REPUBLIC OF MALAWI

IN THE INDUSTRIAL RELATIONS COURT

ZOMBA REGISTRY

IRC MATTER NUMBER ZA 62 OF 2025

BETWEEN

AGNESS PHIRI……..……..…….APPLICANT

AND

CATHOLIC HEALTH COMMISSION MANGOCHI DIOCESSE……RESPONDENT

CORAM:

HON. PETER M.E. KANDULU, DEPUTY CHAIRPERSON

Isamel Yahya, Counsel for the Applicant

Mitthias Kafere, Counsel for the Respondent

Mr Patrick Banda, Court Clerk

RULING ON A MOTION

Introduction

On the 2nd day of September 2026, this Court delivered a comprehensive judgment in favour of the Applicant, Agness Phiri, finding the Respondent, the Catholic Health Commission (Mangochi Diocese), liable for constructive and unfair dismissal. Consequently, the Court ordered the assessment and payment of salary arrears, compensation for unfair dismissal and unfair labour practice, severance pay, notice pay, and accrued leave pay.

The said judgment was entered following a full trial in which the evidence presented by the Applicant was entirely uncontroverted. The Respondent failed to attend the trial on the scheduled date, and no explanation or formal application for adjournment was furnished to the Court for its absence.

Before this Court is an inter-party motion filed by the Respondent seeking an order for a stay of execution of the judgment dated 2nd September 2026 pending a rehearing of the matter. The application is brought pursuant to Order XII of the Subordinate Court Rules and Rule 25(1)(h) of the Industrial Relations Court (Procedure) Rules.

The Respondent's Case

In support of the motion, the Respondent relies on the affidavit sworn by its counsel, Mr. Mitthias Kafere. Counsel deposes that he was aware the matter was scheduled for hearing on 20th July 2026, and that the proceedings indeed took place in the absence of the Respondent on that date.

Counsel explains that although the notice of hearing was delivered to their office in good time, it was inadvertently misplaced or overlooked by a member of support staff and was never brought to his personal attention. Consequently, he remained entirely unaware of the rescheduled hearing date. The Respondent contends that its failure to attend was neither deliberate nor intentional, but was occasioned solely by internal administrative oversight amounting to professional or office negligence.

Furthermore, counsel avers that the Respondent became aware on 22nd July 2026 that the matter had proceeded ex-parte. Immediately upon making this discovery, the Respondent instructed its legal counsel to take prompt steps to secure a rehearing. It is argued that the application was filed without undue delay and that the Respondent is eager to present its defense on the merits.

The Applicant's Opposition

The motion is vigorously opposed by the Applicant. Mr. Ismael Yahya, Counsel for the Applicant, raises a preliminary and substantive objection that the application constitutes an abuse of the court process, is frivolous and vexatious, and is tainted by a deliberate suppression of material facts.

The Applicant points out that the Respondent has gravely misrepresented the procedural history of this litigation by omitting a vital fact: the default on 20th July 2026 was not an isolated incident. The matter was originally scheduled for hearing on 5th May 2026. On that date, the trial failed to proceed because the Respondent failed to appear or delayed excessively, prompting the Applicant's counsel to personally contact the Respondent's legal team to remind them of the court session, which ultimately resulted in an adjournment.

Subsequently, a new hearing date was fixed for 20th July 2026, upon which the Respondent once again defaulted entirely. The Applicant argues that a pattern of gross negligence, disregard for court schedules, and deliberate evasion cannot be whitewashed by shifting blame onto internal office staff. The Applicant therefore urges the Court to dismiss the application with costs.

Issue for Determination

The sole issue for determination by this Court is whether the Respondent has shown sufficient cause under the law to warrant setting aside the default judgment, granting a stay of execution, and ordering a rehearing of the matter, or whether the application should be dismissed as frivolous, vexatious, and an abuse of the court process pursuant to Section 65(1) of the Labour Relations Act and Rule 25(1)(g) of the Industrial Relations Court (Procedure) Rules.

The Applicable Law

The jurisdiction of this Court to entertain interlocutory applications, manage case flow, and regulate its own procedure is anchored in the Constitution of the Republic of Malawi, the Labour Relations Act (Cap 54:01 of the Laws of Malawi), the Employment Act (Cap 55:01), and the Industrial Relations Court (Procedure) Rules.

