

Roads Authority and Roads Fund

Administration v Al-Abdulhadi Engineering

Consultancy

Summary

Court:	Supreme Court Of Appeal
Bench:	Honourable Justice D. Madise, JA.
Cause Number:	Civil Appeal Number 22 of 2023 (Being Commercial Case No. 459 of 2022)
Date of Judgment:	March 14, 2024
Bar:	Mr. P. Likongwe, Counsel for the Appellants Mr. L. Gondwe, Counsel for the Respondent

The Respondent sought the discharge of an order granted by a Single Member of the Supreme Court of Appeal, which had previously stayed the execution of a default judgment and directed that the judgment sum be paid into Court pending appeal. The dispute originated when the Respondent, as Claimant, commenced proceedings in the High Court, Commercial Division, and obtained a Freezing Injunction and a Default Judgment against the Appellants (Defendants) for **US\$1,481,948.30**. The default judgment was executed swiftly, with the bank paying the sum to the Respondent's lawyers. Shortly thereafter, the money was

frozen by the Financial Intelligence Authority and subsequently preserved by a High Court Order until the determination of the Appellants' application to set aside the Freezing Injunction and the Default Judgment.

When the High Court dismissed the Appellants' applications, they were granted leave to appeal but refused a stay of execution. The Appellants then successfully applied to a Single Member of the Supreme Court of Appeal, who dismissed the Respondent's parallel application to have the preserved money paid out, granted a stay of execution, and ordered that the funds be paid into the Supreme Court. In the present application, the Respondent contended that the stay should be discharged because the Appellants had allegedly failed to prosecute the appeal properly by not filing skeleton arguments within the prescribed period, arguing that the Respondent, as the successful litigant, was entitled to the fruits of the judgment. The principal legal questions were whether discharge was the appropriate remedy for alleged procedural default, and what guarantees existed for the return of the funds given the Respondent's foreign establishment.

The application was dismissed. The Court held that the Respondent's contention that no valid appeal was lodged was misconceived and noted that the Court had previously heard and denied the Respondent's application to release the funds, thereby rendering the issue of whether an appeal was properly lodged *res judicata* before a Single Member. The Court also emphasized that the default judgment in question was not a decision on the merits, and the balance of justice favoured allowing the Appellants to have the substantive merits of their case heard before the full bench, particularly since the judgment sum was secured in Court. The Court ordered that the Appellants obtain a date for the hearing of the

substantive appeal within 21 days