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

2020/HPF/D485

BETWEEN:

KATONGO SUSAN SEMBA KAMBOYI

PETITIONER

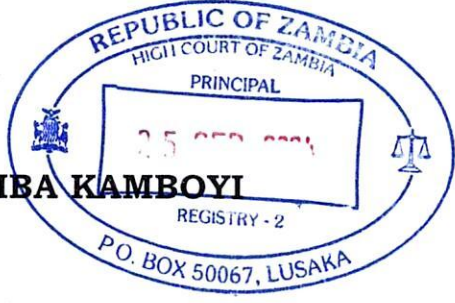
AND

AMOS KAYOMBO KAYOMBO

RESPONDENT

MBINGILA KAMBOYI

INTENDED INTERESTED PARTY



**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA ON THIS
25TH DAY OF SEPTEMBER, 2024.**

For the Petitioner: Mr. C. Malambo of Malambo & Company

For the Respondent: N/P

For Intended Interested Party: Ms. M. Sinkala Silishobo of Messrs. Willis Clement & Partners Legal Practitioners

R U L I N G

CASES REFERRED TO:

1. *Elia Tembo (suing as attorney for Adamson Mbewe) Vs John Kunda Lengwe and 3 others CAZ/08/069/2024;*
2. *Status Mineral Exploration Limited Vs Ocean Ore Limited and Another (2013) Vol 2 ZR 240;*
3. *Zambia National Commercial Bank Vs John Mwamulima and Another (2016/HPC/0119);*

4. *Breza Engineering Limited Vs GM International Limited (2010) ZR 46 of 49; and*
5. *Drill Africa Company Limited Vs Daniel Mpundu Konkolo (SCZ/88.256/2016).*

LEGISLATION REFERRED TO:

1. *High Court Act Chapter 27 of the Laws of Zambia.*
2. *The Court of Appeal Rules Statutory Instrument No.65 of 2016*

OTHER WORKS REFERRED TO:

1. *Zambia Civil Procedure Commentary and Cases Vol. 2.*

1.0 INTRODUCTION

- 1.1 This is a Ruling on the Interested Party's Ex-Parte Summons for Leave to Appeal to the Court of Appeal.
- 1.2 The Summons was filed pursuant to **Section 10 Rule 4 (3)** of the **Court of Appeal Rules Statutory Instrument No. 65 of 2016**, accompanied by an Affidavit in Support and Skeleton Arguments, dated the 29th of July, 2024.
- 1.3 The said Application was opposed by Counsel for the Petitioner who filed an Affidavit and Skeleton Arguments dated the 14th of August, 2024.

2.0 BRIEF BACKGROUND

2.1 This Application arose from the Ruling of this Court delivered on the 17th of July, 2024 in which the Application for Joinder was declined.

2.2 Dissatisfied with the Ruling of the Court, Counsel for the Intended Interested Party applied for Leave to Appeal to the Court of Appeal.

3.0 AFFIDAVIT EVIDENCE IN SUPPORT OF APPLICATION

3.1 The Affidavit in Support was deposed to by Mr. Mbingila Kamboyi, who deposed that on the 17th July, 2024, this Honourable Court rendered its Ruling where it declined and dismissed his Joinder Application but did not grant Leave to Appeal.

3.2 The Deponent deposed that being dissatisfied with the Ruling, he desires to appeal against the said Ruling to the Court of Appeal.

3.3 The Deponent further deposed that he has been advised by his Advocates, and verily believe the same to be true and correct that where the Court does not grant Leave to Appeal in a Ruling, a Party can apply for such Leave, as no Appeal can be entertained by the Court of Appeal without Leave.

3.4 The Deponent further averred that the Application should be granted because the intended appeal has high prospects of success.

4.0 APPLICANT'S SKELETON ARGUMENTS IN SUPPORT

4.1 In support of the Application, Counsel for the Interested Party submitted that this Application was made pursuant to **Section 12, 22** and **Section 23** of the **Court of Appeal Act 2016** and **Order X Rule 4 (3)** of the **Court of Appeal Rules S. I No. 65 of 2016**.

4.2 It was Counsel's submission that this Application was launched because the Court did not grant Leave to Appeal in its Ruling.

4.3 Counsel further submitted that without leave of this Honourable Court, the Appeal cannot proceed to the Court of Appeal.

4.4 Counsel also submitted that the appeal should be allowed because it has high prospects of success.

5.0 RESPONDENT'S AFFIDAVIT IN OPPOSITION

5.1 The Affidavit in Opposition was deposed to by Katongo Susan Semba Kamboyi, the Petitioner herein.

- 5.2 The Deponent deposed that filing a Memorandum of Appeal does not automatically mean that an appeal has high prospects of success.
- 5.3 Further the Deponent averred that as advised by her advocates on record and verily believing the same to be true, the Memorandum of Appeal marked “**MK1**” filed herein is irregular as it contains arguments or narrative, hence the same be expunged.
- 5.4 It was also deposed by the Deponent that she is advised by her Advocates and believes the same to be true that a Memorandum of Appeal should not delve into the merits of the Appeal.

