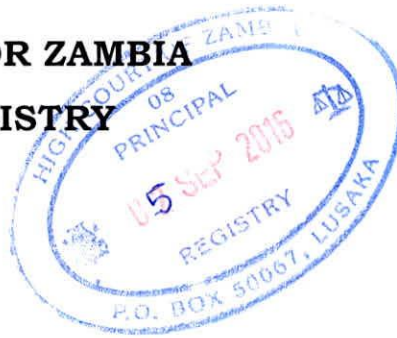


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



2013/HP/1675

IN THE MATTER OF:

SECTIONS 81 & 82 OF THE LANDS AND
DEEDS REGISTRY ACT, CAP 185 OF THE
LAWS OF ZAMBIA

AND

IN THE MATTER OF:

CAVEATS PLACED ON FARMS 1872, 1873 AND
1824 KABWE

B E T W E E N:

AMADEUS INTERNATIONAL LIMITED

APPLICANT

AND

RANA MARKETING LIMITED
THE REGISTRAR OF LANDS AND DEEDS

**1ST RESPONDENT
2ND RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on 5th
September, 2016**

For the Applicant : *Ms. K. Musana, Messrs Simeza, Sangwa
Associates*
For the 1st Respondent : *No Appearance*
For the 2nd Respondent : *No Appearance*

R U L I N G

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *Rules of the Supreme Court (1999) Edition*
2. *Companies Act, Chapter 388*

Counsel for the Applicant by notice dated 11th March, 2016, raised the following issues in limine:

1. *That Mr. Morgan Naik the deponent to the affidavits and mover of the application to stay execution no longer has any locus standi to carry on these proceedings on behalf of the First Respondent following the winding up order made against the First Respondent Company by the High Court on 14th July 2015 under cause No. 2015/HPC/153.*
2. *That the application for stay of execution pending appeal was struck off the active cause list by Order of this Court dated 18 January 2016 with liberty to restore within 14 days and the Applicant is unaware of any order made restoring the said application.*

An affidavit sworn by **KATE VIYUYI** was filed in support of the preliminary issue on 11 March, 2016. She deposes that on 14 July 2015, a winding up order was made by the Court against the 1st Respondent Company under cause no. 2015/HPC/153. She also deposes that the court appointed a Mr. Thomas Akim Banda as liquidator of the 1st Respondent Company. This is shown in the

exhibit marked "**KV1**", which contains a copy of the said winding-up order and notice of appointment of liquidator filed with the Patents and Companies Registration Agency.

The deponent avers that it is only the Liquidator who can properly move the Court on behalf of 1st Respondent Company, which is represented by Messrs Paul Mulenga and Associates. She also avers that the liquidator Mr. Thomas Akim Banda informed her that Messrs Willa Mutofwe & Associates have no instruction to act on his behalf. There is produced and shown in the exhibit marked "**KV2**" copy of a letter confirming the Liquidator's Advocates instructions to the said advocates in another matter involving the 1st Respondent. The deponent contends that until the Liquidator takes the necessary steps, the application to stay execution of judgment cannot be heard.

The hearing of the preliminary issue was fixed on 19th August, 2016. Only Counsel for the Applicant was in attendance. The Respondents did not attend Court. At the hearing, Learned Counsel submitted that the preliminary issue was raised on the basis that the 1st Respondent has no standing to carry out the proceedings. This is because a winding up order was made against the 1st Respondent on 14th July, 2015. She submitted that a Liquidator had been appointed to manage the affairs of the 1st Respondent and had appointed Advocates.

- (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.**
- (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just....."**

In my views these Orders confirm that a party can raise preliminary issue before the Court at any stage of proceedings, thus the application.

From the facts, the issue in my view is whether the 1st Respondent has sufficient interest in this matter so as to move the Court to hear its application for stay of execution of Judgment.

It is not in dispute that a winding up order was made against the 1st Respondent Company under cause no. 2015/HPC/153. It is also not disputed that a Mr. Thomas Akim Banda was appointed as Liquidator of the 1st Respondent Company.

Section 286 (1) of the Companies Act provides that:

"Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

Section 289 (3) of the Companies Act proffers that:

"For the purpose of winding-up the affairs of the company and distributing its assets the liquidator may-

(a) bring or defend any action or other legal proceeding in the name and on behalf of the company;....

(i) appoint a legal practitioner to assist him in his duties;.....

(l) do all such other things as are necessary for winding-up the affairs of the company and distributing its assets.

The consequences of the said provisions of the Companies Act are that once the company was wound up by the order of the Court, on 14th July, 2015, it ceased to exist as it had before. Thus, the Liquidator on appointment was granted immediate power to manage the affairs the company. I find that some of the compelling duties of the Liquidator are to bring or defend any action or to appoint a legal practitioner to assist him in his duties.

In *casu*, the Liquidator has appointed his preferred firm of Advocates and has by choice not elected to defend this preliminary issue. On that basis I do find that it is only the Liquidator who can move the Court to hear the application for a stay of execution of judgment. I further find that the Liquidator's inherent power to move the Court cannot be circumvented by the 1st Respondent Company or its former agents; who no longer have *locus standi*.

That being the case, I find and hold that the preliminary issue has merit. I must however add that the second limb of the preliminary issue has been superseded by event.

I am careful to consider that the Court has been incorrectly moved by an entity which has no *locus standi* and in the circumstances, I find it otiose to make an order on costs.

Leave to appeal is granted.

Dated the 5th day of September, 2016

.....*M. Mapani*.....
Hon. Mrs. Justice M. Mapani-Kawimbe
HIGH COURT JUDGE