

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA MISCELLANEOUS CIVIL APPLICATION NO. 62 OF 2023

[Being High Court of Malawi Commercial Case Number 268 of 2022 at the,
Commercial Division, Blantyre Registry]

BETWEEN

LIBERTAS GENERAL INSURANCE CO LTD

APPLICANT

AND

TOUFIQ BILAL LIMBARDA T/A MOON PUFFS

RESPONDENT

ZEP-RE[PTA REINSURANCE COMPANY]

THIRD PARTY

CORAM: HON. JUSTICE L P CHIKOPA SC JA

G. Kaliwo[Mr.]/L Frazer[Mr.], of Counsel for the Applicant

Mbeta[Mr.]/Kapoto[Mr.] of Counsel for the Respondent

Minikwa [Mr.], Clerk

RULING /ORDER

By a ruling dated December 8, 2023, the Court below awarded the respondent 'the sum of MK2,013,755,358.97 plus interest'[our emphasis]. The interest was to be assessed if not agreed.

The applicant was not best pleased. It filed a notice of appeal. It also filed an application to stay execution. The application for stay was dismissed.

The applicant is now in this court. It is seeking the very same relief that was denied them in the court below. They initially brought the application *ex parte*. We advised them to bring it *inter parties*. The respondent opposes the application.

At the hearing of the application the applicant raised a preliminary objection. It was filed on January 26, 2024. A Friday. The application was set for hearing and was actually heard on January 29, 2024. A Monday. The objection was to the effect that the respondent had not served its affidavit in opposition and skeleton arguments within seven days of being served with the applicant's. There is an affidavit in support of the preliminary objection.

On the face of the notice of preliminary objection there is mention of Practice Direction Number 1 of 2010 specifically Paragraph 1[b][ii] and 3. Reading the notice, the affidavit and the arguments it is clear that the applicant contends that because the respondent failed to comply with the dictates of the Practice Direction the respondent's opposition to the application should be disregarded. In other words, the applicant wants the application heard unopposed.

Preliminary objections operate in a much defined space. Firstly, they are intended once successful to wholly dispose of the matter before the court. Secondly, they must be made and served on the other party at least three days before the date of hearing.

In the instant case it is clear that the preliminary objection would, if successful, at most only result in the application before us being heard unopposed. It is equally clear that the procedural scheme applicable to preliminary objections was not abided by in the instant case. It was filed on a Friday for hearing on the next Monday. Purely on procedural grounds the preliminary objection cannot succeed. It is dismissed. See **Britam Insurance Co Ltd v Jack Jimu** MSCA Civil Appeal Number 21 of 2019[unreported].

Coming to the substantive application it is again clear that we have before us an inchoate judgment. The court below dealt with one part of the matter and left the

other for assessment or agreement at a later time. An inchoate judgment is *inter alia*, incapable of appeal. There cannot therefore be in relation thereto an application to stay execution pending appeal. See **Gersom Mkweza & GAM FUELS Ltd v Master Borehole Drilling Co Ltd MSCA Civil Appeal Number 35 of 2022[unreported]**, **Toyota Malawi Ltd v Mariette MSCA Civil Appeal Number 62 of 2016[unreported]**, **Malawi Housing Corporation v J Suzi Banda MSCA Civil Appeal Number 73 of 2018[unreported]** and **Kad Kapachika v JTI Ltd MSCA Civil Appeal Number 52 of 2016[unreported]**.

The application for stay pending appeal is dismissed with costs.

Dated at Blantyre this 10th day of April, 2024.

L P CHIKOPA SC

JUSTICE OF APPEAL

