



REPUBLIC OF MALAWI

IN THE MALAWI SUPREME COURT OF APPEAL

PRINCIPAL REGISTRY

MSCA MISCELLANEOUS CIVIL APPLICATION NO. 08 OF 2026

(Being High Court, Commercial Division, Lilongwe Registry, Commercial Cause No. 302 of
2017)

BETWEEN

**MAONE OIL MILLS LIMITED
OMEGA INVESTMENTS LIMITED
CONSOLIDATED TEXTILES (MW) LIMITED
ABDUL KADER PATEL
ZARINA MAHOMED FAROOK
MAHOMED FAISAL PATEL**

**1ST APPELLANT/APPLICANT
2ND APPELLANT/APPLICANT
3RD APPELLANT/APPLICANT
4TH APPELLANT/APPLICANT
5TH APPELLANT/APPLICANT
6TH APPELLANT/APPLICANT**

AND

STANDARD BANK PLC

RESPONDENT

**CORAM: Hon. Justice F.E. Kapanda, SC, JA
E. Banda and C. Chamkakala, Counsel for the Applicants
N. Sitima, Counsel for the Respondent
E. Minikwa, Court Clerk**

Date of Hearing: 14 April 2026

Date of Judgment: 26 June 2026

RULING

Introduction

This is an inter partes application for a stay of execution brought by the Appellants under section 7 of the *Supreme Court of Appeal Act*, Order I rule 18 of the *Supreme Court of Appeal Rules*, and the inherent jurisdiction of this Court. The application concerns the Enforcement Order for Possession of Land issued by the High Court on 5 December 2025 in Commercial Cause No. 302 of 2017. The Appellants seek a stay of its execution pending determination of their appeal against the judgment entered on 2 October 2024 and the ruling of 23 July 2025 refusing to set aside that judgment.

The application is supported by the sworn statement of Wapona Mathias Kita and the Appellants' skeleton arguments. The Respondent opposes it through the affidavit of Phempho Likongwe SC and the Respondent's skeleton arguments.

The Court is not called upon at this interlocutory stage to determine the merits of the appeal. Nor is it necessary to decide finally whether the Enforcement Order for Possession of Land was lawfully issued. The question is whether, upon the evidence and submissions now before the Court, it is just to stay execution pending appeal in order to avoid a real risk of injustice to either party.

Factual Background

The dispute originates from Commercial Cause No. 302 of 2017. The Respondent commenced proceedings against the Appellants seeking recovery of MK10,497,062,000, together with interest and costs. The Respondent's case was that Cotton Ginners Africa Limited had borrowed money from the Respondent and that the Appellants had guaranteed the indebtedness. The first, second and third Appellants charged properties as security for that indebtedness. The properties comprise Title No. Nkolokoti 78 in Blantyre, Title No. Bwaila 4/353 in Lilongwe, and Title No. Mapanga

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97 in Blantyre. The Appellants denied liability, challenged the validity of the guarantees and charges, and counterclaimed for rectification of the Land Registers so that the relevant charges could be discharged.

In 2018, the High Court dismissed the Respondent's claim. It subsequently made orders favourable to the Appellants concerning the registered charges. The Respondent appealed to this Court. On 27 February 2024, this Court allowed the Respondent's appeal, reversed the earlier disposition, and remitted the matter to the High Court for conclusion in accordance with the law.

Following remittal, the High Court found that the Appellants had not complied with directions issued at the scheduling conference. Their Defence and Counterclaim were struck out. Judgment was thereafter entered for the Respondent for MK10,497,062,000, interest at 35 percent per annum from 4 September 2017 until payment, and costs. The order was signed on 2 October 2024.

The Appellants applied to suspend enforcement of that judgment. Their application was dismissed on 29 January 2025. They subsequently applied to set aside the judgment. That application was dismissed by a ruling dated 23 July 2025. The Appellants thereafter filed a *Notice of Appeal*. Read in substance, the Notice challenges the judgment entered on 2 October 2024 and the ruling delivered on 23 July 2025. Some references in the Notice to a judgment or ruling dated 23 July 2025 and 2 October 2024 are inconsistent. However, the nature of the appeal is sufficiently clear from the Notice as a whole and from the relief sought. While that appeal was pending, the Respondent obtained an *Enforcement Order for Possession of Land* dated 5 December 2025 in respect of the charged properties.

The Appellants challenged the Enforcement Order in the High Court. They contended that the underlying judgment was a money judgment and that the Respondent could not lawfully obtain possession of the properties through an enforcement order. Their application was dismissed on 2 March 2026. On 5 March 2026, the Appellants approached this Court *ex parte*. Having considered the *Notice of Appeal*, the application for stay of execution, and the supporting affidavit, I concluded that interim preservation of the subject matter was just and necessary before the Respondent could be heard. I therefore stayed execution and enforcement of the *Enforcement Order for Possession of Land* on an interim basis. That interim order was deliberately confined in both purpose and duration. It was to remain in force for fourteen days. The Appellants were required, within that period, to file and serve an *inter partes* application for stay of execution, failing which the interim order would automatically lapse. Costs were reserved in the cause.

The interim order was not a decision on the merits of the appeal, the validity of the High Court judgment, the legality of the Enforcement Order, or the parties' ultimate entitlement to a stay. It

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was a short protective measure intended only to preserve the position until the Respondent could be heard.

The Appellants duly filed the present inter partes application. At the conclusion of the inter partes hearing, and because the ruling was reserved, the Court extended the validity of the interim stay granted on 5 March 2026 pending delivery of this ruling. That continuation ensured that the position remained preserved in the interval between the hearing and the Court's reasoned determination.

Evidence

The sworn statement of Mr Kita emphasises the urgency of the matter. He states that the Sheriff was poised to take possession of the charged properties and that the Respondent intended to proceed with their sale and disposal.

The Appellants' central concern is that a sale before determination of the appeal would irreversibly alter the position. They contend that the properties could pass to third parties and that any subsequent success on appeal would become practically ineffective. The Appellants also rely on the material filed before the High Court challenging the Enforcement Order. Their position is that the judgment being enforced is a money judgment and not a judgment awarding possession of land. They contend that the Respondent, as a chargee, has statutory powers of sale under the *Registered Land Act* but cannot bypass the statutory process by obtaining an *Enforcement Order for Possession of Land*.

The Respondent's affidavit provides the broader litigation history. It asserts that the Appellants guaranteed the debt, charged the properties as security, and have repeatedly sought to prevent realisation of the security despite the subsisting judgment.

The Respondent maintains that the earlier injunction restraining sale ceased to operate once judgment was entered on 2 October 2024. It contends that it is now entitled both to enforce the judgment and to exercise its rights as chargee. The Respondent also alleges that the Appellants frustrated valuation of the properties by denying access to valuers. It argues that such valuation is necessary before sale in order to comply with the Respondent's obligation to act in good faith.

The evidence demonstrates that the properties are not merely incidental assets. They were charged as security, were central to the original dispute, formed part of the Counterclaim, and are the properties against which enforcement is now directed. It is also clear that the Respondent has a valid and subsisting judgment. The Court cannot overlook the lengthy history of the proceedings,

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the previous refusal to suspend enforcement, or the dismissal of the application to set aside the judgment. At the same time, the Court cannot ignore the fact that sale of the properties before determination of the appeal may create third party interests and may irreversibly change the position which the appeal seeks to address.

Issues for Determination

The following issues arise for determination:

- (a) Whether the application is properly before this Court.
- (b) Whether the Notice of Appeal discloses arguable grounds sufficient to engage the Court's discretion.
- (c) Whether refusal of a stay would render the appeal nugatory or otherwise create a real risk of injustice.
- (d) Where the balance of justice lies.
- (e) Whether a stay, if granted, should be subject to conditions.

Parties' Arguments

The Appellants' Arguments

The Appellants submit that the Court has jurisdiction under section 7 of the Supreme Court of Appeal Act to stay execution pending appeal. They rely on the authorities cited in their skeleton arguments, including *Attorney General v Sunrise Pharmaceuticals and Chombe Foods Limited*, *National Bank of Malawi v Aziz Mahomed Issa and Another*, *Ismail Sabadia and Lennie Nkhonjera v Elizabeth Maro*, *Mike Appel and Gatto Limited v Saulosi Chilima*, *Archbishop George Desmond Tambala and the Registered Trustees of Archdiocese of Lilongwe v Carmelites Tertiaries Couvent Ste Zithe*, and *Pacific Limited v Zaiife Investments and Others*.

Counsel also referred to English authorities including *Hammond Suddards Solicitors v Agrichem International Holdings Ltd*, *Wilson v Church (No. 2)*, *Monk v Bartram*, *The Annot Lyle*, and *Department for Environment, Food and Rural Affairs v Downs*. Those authorities were cited in support of the general submission that the Court should identify where the risk of injustice lies. The Appellants submit that the Court should apply a practical and justice-based approach directed to the risk of injustice which may arise if the stay is granted or refused. They contend that the

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grounds of appeal are arguable because they raise questions concerning the procedure used to enter judgment, the availability of relief from the judgment, the equal treatment of the parties in relation to procedural defaults, and the proportionality of striking out their Defence and Counterclaim. They further argue that the Enforcement Order for Possession of Land is irregular. Their contention is that the Respondent's proper remedy is to realise the charged properties under the *Registered Land Act* rather than seek possession under Order 28 of the *Courts (High Court) (Civil Procedure) Rules 2017*.

Finally, they submit that sale of the properties would render the appeal nugatory. They contend that the Respondent will not suffer unjust prejudice from a stay because its judgment remains intact, interest continues to accrue, and the properties remain charged as security.

The Respondent's Arguments

The Respondent submits that the application should be dismissed. It contends that Order 28 of the *Courts (High Court) (Civil Procedure) Rules 2017* permits enforcement through an order for possession of land. It relies on Order 28 rule 2, which includes an order for possession of land among the recognised means by which a judgment may be enforced, and on Order 28 rule 37, which empowers the Court to issue such an order.

The Respondent argues that section 40 of the *Sheriffs Act* regulates the manner in which the Sheriff enforces judgments affecting registered land. It does not limit the jurisdiction of the High Court to issue an enforcement order. The Respondent further submits that the *Registered Land Act* does not bar it from pursuing its power of sale as chargee. It maintains that the Appellants have hindered that process by obstructing valuation of the properties. It relies on the principle that a successful litigant should ordinarily not be deprived of the fruits of litigation. It argues that the Appellants have already pursued unsuccessful applications aimed at preventing enforcement.

The Respondent also relies on *Fred Nseula v Attorney General, Kasungu Flue Cured Tobacco Authority v Zgambo*, and the authorities relating to *functus officio*. It submits that the present application is an abuse of process and another attempt to frustrate lawful enforcement.

Applicable Law on Stay of Execution

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Section 7 of the *Supreme Court of Appeal Act* authorises a single member of this Court to exercise any power vested in the Court which does not involve hearing or determining an appeal. In civil matters, an order made by a single member may be varied, discharged, or reversed by the full Court.

Section 8 of the Act provides that the practice and procedure of this Court are governed by the Act and the Rules of Court. Where neither provides for a particular procedural point, civil practice may be guided, as nearly as may be, by the practice of the Court of Appeal in England. Order I rule 18 of the *Supreme Court of Appeal Rules* requires an applicant, where appropriate, first to seek relief in the Court below. The Appellants did so. Their application was dismissed by the High Court before they approached this Court.

