



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT
SITTING AT ZOMBA
MATTER NO. IRC ZA 04 OF 2025

BETWEEN

CHAONA BATONI.....APPLICANT

-AND-

CHIMPENI ESTATE.....RESPONDENT

CORUM: HON: PETER M.E KANDULU

Yahya Allan, Counsel for the Applicant

Precious Kalulu, Counsel for the Respondent

Patrick Banda, Court Clerk

RULING ON MOTION FOR REVIEW OF THE DECISION OF THE REGISTRAR

Introduction

This ruling arises from a motion filed by the Respondent seeking a review of the decision of the Registrar dated 24th July 2026. The underlying dispute relates to a judgment rendered in favor of the Applicant on 24th December 2025, subsequent to which assessment proceedings were conducted and determined by the Registrar.

Following the assessment, the Respondent lodged an application for a stay of execution before the Registrar. The Registrar entertained the application and delivered a decision on 24th July 2026. Dissatisfied with that outcome, the Respondent filed the present application under Rule 5 A (1) and (2) of the Industrial Relations Court Rules 1999 [**“the Court Rules”**], seeking:

1. An order setting aside the Registrar’s decision dated 24th July 2026 for lack of jurisdiction;
2. A direction that the application for stay of execution be heard *de novo* before the Chairperson or Deputy Chairperson; and
3. An interim order staying execution of the judgment sum (MK 16,000,000.00) pending the determination of the substantive application for stay.

The Applicant firmly opposes the motion, raising preliminary objections and arguing that the Respondent’s application constitutes an abuse of court process, is frivolous, vexatious, and brought in bad faith.

Submissions of the Parties

The Respondent’s Case

Counsel for the Respondent, Mr. Kalulu, submits that under Rule 5A(1)(b) of the Court Rules, the Registrar is explicitly proscribed from hearing and determining applications for stay of execution. He contends that:

The Registrar acted without jurisdiction; hence, the proceedings and the resulting decision of 24th July 2026 are **void *ab initio*** pursuant to the principles in *Mbale v Maganga* (Misc. Civil Appeal 21 of 2013) [2015] MWSC 1.

A defect in jurisdiction cannot be cured by consent, acquiescence, or the failure of a party to object during the initial hearing.

Regarding the interim stay, Counsel argues that if the sum of over MK 16,000,000.00 is disbursed to the Applicant, a person of modest financial means any subsequent appeal or substantive stay application would be rendered nugatory (*Attorney General v Sunrise Pharmaceuticals and another*, MSCA Civil Appeal No. 11 of 2013; *Mulli Brothers Ltd v Malawi Savings Bank Ltd* [2015] MWSC 467).

The Applicant's Case

Counsel for the Applicant, Mr. Allan, vehemently opposes the application on the following grounds:

Estoppel and Abuse of Process

The Respondent voluntarily selected the Registrar's forum, submitted to her jurisdiction, and only challenged her authority after receiving an unfavorable outcome.

Competency of the Registrar

Relying on general principles of procedural hierarchy (*George Jivason Kadzipatike MacDonald Kamwera t/a Kam Building Contractors v Zhejiang Communications Construction Group Co. Ltd*, MSCA Misc. Civil Application No. 29 of 2023; *Cropper v Smith* (1883) 24 Ch.D 305; *Hellen Buluma v Electoral Commission and another*, Misc. Civil Appeal No. 22 of 2014), an application for stay must first be made to the court/forum that delivered the decision being stayed. Since the Registrar conducted and finalized the assessment, she possessed initial jurisdiction to stay her own order.

Delaying Tactics

The Respondent is engaging in dilatory tactics to starve the Applicant of the fruits of a judgment obtained on 24th December 2025.

Issues for Determination

Having evaluated the affidavits and arguments of both learned counsel, the Court frames the following issues for determination

Whether the Registrar has statutory jurisdiction under the Industrial Relations Court Rules 1999 to hear and determine an application for stay of execution.

What is the legal effect of a decision rendered by the Registrar without jurisdiction, and does submission/acquiescence by a party validate such a decision?

Whether the present motion should be dismissed for abuse of process, or whether the Court must exercise its powers under Rule 5A (2) to review and set aside the Registrar's decision and order a rehearing.

Whether an interim order of stay of execution pending the *de novo* hearing is warranted in the circumstances.

Analysis of the Law and Findings

Statutory Jurisdiction of the Registrar and Legal Effect of Exceeded Authority

Jurisdiction is the lifeblood of judicial authority; without it, a court or judicial officer acts in vain. Rule 5A (1) of the Industrial Relations Court Rules 1999 provides:

*"The Registrar and a Deputy Registrar shall have power to transact all such business and exercise all such authority as may be transacted and exercised by the Chairperson or Deputy Chairperson in Chambers, **except in respect of the following matters or proceedings—***

(a) matters or proceedings relating to the question of whether or not a dismissal was unfair;

(b) applications for stay of execution of any decision of the Court, or of the Chairperson or Deputy Chairperson;

(c) where a notice of motion raises for the determination of the Court a question as to the construction of a document or a question of law...; and

(d) any other matter or proceedings which by any of these rules is required to be heard by the Chairperson or the Deputy Chairperson." [Emphasis added]

The text of Rule 5A(1)(b) is unambiguous and peremptory. It places applications for stay of execution strictly beyond the reach of the Registrar.

Counsel for the Applicant argues, citing *Hellen Buluma and Kadzipatike*, that a stay application must first be brought before the specific judicial officer who made the assessment decision. While this rule of practice holds true generally across the High Court and Supreme Court of Appeal frameworks, it cannot override an express, specific statutory prohibition. The specialized procedural framework of this Court (**Rule 5A(1)(b)**) explicitly carves out *all* stay of execution applications from the Registrar's authority, reserving them exclusively for the Chairperson or Deputy Chairperson.

As established by the Supreme Court of Appeal in *Mbale v Maganga* [2015] MWSC 1, an order or judgment made by an officer acting without statutory jurisdiction is a total nullity, it is **void ab initio**. Furthermore, it is a foundational principle of law that parties cannot confer jurisdiction on a tribunal by consent, silence, or acquiescence where statutory authority is absent (*Farquharson v Morgan* [1894] 1 QB 552). Consequently, the fact that the Respondent initiated the application before the Registrar without objection does not cure the fundamental defect of authority.

Review under Rule 5A (2) and Abuse of Process

Rule 5A (2) of the Court Rules grants this Court broad supervisory powers upon review:

"Any decision of the Registrar or a Deputy Registrar may be reviewed by the Chairperson or Deputy Chairperson on application by a party... and upon such review, the Chairperson or Deputy Chairperson may—

(a) dismiss the application or confirm, set aside, vary or amend the decision...;

(b) determine the matter as if it were coming before him or her in the first instance...; or

(c) refer the matter back..."

Since the Registrar's determination dated 24th July 2026 was rendered completely without jurisdiction, this Court cannot dismiss the review motion as an abuse of process or as being frivolous. Irrespective of the Respondent's prior procedural errors or potential motives regarding delay, a null decision cannot be left to stand in the court records. It must be set aside.

Ancillary Application for Interim Stay

In considering an interim stay pending the *de novo* hearing of the main stay application, this Court must balance the competing interests of justice (*Attorney General v Sunrise Pharmaceuticals; Mulli Brothers Ltd v Malawi Savings Bank Ltd*):

The Right to Enjoy Judgment

A successful litigant should not be needlessly deprived of the fruits of their judgment.

Preservation of the Appeal/Application

The court must ensure that if the applicant's challenge succeeds, it is not rendered academic or abortive.

The judgment sum involved exceeds **MK 16,000,000.00**. Given the economic standing of the Applicant as an individual employee relative to this substantial sum, there is a legitimate risk that if these funds are disbursed prior to evaluating the merits of the stay application, the Respondent would be unable to recover them should a stay or subsequent appeal succeed. To ensure justice is preserved without causing undue delay, a brief, temporary stay is justified, conditioned upon an expedited inter partes hearing of the substantive application for stay before this Court.

Order and Ruling

In the premises, it is hereby ordered as follows:

Setting Aside Decision

The proceedings before the Registrar relating to the application for stay of execution, and the resulting decision dated **24th July 2026**, are hereby declared null and void for want of jurisdiction and are accordingly **set aside**.

Re-hearing *De Novo*

The Respondent's substantive application for a stay of execution shall be heard *de novo* before the Deputy Chairperson.

Interim Stay Granted

An interim order staying execution of the judgment sum of **MK 16,000,000.00** is hereby granted, pending the inter partes hearing and determination of the substantive stay application.

Expedited Hearing

To prevent further prejudice or delay to the Applicant, the inter partes hearing of the substantive stay application. The court directs the parties to file their paper work within 14 days from 3rd September 2026 at the Industrial Relations Court, Zomba.

Costs

Costs of this motion shall be in the cause of the substantive stay application

PRONOUNCED in Chambers this 3rd day of September 2026 at Zomba, Malawi.



A handwritten signature in purple ink, appearing to read "Peter M.E. Kandulu".

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON