

REPUBLIC OF MALAWI

SUPREME COURT OF APPEAL

CIVIL APPEAL NUMBER 7 OF 2019

**[BEING CIVIL CASE NO. 97 OF 2015, BEFORE THE HIGH COURT OF MALAWI,
COMMERCIAL DIVISION, LILONGWE REGISTRY]**

BETWEEN

LUSO AFRICAN STEEL ENGINEERING CONTRACTORS

APPLICANT

AND

HALS GENERAL DEALERS

RESPONDENT

CORAM: JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

Likongwe of Counsel for the Applicant

Minikwa Court Clerk

ORDER

This court pronounced against the applicant in a decision delivered on May 22, 2025. After a regrettably long time it should be added. Consequent upon such decision the applicant must, at the very minimum, pay to the respondent the princely sum of K1.3billion kwacha made up of principal and interest. The bulk of the sum is payable within 14 days from the date of the judgment.

The applicant has now brought an application before '*a single Judge of the Court*' for '*STAY OF EXECUTION PENDING APPLICATION TO REVIEW JUDGMENT AND/OR TO DECLARE THE JUDGMENT NULL AND VOID AND/OR PENDING APPLICATION TO PAY DEBT BY INSTALMENTS*'.

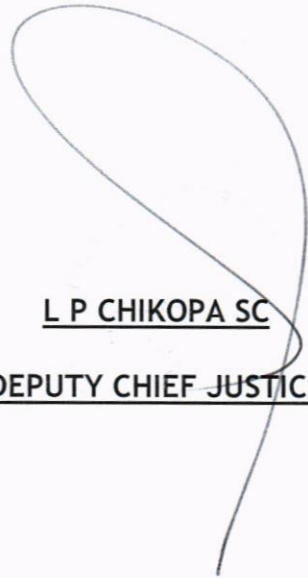
The application is supported by an affidavit sworn by Counsel. It is brought '*Under Part 52.16 Civil Procedure Rules*'. Essentially the applicant contends that this court was not quorate when it handed down the judgment in issue. Two of the seven Justices of Appeal that sat in this matter had on date of the judgment retired from their positions. The number of Justices had therefore dropped below the minimum of seven to five. The court thereby became inquorate and incapable of rendering the judgment.

On the other hand, and in case the application to annul the decision is not successful, the applicant wants to pay the judgment by installments. The reasoning is simple. The applicant company just does not have the financial wherewithal to pay.

The application raises weighty and urgent issues in our judgment. Worthy of further consideration by this court. Accordingly, we will grant the stay pending the applications referred to above. Being alive to the fact that the judgment in issue is, as of now one of the full bench, we think it only appropriate that the said bench be afforded an opportunity to express its opinion on the applicant's application. The applicant will thus within 28 days from this date file an *inter parties* application with this court for it to determine whether or not to sustain the stay and if need be to give such other directions for the further conduct of this matter as might be deemed necessary.

Costs shall be in the course.

Made this June 4, 2025 at Blantyre



L P CHIKOPA SC
DEPUTY CHIEF JUSTICE