IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

SCZ/8/37/2019

BETWEEN:

FINANCE BANK ZAMBIA LTD **APPLICANT**

And

DIMITROS MONOKANDILOS **1ST RESPONDENT**

FILANDRA KOURI **2ND RESPONDENT**

CORAM: **MUSONDA, DCJ, MUTUNA AND CHISANGA, JJS**
On 10th January and 27th October, 2023

FOR THE APPLICANT	Mr. M. Nchito, SC appearing with Mr. C. Hamwela and Ms. N. Chibuye all of Messrs Nchito & Nchito
FOR THE 1ST RESPONDENT	N/A
FOR THE 2ND RESPONDENT	Mr. S. Mambwe of Messrs Mambwe, Lisimba and Siwila appearing with Mr. Yeta of Central Chambers

RULING ON MOTION FOR LEAVE TO APPEAL

MUSONDA, DCJ delivered the Ruling of the Court

1.0 AUTHORITIES

1.1 **Statutes referred to:**

1.1.1 Supreme Court Act, Chapter 25, Section 4, Rule 48 (4)
1.1.2 Court of Appeal Act No. 7 of 2016, Section 13

1.2 **Cases referred to:**

1. **Finance Bank Zambia Limited v Mirriam Muzeya & Four Others**
2. **Hermanus Phillip Steyn –v- Giovanni Gn-ecchi Ruscone: Application No. 4 of 2012**
3. **Hirschorn –v- Evans [1938] 2.K.B. 801**
4. **Jones –v- Maynard [1951] CH. 572**
5. **Rimmer -v- Rimmer [1953] 1 Q.B 63**
6. **Emmanuel Mponda –v- Mwansa Mulenga & Two Others**

1.3 **Other Works referred to:**

1.3.1 Fidler, P.J.M (1982), Sheldon and Fidler's Practice and Law of Banking, 11th ed. (Macdonald and Evans, Suffolk)

1.3.2 Pennington R.R. and Hudson, A.H., Commercial Law

1.3.3 Zukerman, A (2013), Zuckerman on Civil Procedure: Principles of Practice 3rd edition, Sweet & Maxwell

2.0 INTRODUCTION

2.1 The applicant filed a Motion to this (full) Court on 25th March, 2020 seeking to have the ruling of a single Judge of this Court (Kabuka, J.S,) dated 23rd March, *2020* ***"varied, discharged or reversed"*** pursuant to the provisions contained in section 4 of the Supreme Court Act, Chapter 25 of the Laws of Zambia as read with rule 48 (4) of the Rules of this Court as promulgated under the said Chapter 25.

2.2 In terms of the said ruling of the Single Judge referred to in 2.1 above, the single Judge declined to grant the applicant leave to appeal (to this Court) against a judgment which the Court of Appeal had entered against the applicant on 29th November, 2019. For completeness, the Court of Appeal had itself earlier refused to grant the applicant leave to appeal to the Supreme Court against its own (Court of Appeal's) decision.

2.3 We must, at this early stage, indicate that the hearing of the applicant's renewed application for leave before this full Court

had remained in cold storage until the 10th day of January, 2023 on account of multiple applications of a varied nature which we find both unnecessary and unprofitable to advert to in this ruling.

3.0 **MOTION BACKGROUND**

3.1 The applicant's present Motion had its early roots in a High Court judgment which was handed down against the applicant by Mweemba, J on 29th March, 2018.

3.2 The facts and circumstances around which Mweemba, J entered the judgment we have adverted to in 3.1 above and which we have adopted in this ruling, were well summarised by our sister, Kabuka J.S, in her ruling of 23rd March, 2020 which is now being sought to be varied or discharged or reversed on the faith of section 4 of the Supreme Court Act, Chapter 25 of the Laws of Zambia, CAP. 25, as read with rule 48 (4) of the Rules of this Court as adverted to a short while ago.

3.3. The 1st and 2nd respondents are husband and wife. At the request of this couple, the applicant opened joint account number 0101800121000 in the respondents' joint names.

