



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

BLANTYRE REGISTRY

Commercial Cause No. 203 of 2022

BETWEEN

SAFEGUARD SECURITY SERVICES LIMITED.....CLAIMANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI LIMITED..... DEFENDANT

Coram: **Manda, J**

Alide for the Claimant

Kadyampakeni for the Defendant

M. Kachimanga Court Clerk/Interpreter

RULING

This matter came before me for an application for summary judgment which was duly heard and judgment was rendered. Following the judgment, the defendant applied for stay of execution of the judgment, pending the assessment of interest. It was the defendant's application that without there being an assessment of interest, the judgment of this court remains inchoate. The defendant based its argument on the recent decisions in the Supreme Court of Appeal on the issue of inchoate judgments. See *Elida Liphava & Others v Micheal Mbaula and Prime Insurance Company Limited* MSCA Civil Appeal No. 40 of 2019, *Malawi Housing Corporation v J Suzi Banda* 73

of 2018 (unreported), *Toyota Malawi Limited v J Mariette* MSCA Civil Appeal No. 62 of 2016 (unreported) and *Attorney General v Sunrise Pharmaceuticals Ltd and another* MSCA Civil Appeal No. 11 of 2013 (unreported).

The new approach adopted by the Supreme Court of Appeal was summarized by Chipeta JA, SC, (Rtd) in *JTI Leaf (Malawi) Limited v Kad Kapachika* MSCA Civil Appeal No. 52 of 2016, as follows:

“Now, even though the appeal has passed the leave test, and we can from that angle properly proceed to adjudicate on it, we need to observe that there is a development in our jurisprudence that could still operate as a hindrance against us proceeding to so determine this matter. As must by now be common knowledge in legal circles, for a while now we have in this Court adopted a new way of handling civil appeals. We only receive and entertain appeals on matters that have been dealt with and determined to completion. Our stand is that appeals must only be taken up in matters in which there is a 'final' judgment and nothing less. The language we have generally used is that we no longer deal with 'inchoate' appeals.

In this regard, we have a growing chain of precedents, such as Aon Malawi Limited vs Garry Tamani Makolo and Toyota Malawi Limited vs Jacques Mariettea showing that we have closed the door on what may be referred to as 'piecemeal' appeals i.e., having multiple appeals on isolated issues, but all of them arising from one and the same case. It really became tiresome for us to be handling say an appeal on an interlocutory matter in a given case, and then another appeal in it on the, Court's determination therein only on the question of liability, and next after that entertaining yet another appeal in the same matter in regard to the assessment of damages in it, etc almost ad infinitum. In such instances, by the time we got to the stage when we could say that we were finally done with such a case, we would be wholly exhausted with it. Hence our change to the stance that we should only be handling cases on appeal when they have been fully and finally determined and exhausted, in the Court below.”

As to what constitutes an inchoate judgment, examples include decisions where judgment has been entered on liability with damages yet to be assessed. For liquidated claims, it has been stated that the judgement becomes complete only after interest has been assessed and the costs taxed. This is

also in recognition of the fact that under the Civil Procedure Rules, effective case management, means that a Judge is the one who is seized of the entire action and that a Registrar only acts under delegated authority.

In the present instance, having granted the claimant summary judgment on a liquidated sum, the matter was referred to the Assistant Registrar for assessment of interest. There was a rider that the interest would be assessed if the parties failed to agree on the same. The parties having not agreed on the interest, it goes without saying that the matter has to proceed for assessment. In this regard, and in line with the decisions of the Apex Court, this matter remains inchoate.

It must be stated though that the approach adopted by the Apex Court specifically applies to appeals. The main aim of the approach being to avoid multiple appeals arising from the same case. The new approach does not apply to enforcement of judgments.

In terms of O. 23 r 6(1), a judgment or order takes effect from the date that it is given or made or on a specified date. This essentially means that the judgment or order becomes enforceable on the date that it is given or on the specified date. It must be stated however that under O. 28 r. 1, a judgment can only be enforced under an enforcement order. More importantly, the costs of enforcing the order are recoverable as part of the order. Further, it is also the overall objective of the of the Civil Procedure Rules to minimize all costs and to deal with matters fairly.

From the stated objectives, especially considering that costs for enforcing a judgment are supposed to come from the order, I would opine that it would only be fair and expedient that enforcement of a judgment should be done after interest has been assessed and the costs have been taxed. In other words, I do not think that it would be prudent for the Courts to continue allowing piecemeal enforcement of judgments. After all it is a cardinal principle of litigation must come to an end, and litigation only comes to an end when there has been full enforcement of the whole judgment.


Coming now to the question whether the order of stay which I granted should be set aside, the answer would be no. This is especially considering the fact that the defendant has indicated its intention to appeal the summary judgment decision. Of course, it must be stated that a proper intention to appeal a decision has to be expressed with a Notice to Appeal. Thus, by the time the defendant applied to stay the enforcement of the judgment to make it complete for appeal, they

should have also filed a notice to appeal. I believe that this is good practice, especially considering that there is a limited time for appeal.

Of course, it is appreciated that in as far as a party views a judgment to be inchoate, there may be difficulties in drafting the grounds of appeal. Further that one would fall foul of the approach taken by the Apex Court by filing what would be deemed to be an incomplete Notice of Appeal. In that regard, perhaps the suggestion would be that the date on which a judgment becomes effective should be the date that the judgment is deemed to be complete. This is but a suggestion.

All in all, and from the foregoing, I must find that the application to set aside the order of stay does not succeed and I do dismiss the same. However, considering that the matter is still ongoing, I will not make an order for costs.

Made in Chambers this.....23rd day of..... November....., 2023

A handwritten signature in black ink, appearing to be 'K.T. Manda', with a large, stylized loop at the end.

K.T. MANDA

JUDGE