

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2018/HP/0848



BETWEEN

CHRISTOPHER CHILONGO (suing as Secretary
General of City of Football Club 1970)

PLAINTIFF

AND

**CAVMONT FMO CORPORATION LIMITED
FORLI LIMITED**

1ST DEFENDANT

2ND DEFENDANT

**Before the Honourable Ms. Justice S. Chocho, in Chambers on the 27th day
of March, 2025.**

For the Plaintiff (s):

*Ms. CK Puta of Messrs Sinkamba Legal
Practitioners.*

*Mr. N. Okware of Messrs Okware and
Associates.*

For the Defendant (s):

*Mrs. S. Kalima Banda and Mr. K. Mulenga of
Messrs J and M Advocates.*

Mr. Y. Yosa of Messrs May and Company.

RULING

Cases referred to:

- 1. Fred Mubiana V. Zesco Limited (2012) ZRL 165.**
- 2. Carmine Safaris Z Limited and Another V. Zambia national Tender Board and 6 others Appeal No. 145 of 2003.**
- 3. Sonny Paul Mulenga, Vismer Mulenga, Chinama Hotels Limited, Elephant's head Hotel Limited V. Investrust Marchant bank Limited (1999) ZR 101 (SC).**
- 4. Nyampala Safaris Z Limited and 4 Others V Zambia Wildlife Authority and 6 others SCZ/8/179/2003.**

1. INTRODUCTION

- 1.1. This Ruling is in respect of the Defendants application for an Order to stay execution of Judgment dated December 9th, 2024, pending hearing and determination of Appeal.
- 1.2. The Defendants filed an affidavit, skeleton arguments and a list of authorities dated December 11th, 2024. The Defendants filed exparte summons but this Court gave an Inter Partes date for all parties to be heard.
- 1.3. The Plaintiff filed an affidavit in opposition, skeleton arguments and list of authorities on December 18th, 2024.
- 1.4. In response to the Plaintiff's affidavit in opposition, the Defendants filed an affidavit in reply on 16th January, 2025.
- 1.5. The application was heard on January 21st, 2025.

2. AFFIVIDAVIT EVIDENCE

- 2.1. The Defendants by Affidavit sworn by one Thomas F. Ryan averred that Judgment was passed in favour of the Plaintiff on December 9th, 2024 and leave to appeal duly granted.
- 2.2. The Defendants further aver that being dissatisfied with the Judgment they caused to be filed a Notice and Memorandum of Appeal before the Court of Appeal on December 11th, 2024.
- 2.3. The Defendants aver that their Memorandum of Appeal reveals an appeal with high prospects of success and as such the Court must grant stay of execution of its Judgment of December 9th, 2024.
- 2.4. The Defendants aver that despite the Judgment providing for a period of 4 months before execution, the Plaintiff has already started making efforts to execute the same.

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- 2.5. The Defendants further aver that the stay of execution is necessary to maintain the status quo and not render the Defendants appeal nugatory.
- 2.6. The Defendants aver that no prejudice will be occasioned to the Plaintiff if the stay of execution is granted.
- 2.7. The Defendants further aver that this is a proper and fit case for this Court to exercise its discretion and grant the Order for stay of execution.
- 2.8. The Plaintiffs filed in opposition an affidavit deposed by one Christopher Chilongo, who avers that no efforts have been made by the Plaintiff to access the Lewanika Mall, subject of the Judgment. He further avers that no proof has been adduced by the Defendants to connect him directly to the chat messages appearing as "TFRI" in the Defendants affidavit in support. That the redacted messages show that the Defendants come to equity with dirty hands.
- 2.9. The Plaintiff further avers that the Defendants appeal does not show any prospects of success and their appeal lacks merit. The appeal is aimed at denying the Plaintiff fruits of its Judgment.
- 2.10. The Plaintiff avers that the 4 months period in the Judgment given for the parties to agree on quantum of damages, loss and restitution/compensation, the Defendants will not suffer any irreparable damage.
- 2.11. The Plaintiff further avers that it will suffer prejudice of loss of use of land if the Order for stay of execution is granted.
- 2.12. The Defendants filed an affidavit in reply and aver that the Plaintiff has in fact sent correspondence to the tenants of Lewanikika Mall.

- 2.13. The Defendants aver that no prejudice will be occasioned to the Plaintiff by the grant of Order for stay of execution.

3. **LAW AND ARGUMENTS**

- 3.1. The Defendants in their arguments rely on many authorities asking for this Court to grant the stay of execution of Judgment so that their appeal can be heard and determined on merit.
- 3.2. The Defendants submit that their Memorandum of Appeal and Grounds of Appeal launched before the Court of Appeal shows the prospects of success. That the Defendants would suffer irreparable damage if the Judgment is executed and the Plaintiff has not shown capacity to compensate the Defendants in event that the appeal is successful.
- 3.3. The Defendants rely on the case of **Fred Mubiana V. Zesco Limited (2012) ZRL 165**. The authority underscores or outlines the test a Court ought to consider before granting a stay of execution. The Defendants submit that their case satisfies/passes the test which is that they have shown that their appeal has prospects of success and irreparable damage.
- 3.4. The Defendants also rely on the case of **Carmine Safaris Z Limited and Another V. Zambia national Tender Board and 6 Others Appeal No. 145/2003** where the Supreme Court held:

“For any application to stay the judgment to succeed the applicants must satisfy the court that there are good and convincing reasons for staying the execution. The Court does not make a practice of depriving a successful litigant of the fruits of is litigation except where the Applicant satisfies the Court that there is a good reason and that there are

reasonable prospects of the applicant's succeeding appeal stage."

- 3.5. The Defendants submit that the Plaintiff does not have the requisite expertise to run the business/property in question and further no financial capacity to compensate the Defendants in the event that they succeed on appeal.
- 3.6. The Defendants referred this Court to many other authorities, which basically speak to the same thing.
- 3.7. The Plaintiff on the other hand submits that the Defendants Memorandum of Appeal and Notice of Appeal do not present prospects of success.
- 3.8. The Plaintiff relies on the authority in the case of **Sonny Paul Mulenga, Vismer Mulenga, Chinama Hotels Limited, Elephant's Head Hotel Limited V. Investrust Marchant Bank Limited (1999) ZR 101 (SC)**, where the Supreme Court made the following instructive observation:
- "2. In exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of the proposed appeal.***
- 3. The successful party should not be denied immediate enjoyment of a judgment, unless there are good and sufficient grounds".***
- 3.9. The Plaintiff cites various other authorities, some of which the Defendants have also relied on, I shall not repeat them as they are on record and I have considered the same.
- 3.10. The crux of the Plaintiff's submission is that the Defendants have not shown reason for this Court to grant them a stay of execution of Judgment and deny the Plaintiff the fruits of its labour.

4. **COURT'S ANALYSIS/DECISION**

- 4.1. I have considered the record and the parties' respective submissions and affidavit evidence.
- 4.2. It is trite law that this Court has the power to grant a party stay of execution of Judgment and for this discretionary power, the Supreme Court has laid down test/issues to consider.
- 4.3. I shall place reliance on the authority as stated the case of **Nyampala Safaris (Z) Limited and 4 Others V Zambia Wildlife Authority and 6 Others SCZ/8/179/2003**, the Supreme Court stated as follows:

“A stay of execution is only granted on good and convincing reasons. The rationale for this is clear, which is that a successful litigant should not be deprived of the fruits of his litigation as a matter of course. The application for a stay of execution must therefore clearly demonstrate the basis on which such stay be granted...”

- 4.4. Upon review of the parties' arguments and evidence on the record, I am not convinced that the Defendants have shown any good/convincing reasons for this Court to grant a stay of execution. Particularly so, I do not believe the Defendants appeal show prospects of success.
- 4.5. I am of the considered opinion that the Defendants have not passed the test for me to deprive the Plaintiff the fruits/benefit of his Judgment. The Plaintiff's business acumen or lack thereof as suggested by the Defendants is not satisfactory ground nor even proven by the Defendants.

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4.6. I must however state for the record that the Judgment is not to be pre-maturely executed by any of the parties.

5. **CONCLUSION**

5.1. For the foregoing, reasons I find that the Defendants application must fail. The application for an Order for stay of execution is hereby denied and dismissed.

5.2. Each party to bear its own costs.

Delivered at Lusaka on 27th day March, 2025



S. CHOCHO
HIGH COURT JUDGE