3.4 When the respondents subsequently visited the applicant bank to complete the formalities relating to the opening of their joint account, the applicant's employee who attended to them did not insist on obtaining all relevant information pertaining to the opening of the bank account in question from the 2nd respondent beyond confirming her names.

3.5 According to the trier of fact, Mweemba, J, the applicant's employee's rather cavalier or casual approach as adverted to in 3.4 above was completely at odds with the applicant bank's own rules which required prospective joint account holders to furnish the applicant bank with their full names, personal details, specimen signatures and a signed standing mandate announcing how, once the joint account had been opened, the same were to be operated.

3.6 According to the undisputed evidence which was placed before Mweemba, J, following the opening of the respondents' joint account, the same was solely operated by the 1st respondent.

3.7 About a year after the joint account in question had been opened, the 1st respondent and one Kosmas Mastrokolias executed personal guarantees in favour of the applicant for the

purpose of securing a USD 1,200,000.00 loan which the latter had advanced to a limited Company in which the 1st respondent and Kosmas Mastrokolias were directors. For the avoidance of doubt, the 2nd respondent was not involved with the transaction between her husband and one Kosmas Mastrokolias.

3.8 Following the failure by the limited company alluded to in 3.7 above to repay the afore-mentioned US$1,200,000.00 loan, the applicant instituted an action against the 1st respondent and Kosmas Mastrokolias, as the guarantors alluded to in 3.7 above, for the recovery of the US$ 1,200,000.00 together with 12% interest thereon per annum.

3.9 After obtaining judgment in its favour in the action alluded to in 3.8 above in the guaranteed sum, the applicant proceeded, in execution of the said judgment, to debit the respondents' joint bank account by way of securing a partial satisfaction of the US$ 1,200,000.00 judgment sum.

3.10 The respondents were unsettled by the applicant's action in 3.9 above and proceeded to institute an action in the High Court for the recovery of the sum of US$ 983,858.74 which the duo claimed to have represented the credit balance in their joint

bank account at the time. The respondents also sought to recover interest on the said amount.

3.11 Upon the matter being tried in the High Court, the learned trial Judge made the following findings of fact:

3.11.1 that the name of the bank account clearly revealed that it was a joint account;

3.11.2 that the responsibility to ensure due compliance with all formalities pertaining to the opening and operation of any joint bank account lay with the applicant;

3.11.3 that barring a contrary intention, monies which stood to the credit of any joint bank account which was maintained with the applicant was a debt owed to the joint account holders and was not enforceable otherwise than jointly;

3.11.4 that the opening of the joint account in question was characterised by negligence on the part of the applicant bank in that the exercise was undertaken without:

(a) securing the 2nd respondent's full details;

(b) her specimen signature;

(c) a properly executed mandate form specifying the manner in which the joint account was to be operated and;

(d) without fully complying with the applicant's own bank account opening rules.

3.12 Notwithstanding the matters in 3.11, the trial Court concluded that the fact of the joint account in question having been such an account could not be doubted and that, consequently, it was not open to the applicant to set - off the credit balance in the joint account against the debt which the 1st respondent and Kosmas Mastrokolias jointly owed the applicant.

3.13 The trial Court's reasoning in 3.12 was founded upon the banking legal principle that joint account holders have no right to pledge each other's credit. Consequently, the trial Court upheld the respondents' claim for the US$ 983,858.74 which was in the joint account together with interest at the rate of 7% per annum.

3.14 The applicant's subsequent attempt to upset the decision of the High Court through the medium of an appeal to the Court of Appeal was unsuccessful. The Court of Appeal also declined to grant the applicant leave to appeal to the Supreme Court on the

basis that the applicant had failed to satisfy any of the requirements which section 13 of the Court of Appeal Act, No. 7 of 2016 prescribes in the way of supporting a viable application for the grant of leave to appeal.

3.15 Following the Court of Appeal's refusal to grant the applicant leave to appeal, the applicant decided to approach a single member of this Court for leave to appeal to this Court.

4.0 THE APPLICANT'S SEARCH FOR LEAVE BEFORE A SINGLE JUDGE

4.1 The applicant's application to a single judge was supported by an affidavit in which the applicant deposed that, in arriving at its decision against granting leave, the Court of Appeal had been more concerned with considerations which were defensive of its judgement against which the applicant intended to appeal as opposed to focussing on the considerations set out in section 13 (3) of the Court of Appeal Act being the only factors that should inform the court, in the exercise of its discretion, whether or not to grant an applicant leave to appeal against its judgment.

4.2 The applicant further deposed that had the Court of Appeal properly directed itself to the requirements of section 13 of the Court of Appeal Act it (the Court) would have granted leave to

appeal on the basis that the applicant's proposed appeal raised points of law of public importance and had prospects of success.

4.3 According to the applicant, the Court of Appeal would, additionally, have granted leave to appeal on the basis that its (i.e. the applicant's) proposed appeal raised issues of law concerning banking practice in Zambia upon which there was no previous Supreme Court decision.

4.4 In the applicant's estimation, its application for leave had satisfied all the requirements of section 13 (3) (a), (c) and (d) of the Court of Appeal Act thereby justifying the granting of leave to appeal to this Court.

4.5 In their affidavit opposing the granting of leave which was sworn by the 1st respondent, the 1st respondent deposed that, the matter which was before the Single Judge had previously been dealt with by this Court and was the subject of a judgment dated 15th November, 2016.

4.6 According to the 1st respondent, in that judgement referred to in 4.5 above, the applicant's attempt to link the matter the subject of the Single Judge's ruling, to a judgment debt which was owing to the applicant by a third party, was described by

this Court as having been frivolous, vexatious and an abuse of the process of the Court.

4.7 The respondents further contended that, the gist of the High Court finding which was confirmed by the Court of Appeal was based on documentary evidence. That evidence, it was further deposed, confirmed the fact of the bank account that is in issue having been a joint account belonging to the two respondents.

4.8 Having regard to what has been adverted to above, the respondents further deposed that the intended appeal did not raise any point of law of public importance.

4.9 According to the respondents, the issues at play in this matter did not raise anything novel concerning banking practice in Zambia which deserved to be pronounced upon by the Supreme Court nor did the same meet the requisite legal threshold for the purpose of qualifying to be heard by the Supreme Court.

4.10 According to the respondents, the grounds upon which the applicant's intended appeal to the Supreme Court which were to inform the single Judge, in the exercise of her discretion, whether or not to grant the leave to appeal, was anchored, were

set out in the Notice of Motion for leave to appeal filed, on 13th December, 2019 in the following terms:

> ***"1. The Court of Appeal having rejected and set aside the finding of the High Court that the appellant "was negligent in the way it opened the Account in issue as well as the way it allowed it to operate without obtaining the required personal details of Filandra Kouri and her specimen signature ...," the Court of Appeal misdirected itself on points of law and fact by:"***
>
> ***(a) not equally setting aside the finding of the Court below that the account No. 0101800121000 was a joint account; and***
>
> ***(b) holding that the said finding or decision of the Court of Appeal had no bearing on the entire appeal.***
>
> ***2. The Court of Appeal having found that the action before the High Court was not a representative action, misdirected itself on points of law and fact by holding that:***
>
> ***(a) the issue before the Court affected both parties as it related to only one joint account;***
>
> ***(b) departing from its decision in Finance Bank Zambia Limited v Mirriam Muzeya & Four Others[1]; and***
>
> ***(c) "in this case the 1st respondent's evidence covered the 2nd respondent's case. There was therefore no need to call the 2nd respondent to come and repeat the evidence."***
>
> ***3. The Court of Appeal having held in paragraph 7.14 of the judgment that "There was no evidence that the sum of US$ 949,933.81 was debited on 26th February, 1996,***

misdirected itself on points of law and facts by confirming the judgment in favour of the respondents for the sum of US$ 949,933.81.

4. ***The Court of Appeal misdirected itself on points of law and fact by holding that the appellant was not authorized by the joint account holders to debit their joint account in order to recover the debt incurred by the International Investments and Finance Limited, a third party."***

4.11 Learned Counsel for the applicant filed skeleton arguments and submissions in support of the applicant's proposed grounds of appeal. The skeleton arguments and submissions were supported by statutory provisions, case law and a host of other authorities in a bid to persuade the Single Judge that the proposed grounds of appeal, as reproduced above, did, indeed, satisfy the threshold prescribed by section 13 (3) (a), (c) and (d) of the Court of Appeal Act, as to entitle the applicant to the order for leave to appeal to this Court so sought.

4.12 For his part, learned Counsel for the Respondents also filed skeleton arguments and submissions for the purpose of demonstrating that the proposed grounds of appeal did not, in fact, satisfy the threshold set out in section 13 (3) of the Court of Appeal Act.

5.0 SINGLE JUDGE'S RULING

5.1 In her Ruling, the single Judge considered the material which had been placed before her on behalf of the Applicant in the context of section 13 (3) of the Court of Appeal Act which enacts as follows:

> ***"13 (3). The Court may grant leave to appeal where it considers that:***
>
> ***(a) The appeal raises a point of law of public importance;***
>
> ***(b) (inapplicable)***
>
> ***(c) The appeal would have a reasonable prospect of success; or***
>
> ***(d) There is some other compelling reason for the appeal to be heard."***

5.2 Referring specifically to the meaning and import of paragraph (a) of section 13 (3) (which deals with a point of law of public importance), the learned single Judge quoted the following passage from the Kenyan Court of Appeal case of ***Hermanus Phillip Steyn –v- Giovanni Gn-ecchi Ruscone***[2]**:**

> ***"The importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have more general significance. Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law, and that it is for the common good that such law be clarified to enable the Courts administer the law not only in the case at hand but in such cases in future.***

It is not enough to show that a difficult question of law arose, it must be an important question of law".

5.3 Adverting to the matter before her, the single Judge observed that the applicant had not demonstrated what point of law of public importance was involved in its application to warrant the granting of leave to appeal to the Court of last resort.

5.4 The learned single Judge also noted that the applicant had failed to lay bare any uncertainty in the legal principles governing joint bank accounts which the High Court and the Court of Appeal discussed which stood in need of clarification by the Supreme Court in the interest of furthering the development of the relevant jurisprudence in this jurisdiction.

5.5 According to the single Judge, the sole issue around which the applicant persuasively ventilated in its application for leave was the absence of any Supreme Court decision on the issues which the two lower Courts interrogated.

5.6 In the view which the Single Judge took, mere absence of a Supreme Court decision embodying a particular pronouncement on an issue cannot, by or in itself, elevate a matter to the level and standard of embodying or projecting a point of law of public importance.

5.7 Accordingly, the single Judge concluded that the applicant had failed to fulfil the criteria or requirement which paragraph (a) of section 13 (3) of the Court of Appeal Act prescribes in relation to any search for leave to appeal to the Supreme Court.

5.8 Turning to the second qualifying criteria for the granting of leave to appeal which is embedded in paragraph (c) of section 13 (3) of the Court of Appeal Act, the single Judge reasoned that, unlike a first appeal, the considerations for granting leave to pursue a second appeal ***(as is presently the case)*** went beyond the bare or literal meaning of ***'prospects of success'*** as this expression is projected in paragraph (c) of section 13 (3) of the Court of Appeal Act.

5.9 Having regard to the matters in 5.8, the single Judge observed that, when dealing with an intended second appeal to this Court, a mere or bare identification of flaws in a judgment under attack would not in itself warrant the granting of leave to an intending appellant to appeal against such a judgement.

5.10 With regard to the third qualifying consideration for the granting of leave to appeal which is captured in paragraph (d) of section 13 (3) of the Court of Appeal Act, which anchors the

desirability of hearing of an intended appeal on the basis of the existence of compelling reasons, the learned single Judge discounted this consideration on the basis that no compelling reasons had been shown to exist to warrant the hearing of the intended appeal.

5.11 Overall, the single Judge concluded that the applicant's search for leave to appeal had fallen far short of what is envisaged under the different thresholds which section 13 (3) of the Court of Appeal Act prescribes. In consequence, the applicant's application was dismissed with costs for want of merit.

6.0 **RENEWAL OF LEAVE APPLICATION BEFORE FULL COURT**

6.1 As we intimated early on in our introduction, the present application is arising by way of a renewal, before this full Court, of the applicant's application which failed to find favour before the single Judge.

6.2 When we sat to hear this Motion on 10th January, 2023, we purported to entertain applications from the two sides to the present contest and purported to grant Orders which opened the way to the filing of:

(a) the Applicant's Additional Heads of Argument in support of Motion for leave to Appeal on 17th January, 2023.

(b) the Respondent's response to the Applicant's Additional Heads of Argument in (a) above; and

(c) the Applicant's Additional Heads of Argument in Reply on 7th February, 2023.

6.3 We have used the word **'purported'** in paragraph 6.2 because, in truth, we really had no lawful basis to entertain the said applications, let alone, to grant the Orders which flowed from the said applications.

6.4 For the avoidance of doubt, the renewal application which the applicant mounted before us following the outcome before the single Judge was founded on section 4 (b) and Rule 48 (4) of the Rules of the Supreme Court, CAP. 25.

6.5 Rule 48 (4) prescribes the relevant procedure to be followed when mounting a renewal application in the following terms:

> ***"Any person aggrieved by any decision of a Single Judge who desires to have such decision varied, discharged or reversed by the Court under paragraph (b) of section 4 of the Act, shall, in like manner, file before the hearing by the Court three extra Copies of the proceedings, including Copies of any affidavits filed by any other party prior to the Single Judge's decision, for the use of the Court" (underlining supplied for emphasis).***

6.6 It is self-evident, even from a cursory reading of sub-rule 4 of Rule 48, that a person who is aggrieved by a decision of a single

Judge of this Court and who desires to have such decision varied, discharged or reversed by the (full) Court must place ***the same material***, in the nature of ***Copies of Proceedings, affidavits'*** that will have been placed before the single Judge ***prior to the single Judge's decision'*** for the use of the (full) Court.

6.7 It can scarcely be disputed that, as worded, Rule 48 (4) restricts the party who invokes this Rule in the sense that it does not permit or give room for the introduction of any fresh or additional materials before the (full) Court beyond whatever will have been placed before the Single Judge '***prior to***' such Judge's decision.

6.8 Arising from what we have discussed in the last few paragraphs, we are in no doubt that the proceedings of 10th January, 2023, to the extent that they were employed as a medium to entertain the applications which facilitated the filing of the additional Court documents alluded to in paragraph 6.2 were wholly inadvertent and ***per incuriam.*** In consequence, we set aside the orders which we pronounced on 10th January, 2023 which clearly offended the letter and spirit of Rule 48 (4) from which

we drew our legal mandate to entertain the present renewed application.

6.9 The meaning and effect of what we have pronounced in the preceding paragraph is that the proceedings alluded to in paragraph 6.2, together with all Orders and Court documents which flowed therefrom, are expunged from the record. We offer our apologies to all parties concerned.

6.10 Having regard to what we have announced in paragraph 6.8, consideration of the present renewed application will be restricted only to the material which was before the Single Judge ***prior to*** the delivery of her Ruling dated 23rd March, 2020 as dictated by Rule 48 (4) of the Rules of this Court.

7.0 CONSIDERATION OF MOTION BY THIS COURT AND DECISION

7.1 We have anxiously considered the application which has been renewed before us and examined the material which was placed before the single Judge Kabuka, JS, in the context of the law which that Judge was required to apply as adverted to early on in this Ruling.

7.2 We have also seriously reflected on the decision by our learned sister, Kabuka JS, which the applicant seeks to have us vary or

discharge or, indeed, reverse pursuant to Rule 48 (4) of the Rules of this Court.

7.3 From the outset, we feel obliged to stress that although the law (Rule 48 (4) of the Supreme Court Rules, CAP. 25) pursuant to which we have been invited to intervene in the applicant's search for leave to appeal restricts us to a reconsideration of the same application and the same material which had been placed before the single Judge as opposed to approaching the application as an appeal, nothing stops us from agreeing with or even adopting the reasoning of the single Judge.

7.4 Proceeding in the manner suggested in the preceding paragraph is, indeed, implied in the legal mandate which we derive under rule 48 (4) of the Rules of this Court to 'vary' or 'discharge' or, indeed, 'reverse' the decision of the single Judge. Needless to say, we cannot 'vary' or 'discharge' or, indeed, 'reverse' the decision of the single Judge if we are in agreement with that decision. In this regard, we can confirm that the reasoning of the Single Judge and her general approach to the issues with which she was confronted were as impeccable and unimpeachable as was the eventual conclusion which she reached in her Ruling.

7.5 We also wish to stress that, leaving aside the factors and considerations which buoyed the single Judge to reach the conclusion which she reached in her Ruling, a proper application of the legal principles surrounding the genesis of the substantive or the real grievance which birthed the litigation which has now found its way in this Court fatally discounts the soundness or viability of the applicant's present search for leave to flog the dead horse that the applicant's grievance truly represents.

7.6 To put things in context and, for the removal of any doubt, the applicant's present search for leave to appeal is inextricably linked to the money which was in the joint account earlier referred to in this Ruling. Both the joint account and the money which was in that account constitute pre-eminent features of the applicant's intended appeal to this Court for which the present search for leave represents the necessary ***sine qua non***.

7.7 As we observed early on in this Ruling, the money which was sitting in the joint account became the subject of execution at the behest of the Applicant on account of the events which we have already recounted above.

7.8 It will also be recalled that the money alluded to in the preceding paragraph was restored to the joint account holders by Mweemba J, following the institution of recovery proceedings by the former.

7.9 As we see it, it is the restoration of the USD 949,933.81 to the Respondents which animated the legal measures which the applicant instigated in the Court of Appeal and which measures it wishes to continue in this Court.

7:10 In her Ruling which is now being sought to be varied or discharged or reversed, Kabuka JS soundly considered the factors which section 13 (3) of the Court of Appeal Act enacts by way of prescribing the relevant qualifying criteria for the purpose of any determination as to whether or not to grant leave to appeal in relation to the application which was before her and came to the conclusion that none of the prescribed criteria had been met by the applicant.

7.11 For our part, quite aside from adopting Kabuka JS's reasoning and conclusion, we wish to stress that the legal principles which buoyed Mweemba J's decision in relation to the substantive dispute which triggered this litigation are so compelling that it would be wholly futile to give any oxygen to the applicant's

desire to continue with its adventure of flogging a dead horse by granting it leave to appeal.

7.12 To cite just afew of the legal principles in question, Fidler, P. JM (1982) has stated, in his book entitled ***Sheldon and Fidler's Practice and Law of Banking***, as follows:

> ***"Since parties to a joint account are not automatically authorised to pledge each other's credit, a banker should not lend money to the parties of a joint account, either by means of an overdraft or in any other way, without obtaining from each of the parties an undertaking to be severally as well as jointly liable to repay the loan".***

7.13 It is also axiomatic that a joint account cannot be the subject of attachment or execution by a creditor on account of the indebtedness of one of the account holders of such an account. Thus, in ***Hirschorn –v- Evans***[3], it was sought to garnish a joint account which was held by a husband and his wife. As it happened, the garnishee order was solely directed against the husband. Under these circumstances, the Court of Appeal of England held, by a majority, that, as the debt owed by the bank (i.e., the money which was in the joint account) was to husband and wife jointly, it could not be attached to answer the husband's debt.

7.14 Likewise, in ***Jones –v- Maynard***[4], a husband and wife had maintained a joint account fed by the husband's remuneration and investment income, the rent of a house which was jointly owned by a husband and his wife and the wife's investment income of about £50 per annum. Periodically, the surplus on the account was invested in the husband's sole name.

7.15 The parties were later divorced and the wife then sought a declaration that she was beneficially entitled to half the investments so made. The husband contended that his former wife was only entitled to such proportion as represented her own contributions to the joint account. In his judgment in favour of the wife, Vaisey J said:

> ***"In my view, a husband's earnings or salary, when the spouses have a common purse and pool their resources, are earnings made on behalf of both ... the money which goes into the pool becomes joint property" (at p. 575)***

The reasoning of Vaisey J was subsequently approved by the Court of Appeal ***in Rimmer -v- Rimmer***[5].

7.16 Finally, the learned authors, Pennington, R.R and Hudson, A.H, have posited, in their book ***Commercial Law,*** as follows: -

> ***"A joint account must be treated by the bank at which it is held as distinct for all purposes from individual accounts held by the joint account holders.***

> ***Consequently, the bank cannot consolidate such accounts and set off a credit balance on the joint account against a debit balance on the individual account of one of the joint account holders or vice versa, and, correspondingly, the account holders themselves have no such right of set off" (at P. 54)***

7.17 Turning to the dispute which birthed this litigation, we are in no doubt that the legal principles which have been adumbrated above unshakenly preclude the applicant from taking the action of debiting the respondents' joint bank account, as identified above, for the purpose of securing a partial satisfaction of its USD 1,2000,000.00 judgment debt pursuant to a judgment which had been entered against the 1st respondent and Kosmas Mastrokolias in favour of the Applicant.

7.18 Indeed, if the genesis of the real dispute which triggered the litigation which is being sought to be continued in this Court is viewed in the round and appreciated in its fullness, the incontrovertibility of the applicant's futile adventure becomes both inescapable and unimpeachable.

7.19 As dispute resolution fora, Courts exist for the purpose of resolving real disputes, not merely apparent or imaginary or fictitious disputes. No amount of sophistication in words or

legal argument can create a real or substantive dispute where none-exists or is capable of existing. Courts of law cannot simply entertain litigation for its own sake. The legal principles in section 13 (3) of the Court of Appeal Act No. 7 of 2016 which govern the granting of leave to the Supreme Court presuppose that there is a viable or sustainable dispute deserving of further contestation.

7.20 Professor Adrian Zuckerman, the author of the highly acclaimed and self-titled text ***Zuckerman on Civil Procedure – Principles of Practice (2013)*** has said the following:

> ***"An appeal hearing is justified if there is a real prospect that it could make a difference to the outcome, otherwise resources and time would be wasted in vain" (at p. 1157)***

7.21 This Court of last resort cannot, in the proper exercise of its discretion, waste scarce resources in vain by granting leave to facilitate a patently impetuous pursuit of a wholly hopeless appeal.

7.22 As we conclude this ruling, perhaps we should call to mind the concerns which we expressed in ***Emmanuel Mponda –v- Mwansa Mulenga & Two Others***[6] that the limited resources which are available to Courts should not be recklessly deployed as doing so prejudices the general administration of justice.

7.23 We truly have no difficult in announcing that the applicant's Motion seeking to have us vary or discharge or reverse the decision of our sister, Kabuka, J.S. by granting it leave to appeal cannot possibly succeed. The same has failed.

7.24 The respondents will have their costs and the same will be taxed if not agreed.

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M. MUSONDA
DEPUTY CHIEF JUSTICE

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N.K. MUTUNA
SUPREME COURT JUDGE

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F.M. CHISANGA
SUPREME COURT JUDGE