

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



2014/HP/1735

B E T W E E N :

AL AZIZ GENERAL DEALERS LTD

PLAINTIFF

AND

LUSAKA CENTRAL MEAT PROCESSING LIMITED

DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on 19th January, 2017

For the Plaintiff : Mr. H. Mulenga of Messrs Philsong & Partners
the Defendant : N/A

R U L I N G

Case Authorities Referred To:

1. *Nyampala Safaris and 4 others v Wildlife Authority and 6 others* (2004) Z.R. 49 (S.C.)
2. *Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited* (1999) Z.R. 101 (S.C.)
3. *Tresphord Chali v Bwalya Emmanuel Kanyanta Ngandu* SCZ/8/009/2014

Legislation Referred to:

1. *High Court Act, Chapter 27*

This is the Plaintiff's application for a stay of proceedings and execution of judgment pending an appeal before the Court of Appeal. It was filed pursuant to Order 34 Rule 10 of the High Court Rules and is supported by an Affidavit.

The history of this matter is that the Plaintiff sued the Defendant on 31st October, 2014, claiming the payment of ZMW 119,900.00 for outstanding rentals, ZMW 22,000.00 for water and security charges as well as costs. The Plaintiff was unsuccessful in all its claims before this Court. As a result judgment was delivered in favour of the Defendant on 24th November, 2016.

At the hearing of this application, Learned Counsel for the Plaintiff relied on the Affidavit of Support. The gist of the Affidavit is that the Plaintiff being dissatisfied with the judgment of this Court has lodged an appeal to the Court of Appeal. The Plaintiff is convinced of its high prospects of success, hence the application to stay the Court's judgment pending the appeal hearing. The Plaintiff contends that if the judgment is not stayed then its appeal will be rendered an entire academic exercise.

The Defendant did not file an Affidavit in Opposition.

I have seriously considered this application together with the contents of the Affidavit filed in Support. The application raises the question whether in the circumstances of this case, a stay of proceedings and execution of judgment pending appeal should be granted.

It is a well settled principle of the law that the Court will not grant a stay of execution of judgment unless there are good and reasonable grounds for doing so. What amounts to "good and reasonable grounds" is posited in **Order 59/13** of the **Rules of the Supreme Court**, which puts it thus:-

"Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not "make a practice of depriving a successful litigant of the fruits of his litigation.....But the Court is likely to grant a stay where the appeal would otherwise be rendered nugatory, or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the Court and the Court will grant it where the special circumstances of the case so require.....but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour"

In the case of **Nyampala Safaris and 4 others v Wildlife Authority and 6 others, Mambilima, JS¹**, as she then was, re-stated this position of law, when she declared that a stay should only be granted where good and convincing reasons have been advanced by a party. She went on to state that the rationale for the position was that a successful litigant should not be deprived of the fruit of litigation as a matter of course.

In the case of **Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited²**, the Supreme Court held that:

- “(i) In terms of our rules of court, an appeal does not automatically operate as a stay of execution and it is pointless to request for a stay solely because an appeal has been entered.***
- (ii) In exercising its discretion whether to grant a stay or not, the court is entitled to preview the prospects of the proposed appeal succeeding.***
- (iii) The successful party should not be denied immediate enjoyment unless there are good and sufficient grounds”.***

Considering the guidelines outlined in the above cited cases, the question is, has the Plaintiff met the criteria set as outlined above in order for me to exercise my discretionary power to grant a stay of execution of the judgment in question?

I have come to the conclusion that the Plaintiff has not met the threshold for granting a stay. It is trite, in considering an application for a stay that I have a duty to examine the grounds of appeal, to determine whether an Applicant has prospects of succeeding. This however by no means implies that I should delve into the merits of each ground of appeal.

In the case of **Tresphord Chali Vs Bwalya Emmanuel Kanyanta Ngandu** the Supreme Court held that:

"The court below held that the appellant had failed to prove his case. The court accordingly dismissed the action. The appellant wants to stay execution of that judgment. We are at a loss to what the purpose of staying execution of that judgment is. The appellant sought some declarations. He failed to obtain any. For example the appellant's claim for a declaration that Farm L/19962/M belongs to him failed. Does he, by the stay of execution that he seeks, want that claim to be deemed to have succeeded until the appeal is determined? If that is what he wants then this application is untenable because this is not the purpose for which an order for stay of execution of a judgment is granted. The same can be said about the other declarations that he sought. Therefore, we see no purpose for granting any stay of execution in this appeal. We dismiss the application, with costs to the respondent.

In casu, the Plaintiff has not succeeded in any its claims. Therefore, what is there to stay? Assuming that the Plaintiff does succeed at an appellate level, I have no doubt that an award for damages will atone its loss. Consequently, I shall not grant a stay.

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By arriving at this decision, I am convinced that the Plaintiff's appeal will not be rendered nugatory and an academic exercise.

Accordingly, I dismiss this application but make no order as to costs.

Leave to appeal is granted.

Dated this 19th day of January, 2017.

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE