REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI SITTING AT BLANTYRE

PRINCIPAL REGISTRY

CIVIL DIVISION

MISCELLANEAOUS CASE NUMBER 186 OF 2013

BETWEEN

(Before Honourable Justice Sikwese)

THE ATTORNEY GENERAL ----------APPELLANT

AND

THE ADMINISTRATORS OF THE ESTATE OF DR. CHRISSIE CHAWANJE MUGHOGHO----------RESPONDENT

CORAM: HIS HONOUR THE ASSISTANT REGISTRAR.

Miss, S. M. Machinjiri, of Counsel for the respondent,

Mr. F. Mathanda, Clerk/Official Interpreter,

RULING

Daniels AR,

1. The brutal fact remains; the dead are eternally dead, and yet the hand of the dead stretches beyond their grave to an extent of affecting the affairs of the living. As it were, there is nothing mysterious when the law embraces the shrines of intestate principles by allowing the dead to from their grave dictate what ordinarily would have been their entitlement through their surviving estate. It is obvious that proprietary rights survive the dead through their deceased estate. This is the case. As it were, through her estate, today the Court has been invited to refuse the appellant from continuing denying justice to the estate of the peacefully resting Dr. Christie Chawenje Mughogho who according to the record obtained a default judgment against the appellant. I must say at the onset that over the years the default judgment has remained undisturbed, and there has been no attempt to even set it

aside. This Court had the occasion of perusing through the supposed Notice of Appeal and noted that the grounds indicated thereon do not even come anywhere near the issue of liability as against the appellant. However, the appellant has survived on the stay which they obtained against the execution of the order of compensation which was made by the Industrial Relations Court (herein referred to as IRC). Suffice to say that, the respondent before her demise, saw the amount of **K129,650,198.27** (One Hundred Twenty-Nine Million Six Hundred Fifty Thousand One Hundred Ninety-Eight Kwacha Twenty-Seven Tambala Only) which the court awarded in her favour being compensation for unfair dismissal. This she never lived to enjoy as the fruits of her lawsuit. She breathed her last on 26th January, 2014 and as the saying of the law goes, her estate still survived her. It is her estate that has come before me to stop the appellant, the Attorney General, from disturbing the peace of the deceased and causing her resting soul to turn in her grave. That is in essence what Counsel Machinjiri intently and passionately argued that the Court must gather the courage and stop the perpetual injustice that the unreasonable stalling has occasioned on the respondent. In the main, Counsel invites the Court to consider the overall objective of this Court which is to deal with matters justly. See Order 1 rule 5 of the Courts (High Court) Civil Procedure Rules 2017. As Counsel argued her case eloquently, the maxim that, *"justice delayed is justice denied,"* received some revival and forceful renaissance in the mind of this Court. She argued passionately and understandably so.

2. That said, the application made by Counsel comes under Order 10 Rule 1 as read together with Order 12 rr 54 (1) & 56 of the Courts (High Court) (Civil Procedure) Rules, 2017. The long and short of Counsel's argument is that this Court should vacate or set aside the stay of execution which was obtained on 5th December, 2013. At paragraph 2.3 of her skeleton arguments, which this Court had an encounter with, Counsel submits thereon that the stay which was obtained is now an abuse of Court process, because there is literally no activity on record. Further, Counsel submits that this Court should proceed to dismiss the proceedings on the premise that the appellant has not done anything since 2014 to prosecute their appeal. Additionally, Counsel addressed the Court that the appellant was also served with a notice of these proceedings and that the appellant did not avail itself before the Court a clear sign that the appellant is not serious. On the issue of proceeding in absence of the appellant, Counsel advised the Court that the matter should proceed on the premise that the office of the Attorney General did not even write anything in response besides the fact that they were duly served and they acknowledged service on 3rd April, 2023. I must put it on record that, exactly at 9:00am on the date of hearing this application, the learned Counsel for the respondent was already in Court because the matter was coming before me at 9:00am. That considering the seriousness of this case, the Court delayed the proceedings until 9:25am thereabouts, to allow Counsel to as a matter of comity, good practice and professional courtesy engage the agents of the appellant at their chambers as regards the hearing of this matter. The agents according to Counsel acknowledged knowledge of these proceedings but that they were unsure as to who was responsible for this file. This I allowed to happen fully knowing that ours is an adversarial system. However, this Court allowed

to still offer the appellant a chance to clean their hands. They unfortunately never took that chance.

3. As it were, this Court allowed Counsel to proceed to address the Court having noted that there was indeed evidence before the Court that the honourable office of the Attorney General had knowledge of these proceedings and that for some unknown reason they remained mum as to why they did not file anything in response to the prayer of Counsel neither did they even attempt to attend these proceedings or even telephonically beg the available Counsel for the respondent to seek for an adjournment, which still would have been in the discretion of the Court. The inefficiencies of any public office including that of the appellant, remains in my view, a catalyst that must not be allowed to impede and act as a spanner in the drugging wheels of the blind lady justice. That must never be allowed and I will not allow.

4. The above notwithstanding, it is trite law to consider the summary of the approach I must take when such applications are brought before me. Thus, I must invite to duty the pronouncement of law by Justice Kenyatta Nyirenda in the case of *James Masumbu v Blantyre City Council Civil Cause No. 256 of 2017 (Unreported)* where the learned Judge quoted with force the principles of law adumbrated by Lord Denning M.R. in *Allen v. Sir Alfred McAlpine & Sons [1968] 1 ALL ER 543*, at p 547 as follows:

> *"The principle on which we go is clear: when the delay is prolonged and inexcusable, and is such as to do grave injustice to one side or the other, or to both, the court may in its discretion dismiss the action straight away, leaving the plaintiff to his remedy to his own solicitor who has brought him to this plight. Whenever a solicitor, by his inexcusable delay, deprives a client of his cause of action, the client can claim damages against him."*

The principles enunciated by Lord Denning M.R. in *Allen v. Sir Alfred McAlpine & Sons, (supra)*, further revealed by Kenyatta J, were elucidated by Unyolo J. (as he then was), in *Sabadia v. Dowset Engineering Ltd. 11 MLR 417* at page 420 as follows:

> *"In deciding whether or not it is proper to dismiss an action for want of prosecution, the court asks itself a number of questions. First, has there been inordinate delay? Secondly, is the delay nevertheless excusable? And thirdly, has the inordinate delay in consequence been prejudicial to the other party? "*

5. Moreover, it is further of use to consider the reasoning of Kenyatta J, in the case of *Chasweka and Bosi v Andrea Kalisoni Mankhuwiri (Civil Cause No. 2014 of 2016 (Unreported)* where he pronounced himself as follows:

"I wish to conclude by stating that until there is a real change in the culture in which civil litigation is concluded by legal practitioners in Malawi, it is unlikely that the regime introduced by the CPR will be applied differently. The new ethos of litigation require a party and his or her legal practitioner to be ***vigilant****. The claimants and their legal practitioners have terribly failed in this respect."*

(Emphasis Added)

As it were, it appears that these principles have received acceptance in other common law jurisdictions. Thus, I had some mind interaction with a Kenyan High Court decision of *Ivita v Kyumbu [1975] eKLR* where Justice Chesoni quoted with approval several English cases in summarising the law as follows:

"The authorities I have considered here show that the law and principle upon which courts go are clear. The test was enunciated by Lord Denning MR in Allen v Sir Alfred McAlpine & Sons Ltd at p 547 and it was repeated by Edmund Davies LJ in Paxton v Allsopp [1971] 3 ALL ER 370 at p 378, who put it as follows: "If I may be acquitted of immodesty by quoting some words of mine used in Austin Securities Ltd v Northgate & English Stores Ltd [1969] 2 All ER 753 where having set out the familiar tests to be applied in such cases, I said: 'But these questions are, as it were, posed enroute to the final question which overrides everything else and was enunciated by Lord Denning MR, in Allen v Sir Alfred McAlpine & Sons Ltd, in these words: "The principle on which we go is clear: ***when the delay is prolonged and inexcusable, and is such as to do grave injustice to one side or the other, or to both, the court may in its discretion dismiss the action straight away****……". So, the overriding consideration always is whether or not justice can be done despite the delay. Thus, Lord Denning MR referred later in his judgment in that case, to "****delay…….so great as to amount to a denial of justice'****…"*

