

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

APPEAL NO. 311/2021

BETWEEN

TRANSQUIC SERVICES ZAMBIA LIMITED

1ST APPELLANT

NGANGA YALENGA

2ND APPELLANT

SAMSON ZULU

3RD APPELLANT

PRUDENCE SALAMO

4TH APPELLANT

AND

AFRICAN BANKING CORPORATION ZAMBIA LIMITED

RESPONDENT

(T/A ATLAS MARA)

STANBIC BANK ZAMBIA LIMITED

CLAIMANT



CORAM: Siawwapa, JP, Chishimba and Banda-Bobo, JJA
On 23rd March, 2022 and 29th January, 2025.

For the 1st Appellant:

NA

For the 2nd Appellant

Mr. N. Yalenga of Messrs. Nganga Yalenga Associates

For the 3rd Appellant

NA

For the 4th Appellant

NA

For the Respondent:

Mr. G. Pindani of Messrs. Chonta Musaila & Pindani Advocates with Mr. M. Desai-Inhouse Counsel

For the Claimant:

Mr L. Mwamba of Messrs. Simeza Sangwa and Associates

JUDGMENT

Banda- Bobo, JA, delivered the Judgement of the Court.

Cases referred to:

1. Attorney General v Marcus Achiume (1983) ZR. 1
2. John Sangwa v Sunday Bwalya Nkonde SC Appeal No. 2/2021
3. Stewards Co Limited v Appolo Enterprises Limited and Attorney General SCJ N.1 of 2000
4. Access Bank (Z) Limited v Group Five/Zcon Business Park Joint Venture (Sued as a firm) SCZ/8/52/2014
5. Benjamin Mwelwa v Attorney 2020/CCZ/007
6. Cavmont Capital Holdings plc v Lewis Nathan Advocates SCZ Judgement No. 6 of 2016
7. Murray Roberts Construction Limited v Lusaka Premier Health Limited Appeal No. 141/2016
8. Zambia Telecommunications Company Limited v Aaron Mweene Mulwanda and Others (2012) VI. 1 ZR 404
9. Minister of Home Affairs, Attorney General v Lee Habasonda (2007) ZR 207
10. Betty Chizhyuka and 3 Others v Finance Bank Zambia Limited CAZ Appeal No. 137/2019
11. Mubila Sianyama Mwilu v Kayuni Social Services Development and 5 Others CAZ Appeal No. 36/2019
12. Stanbic Bank Zambia Limited v Savenda Management Services Limited 2016/CAZ/08/040
13. Kenneth Nchima v the Attorney General Selected Judgement No. 6 of 2019
14. Stevenson Harwood LLP v Medien Patentverwaltung AG a & Others [2020] EWHC 1889 (Ch)
15. Clarkson Co. Ltd. v. City of Hamilton and others [1972] 3 O.R. 762-765
16. Stevenson & Son v Brownell [1912] 2 Ch 344
17. Mio Art Pty Ltd v Mango Boulevard Pty Ltd & Ors [2016] QSC 205
18. Wilhelm Roman Buchman v Attorney General SCZ Judgement No. 14 of 1994
19. Khalid Mohamed v Attorney (1982) Z.R. 4

Legislation referred to:

1. Rules of the Supreme Court of England 195 (1999 edition)
2. High Court Rules, Chapter 27 of the Laws of Zambia
3. Court of Appeal Rules, Statutory Instrument No.65 of 2016

Other materials referred to:

1. Halsbury's Laws of England 4th Ed. Vol. 25 Para. 1003
2. Halsbury Laws of England Volume 1 at paragraph 56
3. Black's Law Dictionary 9th edition
4. Akalemwa Ngenda, Registration and Ranking of Company Charges in Zambia, African Law Volume 53 No. 2 pages 279 and 284

The delay in rendering this Judgment is deeply regretted.

It was due to a lapse in record keeping in the Cav Judge's Chamber.

1.0 INTRODUCTION

- 1.1. This is an appeal against the Ruling of Hon. Mr Justice K Chenda on Stakeholder Interpleader Summons delivered in the High Court at Lusaka on 10th August, 2021.

