

Eric Thomson and Others v Telekom Networks Malawi plc Civil Appeal Number 9 of 2023

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Appeal Number 9 of 2023
Date of Judgment:	May 15, 2025
Bar:	Mr Patrick Mpaka, Counsel for the Applicant Counsel for the Respondents: Mr Luciano Mickeus

The Appellant, Telekom Networks Malawi plc (TNM), applied to the High Court for a suspension of the enforcement of a judgment pending an appeal to the Supreme Court of Appeal. The application was filed under Order 10 rule 1 and Order 23 rule 9 of the Courts (High Court) Civil Procedure Rules 2017, as read with section 23 of the Courts Act and the Court's inherent jurisdiction. The Respondents, former employees of TNM, had been retrenched in August 2019 and were successful in their appeal to the High Court, which found that they had not been consulted as required by law. They were awarded compensation of K1,456,324,019.00 by the Assistant Registrar. The Appellant, being aggrieved by

both the judgment on liability and the compensation amount, sought a stay of execution. The Appellant argued that the appeal had a high chance of success due to the contentious legal question of whether consultation is a legal requirement before retrenchment. It also contended that the compensation was unjust and that paying it would cause irreparable damage, rendering the appeal nugatory, as the Respondents had no known means of income to repay the money if the appeal succeeded.

The Respondents opposed the application, arguing that the Court does not typically deprive a successful litigant of the fruits of their litigation. The Court found that the Appellant had not proven the Respondents were impecunious, as they had only claimed not to know their current financial status. The Court also held that the magnitude of the award and the Appellant's alleged financial difficulties were not sufficient grounds for a stay. However, the Court acknowledged that it would be unjust to the Appellant to pay the entire compensation amount before the Supreme Court of Appeal could definitively settle the question of consultation before retrenchment. The Court therefore ordered the Appellant to pay half of the compensation to the Respondents within seven days. Each party was ordered to bear its own costs.