



**IN THE SUPREME COURT OF APPEAL
MSCA Civil Application No. 20 of 2026**

BETWEEN

**MATEYU PATRICK KAUNDA.
MERCY GLORIA NKHONGO.**

**1ST APPLICANT
2ND APPLICANT**

AND

BUA SAUZANDE.

RESPONDENT

**CORAM: LADY JUSTICE I Chatha KAMANGA
W Kitta for the Applicants
P Kalulu for the Respondents
Ms R Njobvu Recording Officer**

RULING

1. This is an application for stay of execution under section 7 of the Supreme Court of Appeal Act as read with Order 1 rule 18 of the Supreme Court of Appeal Rules and Part 23.3 of the Civil Procedure Rules, 1998.

This Court has been moved after a similar application was made in the court below and the where the court dismissed the application. The Court is therefore properly versed with the application.

2. The background to this application is that the applicants herein obtained a loan from the respondents in the amount of K80 Million and they were to return it in

December 2025. They entered a loan agreement to wit Part IV provided for default in paragraphs (b) and (c) it was agreed that in the event of default of payment of the full loaned amount, the respondent should automatically be entitled to register a property that belonged to the applicants. Paragraph (c) verbatim states:

For avoidance of doubt, in the event of default, the [respondent] shall assume all the rights and incidents of ownership, including of control, power to exclude the [applicants] occupation, benefit and possession of the property and shall therefore have the property in the said property vested in him to allow him to transfer by sale such property to another entity or individual.

There is part V of the agreement which provides for miscellaneous terms. Paragraph (c) reads:

Each party to this Agreement represents that it is a sophisticated and informed entity or individual, having been advised by experienced legal counsel and other relevant professional advisors during the negotiation, preparation and execution of this Agreement. Accordingly, no provision of this Agreement shall be construed in favor of or against either party on the basis that such party or its counsel was responsible for the drafting of this Agreement or any specific provisions herein.

All parties herein signed the agreement. There was breach on the part of the applicants who are husband and wife. At the time of signing, the 1st Applicant's residential address of service was 308, Old Mazowe Road Harare.

3. It was the respondent who moved the court as claimant in the court below in an application with notice for recovery of possession of land comprised of the property mentioned in the Loan Agreement. The application was made under Order 12 rule 14(1) as read with Order 12 rule 7(1) of the Courts (High Court) (Civil Procedure) Rules 2017. The respondent was seeking to be declared owner of the property and an order evicting the applicants from the property.

4. The applicants filed a notice of preliminary objection to the application stating that the application was premature as it was filed together with the originating process. Again on the date that application was filed and issued there was no default of intention to defend or defence on the part of the applicants since the summons had not been served. Further, since the applicants had filed their defence within the prescribed period, there was no default warranting issuance of an application for recovery of possession of land by way of default judgement. The applicants sought dismissal of the application.

5. The court below found in favor of the Respondent herein. The court noted that the spirit of Order 12 is about ending proceedings early or summarily without having to go to a full hearing. Included therein are procedures in a claim [] for entering judgement for possession of land; for summary judgement among others. The Honourable Judge noted that it was contradictory on the part of the applicants to complain that the proceedings had ended early since that was the whole purpose of the Order. Indeed, there was swift movement of the matter. The complaint was lodged on 30th January 2026. There was a hearing on 23rd February 2026. On 20th March 2026 a ruling was delivered.

When the applicants moved the court below on 8th May 2026 to stay execution, the court found that there were no enough reasons for it to exercise its discretion to grant the order sought.

PRINCIPLES FOR STAY OF EXECUTION

6. In order for the court to exercise its discretion to stay execution of judgement, the applicant has to demonstrate likelihood of success on appeal. The court considering the stay has to consider this demonstration cautiously as at this particular time, it is not considering the appeal in totality. This court has looked at the loan agreement, the grounds of appeal as well as the reasons for stay.

The applicants state that if the property is withheld, they will not have a place of abode. I do not find this a sufficient reason in the circumstances of this case where it has been demonstrated that the applicants have other properties within Malawi and outside Malawi. If the property is taken, they have the means to gain alternative place of abode. The applicants lament the speed of litigation. The court below was moved summarily, the fact that the court moved with speed, if at all the same was a provided for, cannot, be a basis for stay. Again the applicants lament that the loan agreement herein was 'katangale' which is illegal.

There is nothing to the fact that the court below was conversant with the averment that this was a *katangale agreement*. The applicants have not demonstrated that the interpretation that the court inferred to the Loan Agreement was at fault.

The respondent has indicated and demonstrated that if on appeal, the court makes an adverse decision against him, the applicants will be able to recover the property.

7. When circumstances that surround the matter are considered, I agree with the Honourable Judge in the court below that there aren't sufficient reasons for the court to exercise its discretion in favor of the applicants herein. The Respondent should enjoy fruits of the litigation. There is however a caveat to this enjoyment in that the respondent may enjoy this property in whatever manner except selling it.

The applicants, if at all are mindful should prosecute their appeal within 18 months from to-date. Failure to wit the caveat shall automatically dissolve and the respondent shall be at liberty to enjoy the property without any court attachments.

Pronounced in Chamber via zoom this 26th Day of May 2026.



Lady Justice I Chatha Kamanga
JUSTICE OF APPEAL