2.0 BACKGROUND

- 2.1. The brief background to this appeal is that on 23rd July, 2021 the 2nd Appellant (who was the 2nd Defendant in the Court below) filed a Stakeholder Interpleader Summons, pursuant to Order 17 of the Rules of the Supreme Court 1965 (1999 edition) (hereinafter referred to as "the White Book") as read with Order 43 Rules 1(A); 3, 4, 6 of the High Court Rules, Chapter 27 of the Laws of Zambia.
- 2.2. In the said Summons, the 2nd Appellant sought a

determination of the question of who was entitled to execution on the Marco Polo Bus motor vehicle registration number BAJ 961 ZM (herein after referred to as “**the suit motor vehicle**”), between the Respondent (who was the Plaintiff in the Court below) under cause number 2020/HPC/0198 and the Claimant under cause number 2020/HPC/0048.

- 2.3. The uncontroverted facts leading to the Stakeholder Interpleader Summons were that on 28th August, 2019 the Respondent obtained a liquidated judgment on admission in the sum of K3, 149, 141. 23, under cause number 2019/HPC/0198.
- 2.4. The same judgment *inter alia*, granted an order to the Respondent to forthwith, repossess and sell the suit motor vehicle. The Respondent was to recover the balance from the 2nd, 3rd and 4th appellants as guarantors and in default foreclose on, repossess and sell the property known as Plot 18030/M Lusaka (hereinafter referred to as “**the leasehold property**”) pursuant to the third-party mortgage.

- 2.5. Dissatisfied with that Judgment, the Appellant escalated the matter to this Court under cause number CAZ 49/2020. On 2nd November 2020, this Court upheld the Judgment of the Court below, save for an order of costs.
- 2.6. Meanwhile, on 27 of March, 2019, the Claimant was granted a preservation order over the suit motor vehicle under cause no. 2019/HPC/0048. Subsequently, on 13th of May, 2020 the Claimant was granted an order of possession of the suit bus under the same cause.
- 2.7. In the meantime, on 14th July, 2021 the 2nd Appellant filed for interpretation of the Judgement of the Court below, on whether enforcement on the third-party mortgage created by him over the leasehold property could be done without first executing against the suit motor vehicle. In a Ruling dated 22nd July, 2021 the Court below ruled that the Respondent was at liberty to enforce the third-party mortgage without executing on the suit motor vehicle.
- 2.8. However, the Respondent failed to execute on the suit motor vehicle as the Claimant had already levied execution on it.

Hence, the 2nd Appellant filed the Stakeholder interpleader summons.

3.0 **DECISION OF THE COURT BELOW**

3.1 The Court below dismissed the Stakeholder interpleader summons on the basis that the 2nd Appellant could not challenge the Claimant's right of execution on the motor vehicle as the Claimant's rights were founded on a judgement.

4.0 **GROUND OF APPEAL**

4.1 Discontented with the ruling of the lower Court, the 2nd Appellant lodged the present appeal, fronting the following four (4) grounds of appeal:

- i. **The Learned Judge in the Court below erred in law and fact when he held that the 2nd Defendant's Interpleader Summons were a latest attempt to forestall execution against the leasehold property and were being used as indirect shield for the leasehold property in absence of facts and evidence to substantiate such finding or opinion;**
- ii. **The Learned Judge in the Court below erred in law and fact when he totally ignored and did not take into account the supportive evidence and submission**

of the Plaintiff in his analysis or give reasons for his disregarding it;

- iii. The Learned Judge in the Court below erred in law and fact when he held that the 2nd Defendant could not challenge the execution triggered by the Claimant against the motor vehicle as the Claimant traced its rights to a judgement yet there was evidence produced that the Plaintiff whose judgement was earlier in time had also levied execution on the said bus pursuant to its judgement but the sheriff released the motor vehicle to the Claimant in unexplained circumstances; and
- iv. The Learned Judge in the Court below erred in law when he refused to adjourn the matter and directed that the 2nd Defendant must proceed to find a way to respond to the Claimant's Affidavit in support of the preliminary issue which had just been served that very morning and not yet sighted by the 2nd Defendant despite all the parties conceding that justice entailed that the 2nd Defendant be given an opportunity to study the Claimant's documents and respond accordingly. The Judge's insistence on giving the 2nd Defendant only 3 hours to review the same was oppressive.

