

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

**2017/HP/0716**



**BETWEEN:**

**BOOKER MUNAMPELU**

**APPLICANT**

**AND**

**CONCIOUS PELEKELO MUFAYA**

**1<sup>ST</sup> RESPONDENT**

**CHARLES KARANGWA** (*Sued in his capacity  
as Church of God Regional Superintendent,  
Central Africa*)

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

**PETER THOMAS** (*Sued in his Capacity as  
Church of God Field Director, Africa*)

**3<sup>RD</sup> RESPONDENT**

**BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Applicant : Mr. Mulengeshi of Messrs Tembo Mulengeshi  
and Co.*

*For the Respondent : Mrs. Kunda of Kunda and Co.*

*Mr. Pindani of Chonta Musaila Pindani  
Advocates*

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### **RULING**

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**Cases Referred to:**

1. Michael Chilufya Sata and 3 Others (2011) 2 ZR 444

2. *Sonny Paul Mulenga and Vismer Mulenga (Both personally and practicing as SP Mulenga International and Another S.C.Z. No. 15 of 1999*
3. *Zambia Revenue Authority v Post Newspaper SCZ No. 18 of 2016*

This was the Respondents' application for Stay of the Ruling of this Court dated 16<sup>th</sup> June, 2017 pursuant to Order 47 Rule 5 of the High Court Rules Chapter 27 of the Laws of Zambia. The said application was supported by an affidavit in support filed into Court on 12<sup>th</sup> July, 2017. The affidavit was deposed to by one Pelekelo Mufaya, the 1<sup>st</sup> Respondent herein, who swore that the Respondents were dissatisfied with this Court's ruling of 16<sup>th</sup> June, 2017 granting an interim injunction to the Applicant 'in order to maintain the status quo'.

He asserted that the Respondents had been adversely affected by the Applicant's reliance on the implications of the term "in order to maintain the status quo". This was because the term meant putting everything on hold and that neither party should do anything to disturb the operations peace and tranquility of the church members. It was contended that the Respondents were convinced that the Applicant had embarked on a deliberate plot to act in defiance of the injunction by issuing threats of eviction and threatening us at will. According to the deponent there was a text of threats issued to him and the other two Respondents which supported their harassment at the Applicant's likeness. A copy of

the Memorandum of Eviction Notice was exhibited and marked **"PM2"**.

The deponent further deposed that the Applicant had threatened to close the Bible College where the deponent and the other Respondents were currently based. They had since been forced to relocate to temporary premises against their will but this had been at a great cost. A copy of the receipt for rentals of the office facility was exhibited and marked **"PM3"**. He averred that the Respondents had since appealed against the said ruling and a notice of appeal was exhibited and marked **"PM4"**.

The Plaintiff filed in an affidavit in opposition to this application sworn by himself. He averred that the affidavit in support was misleading as it was purporting that the 1<sup>st</sup> Respondent is the National Overseer of the Church of God Zambia when in fact the Court is yet to make a determination on that as it was the main issue in this matter. According to him the 1<sup>st</sup> Respondent had already defied and continued to defy the ruling of this Court which granted an injunction to direct the parties to maintain the status quo.

He swore that he remained the National Overseer of the Church of Zambia from the time he was elected and maintaining the status quo after the ruling of 16<sup>th</sup> June, 2017 had not in any way enabled him to perform his functions excessively. He denied the allegations that he threatened to close some branches of the church.

He denied there being any threats made to the Respondents as alleged in the affidavit in support. It was his contention that the eviction of Bethel College from the church premises was not in any way targeted at the Respondents but the College itself in the best interest of the Church as the Church had other uses for the building. He strongly contended that in fact it was the Respondents were the ones in abrogation of this Court's ruling of June 12, 2017.

He further denied threatening to close the Bible College save only to remove them from the premises as the Bible College was a private entity and was at liberty to rent premises that would not be in conflict with the interests of the Church. He deposed that he had nothing against the 1<sup>st</sup> Respondent running the Bible College wherever the college chose to be.

He filed in a further affidavit in opposition which, having considered the objection of its submission by the Respondents in affidavit in reply, I will not consider as in fact it was filed without leave of Court.

The Respondents filed in an affidavit in reply deposed to by Bishop Concious Mufaya the 1<sup>st</sup> Respondent in this matter. He deposed that the further affidavit in opposition filed by the Applicant was filed without obtaining leave of Court and as such ought to be expunged from the Court's record.

He averred that he had been sued in his capacity as newly appointed National Overseer of the Church of God in Zambia except he cannot continue performing his duties in view of the injunction.

He stated that maintaining the status quo as provided by the injunction entailed not changing anything within the Church of God until the matter was determined but the Applicant was intimidating pastors he perceived not to be with him within the Church of God and threatening to take away the running of their respective branches from them.

It was his contention that the Applicant was also threatening to evict Bethel Bible College which had always operated from the same premises. That from the time it started operating there, there had been no concern raised by anyone regarding the need of the premises to be used by the Church of God until now when the matter was in Court. He averred that the Church of God immensely benefitted from the activities and programs from the Bethel Bible College as it was a training ground for its Ministers/Pastors.

He asserted that the appeal that was before the Court of Appeal had prospects of success and that unless this Court's ruling of 16<sup>th</sup> June 2017 was stayed, the appeal would not be diligently prosecuted and could be rendered an academic exercise. It was his assertion that the Applicant held a meeting in Kitwe where he started making changes and amendments to the existing Church of God Constitution to his advantage whilst this case was going on instead of leaving everything as they were. Copy of the Constitution bearing the changes proposed by the Applicant was exhibited and marked "**CM2**". He added that the Applicant had also started forgoing and illegally issuing certificate credentials to get support from the members of the church. He stated that the said certificates

were ordinarily signed and issued by the Field Director, Superintendent and National Overseer. A copy of such a certificate was produced and Marked "**CM3**".

He swore that the Applicant had also started making steps to separate the Church of God in Zambia from the Headquarters at the Church of God-World Mission Cleveland TN USA. A copy of a letter written by one of the members of the Church of God Zambia to the Applicant refusing to be part of the separate church was exhibited and marked "**CM4**".

Both parties filed in Skeleton Arguments which they relied on.

The Respondents in their skeleton arguments cited the cases of ***Zambia Railways Limited v Oswell Joseph Simumba (1995) SJ 3*** and ***In Re: Msiska (S.C.Z. Judgment No. 11 of 1983)***. They submitted that the appeal against this Court's ruling dated 16<sup>th</sup> June 2017 had prospects of success because the Applicant would not suffer irreparable Injury he was asked to vacate Plot No. 114 Kaumbwe Road Emmasdale was the official residence and National Headquarters for the Church of God in Zambia. The Applicant occupied the same only by virtue of his appointment to the position of National Overseer.

It was further argued that the Applicant would not suffer irreparable injury if he was removed from the said office by the appointing authority as the privileges and monthly stipend which the Applicant enjoyed could adequately be compensated in monetary terms. It was their argument that the holding that the

Applicant would suffer irreparable injury considering the position he held was not valid and justifiable at law.

They argued that the ultimate power to appoint a State or National Overseer rested with the World Missions Board in consultation with the Superintendent and approval by the International Executive Committee in the USA. The Applicant's contention that he was elected by the Council of Ministers in Zambia and could not be removed before the end of his tenure of two years was not supported by any evidence on record. The Applicant's right to relief was therefore not clear and there was no serious question of law to be tried.

They cited Order 59 rule 13(1) and (2) of the Supreme Court Rules (1999) Edition which provides that that a Stay of Execution can only be granted when there are good reasons to the Stay of execution. It was their argument that in the present case there were good and sufficient reasons to justify the granting of a Stay of the Ruling under appeal as demonstrated above. They cited a number of authorities to support this.

It was further argued that in the present case the grounds in the Memorandum of Appeal demonstrated that the appeal was arguable and had prospects of success and therefore, failure to grant a Stay of Execution would render the appeal nugatory or an academic exercise.

The Respondents submitted that the Applicant had illegally started issuing credentials of Exhorters when he has no authority to do so

without the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent who also co-sign on the certificates.

It was their further submission that the Applicant was, among other things not submissive to his superiors and was misinforming the masses on the injunction from providing accurate information to the members of the church. They added that the Applicant, by virtue of the injunction created conditions favourable only to himself which was not supposed to be the case. It was their argument that the steps being taken by the Applicant before the appeal was determined were much to the prejudice and detriment of the Respondents.

It was further argued that if the Stay was not granted the appeal would be rendered nugatory and an academic exercise and would destroy the Church of God. They added that since the Applicant's tenure was a term of two years from August 2016, considering the time it would take to determine the matter, he would have served his entire term and the entire proceedings would be a mere academic exercise.

The Applicant in his skeleton arguments argued that it was trite law that for an Order for Stay to be granted, an applicant needs to advance good and convincing reasons and clearly demonstrate the basis on which the stay should be granted which the Respondents had failed to do.

He submitted that the purpose of the injunction was to preserve the status quo as was stated by the Court in the ruling of 16<sup>th</sup> June,

2017. He argued that if the Court granted an Order for Stay of the said ruling, the ruling would be such that the Church would have no head as the appointment of the 1<sup>st</sup> Defendant herein was in dispute and being contested in the Court. Therefore the Stay would in essence be delving into the main matter before the Court determined the same.