The filing of an appeal does not automatically stay execution. A successful litigant is ordinarily entitled to enforce a valid judgment. The grant of a stay is discretionary. The Court does not determine the appeal at this stage, but it must be satisfied that the appeal raises a genuine issue and that the circumstances justify temporary interference with enforcement. In *Mike Appel and Gatto Limited v Saulosi Chilima* [2014] MLR 231 (SCA), the Court explained that where an applicant advances solid grounds for a stay, the Court must weigh the risks of injustice in granting a stay against those arising from refusing one. The mere filing of an appeal, even one with prospects of success, is not itself sufficient. The same balancing approach is reflected in *Pacific Limited v Zaiife Investments and Others*, MSCA Miscellaneous Civil Application No. 28 of 2024. The Court recognised the present nugatoriness approach, reaffirmed that a successful party should not ordinarily be denied the fruits of judgment, and held that execution may be stayed where plausible appellate grounds exist and execution threatens the fundamental basis or substance of the appeal without corresponding injustice to the respondent.

The governing Malawi authorities also include *Speaker of the National Assembly ex parte v Hon. John Z. U. Tembo* [2010] MLR 358 (SCA), *Mulli Brothers Ltd v Malawi Savings Bank*, MSCA Civil Appeal No. 48 of 2014, and *Chitawira Shopping Centre v HMS Foods and Grain Ltd*, MSCA Civil Appeal No. 30 of 2015. They confirm that the Court must balance the successful litigant's right to enjoy the fruits of judgment against the risk that enforcement will render an appeal nugatory or occasion loss that cannot adequately be remedied by damages. The authorities placed before the Court by the parties, including *Attorney General v Sunrise Pharmaceuticals and Chombe Foods Limited* and *Archbishop George Desmond Tambala and the Registered Trustees of Archdiocese of Lilongwe v Carmelites Tertiaries Couvent Ste Zithe*, support the proposition that alleged illegality, regularity, and correctness of a judgment may be relevant where a genuine appellate complaint has been raised.

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The *Notice of Appeal* contains four grounds. The first challenges the High Court's finding that the Appellants had used an inappropriate procedure in seeking to set aside a judgment entered under Order 14 rule 5(b) of the *Courts (High Court) (Civil Procedure) Rules 2017*. The second ground broadly alleges that the refusal to set aside the judgment was against the weight of law and facts. It is generally framed and will require careful treatment at the substantive appeal. The third ground alleges unequal treatment. The Appellants contend that the High Court applied a strict standard to their non-compliance but did not apply the same standard to alleged non-compliance by the Respondent. The fourth ground challenges proportionality. The Appellants contend that striking out the Defence and Counterclaim and entering judgment was too harsh in the circumstances. Grounds one, three, and four raise identifiable issues concerning the procedure for relief from a judgment entered following procedural default, the exercise of judicial discretion, procedural equality, and the proportionality of the sanction imposed.

The Court does not determine those grounds now. It is sufficient for present purposes that they cannot be dismissed as plainly frivolous or hopeless. The challenge to the *Enforcement Order for Possession of Land* is important in the present application. However, it is not expressly pleaded as a discrete ground in the *Notice of Appeal*.

The Court will therefore not decide conclusively, in this stay application, whether the Enforcement Order was lawfully issued under Order 28 of the *Courts (High Court) (Civil Procedure) Rules 2017*, the *Sheriffs Act*, or the *Registered Land Act*. That issue may nevertheless be considered to the limited extent necessary to assess whether execution before the appeal is heard would alter the subject matter or undermine the practical utility of the appeal.

Determination of the Issues

Whether the Application is Properly Before the Court

The application is properly before this Court. The Appellants first sought relief from the *High Court*. Their application was dismissed. They have now invoked this Court's jurisdiction under section 7 in the context of a pending appeal.

The Respondent's complaint that the Appellants have filed repeated applications is relevant to the exercise of discretion. It does not, however, bar this Court from considering whether execution should be stayed pending an appeal which remains undetermined.

Whether the Appeal is Arguable

I am satisfied that the appeal is arguable. The first ground raises a legal question concerning the procedure available to a party seeking relief from a judgment entered following a case management sanction. The third and fourth grounds raise issues concerning equal treatment in the application of procedural rules and the proportionality of the sanction imposed.

These are not findings that the Appellants will succeed. The Respondent has a substantial answer founded on the Appellants' alleged defaults, the history of the proceedings, and the *High Court's* earlier findings. The test at this stage is not whether the Appellants have demonstrated that they will win the appeal. It is whether the appeal discloses real issues requiring appellate consideration. It does.