(Emphasis Added)

6. The above is essentially what Counsel Machinjiri submits in her arguments from paragraph 2.1 to 3.6 of her submissions. In sum, Counsel submits in my view that the appellant has been sleeping on their right to prosecute this matter. Counsel further submits in essence that this Court must not allow the slumbering appellant to prolong his slumber to the detriment of the interest of justice which this Court must resolve in favour of the respondent. It is from the foregoing that I proceeded to entertain the arguments of Counsel having satisfied myself on the point of procedural law. As seen, Counsel's application is supported by a sworn statement and skeleton arguments in compliance with Order 20 Rule 1 of the Courts (High Court) (Civil Procedure) Rules. Generally, Counsel argues that the conduct of the appellant in not doing anything to prosecute their appeal since 2014 is generally tantamount to denying the respondent the fruits of her successful litigation. On this, the learned Counsel addressed the Court that in fact the owner of this case is now

deceased and that in 2014 they made an application to change a party by reason of death. The respondent passed on without reaping the benefits of her litigation. Since then, there has been no movement on the file lamented Counsel.

7. Needless to say, I must mention that before me the question I must ask myself is whether there is inordinate and inexcusable delay that has been prejudicial to the case of the respondent or indeed to the spirit of justice and fair trial. Perhaps, I must rephrase my question as was phrased in the South African Supreme Court case of *Mohammed Cassimjee v Minister of Finance (455/11)* where a similar factual question was couched as follows:

> *"At issue in the appeal was whether the high court had properly exercised its discretion to dismiss the appellant's claim for want of prosecution which depended on the factual question* ***whether the delay was so unreasonable or inordinate as to constitute an abuse of the process of court****."*
>
> *(Emphasis Added)*

That is essentially the question I must answer at the end of this legal disposition. As it were, Counsel has invited this Court sitting as it does to set aside the stay of execution and proceed to dismiss the proceedings for want of prosecution. In the alternative, Counsel argues that although this matter was coming with notice, but the Court can take it upon itself with regard to Order 1 Rule 5 of the Courts (High Courts) (Civil Procedure) Rules 2017 that matters must be dealt with justly and that the Court can on its own under Order 12 Rule 56 strike off the matter for inactivity for a period of 8 years as deponed by Counsel in her sworn statement in support of this application.

8. Like enunciated in the recent above, my understanding is that the principal issue I have to consider is whether there was a delay in dealing with the appeal that the appellants sought against the decision of the IRC on compensation which was awarded to the deceased. I must be quick to mention that where there is an inexcusable delay, courts have been moved to dismiss the proceedings because not only is unreasonable delay an impediment to the spirit of justice but it is an affront to the general administration of justice and a clear abuse of court process which in essence is against public policy. In lamenting on similar averments Justice Kenyatta Nyirenda in *James Masumbu v Blantyre City Council (Supra)* had the following to say:

> *"There should be a point where matters should be closed. The delay here is so prolonged that there is a substantial risk that a fair trial of the issues will be no longer possible. When this stage has been reached, the public interest in the administration of justice demands that the action should not be allowed to proceed."*

9. As if this was never enough, this Court had yet an encounter with the South African High Court decision of *Member of The Executive Council Department Of Agriculture, Rural*

Development, Land, & Environmental Affairs Mpumalanga Province-v- Kanjani (Pty) Ltd Case Number: 57611/2014 where Sardiwalla J, couched the law as follows:

