

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

2014/HP/1490

**IN THE MATTER OF: ORDER 53 RULE 3 OF THE RULES OF THE  
SUPREME COURT 1999 EDITION**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR  
JUDICIAL REVIEW**

**BETWEEN:**

**POST NEWSPAPER LIMITED**

**AND**

**ZAMBIA REVENUE AUTHORITY**



**APPLICANT**

**RESPONDENT**

***Before the Honorable Mr. Justice E. M. Sikazwe in Chambers***

*For the Applicant* : *Mr. N. Nchito, S.C. and Mr. C Hamweela - Messrs  
Nchito & Nchito*

*For the Respondent* : *Ms. D.B. Goramota, In-house Legal Counsel, Mr. G.  
Mwamba, Ms. N. K. Katongo and Mr. N. Chitupila -  
Legal Officers of Zambia Revenue Authority*

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**R U L I N G**

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This is the ruling on the Respondent's application to raise a preliminary issue filed into court on 23<sup>rd</sup> June, 2016.

The brief background to the Application is as follows:

The Applicant herein on 23<sup>rd</sup> September, 2014 by way of Notice of Motion, commenced judicial review proceedings before my learned brother Mr. Justice M. Siavwapwa following the refusal by the Respondent, through its Commissioner-General to allow the Applicant herein to pay its tax liabilities in six instalments.

On 30<sup>th</sup> October, 2015, Judgment was delivered. The Motion for judicial review failed and the remedies sought by the Applicant refused. The Applicant then appealed against the judgment and applied for a stay of execution of the judgment pending appeal.

On 9<sup>th</sup> November, 2015, an order to stay execution of the judgment of 30<sup>th</sup> October, 2015 was granted ex parte and it is reproduced here below:

**UPON HEARING COUNSEL** for the Applicant; **AND UPON READING** the Affidavit of one **FYNOLD MUFWAAFWI**;

**IT IS HEREBY ORDERED** that the execution of the judgment delivered on 30<sup>th</sup> October, 2015 **BE** and is **HEREBY STAYED** pending the Intended Appeal to the Supreme Court and costs be in the cause.

On 10<sup>th</sup> November, 2015, Mr. Justice Siavwapwa delivered a ruling staying the execution of the judgment of the 30<sup>th</sup> October, 2015. The relevant parts of the Ruling granting the stay of the execution of the Judgment of 30<sup>th</sup> October, 2015 are reproduced here below by way of emphasis:

*“It is also clear that what the Applicant is fighting against is not the payment of the outstanding amounts due but the demand of the same at once by the Commissioner-General. The Applicant fears that if the order of stay is not granted distress will be levied on its core assets which could result into the close down of its operations. This is a prospect which could render the appeal nugatory and academic.*

*It further would not be in the interest of the Respondent and the nation to collect outstanding tax once and for all and render families jobless while an appeal is pending. As rightly submitted by Mr. Nchito, SC, it makes good sense to maintain the status quo pending the appeal because not doing so would cause more injury to the Applicant than it would to the Respondent who would levy distress if the appeal fails and recover what is due to it.*

*My inclination is therefore, to grant the order to stay solely on the basis that not doing so has the potential to lead to the closure of the business of the Applicant.*

*That said however, the Applicant, remains duty bound to continue paying its tax obligation for as long as it remains a going concern. In that regard, it is hereby ordered that the Applicant shall make itself current on its tax obligations with the Respondent within ninety days of the disposal of the appeal by the Supreme Court and that in the interim it shall continue to pay its taxes both current and outstanding”*

On the same day of the 10<sup>th</sup> November, 2015, Honourable Justice Siavwapwa also granted the Applicant an order for leave to appeal to the Supreme Court against the Judgment of 30<sup>th</sup> October, 2015.

On 18<sup>th</sup> November, 2015, the Respondent filed an application into court seeking interpretation of the Court Order and clarifications on the extent of the Stay.



By way of interpretation and clarification on the Order aforesaid, the following Order was accordingly issued by Honourable Justice Siavwapwa:

*“UPON READING the application of the Respondent, filed on 18<sup>th</sup> November, 2015, for interpretation*

*IT IS HEREBY ORDERED that the Order of Stay granted on 10<sup>th</sup> November, 2015 is against execution of the Judgment of 30<sup>th</sup> October, 2015 in relation to outstanding tax obligations. It has nothing to do with matters not litigated before me”.*

On 10<sup>th</sup> December, 2015, the Applicant filed into court an application for leave to commence contempt proceedings, alleging that the Respondent had taken steps that were likely to cripple the Applicant’s business in total disregard of the Orders of the Court, in particular, the Order granting a stay of execution of the judgment of 30<sup>th</sup> October, 2015.

In light of the foregoing and the fact that the Applicant had already filed an appeal to the Supreme Court, on 12<sup>th</sup> November, 2015 and a copy of the Notice of Appeal under cause number SCZ/8/326/2015 exhibited to this Court, the following Order of the 11<sup>th</sup> December, 2015 was issued and now reproduced below:

**“UPON HEARING COUNSEL FOR THE APPLICANT AND READING THE AFFIDAVIT OF FYNOLD MUFWAAFWI, IT IS HEREBY ORDERED AS FOLLOWS:**

- 1. That the Respondent only conduct an inspection of the applicant’s business and not take anything relating to the applicant’s business;*
- 2. That the Respondent forthwith return any property and documents already taken from the applicant;*

*3. That the respondent is ordered not to levy distress against the applicant for any amount until the determination of the appeal lodged by the applicant in the Supreme Court”*

It must be noted that the above Order was issued by this Court, as the Vacation Judge-General List for the period between 11<sup>th</sup> December, 2015 – 9<sup>th</sup> January, 2016 for the sole purpose of maintaining the status quo in light of the Ruling handed down by my learned brother Mr. Justice M. Siavwapwa on 10<sup>th</sup> November, 2015.

On 16<sup>th</sup> June, 2016, the Supreme Court delivered its Judgment reversing and setting aside Mr. Justice Siavwapwa’s Ruling of 10<sup>th</sup> November, 2015.

Following the Judgment by the Supreme Court reversing Honourable Siavwapwa’s Ruling, the Applicant filed into court an application for the enforcement of the Order issued by this Court on the 11<sup>th</sup> December, 2015.

The gist of the Applicant’s application is for this Court to order the Respondent, whether by themselves or their agents or servants or otherwise, to comply with the Order of this Court dated 11<sup>th</sup> December, 2015 and for the Respondent to hand over the Applicant’s Plant and Head Office.

The Application was filed Ex parte and this Court scheduled the application to be heard inter partes on 23<sup>rd</sup> June, 2016 at 12:00 hours. At the hearing, Counsel for the Respondent informed this Court that they had filed into court, a Notice to Raise a Preliminary Issue. Counsel stated that the Application had been filed the same day of the 23<sup>rd</sup> June, 2016.

According to the Notice, the issues for determination were:



Firstly, for this Court to determine whether the matter was properly before it having originally been set down before my learned brother Mr. Justice Siavwapwa to this Court.

Secondly, the Respondent invited this Court to guide whether it can enforce an order which does not have a penal notice.

Thirdly, for this Court to determine whether the Applicant's Affidavit in support of the Application was properly before the court given that it is not dated.

Lastly, the Respondent sought this Court's determination on whether the Application was properly before it even though the Applicant brought it under a wrong provision of the law.

I have carefully considered the issues raised and the evidence on record; affidavit in support, skeleton arguments, authorities relied on and Counsel's Submissions.

It is important to note first of all that this Court issued the Order on the 11<sup>th</sup> December, 2015, for the sole purpose of maintaining the status quo in light of Judge Siavwapwa's Ruling of the 10<sup>th</sup> November, 2015 but also due to the fact that the Applicant filed into Court a Certificate of Urgency for leave to commence contempt proceedings against the Respondent and to stay the Order interpreting the Ruling of 10<sup>th</sup> November, 2015 which application was not considered by this Court. Further, and of paramount importance there was a pending appeal to the Supreme Court as alluded to above.

Following the Judgment by the Supreme Court on the 16<sup>th</sup> June, 2016, reversing and setting aside, the Ruling of 10<sup>th</sup> November, 2015, this Court is of the view that the Order of 11<sup>th</sup> December, 2015 automatically falls away.

In light of the foregoing I agree with Counsel for the Respondent that this Court does not have the necessary jurisdiction to hear and determine this matter.

The Applicant's application is accordingly dismissed with costs to the Respondent to be taxed in default of agreement.

Leave to appeal to the Supreme Court within 14 days from the date hereof is granted.

DELIVERED THIS.....<sup>14th</sup>.....DAY OF.....<sup>July</sup>.....2016.

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**E.M. SIKAZWE**  
**JUDGE**