

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY**

2020/HP/0973

HOLDEN AT LUSAKA
(Civil Jurisdiction)



LEGANA INVESTMENTS LIMITED PLAINTIFF

AND

STANBIC BANK (Z) LIMITED 1ST DEFENDANT

STANBIC INSURANCE BROKERS LIMITED 2ND DEFENDANT

MADISON GENERAL INSURANCE LIMITED 3RD DEFENDANT

For the Plaintiff: Not Applicable

For the Defendants: Not Applicable

**RULING ON APPLICATION FOR STAY OF EXECUTION
OF JUDGMENT PENDING APPEAL**

A. CASES REFERRED TO:

1. *New Plast Industries v Commissioner of Lands and Another (2001) ZR51*
2. *CAA Import and Export Limited v Bidvest Food Zambia Limited (HPC 475 of 2013) (2017) (ZMHC 132*
3. *Nyampala Safaris Zambia Limited and Others v Zambia Wildlife Authority and Others (SCZ No. 6 of 2004) ZMSC 99*
4. *Phillip Chitambo v Banda (HP 1393 of 2015) (2017) ZMHC 166*
5. *Wilson v Church (No.2) (1879) 12Ch D. 454*
6. *Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investments Merchant Bank Limited (1999) ZR.101 (SC)*
7. *Ketchum International Plc v Group Relations Holdings Limited and Others (1996) 4.A: ER 314*
8. *Carmine Safaris Zambia Limited and Another v Zambia National Tender Board and 6 Others Appeal No. 145/2003*

B. LEGISLATION REFERRED TO:

1. *High Court Rules Chapter 27 of the Laws of Zambia*

1.0. INTRODUCTION

- 1.1. This is a Ruling on the Plaintiff's *Ex-Parte* Application for Stay of Execution of Judgment pending Appeal to the Court of Appeal against the Judgment of this Court delivered on 7th February, 2025. The Application by Summons has been made pursuant to **Order XXXVI Rule 10** of the **High Court Rules, Chapter 27** of the **Laws of Zambia**. It is accompanied by an Affidavit and Skeleton Arguments.
- 1.2. Given the nature of the Application and deposition in the Affidavit, I proceeded to determine the Application on the basis of the documents before me as well as the principles on granting Stay of Execution of Judgment pending Appeal.
- 1.3. I am fortified in electing to dispense with oral hearing by the holding in the Supreme Court case of **New Plast Industries v Commissioner of Lands and Another**¹ where it was stated, among others, that:

“The Content of what amounts to the hearing of the parties in any proceedings can take either the form of oral or written evidence. Where the evidence in support of an application is by way of affidavit, the deponent cannot be heard to say he was denied the right of hearing simply because he had not adduced evidence”.

2.0 AFFIDAVIT EVIDENCE

- 2.1. The Affidavit in Support of the Application was deposed to by Edith Nawakwi in her capacity as Managing Director in the employ of the Plaintiff's company.
- 2.2. She averred that being dissatisfied with the Judgment of the Court delivered on 7th February, 2025, the Plaintiff herein filed a Notice of Appeal and Memorandum of Appeal respectively marked as "**EN1**" and "**EN2**" in the Court of Appeal and served the same on the 1st, 2nd and 3rd Defendants' Advocates.
- 2.3. It was deposed that she had been advised by her Advocates and believes to be true that an application for Notice and Memorandum of Appeal filed into Court do not automatically Stay Execution of Judgment hence this Application.
- 2.4. The Deponent believes that her Application for a Notice and Memorandum of Appeal are meritorious, with reasonably high chances of success. That the grant of a Stay of Execution of Judgment is necessary for doing justice so as to avoid rendering the Appeal nugatory.
- 2.5. She adds that the Defendants will not be prejudiced as they would be given an opportunity to be heard on the Appeal. That it is necessary in the interest of justice that an Order to Stay Execution is granted pending Appeal.

3.0. SKELETON ARGUMENTS

- 3.1. In the Skeleton Arguments filed on behalf of the Plaintiff, it was submitted that the starting point is **Order XXXVI Rule**

10 of the **High Court Rules, Chapter 27** of the **Laws of Zambia** which provides that:

“Except as provided for under Rule 9, the Court or Judge may on sufficient grounds, order Stay of Execution of Judgment”.

- 3.2. My attention was drawn to the case of **CAA Import and Export Limited v Bidvest Food Zambia Limited**² for the position that **Order XXXVI Rule 10** gives Court a general mandate to Stay Execution of Judgment, the Court cannot order a Stay of Execution which is prohibited under **Rule 9 of Order XXXVI** and that there must be sufficient grounds upon which the stay must be not noted.
- 3.3. To bolster the argument, the cases of **Nyampala Safaris Zambia Limited and Others v Zambia Wildlife Authority and Others**³ and **Philip Chitambo v Banda**⁴ were called in aid for the position that a Stay of Execution is granted on good and convincing reasons, that the Court is likely to grant a Stay where the Appeal would otherwise be rendered nugatory and that the question whether or not to grant a Stay is entirely in the discretion of the Court which will grant it where special circumstances of the case so require.
- 3.4. The submission therefore is that the Application is on good and sufficient grounds in that the Appeal is meritorious with high chances of success. That there are sufficient and justifiable reasons to grant the Stay herein in line with **Order XXXVI Rule 10** of the **High Court Rules**. The case of **Wilson v Church**⁵ was cited for the position that when a

party is appealing, exercising his undoubted right of appeal, this Court ought to see that the Appeal if successful is not nugatory.

- 3.5. Submitting further, the Plaintiff referred me to the case of **Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investments Merchant Bank Limited**⁶ for the guidance by the Court that an appeal does not automatically operate as a Stay of Execution, it is pointless to request for a Stay solely because an appeal has been entered and that the Court has a duty to examine the Grounds of Appeal to determine whether an application has prospects of succeeding without delving into the merits of each Ground.
- 3.6. I was finally referred to the case of **Ketchum International Plc v Group Public Relations Holdings Limited and Others**⁷ for the position that where an unsuccessful defendant has to obtain Leave to Appeal and seeks a Stay of Execution, the Court will normally grant a Stay if it grants Leave to Appeal, since otherwise a successful appeal will be of no effect.
- 3.7. It was submitted that the Plaintiff believes that the Appeal has chances of succeeding because amongst other reasons, the Court erred in law and in fact when it held that the provisions of the **Banking and Financial Services Act No. 17 of 2017** had been pronounced upon by the Court of Appeal when in fact not.

4.0. CONSIDERATION AND DECISION OF THE COURT

- 4.1. I have fully addressed my mind to the Plaintiff's Application, Affidavit in Support and Skeleton Arguments for which I am grateful.
- 4.2. Quite clearly, this Application is properly before me on the authority of **Order XXXVI Rule 10** of the **High Court Rules Chapter 27** of the **Laws of Zambia**.
- 4.3 It is a settled principle that an Appeal does not operate as a Stay of Execution of Judgment. This position was clearly elaborated by Ngulube C.J (as he then was) in the case of **Sonny Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited**⁶ as follows:

“In terms of the rules of Court, an appeal does not automatically operate as a stay of execution, and it is utterly pointless to ask for a stay solely because an appeal has been entered. More is required to persuade Court below or this Court that it is desirable, necessary and just to stay a judgment pending appeal. The successful party should not be denied immediate enjoyment of a judgment except only on good and sufficient grounds”.

- 4.4. The Supreme Court of Zambia took a similar position in the cases of **Nyampala Safaris and 4 Others v Zambia Wildlife Authority and 6 Others**³ and **Carmine Safaris Zambia**

Limited and Another v Zambia National Tender Board and 6 Others⁸.

4.5. It is evident from the authorities that the common thread running through all of them is that a Stay of Execution of Judgment is a discretionary remedy that will not generally be granted unless there are good reasons for doing so. A party is therefore not entitled to a Stay of Execution of Judgment as a matter of right.

4.6. Undoubtedly, the preserve to delve into the details of the merits or otherwise of the appeal does not lie with me. That notwithstanding, the authorities cited above enjoin me to preview or assess, without delving into each Ground, the prospects of the Appeal succeeding. In doing so, I have scrupulously examined my Judgment of 7th February, 2025 which the Plaintiff seeks to impugn in the general context of the Grounds of Appeal exhibited in the Memorandum of Appeal as “**EN2**”. In my well considered view, the said Grounds of Appeal do not reveal any realistic prospects of succeeding on a proper reading and understanding of the Judgment intended to be challenged on the evidence that was placed before Court.

4.7. I have found no exceptional circumstance or ‘something more’ that would warrant or bring this case within the ambit of the requirements set out in the various authorities for grant of a Stay of Execution of Judgment pending Appeal. Given the position that I have taken, the case of **Ketchum International Plc v Group Public Relations Holdings Ltd & Others⁷** referred to me would not be useful to the Plaintiff’s case. This

is because the grant of Leave to Appeal, can not, in the absence of prospects of the appeal succeeding, be a basis for grant of Stay of Execution of Judgment.

5.0.CONCLUSION

5.1. Given that no exceptional circumstances have been demonstrated, or that it is desirable, necessary and just so to do, I decline to grant the Application by the Plaintiff for an Order to Stay Execution of Judgment pending Appeal.

5.2. I make no Order as to costs for this Application.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 28TH
DAY OF MARCH, 2025.**

A handwritten signature in black ink, appearing to read 'I. M. Mabbolobolo', is written over a horizontal line.

**I. M. MABBOLOBOLO
HIGH COURT JUDGE.**