> *"The high court has the inherent power, both at common law and in terms of section 173 of the Constitution, to regulate its own process. This includes the right to prevent an abuse of its process in the form of frivolous or vexatious litigation. An inordinate or unreasonable delay in prosecuting an action may also, depending on the circumstances,* ***constitute an abuse of process and warrant the dismissal of an action arising from the court's same discretion to prevent an abuse of its process****. An* ***inordinate or unreasonable delay*** *in prosecuting any action* ***may constitute an abuse of court process*** *that, in certain narrowly defined circumstances,* ***may justify dismissal of the action****."*
>
> *(Emphasis Added)*

As it were, the Court further articulated the law in the manner as follows:

> *"It is a trite principle of law however that* ***a court should not easily dismiss an action for want of prosecution, except in cases where there has been a clear abuse of the process of court****. Indeed,* ***a court will exercise such powers sparingly and only in exceptional circumstances because the dismissal of an action can have serious impacts*** *on the constitutional and common law rights of a plaintiff to have his dispute adjudicated in a court of law by means of a fair trial. In Cassimjee the court held that even though section 34 of the Constitution does provide that every person the right to have a dispute adjudicated by a court or tribunal in a fair public hearing, that there exists a limitation of that right provided that the limitation is reasonable and justifiable.* ***The question before the court therefore is not just if there is an unreasonable delay but whether or not the Plaintiff is guilty of an abuse of process****."*
>
> *(Emphasis Added)*

The take away from the above reasoning is that I must warn myself to use my discretion sparingly and that the question I must ask myself must not only address the issue of delay, but rather whether if there is any delay, such a delay is devoid of reasonable explanation and indeed whether that delay amounts to an abuse of court process. Perhaps, just a caveat, that this Court is well aware that the above pronouncement of law from our sister jurisdiction may not be binding but I must admit that the above reasoning is clearly common law principles that have been applied even in our jurisdiction by our Courts.

10. Besides, the above even in Kenya the position of the law has been that a party who seeks the matter to be dismissed for want of prosecution must go beyond the argument that there

is a delay of proceedings which is inexplicable. Thus, the applicant must show the Court that the status quo is prejudicial and tantamount to injustice or that if the Court allows the matter to proceed then perhaps justice might not be achieved. This is mainly because witnesses might have passed on and or indeed might not be able to recollect the facts as were known to them at the time the cause of action arose. In pronouncing the law in the Kenyan High Court case of *Ivita v Kyumbu [1975] eKLR* Justice Chesoni quoted with approval the decision of East African Court of Appeal case of *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited [1969] EA 696* where Sir Charles Newbold P held as follows:

> *"The second matter relates to the undoubted delay in the hearing by the High court of this case.* ***It is the duty of a plaintiff to bring his suit to early trial****, and he cannot absolve himself of* ***this primary duty*** *by saying that the defendant consented to the position."*
>
> *(Emphasis Added)*

I note that not only was the appellant supposed to make sure that they took reasonable steps to have the appeal heard, but doing that was a matter of duty which as would become apparent, the appellant failed to discharge. As I canvassed further, the case of *Ivita v Kyumbu (Supra)* I noted that the learned Judge further quoted with approval the reasoning of Sir Charles Newbold P in the case of *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited (Supra)* where he said the following:

> *"I wish, however, to make it clear that in future a plaintiff who for whatever reason, delays for over six years before bringing his suit for trial can* ***expect little sympathy."***

In the instant case, Counsel Machinjiri has passionately submitted before me that the about 9 years delay is perhaps an insult to lady justice and holding otherwise would be to manifestly deny the litigant the fruits of a successful litigation. She cited numerous cases on this point which I find it unnecessary to reproduce. Nonetheless, what is sad in this case is that as the matter was delayed nature called the respondent (who could have been the material witness in the would-be appeal) to join her ancestors. Indeed, this is the exact case that sympathy is no resource that the Court has in its reservoirs of discretion as against conduct of the appellant. Thus, I will not hesitate to consider the prayer of Counsel should the facts indicate that not only is there a delay but that such inexcusable delay has caused the appellant to be guilty of abusing the process of the Court to the prejudice of the respondent's case, whose estate speaks on her behalf even as she eternally rests.

11. Coming to our context, Justice Kenyatta Nyirenda in the case of *James Masumbu v Blantyre City Council (Supra)* emphasised that at this level, the Court has to make sure that justice is achieved and that public policy requires that litigation must come to an end and

the Court must make sure that parties are vigilant in the pursuit of justice. Further, it is not fair to use the instruments of law procedural and otherwise to delay any party having the fruits of their litigation by using the instruments of the Court because that is tantamount to the abuse of Court process. This the learned Judge argues can also be occasioned by the inexcusable delay.

12. In the instant case, in her sworn statement Counsel for the respondent exposed the chronology of events since the appellant filed their notice of appeal. In particular, Counsel deponed on paragraph 3 which this court verified with the IRC order on record, that an assessment order was delivered on 28th October, 2013 pursuant to a default judgment which was regularly obtained on 26th April, 2013. Further, on 13th November, 2013 the appellant filed and served on the respondents herein (now the applicants) a Notice of Appeal against the Order on compensation a copy of which is attached on the record. Again, I have before me knowledge that on 5th December, 2013, the appellant filed and served an order staying execution of the Ruling on Assessment of compensation pending the hearing and determination of an appeal. It would appear from these steps that the appellant appeared to be vigilant in the first place. Perhaps, calculated or not remains undetermined but I shall come back to the reason I have so mentioned this because there is an argument that the stay was obtained to simply act as a permanent prohibitory injunction stopping the estate of the deceased to benefit from what the court granted the departed.

13. Unfortunately, as misfortune would have it, the respondent like said earlier died at the time the order of stay of execution stopped her from accessing the fruits of her successful litigation. Thus, as deponed by Counsel, on 18th February, 2014, the respondent filed an ex parte application to change a party by reason of death. This order was granted and served on the appellant on 12th March, 2014. It appears that was the only activity that happened after the stay. This activity was occasioned by the estate of the deceased.

14. Interesting to note is the fact that on 12th June, 2014 a similar application like one now before me was filed with the Court and on 26th June, 2014 as deponed by Counsel the application was served on the appellant. It must be noted that, the appellant only took 4 days to respond to that application by way of affidavit and accompanying skeleton arguments in opposition on 30th June, 2014, a day in which the respondent was also served with the response. It must be mentioned that this initial application was heard by the then Assistant Registrar, his Honour Masoamphambe (as he was then). The learned Registrar, correctly in my view directed the IRC to expedite the preparation of the court record so the High Court would entertain the appeal. This is the genesis of Counsel's lamentations. Thus, she argues that since this direction, being the owner of the appeal, they have not shown any interest to prosecute the matter premised perhaps on the fact that the appellant has used the stay which they obtained to protect their interests.

15. It must be noted that this Court did a search of its own throughout the record, but I must mention that it has been a journey in futility for me to find any piece of explanation on

record as regards what has occasioned the delay of the appeal herein. I must admit that perhaps if the Attorney General appeared before me or indeed if they simply had filed anything in response on record, then perhaps the Court would have been accorded the opportunity to have an explanation for the delay on prosecuting their appeal. Unfortunately, that did not happen. Perhaps to make it clear, that the Honourable Office of the Attorney General acknowledged receipt of service and ordinarily, if they so intended to respond they would have made a response in writing. Perhaps I would have looked aside on their none availability in Court. Is it hard for this Court to think that the actions of the appellant are prima facie *mala fide*? Certainly not. Since commencement it is about 10 years that this matter has existed without completion. For a fact, lady justice does not only hold on her strong belief that justice delayed is justice denied but she continues to hold that the Court should be the custodian of justice and that it must not allow its processes to be abused to the prejudice of the other.

16. Can anyone explain a delay of approximately 10 years? Perhaps yes. But before me I have no explanation on such a number of years which is not only a lifetime but like it is in this case the respondent died without benefiting from the recourse that she had in court. The prejudice that such a delay has occasioned on the respondent beyond inquiry. It is not an overstretch to note that the meaning is that this case has not been handled well by the honourable office of the appellant. This I say because they have been loudly inactive in that even a default judgment was obtained against them in this case meaning they did not act procedurally righteous. Generally, what that means is that they did not ordinarily file in their defence or indeed their case even when the originating process was filed with the Court and served on them. In fact, the lack of seriousness in the handling of this case by the appellant is so revealing even when one reads the sworn statement of Apoche Itimu deponed on 4th December, 2013, that they had no knowledge of the proceedings including the default judgment.

