

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2017/HP/1238

**B E T W E E N:**

CHISHIMBA KAMBWILI

PLAINTIFF**AND**

DAVIES MWILA (Sued in his capacity
as Secretary General of the Patriotic Front)

DEFENDANT

**Before Hon. Mrs. Justice M. Mapani-Kawimbe in Chambers on the 25th day
of July, 2018.**

For the Plaintiff : *Mrs. P. Munthali, Messrs CL Mundia & Company*

E X T E M P O R E R U L I N G

This is the Plaintiff's ex parte application for leave to appeal the Court's Order dated 5th July, 2018. Although it is made pursuant to Order 47 Rule 2 of the High Court Rules, it does not refer to the Appellate Court to which it is directed.

The application is supported by an Affidavit, which was filed into Court on 18th June, 2018 and sworn by the Plaintiff,

Chishimba Kambwili. It reveals that the Plaintiff was unable to file his Reply and Defence to the Counterclaim because it raised new issues that were not part of his original claim. According to the deponent, he needs more time to prepare his defence to the Counterclaim and to call more witnesses because the issues raised therein are irregular. He also states that the increase in the number of witnesses would also affect the trial dates. He concludes with a prayer to Court to grant him leave to appeal the Order dated 5th July, 2018.

I held the hearing of this application on 25th July, 2018. Learned Counsel for the Plaintiff placed reliance on the Affidavit filed herein.

I have anxiously considered the Affidavit evidence. Order 59 Rule 14 Sub Rule 18 of the Rules of the Supreme Court governs the condition upon which leave to appeal may be granted. It says:

“The general test which the Court should consider in deciding whether or not to grant leave to appeal is this: leave will not normally be granted where the grounds of appeal have no realistic prospects of success.”

According to that Order and Sub Rules, a Court can only grant leave to appeal where it is satisfied that an intended appeal has prospects of success. After carefully considering the application before me, I am convinced that the intended appeal has no prospects of success. It does not raise any serious legal issues that require the attention of an Appellate Court. It merely attacks procedural orders regulated by Order 19 of the High Court Rules and which are within this Court's discretion. In any event, Order 47 of the High Court Rules, upon which this appeal is grounded, governs civil appeals from the Subordinate Court to the High Court and not from the High Court to an Appellate Court.

Be that as it may, I am satisfied that the order I made against the Plaintiff is sound at law and the intended appeal has no prospects of success. I accordingly dismiss this application but make no order as to costs.

Dated this 25th day of July, 2018


M. Mapani-Kawimbe
HIGH COURT JUDGE