

This motion is, essentially, for stay of execution of a ruling of the High Court by which an application by the appellants for extension of time within which to comply with an *“unless order”* was rejected.

The background to the motion is as follows: The appellants commenced this action in 2002. Whilst the matter was still active, the appellants obtained an interlocutory injunction restraining the 1st respondent from proceeding with its intended sale of the property in dispute to the 4th respondent. The matter was handled by several judges until it was re-allocated to Chashi J, as he then was. In 2012, Chashi J struck the matter off the cause-list, with an order that it shall stand dismissed if not restored within 30 days. The appellants did not restore the matter within that period, whereupon it stood dismissed for want of prosecution. Then the 1st and 4th respondents proceeded with the sale of the land. The 4th respondent even obtained a certificate of title. In 2014, the appellants went back to the High Court to apply for extension of time within which to comply with the *“unless order.”* The High Court, this time presided over by Mulongoti, J, found the appellants

conduct in the prosecution of the matter wanting. Consequently, she dismissed their application. The appellants appealed to this court against that refusal. They then went back to Mulongoti, J and applied for a stay of execution of her ruling. The application was rejected. The appellants, then, came to a single judge of this court. In their application, the appellants asked the single judge to set aside Mulongoti, J's refusal to stay her earlier ruling. They also asked the single judge to stay the ruling which denied them an extension of time.

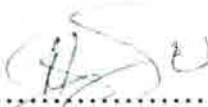
The first limb of the application was dismissed for being incompetent. As regards the second limb, the single judge was of the view that it ought to fail because the main appeal had little prospects of succeeding. Perhaps more important, the single judge held that the application ought to fail because, in his view, there was nothing in Mulongoti, J's refusal to extend the time which would set into motion the legal process of executing it; and, therefore the ruling did not warrant an order of stay of execution.

The appellants have now brought the application before the full bench.

At the hearing, the motion was argued on the issue whether or not Mulongoti, J's refusal to grant the appellants an extension of time was capable of giving rise to the legal process of execution. Mr Zulu, state counsel, on behalf of the appellants, conceded that, technically, the ruling could not give rise to the process of execution. However, he submitted that it was the appellants view that the dismissal of the matter for want of prosecution did not discharge the injunction which was granted by the Supreme Court. According to learned state counsel, a stay of execution of Mulongoti, J's ruling would enable the appellants to pursue the 1st and 4th appellants for having disobeyed the injunction when they proceeded with the transaction after the matter stood dismissed for want of prosecution.

We do not agree with the view by the appellants that when the matter stood dismissed for want of prosecution, the interlocutory injunction survived. However, even assuming that the appellants' view were to be correct we do not see how staying execution of the ruling is necessary for the appellants to pursue the respondents for purportedly disobeying an injunction that is subsisting. If the appellants wanted to test the validity of their view, they could

simply commence contempt proceedings in the High Court. Otherwise there was nothing in Mulongoti, J's ruling that was capable of being executed. This is because this matter stood dismissed by order of Chashi, J. When Mulongoti, J refused to extend time for the appellants to comply with Chashi J's "*unless order*" the matter remained dismissed. Staying execution of a judgment or decision means that the parties temporally revert to the *status quo* prevailing prior to the decision. In this case, the *status quo* before Mulongoti, J's ruling was that this matter stood dismissed. Therefore, staying Mulongoti, J's refusal to extend time simply takes the parties to the same state of affairs; that is, that that matter still remains dismissed. For the fore-going reasons, this motion is misconceived. We dismiss it, with costs to the respondents.



 E. M. Hamaundu
SUPREME COURT JUDGE



 Dr. M. Malila, SC.
SUPREME COURT JUDGE



 J. Chinyama
SUPREME COURT JUDGE