17. Be that as it may, coming to the issue of abuse of Court process, there could be no clear intention to abuse the process of the Court, it has always been the view of this Court that perhaps the general conduct of counsel must be examined for it is almost not practicable for a litigant to clearly demonstrate that their intentions are *mala fide* per se and therefore tantamount to an abuse of the processes of the Court. What I have with me are facts of omissions and my duty is to undress such facts as to their real meaning and whether they amount to inordinate delay as Counsel has argued. Without doubt they do.

18. Be that as it may, what I have now is a situation which is not explained. That this matter has been handled with kid gloves remains a fact because if the appellant were any serious and vigilant, they would have done all they could to simply even respond to this application and attend the proceedings. Either of that would have sufficed. This they did not do. Is it hard to surmise that they have been hanging on a stay which the Court gave them? Certainly, it does not require so much ravages of intelligence to recognise that this has been the case because the appellant has hanged the fate of the respondent through the stay, which

they obtained. That relief, like correctly argued by the learned Counsel has acted in essence as a permanent prohibitory order, prohibiting the respondent from benefitting from the fruits of her litigation in the name of an appeal which has only existed in thin air. This is a clear case of abuse of Court process, not only by the inexcusable delay, but through the use of a stay to thwart the interests of the respondent.

19. Perhaps just to put things in perspective, 8 years has elapsed with no activity from the date the appellant were successful in defending a similar application to dismiss the appeal for want of prosecution. Today, I must think differently because the law permits. In wisdom, the learned Assistant Registrar (as he was then) directed that the file was to be expedited by the IRC. Presumably, the appellants must have made an argument that the delay was on one side occasioned by the Court. I presume so because I have seen the order of the then honourable Assistant Registrar who instead of dismissing the appeal, directed the IRC to expedite the record to make the record appeal ready.

20. Twice beaten and twice shy has always been a profound idiom even the Courts must be guided with. If that argument was successful then, perhaps this Court must test it before it is convinced in the similitude. This I shall do by inviting myself to answer the question of what if the appellant has an explanation? Which perhaps with the reasons alluded above are not privy to the knowledge of this Court for want of response and appearance by the appellant even with due notice. As it were, if the court was to err then perhaps the court must err on a side of caution. This is because I hold the view that if indeed the appellant could have argued that the file has been missing or that the record remains unprepared, then perhaps at least the appellant would have complained on that in writing to the honourable office of the Registrar. This they did not do. At least if the appellant did that, they would have demonstrated that they had an aorta of intent to have the matter prosecuted. Unfortunately, my general perusal of the Court record does not have anything suggesting that the appellant was any vigilant.

    For the avoidance of doubt a similar kind of reasoning was adopted by the honourable Justice Kenyatta Nyirenda in the case of *Chasweka and Bosi v Andrea Kalisoni Mankhuwiri (Supra)* where he observed as follows:

> *"...there is no mention of the Claimants ever **making a follow up with** the court clerks or **the office of the Registrar regarding this-matter** within the last four years. To my mind, if the Claimants were serious about prosecuting their case, they would have lodged a complaint, in writing regarding the alleged missing of the Court file."*
>
> *(Emphasis Added)*

    Indeed, I have concluded that from the facts of this case, pragmatically, if there was no stay and that the matter was proceeding the appellant would not have done what they have done.

If for instance they were ordered to pay into Court the amount directed. Certainly, the appellant would have vehemently prosecuted the matter. This is exactly why I hold the view that they have not only delayed the matter unreasonably, but that they have used the instrument of the Court to the prejudice of the deceased who did not live long enough to enjoy the fruits of her litigation. Perhaps, we must not be slow to think that even her estate which survived her has also suffered the undesirable wait. This Court must not allow such to happen. This is a clear case of abuse of Court process to the prejudice of the other. If we were to allow this case to proceed, the principal witness of the respondent's case passed on and that would be so prejudicial to the respondent's case.

