

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

2014/HP/0910

(Civil Jurisdiction)



B E T W E E N :

BENJAMIN ELIJAH MUMBA

PLAINTIFF

AND

CONUS MUSONDA
ATTORNEY GENERAL

**1ST DEFENDANT
2ND DEFENDANT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
14th day of June, 2017**

For the Plaintiff : *Mr. T. S. Ngulube, Messrs Tutwa S Ngulube & Company*

R U L I N G

Case Authorities Referred To:

1. *Nyampala Safris 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 Investment Merchant Bank Limited (1999) Z.R 101 (S.C)*
3. *Shelter for All, Evans Mukula Chomba v Kingfred Ramsey and Precious Ramsey SCZ/8/192/2009*

Legislation Referred To:

1. *High Court Act, Chapter 27*
2. *Lands and Deeds Registry Act, Chapter 185*

This is Plaintiff's application to stay execution of judgment. It is filed pursuant to Order 47 Rule 1 of the High Court Rules. It is supported by an Affidavit.

The history of this matter is that on 12th June, 2014, the Plaintiff issued Writ of Summons indulging the Court to declare him as the legitimate and beneficial owner of Subdivision No. 1166 of Subdivision 'A' of Farm No. 378a, Lusaka. He also sought a declaration to cancel the Defendant's title on account of fraud and damages for trespass. Judgment was delivered on 27th March, 2017, wherein the Plaintiff's claims were dismissed.

At the hearing of this application, Learned Counsel for the Plaintiff relied on the Affidavit filed in Support. The gist of which is that the Plaintiff being dissatisfied with the Judgment of this Court intends to lodge an appeal to the Court of Appeal. The Plaintiff believes that his appeal is meritorious and has a high chance of succeeding.

I have carefully examined the Affidavit filed in Support and the submissions advanced by Learned Counsel for the Plaintiff. The

Plaintiff's application raises the question whether in the circumstances of this case, I can exercise my discretionary power to grant a stay of execution of judgment pending an appeal to the Court of Appeal.

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 is 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 to provoke my discretionary power to grant a stay of execution of the judgment? In other words, has the Plaintiff demonstrated that there are good and convincing reason(s) for granting a stay of execution of judgment? Has he shown in his application that his appeal has prospects of succeeding and if a

stay is not granted, then his appeal would be rendered nugatory and an academic exercise?

In applying the above principles to the application before me, I am of the firm view that the Plaintiff has not advanced good reasons to be granted a stay.

Firstly, the Defendant has a certificate of title and under section 33 of the Lands and Deeds Registry Act, a certificate of title is conclusive proof of ownership. The Plaintiff's contention that the certificate of title was fraudulently obtained failed before this Court.

In any event, this case concerns land which is not a moveable asset. In the case of **Shelter For All, Evans Mukula Chomba v Kingfred Rumsey and Precious Ramsey**³, the Supreme Court stated that land is an immovable asset and any developments on the land have monetary value, which can easily be ascertained by assessment.

I therefore, hold that the Plaintiff will not suffer irreparable damage if a stay is not granted and I see no reason to deny the

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Defendant his fruits of judgment. I accordingly, refuse to grant the Plaintiff a stay of execution of judgment and dismiss this application.

I make no order as to costs.

Leave to appeal is granted.

Dated this 14th day of June, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE