

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MISCELLANEOUS CIVIL APPLICATION NO. 14 OF 2024

**[Being Commercial Cause Number 14 of 2023 High Court of Malawi
Commercial Division Lilongwe Registry]**

BETWEEN

DAYU CONSTRUCTION CO

APPLICANT

AND

LU GUOHUA

RESPONDENT

CORAM:

HON. JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

Kadyampakeni [Mr.], of Counsel for the Applicant

Mabutwa [Mr.] of Counsel for the Respondent

Minikwa [Mr.], Court Clerk

RULING/ORDER

There is a contractual dispute between the parties herein. Consequent on it the respondent took out a summons against the applicant in the court below claiming:

- i. 'The sum of MK165,750,000.00 the equivalent to 638500R RBM as debt amount;*
- ii. The sum of MK24,862,500.00 as a statutory legal collection costs;*

iii. Interest on the said sum of MK165,750,000.00 at 1% above Commercial Bank lending rate from the time due to the actual payment or at such rate as the court may deem fit; and

iv. Costs of this action[Sic]'

On December 4, 2023 the respondent filed an application for summary judgment. It was granted *via* an order dated January 16, 2024. The applicant is presently in the process of enforcing such order even though the interest payable remains unknown for not having been calculated.

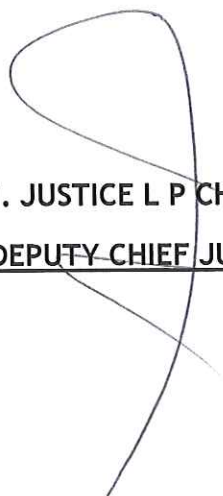
The applicant has escalated this matter to this court. It seeks a stay of execution pending appeal.

We will not belabour the matter. We have before us an inchoate judgment. The interest payable has not been calculated. The position of this court in relation to appeals against inchoate judgments is now beyond doubt. One cannot appeal against an inchoate judgment. See *Aon Malawi Ltd v Gray Tamani Makolo* MSCA Civil Appeal Number 16 of 2016[unreported], *Toyota Malawi Ltd v Jacques Mariette* MSCA Civil Appeal Number 62 of 2016[unreported] and *Malawi Housing Corporation v John Suzi Banda* MSCA Civil Appeal Number 73 of 2018[unreported]. To the extent therefore that the stay prayed for in this application is premised on an appeal against an inchoate judgment the same is obviously untenable. The right of appeal has not as yet crystallized. The appeal cannot therefore exist.

We quite understand that there was in this case the threat of or an actual enforcement. That cannot/does not change anything. An inchoate judgment is not immediately enforceable in the same way that it is not immediately appealable. A trial court should therefore have no business allowing a party to take steps in that regard. All this we would have thought should be clear from the cases cited above and should have guided the Bar and trial courts accordingly.

Coming back to the application before us it is for a '*stay pending appeal against the judgment herein*'. The application is on the above debate unnecessary, misconceived and clearly untenable. It is dismissed with costs.

Dated at Blantyre this 8th day of October, 2024.



HON. JUSTICE L P CHIKOPA SC
DEPUTY CHIEF JUSTICE