

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

**2019/HP/1380**

**BETWEEN:**

**HAMBLOCKS LIMITED**



**PLAINTIFF**

**AND**

**WANMING INVESTMENTS LIMITED**

**1<sup>ST</sup> DEFENDANT**

**ATTORNEY GEENRAL**

**2<sup>ND</sup> DEFENDANT**

**BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE**

*For the Plaintiff:*

*No - Appearance*

*For the 1<sup>st</sup> Defendant:*

*Mr. M. Khunga – Messrs. Barnaby Chitundu & Khunga Advocates.*

*For the 2<sup>nd</sup> Defendant:*

*Mrs. Mwila N. Muluse & M. Mwenda - State Advocates –Attorney –General’s Chambers*

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

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**Cases referred to:**

- 1. Wynter M. Kabimba v. Attorney General and Lusaka City Council (S. C. Z Judgment No. 13 of 1996).**
- 2. Shoprite Holdings and Another v. Mosho and Lewis Nathan Advocates (sued as a firm) (Appeal No. 86/2013)**
- 3. Micro-financial Inc v. Premier Holidays Intern Inc. (385 F.3d 72,77) (1<sup>st</sup> Circuit 2004).**

4. **Winchester Cigarette Machinery Limited v. Payne and Another (2 Times Law Report of 15/12/1995).**
5. **Rosemary Bwalya v. Mwanamuto Investment Limited and 2 Others (CAZ 139 of 2017).**
6. **Development Bank of Zambia and KPMG Peat Marwick v. Sunvest Limited and Sun Pharmaceuticals (1995-1997) Z.R. 187.**

**Legislation and other material referred to;**

1. **The High Court Rules, Chapter 27 of the Laws of Zambia.**
2. **The Rules of the Supreme Court of England (RSC), 1999 Edition.**

This is a ruling on the 1<sup>st</sup> Defendant's application for an Order to stay proceedings pending determination of the 1<sup>st</sup> Defendant's applications for non-joinder and setting aside Consent Judgment under Cause No.2019/HP/1658 and its consolidation with the proceedings herein. The application is made pursuant to Order 3 rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.

The application is supported by an affidavit deposed to by **GU WAMNING**, the Director in the 1<sup>st</sup> Defendant's Company.

He deposed that on 29<sup>th</sup> August, 2019 the Plaintiff commenced this action against the 1<sup>st</sup> Defendant Company by way of writ of summons

and statement of claim seeking among other reliefs, cancellation of the Defendant's Certificate of Title.

On 15<sup>th</sup> June, 2020, the Plaintiff filed into Court a Second Further Affidavit in opposition to Affidavit in Support of *Ex-parte* Summons for an Order of Interim Injunction wherein the Plaintiff exhibited a Consent Judgment made under Cause No. 2019/HP/1658. A copy of the Consent Judgment was exhibited and marked "**GW1.**"

That it had come to the knowledge of the 1<sup>st</sup> Defendant Company that the Consent Judgment in the action under Cause No.2019/HP/1658 affected the 1<sup>st</sup> Defendant's interest and that the cause of action under the aforementioned action and the matter herein related to Stand No. S/Chibo 3142587.

Further, that the Plaintiff intended to rely on the said Consent Judgment under Cause Number 2019/HP/1658 in the matter herein.

He added that the 1<sup>st</sup> Defendant had filed into Court an application for Non-Joinder under Cause Number 2019/HP/1658 as it was desirous of protecting the legal ownership of its property. That failure by the 1<sup>st</sup> Defendant to challenge the Consent Judgment under Cause Number 2019/HP/1658 would cause grave injustice and irreparable damage to

the 1<sup>st</sup> Defendant Company as its Certificate of Title risked being cancelled as ordered in the Consent Judgment.

It was deposed further that the 1<sup>st</sup> Defendant Company was not heard under Cause Number 2019/HP/1658 hence its desire to protect its interest in the aforementioned cause and the application for the relief sought herein. It was therefore prudent to stay proceedings of the matter while the 1<sup>st</sup> Defendant Company was pursuing to protect its interest under Cause Number 2019/HP/1658 which related to the same subject matter herein.

The 2<sup>nd</sup> Defendant did not object to the 1<sup>st</sup> Defendant's application.

There were no documents filed on behalf of the Plaintiff regarding the application even after orders for directions were issued by the Court. Furthermore, there was no attendance on their part. After being satisfied that the Plaintiff was aware of the date of hearing and had disregarded the orders given by the Court, I allowed counsel for the 1<sup>st</sup> Defendant to proceed with his application.

At the hearing of the application, learned counsel for the 1<sup>st</sup> Defendant Mr. Khunga, relied on the affidavit in support, the skeleton arguments and list of authorities filed in support of the application.

In the skeleton arguments, the Court was referred to Order 3 rule 2 of the of the High Court Rules which provides as follows:

**“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 by the person entitled to the benefit of the order or not.”**

It was submitted that according to Order 59, rule 13(7) of the Rules of the Supreme Court of England 1999 Edition, the Court will not grant a stay of proceedings unless satisfied that there are good reasons for doing so as held in the case of **Wynter M. Kabimba v. Attorney General and Lusaka City Council** (1).

Counsel argued that there was a Consent Judgment in another action relating to the same subject property as in this matter whose terms affected the 1<sup>st</sup> Defendant's interest. It was argued that the Plaintiff intended to rely on that Consent Judgment to have the 1<sup>st</sup> Defendant's Certificate of Title in the matter cancelled and that most importantly, the 1<sup>st</sup> Defendant had since applied for Non-Joinder in order to protect its interest in the matter.

It was submitted that the 1<sup>st</sup> Defendant had provided sufficient reasons to satisfy the Court in order for these proceedings to be stayed.

Counsel added that this Court also had the inherent jurisdiction to grant a stay of proceedings pending determination of the 1<sup>st</sup> Defendant's application for Non-Joinder and Setting Aside Consent Judgment under Cause Number 2019/HP/1658 and thereafter have consolidation of both cases.

Reliance was placed on the case of **Shoprite Holdings and Another v Mosho and Lewis Nathan Advocates (sued as a firm)** <sup>(2)</sup> where it was stated that:

**“The power to stay proceedings is incidental to the power inherent in every Court to control the disposition of the causes on its dockets with economy of time and effort for itself, for counsel and for 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 hardship or inequity in being required to go forward...”**

It was submitted on the basis of the cited authorities that the Court had the power to grant the Order for stay especially that the 1<sup>st</sup> Defendant had demonstrated that it would be unjustly forced to protect its interest

in the subject property before two different courts. This showed a clear case of injustice that maybe suffered by the 1<sup>st</sup> Defendant if the two actions ran parallel to each other yet over the same property.

The case of **Micro-financial Inc v. Premier Holidays Intern Inc.** <sup>(3)</sup> was also relied on as providing guidance as to when a stay should be granted.

It was submitted that it was in the interest of justice that the proceedings in this Court were stayed due to the fact that the Court was unlikely to be brought into disrepute by giving two different decisions on the same subject matter and that the stay would not prejudice the Plaintiff in any way.

In his oral submissions, Mr. Khunga reiterated that even though this cause was commenced earlier, Cause No. 2019/HP/1658 was concluded by the parties by way of Consent Judgment whose terms would affect the 1<sup>st</sup> Defendant's interests. That the 1<sup>st</sup> Defendant applied to be joined to the other action and was joined and now filed an action to set aside the Consent Judgment. He argued that the 1<sup>st</sup> Defendant hoped to file an affidavit in reply exhibiting the fresh action under Cause Number 2022/HP/0684 which was before Judge R. Chibbabuka as it was their intention to have the two matters consolidated once the Consent

Judgment was set aside so that all parties having an interest in the disputed property could be heard under one cause to avoid multiplicity.

The issue that falls for determination is whether this Court should grant an order for stay of proceedings pending determination of the 1<sup>st</sup> Defendant's applications for Non-joinder, setting aside Consent Judgment and consolidation of Cause Number 2019/HP/1658 and 2019/HP/1380.

The application is anchored on **Order 3 rule 2 of the of the High Court Rules** which provides as follows:

**“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 by the person entitled to the benefit of the order or not.”**

It is clear that the Court in all causes and matters has the power to make any interlocutory order which it considers necessary for doing justice whether such order has been expressly asked by the person entitled to it or not.

Ralph Gibson L.J(as he then was) in the case of Winchester Cigarette Machinery Limited v Payne and Another <sup>(4)</sup> reasoned that for an applicant to be granted a stay, he must show some special circumstances which would take the case out of the ordinary.

The Court of Appeal in the case of Rosemary Bwalya v Mwanamuto Investment Limited and 2 Others <sup>(5)</sup> stated regarding stay of proceedings that:

**“It is trite that for stay of proceedings to be granted, there must be special circumstances demonstrated by the Applicant to satisfy the Court that there are good and convincing grounds to warrant a stay pending either an appeal or outcome of any proceedings.”**

From the above authorities, it can be stated that for an order for stay of proceedings to be granted, the applicant must show the existence of special circumstances taking the case out of the ordinary evidencing that there are good and convincing grounds warranting a stay of proceedings. A stay will not thus be granted as a matter of right but on proof that there are good and compelling reasons for doing so.

The crux of the 1<sup>st</sup> Defendant’s argument is that a Consent Judgment to procure cancellation of the 1<sup>st</sup> Defendant’s Certificate of Title was

entered into under Cause Number 2019/HP/1658 relating to the subject property Stand No. S/Chibo 3142587 which is also the subject property in this matter.

It is argued that the 1<sup>st</sup> Defendant applied for Non-joinder in that cause matter in order to protect its interests and now applies to stay these proceedings pending determination of the applications to Set Aside the said Consent Judgment under cause No. 2019/HP/1658 and thereafter have the two actions consolidated. The 1<sup>st</sup> Defendant contends that this will assist the Court in arriving at only one decision over the same subject property of the two actions.

I have considered the 1<sup>st</sup> Defendant's arguments and I am satisfied that Stand No. S/Chibo 3142587 which is a subject property under this action was also a subject of the Consent Judgment by which the Plaintiff seeks to cancel the Certificate of Title of the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant has since been joined to that action with a view to challenge the said Consent Judgment. I therefore find that under the circumstances, it would be in the interest of justice if the proceedings in this case were stayed pending the 1<sup>st</sup> Defendant's application to Set Aside the Consent Judgment with a view to have the two actions

consolidated as there would be no prejudice occasioned to the Plaintiff. Further, this would curb the frowned upon vice of multiplicity of actions as illustrated by the Supreme Court in a plethora of cases including the case of **Development Bank of Zambia and KPMG Peat Marwick v. Sunvest Limited and Sun Pharmaceuticals** <sup>(6)</sup> wherein it stated that:

**“We also disapprove of parties commencing a multiplicity of procedures and proceedings and indeed a multiplicity of actions over the same subject matter.”**

I am thus satisfied that there are good and compelling reasons warranting this Court to exercise its discretion to grant the 1<sup>st</sup> Defendant an Order for stay of the proceedings.

In a nutshell, I find merit in the 1<sup>st</sup> Defendant’s application and thus order a stay of these proceedings pending determination of the 1<sup>st</sup> Defendant’s application to Set Aside Consent Judgment under Cause No. 2019/HP/1658 with a view to have both cases consolidated. I make no orders as to costs.

**DELIVERED AT LUSAKA THIS 1<sup>ST</sup> DAY OF JUNE, 2023**



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**M.C. KOMBE**  
**JUDGE**

