ADMARC Limited vs Alex Malikebu & 3281 Others Miscellaneous Civil Cause Number 91 of 2024

Ruling/Judgment

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:	June 16, 2025
Bar:	Mr Benard Ndau, Mr John Suzi-Banda, Mr Francisco Chikabvumbwa, and Mr Edward Dzimphonje, Counsel for the Applicant/Enforcement Debtor Counsel for the Respondents/Enforcement Creditors: Mr Shepher Mumba and Mr Ackim Ndlovu

1. There are two applications before this Court. The first application is by the enforcement creditors. On 19th May 2025, the enforcement creditors obtained an interim third party debt order for the sum of K5,860,032, 056.23 being the balance on the total judgment sum of K25,051,448, 241.68 which was awarded to them by the Industrial Relations Court (IRC) on 15th November 2024. The

enforcement creditors would like to have the interim order made absolute so that the monies that have been attached should be paid out.

2. The second application is by the enforcement debtor which seeks to set aside and or strike out the interim third party debt order on the ground that the same is irregular and also that it amounts to an abuse of the court process.

3. The brief facts are that the enforcement debtor retrenched its employees, the enforcement creditors, who subsequently brought a successful claim for unfair dismissal and unfair labour practices in the IRC. On 15th November 2024, the IRC awarded each one of the 3,282 enforcement creditors compensation for unfair dismissal and also compensation for unfair labour practices totaling K25,050,448,242.67.

4. Subsequently, the enforcement debtor applied for and was granted and order of stay pending appeal on 3rd December 2024. There was a condition that the enforcement debtor should pay 50% of the judgment debt and then 25% of the balance after 6 months if the appeal by the enforcement debtor would not have been set down for hearing for no fault of the parties. The 50% of the compensation amounted to K12, 525,724,120.84.

5. The enforcement debtor then brought an application before this Court for stay of the decision of the IRC. This Court, on 23rd December 2024, after carefully considering the matter, declined the application and confirmed the order of the

IRC but directed that the 50% of the compensation be paid within 14 days. The facts show that the enforcement debtor failed to pay the sum of K12,525,724,120.84 and the enforcement creditors resorted to enforcing the judgment debt through third party debt orders from this Court and through the Sheriff of Malawi. The enforcement creditors collected a sum of K6,691,416,185.45 and the enforcement debtor paid a further sum of K12,500,000,000.00 around 24th March 2025 thereby leaving the unpaid balance of K5,860,032,056.23.

6. The parties filed their documents in support of their respective positions. This Court will not set out all what is contained in these documents suffice to say that in the determination of the two applications, this Court will bear in mind the contents of these documents and the totality of the oral arguments.

7. During the oral arguments, Counsel for the enforcement debtor argued that at the time of the application by the enforcement creditors on 19th May 2025 for the interim third party debt order for the balance on the judgment debt, there was in existence and subsisting the order of stay by the IRC which was also confirmed by this Court. Accordingly, the third party debt order that was granted to the enforcement creditors was irregular and must be set aside. Counsel argued that there is at the moment no order to be enforced and that the enforcement debtor complied with the conditions of stay as was imposed by the Court. Counsel concluded by arguing that the third party debt order proceedings that were taken by the enforcement creditors are an abuse of the court process.

8. The enforcement creditors vehemently oppose the application. Counsel admitted that the order of stay pending appeal provided for conditions for payment of 50% of the total judgment sum and subsequently 25% of the balance. However, Counsel argued that the enforcement did not comply with the first condition to pay the 50% of the judgment sum and this led the enforcement creditors to enforce through third party debt orders and through levying execution through the sheriffs.

9. Counsel also argued that the parties then entered into discussions for the payment of the whole judgment sum. Counsel exhibited the letter from the Attorney General as evidence that there were discussions for the payment of the whole judgment debt. Counsel argued that the enforcement debtor paid the sum of K12,500,000,000.00 pursuant to the discussions arguing that the enforcement debtor abandoned their appeal.

10. This Court does not agree that the enforcement debtor has abandoned the appeal as there are formal ways of doing so.

11. That said, this Court has wide powers to set aside an order that has been granted without notice. Where the other party alleges irregularities, as is alleged by the enforcement debtor in this case, the other party is entitled ex debito justitiae to have it set aside: see the case of J.T. Chanrai (Hong Kong) Limited v Climax Manufacturers Limited 8 MLR 198 which was decided in the context of setting aside default judgments for irregularity.

12. Further, this Court has inherent jurisdiction to prevent its process from being abused: see Mota Engil Engenharia E. Constucao (Mw) v Omega Security Solutions (Pty) Ltd MSCA Civil Appeal No. 159 of 2013.

13. This Court notes that indeed the IRC granted an order of stay pending appeal on 3rd December 2024 and as has been rightly argued by both parties, the order of stay aforesaid was with conditions. The first condition ordered the enforcement debtor to pay 50% of the judgment sum and then 25% after six months if the appeal was not set down for hearing. When a similar application came before this Court, the application was declined and the order of stay pending appeal by the IRC was confirmed with the same conditions. This Court further directed the enforcement debtor to pay the 50% within 14 days from 23rd December 2024.

14. The facts as presented by both parties show that the enforcement debtor failed to comply with that condition of paying the 50% of the judgment sum within the 14 days that this Court had ordered. The implication of that failure to pay by the enforcement debtor automatically discharged the order of stay pending appeal that was granted to the enforcement debtor: see Phillip Msindo v National Bank of Malawi [2009] MLR 390. This is why the enforcement creditors were at liberty to enforce the Judgment. This Court is of the view that the enforcement debtor can no longer rely on the order of stay whose condition was not complied with and it is not open to the enforcement debtor to choose which condition to obey or not to obey.

15. In addition, there is the letter from the Attorney General that has been exhibited by the enforcement debtor. That letter shows clearly that the parties were engaged in discussions. The letter also states that ‘the rest of the judgment should be paid after the passing of the budget by the National Assembly.’ And there is evidence that the enforcement debtor paid the sum of K12,500,000,000.00 which did not follow the pattern that was in the order of stay pending appeal.

16. The enforcement debtor also obtained an order, without notice, of stay pending payment of judgment debt by instalments on 6th February 2025. The enforcement debtor has sought to limit this order to the first condition in the order of stay pending appeal; they sought to pay the 50% by instalments. However, that order without notice, required them to file an application with notice within 7 days. This was not done and the order fell through due to effluxion of time.

17. The totality of the foregoing leads to one conclusion that both parties knew that the order of stay pending appeal was discharged by failure on the part of the enforcement debtor to pay the 50% of the judgment sum.

18. This means that the order that was granted to the enforcement creditors dated 19th May 2025 is not irregular and does not amount to an abuse of the court process. The application to set aside that order is therefore dismissed, save

that each party shall bear their own costs.

19. This then leaves this Court with the application for the enforcement creditors. After carefully considering the facts and the sworn statements filed by the Third Parties, this Court grants the prayer by the enforcement creditors and orders that the interim third party debt order be made absolute. It is so ordered.

Made in Chambers this 16th day of June, 2025.