

# **Malawi Hotel and conference Centre Ltd (previously known as Eclipse Limited) v. Blantyre City Council Land Cause No. 110 of 2015**

## **Summary**

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<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Kenyatta Nyirenda
<b>Cause Number:</b>	Land Cause No. 110 of 2015
<b>Date of Judgment:</b>	March 26, 2019
<b>Bar:</b>	Mr. Gondwe, Counsel for the Claimant Mr. Matumbi, Counsel for the Defendants

The Claimant, formerly known as Eclipse Limited, sought an application for a stay of a ruling in the High Court, Principal Registry, which had dismissed its action for want of prosecution. The application was brought under Order 10, Order 12, rule 55(1), and Order 21 of the Courts (High Court) (Civil Procedure) Rules. The Claimant's representative argued that the delay in prosecuting the matter was due to protracted negotiations for an amicable settlement and the Court's failure to assign a judge to the case for a significant period. The Claimant contended

that the dismissal was prejudicial, as it stood to lose property valued at over K194 million for a mere K4.5 million, a sum the Second Defendant would acquire. The Defendants opposed the application, asserting that settlement negotiations had broken down in 2016 and the Claimant had failed to take any further steps. They argued that the appeal's chances of success were non-existent and a stay would only serve to deprive them of the fruits of their litigation.

The principal legal question before the Court was whether the application for a stay was properly grounded under the cited provisions of the Courts (High Court) (Civil Procedure) Rules. The Court dismissed the application, holding that it was incompetent. The Court reasoned that Order 12, rule 55(1) does not grant the High Court the power to set aside its own order dismissing a proceeding for want of prosecution, as this power is reposed in the Supreme Court of Appeal. Furthermore, the Court clarified that Order 21 governs appeals from subordinate courts to the High Court, not appeals from the High Court to the Supreme Court of Appeal. Consequently, the application was found to be improperly grounded and was dismissed with costs.