Section 65(1) of the Labour Relations Act empowers the Court to regulate its procedure in accordance with the principles of natural justice and equity, ensuring expeditious and fair resolution of industrial disputes.

Rule 25(1)(g) and (h) of the Industrial Relations Court (Procedure) Rules grants the Court discretionary powers to give directions, set aside default judgments, stay executions, and handle interlocutory motions with a view to meeting the ends of justice.

It is well-established jurisprudence in our civil and industrial courts that where a party seeks to set aside a judgment entered in its absence, the applicant must satisfy the court on three cardinal principles:

1. First, that there is a reasonable and satisfactory explanation for the default or absence.
2. Second, that the application has been made promptly upon the applicant becoming aware of the default judgment.
3. Third, that the applicant has a meritorious defense or triable issues fit to be heard on the merits, such that shutting them out would occasion a miscarriage of justice.

Analysis and Evaluation by the Court

I have carefully considered the affidavit evidence, the submissions of both counsel, and the procedural history of this matter as borne out by the court record.

The primary excuse proffered by the Respondent for its non-appearance on 20th July 2026 is internal administrative negligence specifically, that the hearing notice was received at the office of Mr. Mitthias Kafere but was not brought to his attention by a member of staff. While our courts have occasionally shown leniency where default is shown to be a genuine, isolated slip by a legal practitioner's employee, such indulgence is not automatic or absolute. It must be weighed against the broader conduct of the defaulting party and the prejudice to the innocent party.

The Applicant has brought to light a crucial and uncontroverted fact: this default was part of a persistent pattern of laxity. On 5th May 2026, the Respondent similarly failed to attend or delayed appearance, forcing the Applicant’s legal team to chase after them. Giving a second chance requires clean hands and a demonstrable respect for court processes. Repeatedly ignoring hearing dates and then seeking refuge under "office oversight" borders on professional negligence and disrespect for the administration of justice.

However, the Industrial Relations Court is a specialized tribunal established under the Constitution and the Labour Relations Act to administer substantive social justice, rather than punish litigants rigidly for procedural missteps where genuine disputes exist. The overarching objective under the Employment Act and Labour Relations Act is to secure a just determination of industrial rights and obligations.

Although the Respondent’s conduct displays culpable administrative slackness, the court must balance this against the draconian effect of shutting out a party permanently without a hearing on the merits, provided terms can be set to compensate the aggrieved Applicant for the wasted costs and delay incurred.

I note that the application for a rehearing was filed promptly upon discovery of the judgment on 22nd July 2026. Furthermore, equity dictates that employment disputes involving substantial claims of unfair dismissal, salary arrears, and statutory benefits are best resolved after both sides have been heard, ensuring that industrial harmony and substantive justice prevail over technical defaults. To mark the Court's utmost disapproval of the Respondent's negligent handling of court processes and to compensate the Applicant for the unnecessary delay and inconvenience occasioned by the aborted trial dates, the grant of this motion must be conditional upon the immediate settlement of thrown-away costs.

Disposition and Orders

Accordingly, upon a balanced review of the law, the overriding objectives of the Industrial Relations Court, and the circumstances of this case, it is hereby ORDERED as follows:

1. The Respondent's application for a stay of execution of the judgment dated 2nd September 2026 and for a rehearing of IRC Matter Number ZA 62 of 2025 is GRANTED, subject to the strict conditions set out below.
2. The judgment delivered on 2nd September 2026 is hereby SET ASIDE.
3. As a condition precedent to the rehearing of this matter, the Respondent shall pay thrown-away costs to the Applicant, to be taxed by the Registrar if not agreed upon within fourteen (14) days from the date of this ruling.
4. Proof of payment of the taxed or agreed costs shall be filed into court before the new hearing date is fixed.
5. The matter shall be set down for a scheduling hearing before the Deputy Chairperson within twenty-one (21) days and shall follow a strict timetable for the expeditious disposal of the trial on its merits.

PRONOUNCED this 10th day of November 2026 at the Industrial Relations Court, Zomba Registry.

HON. PETER M.E KANDULU

DEPUTY CHAIRPERSON