

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

**2016/HP/399**

**BETWEEN:**

**KASHY INTERNATIONAL LIMITED**



**PLAINTIFF**

**AND**

**CELTIC FREIGHT LIMITED**

**DEFENDANT**

**BEFORE HON. JUSTICE ELITA PHIRI MWIKISA**

**FOR THE PLAINTIFF: MRS. L. MUSHOTA, MESDAMES MUSHOTA AND  
ASOCIATES**

**FOR THE DEFENDANT: MS MUTEMI MESSRS THEOTIS MUTEMI LEGAL  
PRACTITIONERS**

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## **RULING**

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**Cases referred to:**

1. *Hakainde Hichilema and 5 Others v. The Government of the Republic of Zambia – Appeal No. 28/2017*
2. *Shoprite Holdings and Shoprite Checkers (PTY) Limited v. Lewis Chisanga Mosho and Lewis Nathan Advocates (sued as firm) SCZ judgment No. 40 of 2014*
3. *Zambia Seed Company Limited v. West Coop Haulage Limited & Another SCZ Appeal No. 112/2013*
4. *Landis v. North America Co. 2999 US 248 (1936)*
5. *Jefferson Limited v. Bhetcha (1979) ALL ER 1108 at page 1113*

6. *Walsh Securities Inc v. Cristo Property Management Limited et ALS 7FSUPP ZD, 523*
7. *Attorney General for Zambia v. Meer Care & Desai and 19 Others*

**Works referred to:**

1. *Halsbury Laws of England 4<sup>th</sup> edition volume 37*

This is the defendant's *ex parte* application for an order to stay proceedings pending verification exercise and criminal investigations. The application is supported by an affidavit filed into court on 27<sup>th</sup> February, 2024 and sworn by one Adrian Friend, the deponent herein. He *inter alia* deposed that on 15<sup>th</sup> February 2024, the defendant's witness "DW" gave his evidence in chief and was partially cross-examined. That during cross-examination, the defendant witness was asked how he knew that the goods were transported on 3 different trucks and in answer to this question, the defendant witness responded that he knew the same based on the logistics report at page 19 of the plaintiff's bundle of documents, and that the date of the said documents was 16<sup>th</sup> November, 2015, which the plaintiffs served on the defendants. That since the court did not have a copy of the plaintiff's bundle of documents, the plaintiffs' advocates availed the court with a copy of the plaintiff's bundle of

documents during trial. That when the court noticed that the date of the document in the plaintiff's bundle of document was different from that mentioned by the defendant witness, a query was made and an examination of the logistics report was done by the court in the presence of all the parties. That the examination revealed some discrepancies with regards to the plaintiff's bundle of documents in the plaintiff's possession and the plaintiff's bundle of documents, in the defendant's possession. That the customer details in the plaintiff's bundle of documents and court's possession, bear email address of Kashy Internation under the customer details column whereas in the plaintiff's bundle of documents in the defendant's possession, the customer details do not bear the email address of Kashy Internation under the customer details column. Further that in the plaintiff's bundle of documents and in the plaintiff's bundle of documents in the court's possession, location of cargo for manifest No. N03101 is Lusaka, whereas in the plaintiff's bundle of documents in the defendant's possession, location of cargo for manifest No. N03101 is Kasane, Botswana. That further in the plaintiff's bundle of documents and in the plaintiff's bundle of documents in the court's possession, location of cargo for manifest No. N03099 is Kasane,

Botswana, whereas in the plaintiff's bundle of documents in the defendant's possession, the location of Cargo for manifest No. N03099 is enroute Martinsdrift Boarder.

Further that location for cargo manifest No. N03092 is Kazungula Zambia, in the plaintiff's bundle of documents in the court's possession whereas location of cargo for manifest No. N03092 is enroute Martinsdrift Boarder in the plaintiff's bundle of documents in the defendant's possession, and that data is reflected as at 2015-11-19 in the plaintiff's bundle of documents in the court's possession and data is reflected as at 2015-11-16, 08:28 in the plaintiff's bundle of documents in the defendant's possession. That owing to these discrepancies, the matter was adjourned to 29<sup>th</sup> February, 2024, for continuation of trial. The deponent further deposed that he noted that in addition to the discrepancies identified by this court there were further discrepancies bordering on the font type and size as well as the defendant's logo as contained in the disputed document. That owing to the above mentioned discrepancies, the defendant has taken issue with the document at page 19 of the plaintiff's bundle of documents in the plaintiff's possession and has requested for an original copy of the same, to enable the defendant conduct the

necessary investigations in accordance with the directive of the court for an authentication exercise to be done. That the defendant had requested for an explanation from the plaintiffs, on the discrepancies identified in the document which explanation the defendant required before close of business on Monday, 26<sup>th</sup> February, 2024. That as things stand, it appears, that the document at page 19 of the plaintiff's bundle of documents may be fraudulent and that this only came to the defendant's attention on 15<sup>th</sup> February, because that was the day when the defendant had sight of the plaintiff's bundle of documents in the plaintiff's possession. That owing to the above, the defendant's client requested that in the absence of a plausible explanation from the plaintiff, the defendant should report the matter to the police to investigate. That in view of the intended investigations, the defendant is desirous that proceedings herein be stayed pending these investigations and that if the proceedings are not stayed, the investigations will be rendered academic with a likelihood of the plaintiff relying on a fraudulent document to obtain a decision in their favour.

On the other hand, the plaintiffs filed into court their affidavit in opposition dated 7<sup>th</sup> March, 2024, and sworn by one Lazarous

Sakala. It was deposed therein that there were two documents in court on the 15<sup>th</sup> February, 2024, both numbered 19, but content different. That the court directed that the parties conduct a verification to resolve the differences in content. That outside the court chambers after the sitting, the defendant's Adrian Friend and its Counsel demanded for an original copy of the document in the plaintiffs and the court's bundle filed by the plaintiff, on account that the font, the log, and content were suspect. That the document in the plaintiff's and court's copy is the one that was refused by the defendant and not the one in the defendants copy number 19 also by the plaintiff.

That following the sentiments above, the deponent could only be detailed on Monday 19<sup>th</sup> February, 2024, and that he went through the emails and printed the same document from a different printer and it was evident that every feature in the reprint were exactly the same as those in the disputed document. That before the plaintiff's could serve the new documents in its original form, the defendant wrote and served on the plaintiff's advocates a scathing letter dated 22<sup>nd</sup> February, 2024, threatening to report fraud to Zambia Police and the Law Association of Zambia for investigations if the plaintiff

and Counsel did not answer its queries by Monday 26<sup>th</sup> February, 2024.

That taken a back by the letter, exhibit “LS1” in the affidavit of verification, the plaintiff filed its findings in court and served the defendant’s Counsel on 27<sup>th</sup> February, 2024. That on 28<sup>th</sup> February, at 14:08 hours, the defendant’s advocates, Joy Mutemi sent to the plaintiff’s Counsel an SMS saying:

***“Good afternoon Counsel, as a matter of courtesy, I thought of informing you that we have applied for a stay of proceedings” but never sent the application as now the second shows”.***

That regarding paragraph 9 of the defendant’s affidavit in support, at discovery, the documents had not yet been photocopied or bound for filing and serving, and an error must have happened to produce two similar automated documents but different notifications as one in the bundles hence both bearing the same page 19, both being originated by the defendant and the discrepancies being no discrepancies at all but documents generated by the defendant. That as this index item No. 13 shows in relation to the disputed document at page 19, in its logistics report, showing the arrival of the first container and truck in Lusaka, dated 19<sup>th</sup> November, 2015, but the document in the

defendant's bundle though filed by the plaintiff, was generated by the defendant as shown to the deponent and marked "LS2" to "LS4", other automated documents similar to the copy in the plaintiff's bundle which was originated by the defendant, which is disputed. That the one in the bundle, which the defendant, has not disputed, is one of those documents also generated by the defendant.

That in paragraph 16 of the defendant's affidavit, Adrian Friend states that in the absence of a plausible explanation from the plaintiff "we report this matter to the police to investigate", yet with a plausible explanation, the defendant, by its Counsel retorted that neither the plaintiff nor its Counsel are experts in computers, hence their reporting to Zambia Police and Law Association of Zambia.

That the plaintiff opposes the stay of proceedings which are civil, to await criminal proceedings, as both can run simultaneously. That the stay of proceedings will be prejudicial to the interest of the plaintiff which has been crippled by the defendant's numerous applications and inter locutory proceedings in this court and in the Court of Appeal, thereby delaying the conclusion of the matter.

That should the plaintiff and its Counsel be found liable after the purported criminal investigations and proceedings, the defendant will receive the relief it seeks in making a false report to the Zambia Police and Law Association of Zambia.

At the hearing of the matter on 29<sup>th</sup> February, 2024, the learned Counsel for the defendant submitted that following the discovery of the discrepancies between the documents at page 16 of the plaintiff's bundle of documents which was in the possession of the plaintiff and page 19 of the plaintiff's bundle of documents which was in the possession of the defendant, the court had directed the parties to conduct a joint verification and thereafter to submit the verified documents for authentication before a Commissioner for Oaths. That the defendant wrote to the plaintiff's Counsel requesting for the original document at page 19 of the plaintiff's bundle of documents and asked that it be availed to them by Monday, the 26<sup>th</sup> February, 2024. That when the defendant noted that on Monday of the said date, there was no response from the plaintiff's Counsel, they thought it wise to put in this application for a stay of proceedings owing to the short period of time between Monday and the date of hearing which was 29<sup>th</sup> February, 2024. That due to the fact that the

verification had not been done, the defendant noticed further discrepancies between the two competing documents and instructed its lawyers to report the matter to the Police for investigations because their client is suspicious that the said documents could be fraudulent. That to the defendant's surprise, on Tuesday, the 27<sup>th</sup> February, 2024 they were served with a verification document prepared as an affidavit by the plaintiff's advocates in which the plaintiff appears to have done its own verification without the involvement of the defendant contrary to what was directed by this court. That the plaintiff also exhibited email correspondence which they claim emanated from the defendant on 10<sup>th</sup> December, 2017. There is equally email of 19<sup>th</sup> November, 2019, alleging that this document at page 19 which is being disputed by the defendant, was attached to this email. That the plaintiff has equally provided an explanation for the difference in characters and fonts on the two competing documents. That seeing that this verification was done solely by the plaintiff without the defendant, there is no way that the defendant would verify the veracity of the contents of the said affidavit for verification of document and that the court should not accept this document. That owing to that, the court grants the

defendant's application to stay proceedings so that there can be compliance with the directive that was given by this court on 15<sup>th</sup> February, 2024, as well as to facilitate possible investigations by the police.

On the other hand, the learned Counsel for the plaintiff, Mrs Mushota, submitted that after the hearing of 15<sup>th</sup> February, 2024, the parties gathered outside the court's chambers and the defendant demanded for the original documents and did say that the font was different from their own. It was Mrs Mushota's submission that what determines the font or size of the character of an email is the computer on which it is printed. That it does not come with the sender's font size or character. She submitted that, that was explained to the defendant by the document verification which the plaintiff filed into court. That the verification that was required of bringing in the original document had to be referred to the plaintiff. That the court will notice that the 15<sup>th</sup> February, 2024, was a Thursday and Friday was a full trial date in another court. That the request was made to the client to the plaintiff on Monday the 19<sup>th</sup> February, 2024. That on Thursday, the 22<sup>nd</sup> February, the plaintiff got a letter from the defendants' advocates which was not in good

taste at all, alleging fraud both on the plaintiff's part and on Counsel's part. That to show that Counsel for the plaintiff was a suspect, the matter would be referred to the Law Association of Zambia (LAZ) for investigation. That LAZ does not investigate litigants who are not members. That the letter of 22<sup>nd</sup> February, demanded a response by way of explanation of the discrepancies and that is in tandem with the original document. That the plaintiff's Counsel prepared the documents in their original form by going back to the events of that day and because of the venom of the letter and tendency of being combatant by the defendants Counsel, the plaintiff filed a document of verification and served. That the court did not order that the verification be done by Monday 26<sup>th</sup> February, but simply ordered that the verification be done before 29<sup>th</sup> February, 2024. That further the court did not say or order that the document should be verified or certified by a Commissioner for Oaths and that Counsel for the defendant was therefore misleading the court because of that kind of venom, she was misleading herself. That the only person who can access another person's email, unless it's sent to that person, is the owner of that email address. That all that the court requires the parties herein to do, is to show their emails and

that without password neither of the parties can access the said emails. That the plaintiff sees this tactic as another way to further delay these proceedings. That the plaintiff's Counsel is aware that a party cannot generate a document other than that which is sent by the sender. That Counsel for the plaintiff had taken great exception to the allegation of a criminal nature and would not stand in the way of the defendant so that they can carry out the said investigations using the police and LAZ, but that the defendant should be aware of the consequences, if it is found that their complaint is without merit, confirming that they were fishing for faults with an intention to derail these proceedings. That it was not necessary for the parties to sit with a marshal in that the police when investigating, collect all documents relating to a matter.

In reply, Ms Mutemi for the defendant, submitted that Counsel for the plaintiff had submitted that the font size of an email is determined by the computer from which it is printed, Ms Mutemi's submission is that there is no evidence of this. That with due respect to senior Counsel for the plaintiff, the defendant's Counsel believes that neither senior Counsel nor her client are experts in the field of computers and printers and that this explanation or proposition

tendered by the plaintiff is therefore speculation and is therefore an opinion. That even if Counsel were right by submitting that a computer can change font, the defendant Counsel's submission is that the plaintiff would still have a case to answer because it is not possible for the computer to change the date of a document. In addition, it was Counsel's submission that the court will note from exhibit "LS3" in the verification of documents affidavit filed into court on 27<sup>th</sup> February, 2024, that what is purported to be the document at page 19, is a PDF document, so it is very hard for one to believe that a PDF document can be altered.

That pertaining to the letter on the disputed document, the defendants do not agree that the defendant is alleging fraud at the instance of Counsel as Counsel has understood it. That what is being communicated is a suspicion that the document in question is fraudulent and hence the use of the word "may". That there would only be a report to LAZ if no plausible explanation was tendered. That the contents of the defendant's letter may have been misunderstood by Counsel for the plaintiff. It was further submitted by Ms Mutemi that Counsel for the plaintiff has submitted that in this verification affidavit they may have exhibited the original email

and the attachment sent by the defendant, however neither the defendant nor this court has a way of knowing that what the plaintiffs are purporting to be an original document, is actually one. That the plaintiff's appear to be mistaken and when they submit that Counsel for the defendant is dwelling on the font of the document, but the letter which has been exhibited as "LS4" in both the verification affidavit and defendant's affidavit, will show that the defendant has not only taken issue with the font but that there is actually a table where the discrepancies are highlighted.

On the issue of verification exercise being done before a Commissioner for Oaths, Ms Mutemi, submitted that it was her understanding of what the court had stated on the 15<sup>th</sup> February, 2024, which fact could be attested to by her client and 2 officers of her client. That the defendant believes that it is because of this court's directive that the parties do go before a Commissioner for Oaths. That the plaintiff filed this verification affidavit and had it deposed before a Commissioner for Oaths. That the court will note that the plaintiff has not disputed nor objected to investigations being conducted by the Police and in the defendants view, this in itself is

sufficient ground for this court to stay proceedings pending the said investigations.

I have carefully considered the evidence on record and have noted the written submissions from both Counsel on both sides. I am of the considered view that both parties are aware of the fact that on 15<sup>th</sup> February, 2024, this court ordered that a verification exercise be jointly conducted by both parties, so that the document in question at page 19, of the plaintiff's bundle of documents can be authenticated as an original document or be verified as true copy of the original document. My order was based on the fact there were discrepancies that were discovered on the said in court during trial on the said document. Order 3 rule 2 under which the application is made provides that:

***“Subject to any particular rules, the court or a Judge may, in all causes and matters make any interlocutory order which it or he considers necessary for doing justice whether such order has been expressly asked for by the person entitled to the benefit of the order or not”.***

It was Counsel's submission that from the above authority, this court has the discretionary power to grant the Applicant the order sought, which is to stay these proceedings. Counsel for the Applicant referred

the court to the case of **Hakainde Hichilema and 5 Others v. The Government of the Republic of Zambia – Appeal No. 28/2017<sup>1</sup>**,

wherein the Supreme Court stated that:

***“From the warding, order 3 rule 2 gives wide discretionary power to a court to make interlocutory orders even if the said orders are not expressly asked for in order to meet the events of justice”.***

It was further submitted that Halsbury Laws of England 4<sup>th</sup> edition volume 37 at paragraph 437, explains the nature of stay of proceedings as follows:

***“A stay of proceedings arises under an order of court which puts a stop or “stay” on the further conduct of the proceedings in that court at the stage which they have reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the action taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party and to prevent the abuse of process. The order is made generally in the exercise of the court’s discretionary jurisdiction, and by way of summary process, that is without a trial on the sustentative merits of the case and at any rate in the exercise of it’s inherent jurisdiction....”***

Applying the aforesaid, the defendant submitted that the purpose of the application for stay of proceedings is to prevent the trial scheduled for continuance on 29<sup>th</sup> February, 2024, and to prevent

undue prejudice being occasioned to the defendant owing to the suspected fraudulent document which the plaintiff is seeking to use to advance it's case during trial. That the effect of staying the proceedings will be to maintain the status quo of these proceedings pending the investigations by both the parties and the police. Counsel for the defendant referred this court to the case of **Shoprite Holdings and Shoprite Checkers (PTY) Limited v. Lewis Chisanga Mosho and Lewis Nathan Advocates (sued as firm) SCZ judgment No. 40 of 2014<sup>2</sup>**, where the court held as follows:

***“We have stated above that there is no complete bar to civil and criminal proceedings involving the same parties’ proceedings concurrently. However, a court must guard against the real danger of a potential miscarriage of justice in the criminal proceedings if the court did not intervene”.***

That applying the aforesaid authority, it was submitted that this case warrants a stay of proceedings to guard against the real danger of a potential miscarriage of justice.

The learned Counsel for the plaintiff on the other hand inter alia submitted that the Supreme Court Practice (white book) vol 2 at ZDA-358 provides as follows:

***“Where there are concurrent civil and criminal proceedings against the same defendant arising out of the same subject matter, there is no principle of law that the plaintiff in the civil proceedings is to be debarred from pursuing the action in accordance with the normal rules...but the civil court has a discretion to stay the proceedings if it appeared to the court that justice between the parties so required, having regard to concurrent criminal proceedings arising out of the same subject matter....”***

It was submitted that in casu, the document at page 19 in both bundles of the plaintiff were generated by the defendant, just like the many others with different particular dates and times, and an error in producing one document on the assumption that it was the same with the other, even though generated by the defendant, does not make it fraudulent. That the defendant’s application to stay these proceedings was brought malafides. Counsel referred the court to the case of **Zambia Seed Company Limited v. West Coop Haulage Limited & Another SCZ Appeal No. 112/2013<sup>3</sup>**, wherein the supreme court guided that:

***“The court must be satisfied that the application is brought bonafide or in good faith and not designed to abuse court process.....”***

Counsel further referred this court to the case of **Landis v. North America Co. 299 US 248 (1936)**<sup>4</sup>, wherein the Supreme Court stated that:

***“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of cases on its dockets with economy of time and effort for itself, for Counsel and Litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance .....True the suppliant for a stay must make out a clear case of handship or inequality in being required to go forward .....*”**

The court was also referred to the case of **Jefferson Limited v. Bhetcha (1979) ALL ER 1108 at page 1113**<sup>5</sup> where the court held that:

***“.... The burden is on the defendant in the civil action to show that it is just and convenient that the plaintiff’s ordinary rights of having his claim processed and heard and decided should be interfered with. Of course, one factor to be taken into account, and it may well be a very important factor, is whether there is a real danger of the causing of justice in the criminal proceedings”.***

It was submitted that there is no real danger in casu of causing any injustice to the defendant in the criminal proceedings, nor are there any criminal proceedings before any court.

Further that in **Shoprite Holdings Limited, Shoprite Checkers (PTY) Limited v. Lewis Chisanga Mosho**, Supra, the appellant appealed against the High Court decision staying civil proceedings, pending the determination of concurrent criminal proceedings against a party. The order staying proceedings was set aside.

Counsel also submitted that the stay in another American case of **Walsh Securities Inc v. Cristo Property Management Limited et ALS 7FSUPP ZD, 523<sup>6</sup>**, was for a specific period, while in casu, the defendant has not produced any document of criminal proceedings and are seeking an open-ended stay.

Having considered the affidavit evidence on record together with the skeleton arguments and written submissions, for which I am indebted to Counsel, I am of the considered view that it is a fact and it is not disputed by both Counsel and as the court ordered in its order of 15<sup>th</sup> February, 2024, there are clearly discrepancies in the document at page 19, of the plaintiff's bundle of documents. The plaintiff has actually conceded that there are discrepancies between the courts copy of the plaintiff's bundle of documents and indeed the defendant's copy of the plaintiff's bundle of documents, specifically

at page 19, hence the courts order that the parties should between them carry out a verification exercise on the authenticity of the said document on or before the 29<sup>th</sup> February 2024. I find that none of the parties herein complied with the court's order to jointly or in consensus, carryout the said verification exercise. The plaintiff instead went ahead and conducted its own verification exercise minus the input of the defendant. This is not what the court had ordered the parties to do. What could have been done, was for the parties to meet and sit down and have a joint inspection of documents and even invite an Information Technology (IT) expert, who is knowledgeable about computers and printers, to provide his or her expert opinion on the issue, rather than for the plaintiffs to unilaterally conduct a verification of the document in issue without the defendant's participation, hence the lack of consensus on the matter at hand. So much time has been wasted over a very straight forward issue that could easily have been resolved as the court had ordered.

I am therefore not satisfied, as is the case with the defendant, with the verification exercise of the document at page 19, of the plaintiff's bundle of documents and hereby order that it be expunged from the

record and I do hereby expunge and set it aside accordingly. Thus said, the document at page 19 of the plaintiffs' bundle of documents, shall not be considered in these proceedings as it may not be genuine or original.

On the issue of the defendants' application for stay of the proceedings, to allow for criminal investigations in the matter, I am fortified by the holding in the case already referred to above namely **Shoprite Holdings Limited, Shoprite Checkers (PTY) Limited v. Lewis Chisanga Mosho**, Supra, wherein the Supreme Court inter alia held that:

***“The threshold for a stay of civil proceedings due to concurrent criminal proceedings is quite high.....This position is supported by paragraphs 20A – 358 of the white book, volume 2, 1999 edition referred to above. Further, paragraph 858 of Halsbury’s Laws of England, 4<sup>th</sup> Edition Reissue volume 37, states the following on an application to stay a claim where there are related criminal proceedings:***

***“The evidence in support of the application must contain an estimate of the expected duration of the stay and must identify the respects in which the continuance of the civil proceedings may prejudice the criminal trial”.***

The Supreme Court in the above case went on to emphasize that:

***“It is therefore cardinal for an applicant to establish that he would be prejudiced by the continuance of the civil***

***proceedings as there is no right to silence in the context of civil proceedings”.***

As the Supreme Court guided in the said case, the Judge in considering an application for stay due to parallel criminal proceedings has to exercise his or her discretionary power by balancing competing interests, and that each instance is sui generis. That the case law discloses five factors that typically bear on the decisional calculus, namely;

- (i) The interests of the civil plaintiff in proceeding expeditiously with the civil litigation, including the avoidance of any prejudice to the plaintiff should a delay transpire;**
- (ii) The hardship to the defendant, including the burden placed upon him, should the case go ahead in tandem;**
- (iii) The convenience of both the civil and criminal courts;**
- (iv) The interest of third parties; and**
- (v) The public interest.**

The Supreme Court in the above mentioned case, also adopted the reasoning in the case of **Attorney General for Zambia v. Meer Care & Desai and 19 Others**<sup>7</sup>, namely, that the court should ring fence the civil proceedings when need arises so that an order is made that none of the evidence adduced by the defendants can be used against them in criminal proceedings nor any of the documents produced in

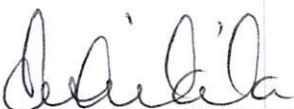
civil proceedings. I however, note that there are no criminal proceedings before any court to warrant a stay of these proceedings.

In conclusion, I would like to state that the issues raised in this application are quite unfortunate, as these are issues that should not have further delayed the hearing this case to the detriment of mostly the plaintiff who commenced these proceedings in 2016, and todate, the matter has not been determined by this court. Further delaying these proceedings will cause a miscarriage of justice in my view and it is for this reason that I order that this matter comes up on 28<sup>th</sup> February, 2025, at 10:00 hours for continued trial.

The application for stay is dismissed. I award no costs.

Leave to appeal is granted.

Dated at Lusaka the .....<sup>29<sup>th</sup></sup>..... day of January....., 2025

  
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**ELITA PHIRI MWIKISA**  
**JUDGE**