The Applicant cited the case of **Turnkey Properties v Lusaka West Development Company Ltd and Others (1984) ZR 85** where it was held that

*“the Court would not comment on issues that would have the effect of pre-empting the issues which are to be decided on the merits at trial.....an interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial but cannot be regarded as a device by which the applicant can attain or create new conditions favourable only to himself”*

He also cited the case of **Sonny Paul Mulenga and Vismer Mulenga (Both personally and practicing as SP Mulenga International and Another S.C.Z. No. 15 of 1999** where it was held that

*“More is required to be advanced to persuade the Court below or this Court that it is desirable, necessary and just to stay a judgment pending appeal. The successful party should be denied immediate enjoyment of a judgment only on good and sufficient grounds”*

It was the Applicant's argument that the Respondents could proceed to appeal without an Order for Stay of the ruling of this Court as the church needed to continue running. Further, that the eviction, if at all, of the Bible College from the premises of the Church as had been stated in the Affidavit in opposition was merely to facilitate the church's use of the building as it belonged to it. He stated that the 1<sup>st</sup> Respondent, herein, purporting to be the Church overseer and his colleagues had been using the offices for their parallel administration as shown in the further Affidavit in opposition.

I have considered the affidavit evidence of both parties as well as the skeleton arguments on record. The starting point is Order 47 Rule 5 of the High Court Rules which provides that:

*"An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed from, except so far as the court below or the Court may order, and no intermediate act or proceeding shall be invalidated, except so far as the court below may direct."*

Having established that an appeal has since been lodged against the decision of this Court, I am satisfied that this application is properly before this Court. Dr. Matibini SCJ, addressed the principle guidelines for granting of a Stay of Execution by the Court in the case of **Michael Chilufya Sata and 3 Others (2011) 2 ZR 444** where he held as follows:

*“The following criteria may be used in considering an application for a stay of injunction: whether the stay application has made a strong showing that he is likely to succeed on merits; whether the applicant will be irreparably injured absent a stay; whether the issuance of the stay will substantially injure the other parties interested in the proceedings; and where the public interest lies.”*

Similarly, the Supreme Court has given sufficient guidance regarding Stay of Proceedings. In the case of **Zambia Revenue Authority v Post Newspaper SCZ No. 18 of 2016** the Supreme Court held that:

*“Where a judgment or ruling is stayable, the principles state that stay of execution pending appeal is a discretionary remedy. A party is not entitled to it as of right and such discretion must be exercised judiciously and on well established principles. Firstly, the successful party should not be denied the immediate enjoyment of the Judgment, unless there are good and sufficient grounds. Stay of execution should not be granted purely on sympathetic or moral considerations. Secondly, in exercising its discretion, whether to grant a stay or not, the Court is entitled to preview the prospects of success of the proposed appeal.”*

The Supreme Court went further and said that:

*“If a Court knows and says that the appeal will fail, then there is no reason in law to stay execution of the judgment appealed against.”*

I have considered the grounds of appeal advanced by the Defendants in this matter and the facts raised that the Plaintiff is not maintaining the status quo. It is very important to note that the issues raised in the affidavit in support of the application indicating that the Plaintiff is not adhering to the Order of the Court are a fit and proper case for committal proceedings, which have been lodged before this Court. However, due to the fact that an appeal has been lodged by the Defendants against the ruling of this Court, I have no jurisdiction to address the same issues.

I will therefore consider whether the appeal has prospects of success. It is common cause that the issue for determination in the main matter is whether the Plaintiff was rightly removed from office and consequently whether the 1<sup>st</sup> Defendant's appointment is valid. The injunction therefore was premised on the fact that there was a clear right to relief and it was necessary for the Church to continue running pending the determination of the matter. Staying the ruling of this Court will in essence be vacating the Court's order and thereby reverting to the position that was being avoided which in my view would be more acrimony before the matter is concluded as each party would claim leadership of the same church and lead to more confusion than is currently being alleged.

In view of this I am satisfied that this appeal has no prospects of success based on the reasons advanced. I am guided by the case of **Michael Chilufya Sata Chanda Chimba and 3 Others** and I agree with the case of **Sonny Paul Mulenga and Vismer Mulenga**

cited by the Applicant that for the Court to grant a Stay much was needed to be advanced.

Further, in the case of **ZRA v Post Newspaper** Mwanamwambwa DCJ delivering the Supreme Court Judgment stated that a “Stay of execution should not be granted purely on sympathetic or moral considerations” and if the Court is of the opinion that the appeal is unlikely to succeed, then it follows that the Stay of execution of the ruling of this Court should not be granted.

As I am of the view that the Appeal has no prospects of success, I accordingly dismiss this application with costs.

Leave to Appeal is granted.

**Delivered under my hand and seal this 11<sup>th</sup> day of September,  
2017**



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**Mwila Chitabo, S.C.  
JUDGE**