

REPUBLIC OF MALAWI

SUPREME COURT OF APPEAL

MISCELLANEOUS CIVIL APPLICATION NUMBER 20 OF 2020

**[Being Civil Case No. 69 Of 2020 Before the High Court of Malawi,
Lilongwe Registry]**

BETWEEN

MALAWI HOUSING CORPORATION

APPLICANT

AND

SENIOR GVH CHATATA & OTHERS

RESPONDENT

CORAM: JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

K Soko of Counsel for the Applicant

W Kita of Counsel for the Respondent

Minikwa Court Clerk

RULING

This is a tale of two cases. One presided over by Hon Justice MCC Mkandawire as he then was and another by Hon Justice K Nyirenda.

In the case now before us the respondents took out a summons in relation to a piece of land therein described as Area 43 Sector 8. For some reason a default judgment was

entered in that case. The actual written judgment has not been placed before us in the instant application. Suffice it to say that the parties are agreed that the default judgment included an assessment of damages that has to date not been had. Instead, the applicant came to this court and sought a stay of enforcement pending appeal. The application was heard and thereafter an order made dismissing the application. The judgment in issue was clearly inchoate. The applicant subsequently withdrew the appeal in its entirety.

A year or so later the respondents brought an application in the court below seeking to enforce part of the default judgment. The part thereof that obliged that the piece of land in dispute be allocated to the respondents and title given at no cost to them.

The applicant objected to the application. Divers reasons were advanced for their objection. The main ones were clearly that the judgment sought to be enforced run counter to the judgment entered by Hon Mkandawire J referred to above which was over the very land that is in issue in this matter. And also, that the judgment sought to be enforced was inchoate and therefore incapable of enforcement and appeal.

The court below threw out the protestations. It granted the order of enforcement and obliged the applicant to effect the transfer of the land in issue to the respondents as prayed.

The applicants are now before us. They seek a stay of the enforcement mentioned above pending appeal against the inchoate judgment.

The respondents again oppose the application. Various arguments were thrown at us. The substance thereof though is that the application is, in their view, much ado about nothing. There cannot be an application for a stay pending appeal in this matter. The applicants have lodged no appeal in this matter in this court. Further the appeal earlier on lodged was withdrawn and must be considered as having been dismissed. See **Malawi Law Society v Registrar of Financial Institutions and Insurance**, MSCA Civil Appeal Case Number 9 of 2021[unreported]. The application before us is thus, again according to the respondent, nothing but a red herring calculated to deprive the respondents of the fruits of a successful litigation.

This is a long outstanding matter. Similarly, the matter decided by Hon Mkandawire J. Looking at the facts as they stand undisputed it is clear that the judgment of October 2020 was inchoate. Incapable of enforcement in the same way it is incapable of being appealed against. See **Gelsom Mkweza & Gem Fuels Ltd v Master Borehole Drillers Ltd** MSCA Civil Appeal Case Number 35 of 2022[unreported], **MHC V Suzi Banda** MSCA Civil Appeal Case Number 73 of 2018[unreported] and **Toyota Mlw Ltd v Mariette** MSCA Civil Appeal Case Number 62 of 2012[unreported] where this court clearly said *inter alia* that trial courts have no business granting enforcement orders in relation to inchoate judgments. And aggrieved parties seeking to appeal.

Applying the above to the instant case the judgment of October 2020 being inchoate cannot be appealed against. Neither is it immediately enforceable. That judgment must be brought to finality before the parties and the trial court can start thinking of enforcements, appeals and stays. The application before us is unnecessary. And misconceived. It is dismissed with costs.

Made this October 8, 2024 at Blantyre



JUSTICE L P CHIKOPA SC
DEPUTY CHIEF JUSTICE