6.0 RESPONDENT’S SKELETON ARGUMENTS IN OPPOSITION

- 6.1 In opposing the Application, Counsel submitted that for Leave to Appeal to be granted, the Applicant must show that the Appeal has high prospects of success. Counsel referred the Court to the case of *Elia Tembo (suing as attorney for Adamson Mbewe) Vs John Kunda Lengwe and 3 others*⁽¹⁾ where the court stated thus:

“With respect to the 1st respondent having attempted to address the merits of all the Grounds of Appeal, the appellant has submitted that this practice is frowned upon by the Supreme Court, as at this stage, as already

noted, the court is only interested in reviewing the prospects of success and will not delve into the merits or substance of the Appeal which is the preserve of the full court”.

6.2 It was Counsel’s submission that in light of the case stated above this Honourable Court should frown upon acts by Counsel of the Intended Interested Party of delving into the merits of the case at this stage.

6.3 It was also Counsel’s submission that the Application should not be granted because the Applicant has failed to show that the Intended Appeal has real prospects of success. Counsel referred the Court to the Learned Author of **Zambia Civil Procedure Commentary and Cases Vol. 2 P.1504** where it was stated that:

“What is the aim of leave or permission to appeal? the aim is to avoid waste of valuable court resources by weeding out hopeless appeals and focusing appellate attention on matters of real significance to the parties and the general public. In effecting the principle aim outlined above, what is the test to be applied?..... The first test for permission is whether the appeal has any real prospects of success, a fanciful prospect is insufficient. The second test is whether there is a compelling reason why the appeal should be heard....”

6.4 Counsel also referred the Court to the case of **Status Mineral Exploration Limited Vs Ocean Ore Limited and Another**⁽²⁾

wherein the court stated as follows:

“It is clear from the forgoing Order that at High Court level, leave will be granted as a general rule, except where the grounds of appeal have no realistic chance of success. As such, in making an application for leave to appeal, an applicant must demonstrate to the court that the grounds he has advanced have a realistic chance of success. This in my opinion, is for the purpose of ensuring that only those matters that are deserving of an Appeal go on Appeal.”

7.0 APPLICANT’S AFFIDAVIT IN REPLY

7.1 The Affidavit in Reply was deposed to by Mbingila Kamboyo, who deposed that the grounds of appeal as demonstrated in the Memorandum of Appeal has realistic prospects of success.

7.2 The Deponent further deposed that the Grounds of Appeal filed are concise and do not contain any arguments or narratives.

8.0 APPLICANT’S SKELETON ARGUMENTS IN REPLY

8.1 Counsel submitted that the application before Court has real prospects of success.

8.2 Counsel submitted that this court should exercise its discretionary power as granted in **Order 3 rule 2** of the **High Court Rules**, of the **High Court Act, Chapter 27** and grant the intended Interested Party leave to appeal.

9.0 HEARING

9.1 The Matter came up for Hearing on the 27th of July, 2024. During the Hearing both Parties relied on the documents filed into Court.

10.0 ANALYSIS AND DECISION OF THE COURT

10.1 I have considered the arguments advanced by both Parties in connection to the Application before me.

10.2 In resolving this Matter, I first acknowledge that this Matter was properly brought before me as the Matter was commenced pursuant to **Order 10 Rule 4** of the **Court of Appeal Rules Statutory Instrument No. 65 of 2016**.

10.3 As guided by the case of **Zambia National Commercial Bank Vs John Mwamulima and Another**⁽³⁾ it was proper for the Interested Party to apply for Leave to Appeal, because this Court did not grant leave at the time of rendering the Ruling.

10.4 The question I ask myself, is whether the Applicant has satisfied the elements needed for this Court to grant Leave to Appeal to the Court of Appeal?

10.5 It is trite that an application for leave to appeal must demonstrate that there are realistic prospects of success on appeal to justify the grant of leave, this is as per **Breza Engineering Limited vs GM International Limited**⁽⁴⁾ and **Status Mineral Exploration Limited Vs Ocean Ore Limited and Another**⁽²⁾.

10.6 Further in the case of **Drill Africa Company Limited vs Daniel Mpundu Konkolo**⁽⁵⁾, where in the Court stated that:

“The basis upon which the learned Judge dismissed the Application were that the Appellant did not disclose both before him and the Court below compelling grounds to enable the Court use its discretion to grant Leave to Appeal. He stated that one such compelling ground is to demonstrate that there is a likelihood of the intended appeal succeeding”.

10.7 In light of the authorities referred to above and in consideration of the arguments filed herein, it is my considered view that I cannot exercise my discretion to grant Leave to Appeal to the Court of Appeal because there are no compelling reasons to do so.


10.8 In reaching this conclusion I'm aware that prospect of success of the intended appeal is a compelling ground on which this appeal can be granted.

10.9 A perusal of the intended Grounds of Appeal reviews that the Appeal has no prospect of success.

11.0 CONCLUSION

11.1 In view of the forgoing, I hereby find that the Interested Party has not advanced good grounds or special circumstances to warrant this Court to exercise its discretion to grant Leave to Appeal to the Court of Appeal. Leave to Appeal is therefore denied. I make no Orders as to Costs.

DELIVERED AT LUSAKA THIS 25TH SEPTEMBER, 2024.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a dotted line. The signature is slanted upwards to the right.

**S. V. SILOKA
HIGH COURT JUDGE**