

IN THE COURT OF APPEAL OF ZAMBIA

CAZ/08/118/2016

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

NANCY NASILELE NYENDWA



APPELLANT

AND

ROSANNA MARY NYENDWA

1ST RESPONDENT

NICHOLAS MISCHECK NYENDWA

2ND RESPONDENT

JEFFERY NYENDWA

3RD RESPONDENT

KALINDA ELLA NYENDWA

4TH RESPONDENT

Before the Hon. Mr. Justice Justin Chashi in Chambers on 18th day of January 2017

For the Appellant:

*CL Mundia, SC and C Mundia, Jnr
Messrs, CL Mundia and Company*

For the 1st Respondent:

*J. Madaika and IM Lifunana, Messrs J
& M Advocates*

For the 2nd and 3rd and 4th Respondents:

N/A

R U L I N G

Legislation referred to:

1. *The Court of Appeal Act, Act No. 7 of 2016*

On 20th December 2016, the Appellant filed an application for an Order to stay Consent Order pursuant to Order 7 Rule 1 (1) of ***The Court of Appeal Rules 2016 (CAR)***¹. On the 21st of December 2016, I did grant the Appellant an ex parte Order of stay of

execution pending the inter parte hearing. On 9th January 2017 before the inter parte hearing of the Appellants application, the 1st Respondent filed a Notice of Motion for an Order of discharge of the ex parte Order of execution which I had granted on the grounds that it was obtained in excess of jurisdiction and in contravention of **CAR¹**.

At the inter parte hearing on 12th January 2017, both Counsel for the Appellant informally raised preliminary issues which bordered on description of this Court by the 1st Respondent as well as to the Advocates for the 1st Respondent, the firm of J & M Advocates being conflicted in this matter.

For reasons which are obvious and on which I will elaborate hereunder, I decline to dwell on both the Notice of Motion by the 1st Respondent as well as the issues raised by the Appellants.

A perusal of the record shows that the Appellant filed a Notice of Appeal on 19th December 2016 appealing against the Ruling of Siavwapa, J in Cause No. 2002/HP/D0087.

According to the accompanying Memorandum of Appeal, the sole ground of appeal is that the Court below erred in both law and fact when it ruled that the Appellant's application for an Order to stay execution of Consent Order in Cause No. 2002/HP/D0087 contained no grounds upon which the Court could stay or set aside the Consent Order.

From the contents of the Notice of Appeal and the Memorandum of Appeal, it is evidently clear that the issue of stay of execution is subject of an appeal to the Court of Appeal.

Section 9 of the **Court of Appeal Act, 2016** states in part as follows:

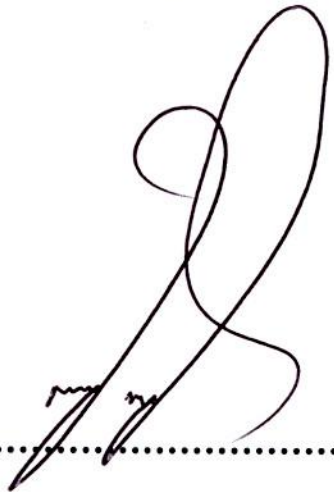
"A single Judge of the Court may exercise a power vested in the Court not involving the decision of an appeal....."

Since the application before me as a single Judge involves the decision of an appeal, I have no powers to adjudicate over the same. The application is therefore wrongly before this Court as I have no jurisdiction to entertain the same.

The application is accordingly dismissed and the ex parte Order for stay of execution which I earlier granted is discharged.

Costs to the 1st Respondent. Same are to be taxed in default of agreement.

Delivered this 18th day of January 2017.

A handwritten signature in black ink, consisting of a large, stylized loop and a diagonal stroke, positioned above a horizontal dotted line.

Justin Chashi

COURT OF APPEAL JUDGE