

Mary Nkolokosa & 18 Others v Banja La Mtsogolo Limited

Summary

Court:	Industrial Relations Court
Bench:	Peter M.E Kandulu, Deputy Chairperson
Cause Number:	Matter No. IRC 456 of 2017
Date of Judgment:	February 27, 2024
Bar:	Chance Gondwe, Counsel for the Applicants. Maziko Sauti Phiri, Counsel for the Respondent.

The Respondent through Counsel sought to set aside an ex parte order dated 12 January 2024, which had discharged a stay of execution granted on 26 July 2021. The genesis of the matter involved a judgment which was delivered on January 10, 2020, finding the Respondent liable for unfair dismissal. The court then partially assessed damages on February 9, 2021, awarding the Applicants the sum of MK44,691,657.00 for compensation, severance pay, and accrued leave. Dissatisfied, the Respondent filed a Notice of Appeal and was granted a stay of execution on the condition they pay half of the assessed sum into the court. The Respondent made this payment on August 13, 2021. However, for over two years, the Respondent had not actively prosecuted the appeal. The Applicants' lawyer, after checking with the High Court, was informed that no appeal had

been registered. Because of this, the Applicants through Counsel moved the court for an order discharging the stay order, which was granted, allowing them to execute the judgment for the remaining amount. The Respondent through Counsel, then filed a motion to set aside the order discharging the stay, arguing that they had been actively pursuing the appeal by sending letters to the court and communicating with a court clerk, who informed them the case file was missing. Further, the Respondent's Counsel failed to cite any law or rule to support their motion to set aside the order. The Applicants' counsel contended that the Respondent's conduct was unreasonably denying the Applicants the fruits of their litigation.

The key question before the Industrial Relations Court was whether to grant the Respondent's motion to **set aside an order dated January 12, 2024**, that had discharged a prior order of stay of execution. In responding to the question, the Court had to determine if the motion herein to set aside the discharge order was supported by any legal authority and if the Respondent's reasons for the delay in prosecuting the appeal were valid.

The IRC Deputy Chairperson **dismissed the respondent's motion** with costs. The Court held that the motion was vexatious and a waste of the court's time because Counsel for the Respondent failed to cite any law or rule to support it. The Court found that the Respondent's excuses for the delay, such as the missing file and communications with a clerk, were "lame" and that the respondent had not taken any active steps to prosecute the appeal. The Court noted that the Respondent's Counsel should have approached the Assistant Registrar's office for proper direction instead of only communicating with a clerk.

Ultimately, the court sustained the discharge of the stay order, concluding that the Respondent was merely trying to frustrate the Applicants from enjoying the “fruits of their litigation”. The Court further noted that an order of stay is not a permanent order and that an appeal is only tenable on a final judgment of the court, whereas in the present case, other heads of damages were yet to be assessed, hence, it acknowledged that the stay order was issued *per incuriam*. The Court awarded costs to the Applicants, citing the special circumstances of the case.