

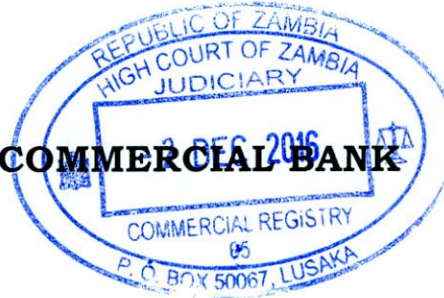
**IN THE HIGH COURT FOR ZAMBIA**      **2016/HPC/0119**  
**AT THE COMMERCIAL REGISTRY**  
**HOLDEN AT LUSAKA**

**(Civil Jurisdiction)**

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

**ZAMBIA NATIONAL COMMERCIAL BANK**      **APPLICANT**

**and**



**J. MWAMULIMA PROPERTIES**      **1st RESPONDENT**

**IMPORT AND EXPORT LIMITED**

**JOHN MWAMULIMA**      **2<sup>ND</sup> RESPONDENT**

**QUEENS HILLS HOTELS**      **3<sup>RD</sup> RESPONDENT**

**Before Hon. Madam Justice Irene Z. Mbewe in Chambers**

*For the Applicant:*

*Ms G. Mutemi of Messrs Theotis  
Mataka & Sampa*

*For the 2<sup>nd</sup> Respondent:*

*In Person*

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## **R U L I N G**

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**Legislation Referred to:**

1. *Supreme Court Rules, Cap 25 of the Laws of Zambia*
2. *Court of Appeal Act No. 7 of 2016*
3. *Court of Appeal Rules Statutory Instrument No 65 of 2016*

This is the 2nd Respondent's application for leave to appeal to the Court of Appeal against my Ruling of 30th September,

2016 where the 2nd Respondent's stay of proceedings pending appeal was denied. The application was supported by an affidavit filed on 12th October, 2016.

It is important to state the genesis of this application. In its Ruling dated 12th July, 2016, the Court dismissed the 2<sup>nd</sup> Respondent's application for dismissal of the action for abuse of court process and ruled that the substantive matter be heard. In its Ruling, the Court granted the parties leave to appeal. On the 26th July 2016, the 2<sup>nd</sup> Respondent appealed the said Ruling to the Supreme Court.

The 2<sup>nd</sup> Respondent thereafter applied for a stay of proceedings pending appeal to the Supreme Court, which was denied in the Ruling of 30th September, 2016, and the Court made no pronouncement on leave to appeal.

On the 14<sup>th</sup> October 2016, the 2<sup>nd</sup> Respondent made an ex-parte application for leave to appeal my Ruling of 30<sup>th</sup> September, 2016.

On the 2nd November, 2016, the 2<sup>nd</sup> Respondent appealed to the Court of Appeal for leave to appeal my decision of 30th September, 2016. On the 11th November, 2016, the Court of Appeal dismissed the 2nd Respondent's application for leave to appeal stating *inter alia* that my Ruling of 30th September 2016 "**neither gave or refused leave to appeal.**"

The matter came up for hearing of the 2nd Respondent's application before this Court on the 28th November, 2016. From the outset, I must first determine whether the Court has



jurisdiction to determine this matter following its dismissal by a single judge of the Court of Appeal.

I have perused the **Court of Appeal Act No 7 of 2016** and its attendant subsidiary **Court of Appeal Rules** contained in Statutory Instrument No 65 of 2016. It is trite that leave is required before an appeal can be made to a superior court be it the Supreme Court (**Order 50 of the Supreme Court Rules, Cap 25 of the Laws of Zambia**) or Court of Appeal (**Order X Court of Appeal Rules Statutory Instrument No 65 of 2016**).

It must be noted that leave to appeal is not automatically granted at the time a determination is made. The Court may at the time of pronouncement of the Judgment or Ruling, grant the aggrieved party leave to appeal, or hear the matter by way of summons on application by an aggrieved party. It is at this stage that a Judge may either grant the leave or refuse to grant the leave to appeal. Where a Judge refuses to grant leave to appeal, the aggrieved party is at liberty to then appeal such refusal to a superior Court.

In the matter at hand, before the Court could allocate a date for the hearing of the application for leave to appeal, the 2nd Respondent proceeded to file an application for leave to appeal to the Court of Appeal who subsequently dismissed the application on 10th November, 2016.

Specifically, Order X Rule 4 (1) of the **Court of Appeal Rules** provides that:

"4. (1) "The High court or a quasi-judicial body **may** grant or refuse leave to appeal to the Court without formal application at the time when judgment is given, and in the event the judgment shall record that leave has been granted or refused accordingly".

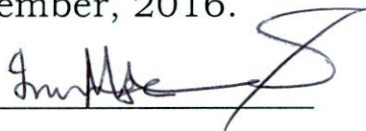
(5) Where leave to appeal is refused, an application for leave to the Court shall be made to a single Judge.

(6) Where a single Judge refuses leave to appeal, the application for leave may be reserved before the Court.

A requirement of Order X Rule 4 of the **Court of Appeal Rules** is that leave to appeal either has to be granted or refused accordingly by the High Court before an aggrieved party proceeds to the Court of Appeal. I find that the 2nd Respondent skipped the hierarchal process provided for in the **Court of Appeal Rules**.

The current application is incompetent as the Court of Appeal adjudicated and dismissed the matter. Therefore this Court has no jurisdiction to determine the application and I decline to entertain the application for leave to appeal.

Dated this 2nd day of December, 2016.



**HON JUSTICE IRENE Z MBEWE**

**HIGH COURT JUDGE**