

BETWEEN:

**CHIMANGA CHANGA LIMITED**

**APPLICANT**

AND

**EXPORT TRADING LIMITED**

**RESPONDENT**

**CORAM: Chishimba, Banda-Bobo and Muzenga, JJA**

**On 4<sup>th</sup> March, 2022 and 30<sup>th</sup> March, 2022**

For the Appellants: Mr. W. Chirwa of Messrs J and M Advocates

For the Respondent: Ms. K. Tembo of Messrs Milner & Paul Legal  
Practitioners

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

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**CHISHIMBA, JA, delivered the ruling of the Court.**

**Cases referred to:**

1. Bidvest Food Zambia Limited & Others v CAA Import and Export Limited  
SCZ Appeal No. 56 of 2017
2. Standard Chartered Bank Limited v Celine Nair SCZ/32/2019
3. Savenda Management Services v Stanbic Bank Limited SCZ Number 10  
of 2018
4. Cavmont Bank Ltd v Spancrete Zambia Limited & 2 Others  
Nom/15/2019
5. Bidvest Food Zambia Limited & Others v CAV Import & Export Limited  
Appeal No. 56 of 2017

6. Smith, Hogg and Co Limited v The Black Sea and Baltic General Insurance Co. Limited (1940) 67 LL.LL Rep 253

**Legislation referred to:**

1. Court of Appeal Act No. 7 of 2016 of the Laws of Zambia.
2. Court of Appeal Rules Statutory Instrument No. 65 of 2016.
3. Supreme Court Act Chapter 25 of the Laws of Zambia.
4. The Rules of the Supreme Court of England, 1999 Edition (white Book).
5. The Corporate Insolvency Act, 2017.

This is an application for leave to appeal to the Supreme Court, and for an order to stay execution of the judgment of the Court pending hearing and determination of the appeal. The application is made pursuant to **section 13 of the Court of Appeal Act No. 7 of 2016**, and **Order 11 and 10 Rule 5 of the Court of Appeal Rules, Statutory Instrument No. 65 of 2016** as read with **Rule 51 of the Supreme Court Rules** and **section 24(b) of the Supreme Court Act Chapter 25 of the Laws of Zambia**.

The applicant seeks leave to appeal against our judgment dated 10<sup>th</sup> December, 2021 on the ground that the intended appeal raises novel issues of public importance relating to:

- i) *Whether the mandatory provisions of section 22(3) Corporate Insolvency Act (CIA) can be overlooked by a court where an affected party making an application to set aside business*

*rescue proceedings omits to serve its application on all affected persons in accordance with the said section of the CIA;*

- ii) Whether it is proper to allow a party that has breached the mandatory provisions of section 22(3) of the CIA to proceed with its application and to place the burden of non-compliance of section 22(3) of the CIA and raising issue with such a breach on affected parties that are not even aware of such court proceedings;*
- iii) The intended appeal as the grounds disclosed in the draft memorandum of appeal exhibited in the affidavit in support of this application raise novel issues which have never been litigated in our superior courts and also raise issues of public importance and have reasonable prospects of success;*
- iv) The intended appeal to the Supreme Court meets the threshold set under section 13 of the Court of Appeal Act, 2016.*

The applicant relied on the affidavit in support deposed to by Sokwani Peter Chilembo, the Group Legal Counsel. Counsel deposed that in our judgement dated 10<sup>th</sup> December, 2021, we held in favour of the respondent on all grounds of appeal and upheld the judgment of the High Court. The applicant is desirous of appealing to the Supreme Court. That the intended appeal raises sound legal questions fit for consideration by the apex court as can be gleaned from the draft notice of appeal and memorandum of appeal exhibited and marked “**SPC 1**” and “**SPC 2**” respectively. The applicant

proceeded to highlight the issues intended to be raised on appeal as follows:

- 1) The issue that this court failed to address the misapprehension of facts by the lower court when it held that there were no prospects of success alluded to by the appellant in the lower court when in fact, the prospects were there and alluded to though, found to be insufficient by this court;
- 2) That this court failed to address the wrongs of the respondent thereby leaving a lacuna as the court did not grant any clear direction and recourse to affected parties not served with court proceedings. That in essence, this court transferred the burden of non-compliance of the provisions of section 22(3) of the CIA on innocent parties;
- 3) That the Supreme Court needs to determine whether the respondent can go unpunished for not complying with the provisions of section 22(3) of the CIA and yet the appellant was punished for purportedly “not complying” with the CIA;
- 4) That the CIA having been enacted in 2017, the issues presented before this court and the lower court are novel