5.0 **2ND APPELLANT'S ARGUMENTS**

5.1 In ground 1 of the appeal, the thrust of the 2nd Appellant's submission is that the Stakeholder's Interpleader Summons were properly before the lower Court. That the law allows for a party in jeopardy from suit by another, to file a stakeholder interpleader summons. This is against the backdrop that the Claimant had seized the suit bus in a different matter. That the 2nd Appellant is a stakeholder because his leasehold property had secured the facility that financed the purchase of the suit motor vehicle.

5.2 Counsel argued that there was no basis upon which the lower Court based its finding that the interpleader summons was an indirect attempt to shield the property from execution. That the 2nd Appellant was on firm ground to file the interpleader summons to show the lower Court that the suit bus was with the claimant. That as such, it was in no way an abuse of the court process.

5.3 Counsel cited the case of **Attorney General v Marcus Achiume**¹, to the effect that an appellate Court can reverse findings of fact made by a trial judge where it is satisfied that the findings are not supported by the evidence or there was a misapprehension of facts or it is a finding that no trial court acting correctly can reasonably make. Suffice to mention that Counsel advanced other arguments which in our view have no nexus to this ground of appeal.

5.4 Grounds 2 and 3 of the appeal were argued together. Counsel argued that the learned High Court Judge erred in law when he held that the 2nd Appellant could not challenge the Claimant's right to the suit bus because it was traced to a judgment. That this is so because the Respondent's rights to the suit bus were also traced to a judgment, which in any case was earlier in time. It was further argued that all High Court Judges have equal powers and as such no judge can overrule or contradict a decision of another judge.

5.5 Counsel's point was that the decision of Hon. Justice Musona under cause No. 2019/HPC/0048 overruled the decision of Hon. Mr Justice Chenda in cause number 2019/HPC/0198, in so far as it relates to who was entitled to execute against the suit bus. In support of this argument, counsel adverted to Article 133 of the Constitution of Zambia, as amended by Act No. 2 of 2016, Section 4 of the High Court Act, Chapter 27 of the Laws of Zambia and the case of **John Sangwa v Sunday Bwalya Nkonde SC²**.

5.6 While conceding that the Respondent sat on its rights by not interpleading in cause no. 2019/HPC/0048, it was contended that the Judge in the Court below should have addressed the issues that were raised relating to the fact that the Respondent by not having asserted its rights by way of interpleader, had sat on its rights and was therefore estopped from claiming that there was no bus for it to execute against and could thus skip the initial line of execution.

5.7 Counsel also argued that the impugned ruling did not give reasons for disregarding the evidence and submission in support of the application from the Respondent, thereby offending the requirement that a judge must adjudicate on all issues in dispute and render a reasoned ruling in time. The case of **Stewards Co Limited v Appolo Enterprises Limited and Attorney General**³, was called in aid.

5.8 In support of ground 4, Counsel submitted that the 3 hours that the Court below stood down the matter to allow him to peruse through the Claimant's Skeleton arguments and affidavit in opposition to the Interpleader Summons (which initially were filed in support of Notice of motion to raise a preliminary objection and converted the Claimant's opposition to interpleader summons by an Order of Court), was not reasonable time, as no affidavit in opposition can be accepted to be filed by the registry at any rate. That Order 30 Rule 16 of the High Court Rules requires a minimum of 4 clear days from the service of the motion and that it is only in

appropriate cases that a judge can do away with the 4 day requirement, in line with Rule 22. Counsel cited the case of **Access Bank (Z) Limited v Group Five/Zcon Business Park Joint Venture (Sued as a firm)**⁴, to emphasise that the rules of the Court must be observed.

5.9 The 2nd Appellant argued that the Court below should have discarded the Claimant's Affidavit because the Notice of Motion which it was initially supporting was incompetent before the Court. The basis of this argument was that no interlocutory application could be entertained by the Lower Court as the matter had already been disposed of by 2 judgments. That this thus goes to the jurisdiction of the Court. Here, Counsel adverted to the Learned Authors of Black's Law Dictionary 9th edition and the case of **Benjamin Mwelwa v Attorney**⁵, as authority.

5.10 The 2nd Appellant conceded that the issues impugning the Claimant's opposing documents were never raised in the Court below. In his defence, it was argued that he did not have enough time to raise such issues as the

time given was constricting. However, that since they are matters of law, they can be raised at any point, even at appellate stage. Reliance was placed on the case of **Cavmont Capital Holdings plc v Lewis Nathan Advocates**⁶.

5.11 Additionally, it was argued that by treating the Claimant's affidavit as an affidavit in Opposition to Interpleader Summons, the same was altered and needed to be re-sworn or file a fresh affidavit, in accordance with Order 5 Rule 20 (h) and (j) of the High Court Rules.

5.12 The 2nd Appellant attempted to raise an issue of bias against the learned Judge in the court below on the basis that the Claimant was represented by a law firm where the Learned Judge was once a partner. However, no arguments were advanced for the same. Similarly, Counsel also raised an issue of the Court's inherent jurisdiction, in accordance with the case of **Murray Roberts Construction Limited v Lusaka Premier Health Limited**⁷, but left the same hanging.

6.0 **RESPONDENT'S ARGUMENTS**

6.1 The Respondent opposed grounds 1 and 4 of the appeal while supporting grounds 2 and 3. In opposing ground 1 of the appeal, Counsel for the Respondent submitted that the lower court did not make any such holding which the 2nd Appellant is appealing against. Rather, that the portion being impugned in this ground of appeal was simply an observation that the Court below made in its introduction, based on the facts on record. That in any case, it did not form part of the Court's findings or orders, and therefore does not form part of the appealable portion of a judgement or ruling. The cases of **Zambia Telecommunications Company Limited v Aaron Mweene Mulwanda and Others**⁸ and **Minister of Home Affairs, Attorney General v Lee Habasonda**⁹, were cited to demonstrate that a judgment has various essential elements, which include an introduction setting forth the nature of the case.

6.2 Still on ground 1, it was also submitted that it is uncontested that the purpose of the stakeholder

interpleader was to prevent execution on the mortgaged property, which the Court below echoed in the introduction. Also, that the 2nd Appellant did not appeal against the ruling relating to the interpretation of judgment which he attempts to impugn in this appeal.

6.3 The Respondent supported grounds 2 and 3 of the appeal. In so doing, Counsel argued that the Respondent traced its interest in the suit bus from perfected security documents, dully registered with the Patents and Companies Registration Agency (PACRA) ahead of the Claimant's security. Additionally, that the Respondent has a superior judgement from this Court over the same bus.

6.4 Emanating from the above, it was argued that the Court below should have reviewed the above evidence and determined who had a superior interest to the suit bus in view of competing claims. That had the learned Judge considered the priority of registration, he would have come to the conclusion that the Respondent's claims superseded those of the Claimant. Counsel took refuge

in Section 52 (a) (b) (i) (ii) (iii) and (c) of the Movable Property (Security Interest) Act No. 2 of 2016, Section 240 of the Companies Act and, the case of **Betty Chizhyuka and 3 Others v Finance Bank Zambia Limited**¹⁰ and the Learned authors of African Law Volume 53 No. 2 pages 279 and 284 in an article entitled **“Registration and Ranking of Company Charges in Zambia by Akalemwa Ngenda”**, to the effect that priority of securities is determined by date of registration.

6.5 In opposing ground 4 of the appeal, Counsel submitted that the 2nd Appellant had sufficient time to peruse through the Claimant’s Affidavit in opposition. That the same had been served on the 2nd Appellant via email a day before the hearing and the same was delivered on the 2nd Appellant’s chambers on the morning of the date of the hearing. That in view of Order LIII Rule 9(1) of the High Court rules, there were no exceptional or compelling circumstances upon which the Judge could have adjourned the matter.

7.0 **CLAIMANT'S ARGUMENTS**

7.1 The Claimant also joined issue with ground 1 of the appeal. Counsel for the Claimant contended that the arguments presented by the 2nd Appellant are at variance with the ground of appeal. That the arguments show that the 2nd Appellant is challenging a ruling on interpretation of Judgment which is not the case.

7.2 The Claimant agreed with the Respondent that the interpleader summons was meant to forestall execution on the leasehold property, the 2nd Appellant having made an earlier application for interpretation of the judgment.

7.3 In opposing grounds 2 and 3 of the appeal, the Claimant argued that contrary to the 2nd Appellant and the Respondent's arguments, the real issue which was before the Court below and this Court is not about who had an earlier Judgement in time. Rather it is whether a person can bring an interpleader action after judgement. Counsel adopted the holding of the Court below that by virtue of the explanatory notes to Order 17/1/5 of the White Book, interpleader proceedings cannot be brought

after judgement against the creditor. To cement the above position, Counsel called in aid, the case of **Mubila Sianyama Mwilu v Kayuni Social Services Development and 5 Others**¹¹, and the Learned Authors of Halsbury's Laws of England 4th Edition, Vol. 37.

7.4 Arising from the foregoing, it was submitted that considering that the Claimant had already obtained a judgement against the suit motor vehicle, the interpleader summons were not properly before the Court below. As such, the Court below had no duty to delve into the Appellant's argument as to which judgement took precedence. The case of **Stanbic Bank Zambia Limited v Savenda Management Services Limited**¹², was cited to posit that the Court should not entertain an incompetent application.

7.5 In winding up, Counsel argued that the 2nd Appellant's arguments that the decision of Hon. Justice Musona overruled the decision of Hon. Justice K. Chenda is bereft of merit because the two judgements are unrelated. That being the case, the issue of overruling

does not arise. That in any case, it is trite that one high Court judge cannot overrule another.

7.6 In relation to ground 4 of the appeal, the Claimant firstly attacked this ground of appeal for being incompetent and urged us to dismiss it. Counsel contended that the said ground of appeal is couched in a narrative manner, thus offending Order 10 Rule 9 (2) of the Court of Appeal Rules. To emphasise that a ground of appeal should not be argumentative or narrative, reliance was placed on the case of **Kenneth Nchima v the Attorney General**¹³.

7.7 On the merits of the ground of appeal, it was contended that the 2nd Appellant's contention that the Notice of Motion to raise preliminary objection was incompetent and the Court should not have made any order on it, was not raised in the Court below. That subsequently, it cannot be raised on appeal before this Court. It was added that in any case, the motion to raise a preliminary objection was dismissed for being incompetent and as such it is difficult to comprehend the 2nd Appellant's grievance.

7.8 Counsel further argued that considering that the factual basis was the same, it was good case management for the Court below to order that the documents filed be treated as an opposition to the Interpleader Summons. As such, no prejudice was suffered from the order of the Court below to treat the affidavit as an opposition.

7.9 Similarly, that the only argument which the Claimant advanced was that the 2nd Appellant could not bring Interpleader Summons after judgment, by virtue of Order 17/1/15 of the White Book. That the 3 hours given to the 2nd Appellant was sufficient time.

7.10 In winding up, Counsel submitted that allegation of bias against the Judge in the Court below are unwarranted as the Court below is unable to defend itself in this appeal. That if the 2nd Appellant had any issues, he should have raised them in the Court below. We were thus urged to censure the 2nd Appellant in the strongest terms.

8 .0 **HEARING OF THE APPEAL**

8.1 At the hearing of this appeal on 22nd March, 2022 both parties relied on the filed arguments and proffered brief

oral arguments. In relation to ground 2 and 3 of the appeal, Mr Yalenga, Counsel for the 2nd Appellant submitted that the Court below relied on a wrong explanatory note to dismiss its interpleader application. That the Applicable explanatory note, which captures the prevailing circumstances is the one under Order 17/1/7 and 17/1/8 of the White Book and not Order 17/1/5 of the White Book. That had the Court below considered the said provisions and the supporting evidence of the right to execution on the suit bus, it would have come to a different conclusion.

8.2 Regarding ground 4 of the appeal, counsel contended that having found that the motion to raise preliminary issues was incompetent, the Court should have simply discarded it, instead of converting it to be an opposition to the Interpleader Summons. As such, the Court below should have deemed the 2nd Appellant's summons as unopposed. We were urged to uphold the appeal.

8.3 In response, Mr Pindani, Counsel for the Respondent echoed the 2nd Appellant's submissions that the Court

below wrongly relied on the explanatory note under Order 17/1/5 of the White Book, which according to counsel, applies to Order 17 Rule 1A of the White Book. Rather, that what is applicable is Order 17 Rule 1B of the White Book and the explanatory note under Order 17/3/7 of the White Book. It was added that the 2nd Appellant met the threshold for making the stakeholder interpleader summons as he has a financial stake in the outcome of the proceedings and subject matter, although he has no claim to the suit bus. Also, that there was no delay in making the interpleader application.

8.4 The Respondent urged this Court to consider Order 17 Rule 9 of the White Book and Section 13 of the High Court Act, to adjudicate on all matters in controversy. That we should find that there being multiple competing judgements, the Court below should have adjudicated on all the issues raised.

8.5 Mr Desai, the Respondent's in-house counsel added an argument on priority of interests under the Moveable Properties (Security Interest) Act, which we have already

captured elsewhere in this judgement. Save for the submission that according to Section 69 of the Moveable Properties (Security Interest) Act, a judgement creditor has priority at the time of execution.

8.6 Mr Mwamba, Counsel for the Claimant submitted in response to ground 2 and 3 that Order 17 (1) of the White Book presents two types of interpleader, namely a stakeholder interpleader under Rule 1A and a sheriff's interpleader under Rule 1B. That the present case involves a stakeholder interpleader, as is evident from the Summons. Thus, it was argued that for one to qualify to file a Stakeholder Interpleader Summons, they must satisfy the condition that they expect to be sued by more than two persons over the same subject matter. That by expectation, it means the application must be brought before Judgement. That this is in tandem with explanatory note 17/1/5 of the White Book. Counsel added that the reason why a stakeholder interpleader cannot be brought after judgement is to avoid pitting one judgement against another.

8.7 It was contended that having found that the stakeholder interpleader summon was incompetent before the Court, the issue of which judgment had priority is immaterial. Counsel then recited his arguments in ground 2 and 3, which we have already captured in this judgment. To avoid the risk of repetition, we shall not recite them here.

8.8 In reply, Mr Yalenga submitted that the issue of priority of judgement is material, in view of the principle of *stare decisis*. Counsel impugned the argument of good case management and reiterated that the Court below should have discarded the Motion to raise a preliminary issue together with its supporting affidavit and skeleton arguments.

9.0 **DECISION OF THIS COURT**

9.1 We have taken due consideration of the Record of Appeal and the arguments advanced by each party. It is evident from the record that the 2nd Appellant commenced Stakeholder Interpleader proceedings after the Respondent and the Claimant had already obtained judgment relating to the claims to the suit motor vehicle.

Both the Respondent and the Claimant have a claim to levy execution on the suit motor vehicle, which claims are founded on a judgement. It is also apparent that the 2nd Appellant's ultimate goal in filing the stakeholder interpleader summons is to get an order that favours the Respondent to levy execution on the suit motor vehicle on the ground that the Respondent's judgement was earlier in time and was affirmed by this Court. This is in a quest to protect his leasehold property for which he had executed a third-party mortgage in favour of the 1st Appellant.

9.2

As we perceive it, the issue at the heart of this appeal is whether the 2nd Appellant's stakeholder interpleader application was competent before the Court below given the two rival judgments already obtained by the Respondent and the Claimant. Put differently, whether a stakeholder interpleader can be deployed where the Claimants' claims have ripened into a judgement.

9.3 Given the above, we propose to handle all the grounds of appeal together as they relate to the same subject matter.

9.4 As already highlighted, the stakeholder interpleader summons was made under Order 17 of the White Book and Order 43 (1a) (2) and (3) of the High Court Rules.

The relevant provision is Order 17/1, which provides as follows:

(1) Where -

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued, the person under liability as mentioned in sub-paragraph (a) or (subject to rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

9.5 Order 43 (1) of the High Court Rules is couched similarly as Order 17/1 of the White Book. However, Order 43 (2) of the High Court Rules, stipulates the requirements that must be met in an interpleader action, as follows:

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise

(a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(b) that the applicant does not collude with any of the claimants; and

(c) that the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct

9.6 It is obvious that Order 17/1 of the White Book and Order 43 (1) of the High Court Rules above envisage two kinds of interpleader actions, namely a sheriff's Interpleader and a stakeholder interpleader. This is also evident from the explanatory note 17/1/2 of the White Book which provides the two categories. In fact, the

Learned Authors of Halsbury's Laws of England 4th Ed.
Vol. 25 Para. 1003, categorically state that relief in the High Court is available in two cases, namely, stakeholder's and sheriff's interpleader.

9.7 The present appeal is dealing with a stakeholder interpleader and as such we shall restrict ourselves to that. In the case of **Stevenson Harwood LLP v Medien Patentverwaltung AG a & Others**¹⁴, Lenon DJ on page 34 defined a stakeholder interpleader as a means by which a court compels competing claimants to the subject matter of the application to put forward their claims and have them adjudicated on, thereby enabling the stakeholder to drop out of the picture. From this, it is clear that the purpose of an interpleader action is to allow competing claimants to present their claims to the subject property to allow the court to determine the rightful Claimant. As shall be shown later in this judgement, Claimant's claims do not include claims which have already culminated into a judgement.

9.8 We have anxiously observed that the basis of the 2nd Appellant's claim of being a stakeholder and having *locus standi* to bring the stakeholder interpleader application subject of this appeal, is that his leasehold property had secured the facility that financed the purchase of the suit motor vehicle. In other words, the 2nd Appellant claims an interest in the suit motor vehicle based on a third-party mortgage. This raises the issue of whether the 2nd Appellant meets the threshold to interplead in this matter. In other words, it raises the issue of whether the 2nd Appellant had the locus standing to file the stakeholder interpleader summons.

9.9 Before a party can approach the Court, he or she must have the requisite *locus standi* in the matter. The Learned Authors of Black's Law Dictionary, 8th Edition at page 960, define *locus standi* as:

“The right to bring an action or to be heard in a given Forum”.

9.10 Similarly, the Learned Authors of Halsbury Laws of England Volume 1 at paragraph 56, state as follows:

“In order to maintain proceedings successfully, a plaintiff, or applicant must show not only that the Court has power to determine the issue, also that he is entitled to bring the matter before the Court”.

9.11 It is clear from Order 43 Rule 2 of the High Court rules that an applicant in an interpleader action must be disinterested in the subject matter in dispute and should have in his possession the property subject of the stakeholder interpleader.

9.12 In the Canadian High Court of Justice case of **Clarkson Co. Ltd. v. City of Hamilton and others**¹⁵, the Court observed as follows:

One of the cases cited as a result of this rule is the case of Murdoch v. Guaranty Trust Co. of Canada, [1948] O.W.N. 169. This was a decision of the late Mr. Master Lennox and was heard by my brother Wilson on appeal who sustained Mr. Lennox's findings for the reasons he himself had given and others which my brother Wilson adduced. The facts are not precisely similar. In giving his judgment Mr. Master Lennox, who was very experienced in this field, at p. 169, observed:

Apart from the right of a sheriff to interplead, the right has been restricted to a mere stakeholder.

It is quite obvious if one reads his judgment and that of my brother Wilson that the person who wished to interplead in respect of some mortgage documents was by no means a stakeholder. In the course of his judgment Mr. Master McBride observes at p. 4 of his reasons which were given to me, as follows:

The principle of interpleader is, that when two persons are concerned in a dispute, and the third person has that which is to be the fruit of the dispute, and has no part in it, but is willing to give it up according to the result of the dispute, if that third person is sued, he is not obliged to be at the expense or risk of defending the action, but on giving up what is sometimes called "the thing in medial" he is relieved, and the Court directs that the persons between whom the dispute really exists, should fight it out at their expense": Evans v. Wright (1865), 5 New Rep. 331, per Willes, J., at p. 333.

9.13 Similarly, the Learned Authors of Halsbury's Laws of England, 4th Ed. Vol. 25. Para 1007, state as follows:

“Where the claim is for a specific article or fund, any applicant for relief, other than the sheriff, must be in possession of the subject matter in dispute between the claimants, for he has to satisfy the Court that he is willing to pay or transfer into court or to dispose of it as the court may direct”.

9.14 Although the above authorities are not binding on us, we are persuaded by them. It follows that a person commencing a stakeholder interpleader action must be disinterested in the subject matter. Thus, a person interpleading based on mortgage documents, as the 2nd Appellant is doing, is not a stakeholder. Additionally, the applicant must have in its possession the property subject of the interpleader action. In the present appeal, there is no evidence suggesting that the 2nd Appellant had in his possession the suit motor vehicle. Thus, in a stakeholder interpleader, the stake is the property itself

and a person is a stakeholder by virtue of being in possession of the property subject of an interpleader. In view of the foregoing, the 2nd Appellant did not therefore meet the requirements for commencing an interpleader action.

9.15 Reverting to the issue of whether an interpleader action can be sustained where the Claimant's interest has already resulted in a judgment, the explanatory note 17/1/5 of the White Book is instructive and it is that an interpleader cannot be filed against a claim which has already culminated into a judgment. In the case of **Stevenson & Son v Brownell**¹⁶, the position of the Court was that the "claim" in interpleader or stakeholder actions did not extend to concluded claims where judgment has been obtained

9.16 Similarly, in **Mio Art Pty Ltd v Mango Boulevard Pty Ltd & Ors**¹⁷, the Supreme Court of Queensland, held that it is too late to interplead when the plaintiff's claim has already passed into judgment.

9.17 We are alive to the 2nd Appellant and the Respondent's contention at the hearing of this appeal that the explanatory note 17/1/5 of the White Book does not apply to stakeholder interpleader actions. Rather, that what is applicable is the explanatory note under 17/1/7, 17/1/8 and 17/3/7 of the White Book.

9.18 We have carefully considered the provisions of Order 17 of the White Book. As earlier mentioned, Order 17 provides for two kinds of interpleader actions, namely a stakeholder interpleader, provided for in Order 17/1 (a) and a sheriff's interpleader, provided for in Order 17/1(b) of the White Book. The heading of the explanatory note 17/1/5 reads: "expects to be sued ... by two or more persons". Clearly, the heading is instructive that the explanatory note relates to a stakeholder interpleader action, covered under Order 17/1(a) of the White Book. In fact, the said words emanate from the said provision. We are therefore not moved by the 2nd Appellant and Respondent's argument.

9.19 In the present case, both the Respondent and the Claimant's claim to the motor vehicle having already ripened into judgements, interpleader proceedings could not issue. It follows that grounds 2 and 3 of the appeal are destitute of merit and are therefore dismissed.

9.20 We are also not persuaded by the arguments advanced in ground 1. The Lower Court's observation that this was a latest attempt to forestall execution on the leasehold property was based on the Court's ocular observation based on the conduct of the parties in the matter. In any case, this portion did not influence the Court's decision as it does not appear anywhere in the Court's reasoning. As such, this ground of appeal is bereft of merit.

9.21 In ground 4 of the appeal, the 2nd Appellant is aggrieved by the 3 hours given to him to study the Claimant's documents in opposition to his stakeholder interpleader application and the order to treat the Claimant's documents accompanying the Notice of motion to raise a preliminary objection as an opposition to the stakeholder interpleader. The 2nd Appellant conceded

that this issue was not raised in the Court below. It is trite that a matter that is not raised in the Court below cannot be raised before a higher Court as a ground of appeal. We are fortified by the Supreme Court of Zambia's decision in the case of **Wilhelm Roman Buchman v Attorney General**¹⁸.

9.22 Without going into the merits of this argument, our view is that because of the position we have taken above, even without the Claimant's documents in opposition, the 2nd Appellant's stakeholder interpleader was still going to be dismissed for being incompetent. We are fortified by the case of **Khalid Mohamed v Attorney**¹⁹, that the failure of the opponent's case does not automatically entitle a party to succeed. A party has to prove his case, which the 2nd Appellant failed to do.

9.23 In any case, Order 30 Rule 16, High Court Rules being relied upon by the 2nd Appellant, applies to the service of motions. It prescribes a minimum of 4 clear days from the date of service of motion. There is no corresponding provision prescribing when documents in opposition

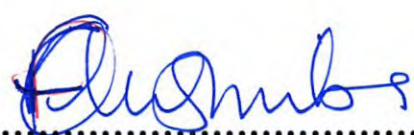
must be served. As such this argument is flawed. Ground 5 of the appeal suffers no better fate. The same is dismissed for want of merit.

10 .0 **CONCLUSION**

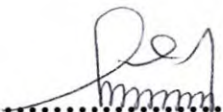
10.1 In a nutshell, all the grounds of appeal having been dismissed, the appeal is dismissed in its entirety. However, no orders have been made regarding costs as this case gave this Court an opportunity to clarify a stakeholder interpleader action. It is therefore our view that this is the proper case in which to exercise our discretion not to award costs.



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M. J. SIAVWAPA
JUDGE PRESIDENT



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F. M. CHISHIMBA
COURT OF APPEAL JUDGE



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A. M. BANDA-BOBO
COURT OF APPEAL JUDGE