitably require the Court to engage with the validity and effect of those orders. At that point, the line between interlocutory relief and the merits of the appeal begins to blur.

The Court is mindful that its powers under section 7 of the Supreme Court of Appeal Act are limited. They are meant to deal with interim matters, not to determine the substance of an appeal. To press on in the face of these issues would risk deciding, in effect, what only the Full Court is entitled to decide, and that would undermine the structure of the appellate process.

In those circumstances, the sensible course is to step back and allow the Full Court to take the matter forward. The issues respecting statutory interpretation, jurisdiction, the effect of the High Court's orders, and the place of interim relief, are best addressed together and in full.

Pending that determination, the interim stay will remain in place, but only as a holding measure. Its purpose is simply to preserve the status quo so that no party is prejudiced while the Full Court considers the matter. It carries no implication as to the merits and does not anticipate the outcome. That approach keeps faith with both procedural fairness and the limits of this Court's interlocutory role.

## **DISPOSITION**

Having considered the submissions and the affidavit evidence, and bearing in mind the statutory framework governing insolvency proceedings, the Court is satisfied that the position must be held steady for now. The issues raised are not only complex but go to the foundation of the matter. They are best addressed by the Full Court after full argument. For that reason, the question whether the interim stay should continue, be varied, or be discharged is referred to the Full Court.

### **Expedited Hearing Directions**

The Registrar is directed, in consultation with the Judge President, to secure an expedited hearing date before the Full Court. In doing so, the Registrar should consult not only the parties, but also any creditors or stakeholders whose interests may be affected, so that their positions and availability are properly taken into account.

This approach is intended to move the matter forward without delay while ensuring that everyone affected has a fair opportunity to be heard. It reflects the need for both efficiency and fairness in resolving what are, plainly, weighty issues.

In the meantime, the interim stay will remain in place but, only as a holding measure. Its purpose is to preserve the status quo so that no party is prejudiced while the appeal is being prepared for hearing. It may be varied or discharged by the Full Court if circumstances require.

The parties may, if necessary, file supplementary skeletal arguments within timelines to be set by the Registrar. That will ensure that the Full Court has the benefit of complete and focused submissions when the matter is heard. Costs of this application are reserved to the appeal.

Given the nature of the issues, it is appropriate that the question of the interim stay be determined only after a full hearing. Nothing in this order should be taken as expressing any view on the merits of the appeal.

In short, the course adopted of a referral to the Full Court, an expedited hearing, and the temporary continuation of the stay, keeps the process fair, orderly, and focused, while leaving the substantive issues to be decided where they properly belong.

**Pronounced in Chambers the 27<sup>th</sup> day of April 2026 at Blantyre.**



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**HON. JUSTICE F.E. KAPANDA, SC, JA**  
**SUPREME COURT OF APPEAL**