

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**
(Commercial Jurisdiction)

2014/HPC/0076



BETWEEN:

SAVENDA MANAGEMENT SERVICES

PLAINTIFF

AND

STANBIC BANK ZAMBIA LIMITED

DEFENDANT

***Delivered in Chambers before Hon. Mr. Justice Sunday B.
Nkonde, SC at Lusaka this 20th day of September, 2016***

For the Plaintiff : Mr. K. Nchito of Messrs N. Makayi & Co.
For the Defendant : Mr. S. Mwananshiku of Messrs M & M
Advocates

R U L I N G

CASES REFERRED TO:

- 1) *Aristogerasimos Vangelatos, Valisto Vangelatos vs Metro Investments Limited, King Quality Meat Products Limited, Demetre Vangelatos and Maria Likiardo Poilou (Covert Baron) SCZ Ruling No.21 of 2013*

LEGISLATION REFERRED TO:

- 1) *Supreme Court Rules, Chapter 25 of the laws of Zambia*

This is the Defendant's application for leave to appeal against the Judgment dated 17th August, 2016 delivered by my brother Chashi, J as he then was. The application is made "pursuant to **Rule 50(2)** of the **Supreme Court Rules**" and is by way of Summons with a supporting Affidavit sworn by REUBEN MALINDI, an Officer in the Defendant Company, and filed into Court together with Skeleton Arguments and List of Authorities on 22nd August, 2016. On the same day, I granted the Defendant an ex-parte Order for Stay of Execution of the Judgment pending the hearing and determination of the summons for leave to appeal.

In his Affidavit, the deponent stated that the Court did not grant the Defendant leave to appeal which the Defendant wished to exercise as the Defendant is extremely unsatisfied with the entire Judgment. The deponent further stated that the dissatisfaction is, among other things, based on the ground that the Court awarded the Plaintiff all the reliefs sought when there was no evidence adduced and/ or given at trial for each and every relief and further that the Court granted relief on matters not specifically pleaded.

The application for leave to appeal is opposed. The Affidavit in opposition was sworn by CLEVER SIAME MPOYA and filed into Court on 30th August, 2016. The deponent essentially stated that the Defendant has not established that there are reasonable chances of success for the leave of the Court sought to be granted.

However, during the hearing of the application on 5th September, 2016, the Plaintiff's Advocate stated that *"in as much as they agree that the Defendant has a right to be granted leave to appeal, the position of the law is that leave to appeal does not operate as a Stay...."*

Indeed, I am alive to the law that an appeal does not operate as a Stay of the Judgment being appealed against but I am here dealing with the application for leave to appeal against a Judgment of an open Court matter.

On the very question of leave of the High Court to appeal against an open Court matter, I have visited the case of **Aristogerasimos Vangelatos, Valisto Vangelatos vs Metro Investments Limited and 3 Others**¹ in which the Supreme Court of Zambia held as follows:

***"We hold that there was no need for
leave of the High Court to appeal,
since on procedure, this was an open
Court matter"***

In the case of **Vangelatos**¹, the Supreme Court, thus, reversed the decision of a single Judge of the Supreme Court to the extent that he held that there was need for the Defendants to obtain leave to appeal and none had been granted.

In short, the herein matter having been an open Court matter, no leave of the High Court was required to be granted by my brother

Chashi, J as he then was for the Defendant to appeal against the Judgment dated 17th August, 2016.

Coming to the question of the Stay, although the parties have advanced spirited arguments on the key factor of whether the appeal has a reasonable prospect of success or not for me to make a determination on the continuation of the ex-parte Order I granted to the Defendant, I am dissuaded from making a determination on the Stay following that route. This is because a cursory perusal of the ex-parte Summons for Stay of Execution of the Judgment filed on record shows that I was only asked to grant a Stay pending the hearing and determination of the application for leave to appeal against the Judgment of 17th August, 2016. For the avoidance of any doubt, the ex-parte Summons for leave read as follows:

“LET ALL PARTIES concerned attend before the Honourable Justice.....in Chambers on theday of.....2016 at.....hours for the hearing on an application by the Defendant for an order for a Stay of Execution of the Judgment dated 17th August, 2016 pending the hearing and determination of the application for Leave to Appeal against the said Judgment.

Dated the 22nd day of August 2016

(Signed)

Per:-

Messrs M & M ADVOCATES

VILLA 7, Stand No. 6953

Birdcage Walk

Longacres

LUSAKA

Advocates for the Defendant"

Therefore, having now determined the fate of the application for leave to appeal against the Judgment dated 17th August, 2016, the ex-parte Order to Stay Execution pending the hearing and determination of the application for leave to appeal against the Judgment I granted to the Defendant on 22nd August, 2016 automatically falls away. In other words, the ex-parte Order for Stay of Execution now stands discharged.

In view of the fact that both parties proceeded on the erroneous basis that leave of the Court was required to appeal against an open Court matter, each party shall bear its own costs.

Dated at Lusaka this 20th day of September, 2016



Hon. Mr. Justice Sunday B. Nkonde, SC
HIGH COURT JUDGE