21. Needless to say, I have already concluded that there has been a clear and manifest abuse of the Court process and the fate of the appellant's effort to appeal against the decision of the IRC on compensation ordered in favour of the deceased suffers and obvious fate before me. Perhaps just to mention that this Court has noted that under Order 12 Rule 54(2) of Courts (High Court) (Civil Procedure) Rules 2017, this Court has the option to either dismiss the appeal for want of prosecution or the Court can make any order it considers fit and appropriate in the circumstances. On this I must say, that the Court engaged the learned Counsel and what came out clear and strong in argument was that the Court should be reminded that a similar application was once entertained and that the learned Assistant Registrar then, did exactly made an order he considered fit then in that he did not dismiss the appeal for want of prosecution.

    Consequently, argues Counsel on record that this Court should take into account all those facts and the prejudice that the respondent has suffered as a result of the stay which was obtained pending an appeal which appears far from ever happening. Indeed, I do not think this Court should ever be part of prolonging this case or better yet any case. Litigation must come to an end. Because there are cost implications on either party to the proceedings and the Court must make decisions fully aware of such cost issues. Thus, I do not think that the facts will persuade me to consider Order 12 Rule 54(2). I remain dissuaded.

22. Ordinarily, I think the delay in this matter has been so inexcusable that no Court properly guiding itself on issues of law and procedure would conclude otherwise. It is from the foregoing that I proceed to set aside the stay of the execution of the order on compensation. Further, it is the considered view of this Court that justice demands that the proceedings herein be dismissed. Accordingly, I proceed to under Order 12 Rule 54 (1) of Courts (High Court) (Civil Procedure) Rules 2017 dismiss the proceedings herein for want of prosecution premised on the fact that the matter has delayed unreasonably to the prejudice of the respondent.

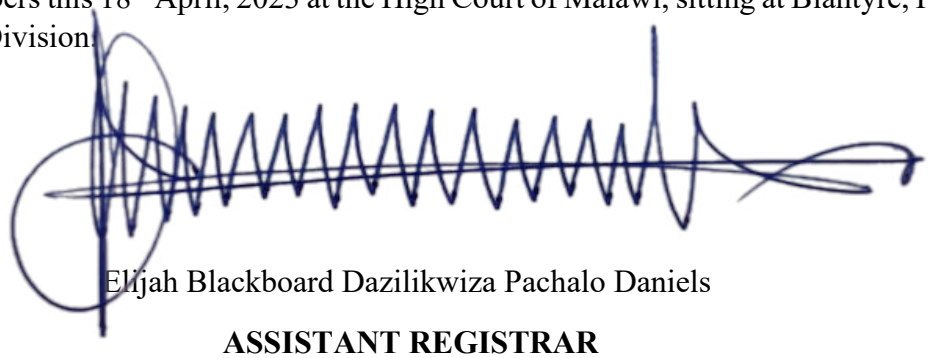
23. Again, as I understand Order 31 Rule 3 of Courts (High Court) (Civil Procedure) Rules 2017, costs are in the discretion of the Court, and to grant them to a successful litigant is not alien to established judicial traditions. I accordingly condemn the appellant with costs

in favour of the respondent. The respondent has made its case, they should reap the benefits of not sleeping on their rights because ours is an adversarial system.

24. It is so ordered.

Any party aggrieved by the decision of this Court, having been given the authority to deal with this matter by the Honourable Judge seized of this matter under Order 25 Rule 1 of the Courts (High Court) Civil Procedure Rules 2017, has the right to Appeal, notwithstanding that such a right must be exercised within 21 days from the date of this order.

MADE in chambers this 18th April, 2023 at the High Court of Malawi, sitting at Blantyre, Principal Registry, Civil Division.



Elijah Blackboard Dazilikwiza Pachalo Daniels

ASSISTANT REGISTRAR