Whether Refusal of a Stay would Render the Appeal Nugatory

The charged properties are central to the dispute. They were offered as security, are connected to the Counterclaim that was struck out, and are now the subject of the *Enforcement Order*. If the Respondent takes possession and sells the properties before the appeal is determined, third party interests may intervene. The properties may pass beyond practical recovery. A later award of damages may not fully cure the prejudice. The appeal concerns the striking out of pleadings through which the Appellants sought to challenge the guarantees, the charges, and the Respondent's ability to realise the security.

The Court is satisfied that there is a real risk that execution and sale before determination of the appeal may materially undermine the practical substance of the appeal.

Where the Balance of Justice Lies

The Respondent is a successful judgment creditor. Its right to enforce the judgment is real and cannot lightly be postponed. The Respondent has also raised a serious concern that the Appellants have obstructed access to the properties and delayed valuation. A stay cannot be used to shield the Appellants from lawful valuation or to permit them to undermine the security. However, the prejudice to the Respondent from a temporary stay can be mitigated. It retains the judgment, accrued interest, the charges over the properties, and the ability to realise the security should the appeal fail.

In contrast, the prejudice to the Appellants if possession is taken and the properties are sold before the appeal is heard may be irreversible. The balance of justice therefore favours preserving the

properties pending appeal, but subject to conditions which protect the Respondent's security and enable proper valuation.

Disposition

At the conclusion of the inter partes hearing, the Court extended the validity of the interim stay granted on 5 March 2026 pending delivery of this ruling. The extension was made because the interim protection had been granted to preserve the subject matter, the parties had now been heard, and the ruling was reserved. That extension did not convert the interim order into a final determination of the application. It was a continuation of the existing protective arrangement so that there would be no gap between the inter partes hearing and the delivery of the Court's reasoned decision.

The original interim order of 5 March 2026 was made without prejudice to the Respondent's opposition and without a final finding on the validity of the judgment, the *Enforcement Order*, or the merits of the appeal. The extension at the conclusion of the inter partes hearing was similarly provisional and preserved the position pending this ruling.

This ruling now determines the inter partes application on its merits. For the reasons given, the application is allowed upon the following terms:

- (a) Execution and enforcement of the Enforcement Order for Possession of Land dated 5 December 2025 in High Court Commercial Cause No. 302 of 2017 are stayed pending determination of the appeal or further order of this Court.
- (b) Pending determination of the appeal, the Respondent shall not take possession of, sell, transfer, dispose of, advertise for sale, or complete a transaction affecting Title No. Nkolokoti 78, Title No. Bwaila 4/353, and Title No. Mapanga 97 pursuant to the Enforcement Order for Possession of Land.
- (c) The Appellants shall permit the Respondent and its duly appointed professional valuers reasonable access to the three properties for inspection and valuation upon not less than seven days' written notice.
- (d) Access granted under paragraph (c) shall be limited to inspection and valuation. It shall not authorise possession, eviction, sale, transfer, or any other enforcement step.
- (e) The Appellants shall not sell, transfer, further charge, waste, materially alter, or permit deterioration of the properties pending determination of the appeal.
- (f) Within twenty-one days of this order, the Appellants shall take all necessary steps to ensure that the appeal is prosecuted expeditiously. They shall either lodge the record of appeal or, if

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it has already been lodged, obtain directions from the Registrar for an expedited hearing of the appeal.

(g) Failure by the Appellants to comply with any condition of this order shall entitle the Respondent to apply for discharge or variation of the stay.

The costs of this application shall abide the outcome of the appeal. The appeal shall be expedited.

It is so ordered.

Made in Chambers at Blantyre this 26th day of June 2026.



A handwritten signature in black ink, consisting of a vertical line with a large, stylized flourish at the top. The signature is positioned over a faint, circular stamp that contains the text 'SUPREME COURT OF MALAWI' and 'JUSTICE OF APPEAL'.

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