



REPUBLIC OF MALAWI

IN THE MALAWI SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA CIVIL APPLICATION NO. 47 OF 2025

**[Being Commercial Cause Number 181 Of 2023, High Court of Malawi, Commercial
Division, Lilongwe]**

BETWEEN

SMALLHOLDER FARMERS FERTILIZER REVOLVING FUND APPLICANT

AND

LONJAMI INVESTMENTS & 29 OTHERS RESPONDENT

CORAM: HON. JUSTICE L P CHIKOPA SC DEPUTY CHIEF JUSTICE

Msowoya, A [Mr.] of Counsel for The Applicant

Nkhata, P[Mr.] of Counsel for The Respondents

Minikwa, E.[Mr.], Clerk

RULING/ORDER

The respondents commenced an action against the applicant in the court below for *inter alia* the sum of MK18,571,577,724.15, general damages, interest, collection fees in the sum of K649,076,640.73 and VAT calculated at 16.5 % of the collection fees. A defence was entered and the case proceeded up to a Scheduling Conference.

Following the said conference and by an order of directions dated March 18, 2025 the court below directed *inter alia* that:

- a. The Claimants and Defendant should prepare, file and serve on each other the following documents by 2nd May, 2025;
 - i. Witness statements;
 - ii. Skeleton arguments
 - iii. List of authorities.
- b. The Claimants should by 8th May, 2025 prepare, file and serve on the Defendant a consolidated paginated trial bundle with a table of contents and clearly marked exhibits.
- c. Each Party should, by 8th May, 2025, prepare and make available to the Court a bundle of all authorities relied upon in the skeleton arguments with the relevant parts highlighted.
- d. A pretrial conference would take place on May 15, 2025 at 1100hours in the forenoon.
- e. Trial would be held on May 20, 2025 starting at 0900hours.
- f. Failure to meet above deadlines would result in the court refusing to allow the extension regardless of the consequences.
- g. This scheduling order can only be amended by:
 - i. An appropriate motion
 - ii. By the court of its own motion
 - iii. By stipulation of the parties and order of the court[Sic].

The applicant did not comply with the above order. They had not, by May 2, 2025, filed and served any witness statements, skeleton arguments and a list of authorities never mind highlighted authorities.

On May 6, 2025 the respondents applied for an order striking out the applicant's defence and entering judgment in their favour for being in breach of the order directions. The application was granted on May 13, 2025. It included grants of declarations, of the specific sums referred to above, general damages subject to assessment, interest and costs. Through an application of May 15, 2025, the respondent was granted an interim third-party debt order to enforce the above judgment.

The applicant applied to have the order of May 13, 2025 set aside. By an order dated August 4, 2025 the court below dismissed the application.

The applicant appealed against the decision of August 4, 2025. They also applied for a stay of execution of the judgment entered herein in the court below pending the determination of the appeal referred to above. The application was dismissed on September 4, 2025.

The applicant then escalated the proceedings to this court. They first sought and were granted, *ex parte*, an order staying execution pending the appeal herein. We then asked the parties to appear before us to argue the question whether or not the stay so granted should be allowed to subsist until the appeal mentioned above is heard and determined. We heard the parties on November 10, 2025. This is the ruling in respect thereof.

For the record the application is opposed. Various grounds were raised/canvassed. Prominent amongst the grounds are that the application is incompetent. Not supported by any law. And without merit. No law, according to the respondents, was cited in support of the application. The decision appealed against is inchoate and therefore incapable of being appealed against. The respondent prayed that the application be dismissed with costs.

Going through the applicant's papers and arguments one gets the impression that the appellant is not exactly sure about their complaint indeed what reliefs they


are seeking from us. However, and proceeding, as we should, purely on the material before us we have come to the conclusion that the appellant is praying for a stay of execution. And upon going through the affidavits, it clear to us that the stay sought is of the judgment entered by the court below via its order of May 13, 2025. The appeal on the other hand is against the High Court's order of August 4, 2025 by which it refused to set aside its order of May 13, 2025.

It is clear that the stay application is against a judgment which, whatever might be said about it[and we have above said a few words about it], is yet to be finalized. The general damages are yet to be assessed. The quantum of interest equally so. To that extent the judgment sought to be stayed is clearly inchoate. It, as this court has said many times over, incapable of enforcement. Just as it cannot be the subject of an appeal. See **Malawi Housing Corporation v John Suzi Banda** MSCA Civil Appeal Case Number 73 Of 2018[unrep], **Malawi Housing Corporation v Senior Group Village Headman Chatata & Others** Miscellaneous Civil Case Number 69 of 2020[unrep] and **Toyota Malawi Ltd v Jacque Mariette** MSCA Civil Appeal Number 62 of 2016[unrep].

The application for a stay of execution is, in so far as it targets an inchoate judgment, clearly superfluous. It is accordingly dismissed.

The respondent will also have the costs of this application. And because of the obvious superfluity of the application and the lackadaisical fashion in which the applicant conducted itself herein the costs will be agreed or taxed and paid to the receiving party before the expiry of 60 days from this date. Appropriate sanctions will be applied if the 60-day limit is exceeded without good cause.

Dated at Blantyre this day 12th day of May, 2026


L P CHIKOPA SC
DEPUTY CHIEF JUSTICE