

ADMARC Limited v Alex Malikebu and 3281 Others

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Miscellaneous Civil Cause Number 91 of 2024
Date of Judgment:	December 23, 2024
Bar:	Mr Patrice Nkhono SC, Counsel for the Applicant Counsel for the Respondents: Mr Shepher Mumba and Mr Ackim Ndlovu

The Applicant, ADMARC Limited, applied to the High Court for a suspension of the enforcement of a judgment pending an appeal. The Industrial Relations Court (IRC) had previously found that the Applicant had unfairly dismissed the Respondents, who were its employees, without consultation. The IRC awarded the Respondents compensation and granted a stay of execution conditional on the Applicant paying 50% of the awarded amount. The Applicant, being aggrieved by both the liability judgment and the compensation order, filed an appeal and simultaneously brought this application for a stay of enforcement.

The Applicant's arguments for a stay were that the appeal had high prospects of success, the appeal would be rendered nugatory if payment was made, the compensation amount was very high, and the Applicant was in a poor financial state. The Respondents opposed the application.

The Court held that the general rule is not to deprive a successful litigant of the fruits of litigation. The Court considered the factors for granting a stay: whether the appeal has merit, whether it would be rendered nugatory without a stay, and the prejudice to each party. The Court found that the Applicant's grounds for a stay were not persuasive. It was held that the financial incapacity of the Applicant was not a good ground for a stay, as ADMARC is a limited liability company with assets, and there are other financing options available. The Court also dismissed the argument that the Respondents would be difficult to trace, as the Applicant holds employee records with bank details. The Court concluded that the risk of prejudice lay against the Respondents and exercised its discretion in their favour. The application was therefore dismissed, and the Court ordered the Applicant to pay the Respondents half of the compensation within 14 days, as directed by the IRC.