



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MISCELLANEOUS CIVIL APPLICATION No. 2 OF 2025
(being High Court, Lilongwe Registry, Family & Probate Division,
Probate Cause No. 623 of 2020)

BETWEEN:

JIMMY KADZAKUMANJA

(on his own behalf and on behalf of his five siblings)

AND

CHARLES KADZAKUMANJA

RACHEL CHASWEKA

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

RULING

(*D. nyaKaunda Kamanga*, SC, JA.)

22nd January 2025

UPON hearing the legal practitioners for the parties and reading the documents which were filed them this Court orders as follows:

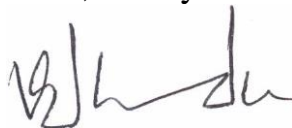
THAT the Applicant's application for leave to appeal is dismissed for being premature as damages have not been assessed, as confirmed by the parties, therefore the judgment remains inchoate, as was also determined by the High Court on 29th November 2024. This Court has held in several cases that inchoate judgments are incapable of being appealed to this Court: *Dalitso General Suppliers Limited v National Bank of Malawi* (MSCA Misc. Application 19 of 2023) [2023] MWSC 42 (7 August 2023); *Toyota Malawi Limited v Jacque Mariette* MSCA Civil Appeal No. 62 of 2016 (unreported); *Standard Bank Plc v Cassidy t/a Krisken General Dealers* Misc Civil Cause Number 50 of 2022; *Liphava & Others v Mbaula & Prime Insurance Company Limited* (Civil Appeal 40 of 2019; Personal Injury Cause 848 of 2013) [2021] MWSC 9 (2 December 2021); *Jumbe v Kasema and Attorney*

General (MSCA Miscellaneous Civil Application 46 of 2023) [2024] MWSC 2 (11 January 2024); *NBS Bank PLC v Dean Lungu t/a Deans Engineering co Ltd* (Commercial Cause 14 of 2015; MSCA Civil Appeal 83 of 2019) [2019] MWSC 11 (7 November 2019).

THAT the application to stay execution of the judgment of the High Court dated 6th March 2023 and the ruling of 29th November 2024 pending appeal is dismissed. Order I rule 18 of the Supreme Court of Appeal Rules and the cases of *Mike Appel and Gatto Ltd v Saulosi K Chilima and another* [2013] MLR 231 (SCA) and *Chalimba t/a Krisken General Suppliers v Standard Bank PLC* (MISC Civil Application 50 of 2022) [2023] MWSC 28 (22 December 2023) are clear that where both the Supreme Court of Appeal and the High Court possess concurrent jurisdiction to grant the order of stay sought by the Applicant, the Applicant should initially make an application for a stay in the court below. Further, the decision in *Malawi Communications Regulatory v Joy Radio* [2009] MLR 328 (SCA) states that the jurisdiction of the Supreme Court of Appeal is invoked solely when the High Court has “refused” to grant a stay. The case law is also to the effect that an application that seeks to stay the execution of a judgment while an appeal is being processed cannot be made to a judgment that is classified as inchoate, primarily because such a judgment lacks the necessary characteristics that would render it eligible for appeal in the first place: *Libertas General Insurance Company Limited v Puffs* (MSCA Miscellaneous Civil Application 62 of 2023) [2024] MWSC 9 (10 April 2024).

ACCORDINGLY, the two applications brought by the Applicant, are dismissed for being procedurally incompetent and improperly presented before this Court. The Respondent is awarded the costs.

Delivered and dated at Chichiri, Blantyre this 22nd day of January 2025.



Dorothy nyaKaunda Kamanga, SC
JUSTICE OF APPEAL

TO: Mr. Kaduya, M/s Likongwe & company
Mr. Mlenga, c/o Legal Aid Bureau