

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

2022/HP/0377



BETWEEN:

SIMON ZIMBA AND 4 OTHERS

PLAINTIFF

AND

**ZAMBIA NATIONAL COMMERCIAL
BANK PLC**

DEFENDANT

*For the Plaintiff: Mr. K Kaunda Messrs. Kauna Kaunda & Mwila
Legal Practitioners*

*For the Defendant: Mr. G. C. Malipile Messrs. Nchito & Nchito
Advocates*

RULING ON STAY OF PROCEEDINGS

CASES REFERED TO:

1. *Savenda Management Services Limited Vs Stanbic Bank Zambia Limited Selected Judgment No. 47 of 2018;*
2. *Francisco Kassongo and Mwaka E. Kassongo Vs Kaldis Emmanuel and Copperbelt Food Industries Limited 2019/HP/0892;*
3. *Zambia Telecommunications Company Limited Vs Mirriam Shabwanga and 5 Others SCZ Appeal No. 78 of 2016 and 81 of 2016;*
4. *National Milling Corporation Limited Vs Macadams Bakery Limited and Aziz Kapali 2008/HP/0402 (Unreported);*

5. *Zambia National Commercial Bank Vs Joseph Kangwa SCZ Appeal No.54 of 2016;*
6. *Dorothy Chibwe Vs Investrust Bank (Plc) 2021/HP/1179;*
7. *Monk Vs Bartram (1881) 1 QB 346;*
8. *Kansanshi Mining Plc Vs Zambia Revenue Authority SCZ 8 162 of 2014;*
9. *Amiran Limited Vs Robert Bones SCZ Appeal No. 42 of 2010; and*
10. *Barclays Bank Zambia PLC Vs Jeremiah Njovu and 41 Others (SCZ/8/21/2019);*

LEGISLATION REFERRED TO:

1. *High Court Act and High Court Rules, Chapter 27 of the Laws of Zambia; and*
2. *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.*

OTHER WORKS REFERRED TO:

1. *Atkin's Court Forms (27th Edition) Volume 37, 1995;*
2. *Halsbury's Laws of England (4th Edition) 2006;*

1. INTRODUCTION

1.1 Following a Ruling of this Court dated 13th January, 2025, the Defendant on 5th February, 2025, re-filed *Ex-Parte* Summons for an Order for Stay of Proceedings pursuant to **Order 3 Rule 2** as read with **Order 17 Rule 2** of the **High Court Rules, Chapter 27** of the **Laws of Zambia**, pending the determination of an Application for Costs in **Complaint No. IRDLK/026/22**, a Matter that was

initially commenced in the Industrial Relations Division of the High Court.

- 1.2 The said Application was accompanied by an Affidavit in Support of the Application, as well as List of Authorities and Skeleton Arguments of even date.
- 1.3 The Plaintiffs, on 29th April, 2022, had filed an Affidavit in Opposition accompanied with List of Authorities and Skeleton Arguments of even date.

2. BACKGROUND

- 2.1 The Plaintiffs had filed a Complaint in the Industrial Relations Division of the High Court under **Complaint No. IRDLK/026/22** on 19th January, 2022, wherein they sought the following reliefs:

“The grounds on which the complaint presented are... That we were employed by the Respondent on different dates and different positions on permanent basis. That on 31st October, 2021, the Respondent declared us redundant. That we seek the Court to Order the Respondent to pay us as follows:

- a) Damages for constructive dismissal;*
- b) Costs and any other benefits the Court may deem fit.”*

- 2.2 The Defendant (then Respondent) took all necessary steps to defend the action in the IRD, including retaining Counsel, seeking legal advice/legal opinion, preparing and filing an Answer, preparing documents and other evidence for trial and so on. However, on 16th March, 2022, the

Plaintiff's discontinued their matter in the IRD and commenced this action before the Court.

2.3 On 11th March, 2022, the Plaintiff herein filed a Writ of Summons and Statement of Claim and the Plaintiff's claim against the Defendant was as follows:

(i) An order of reinstatement in the positions or roles of the Plaintiffs prior to their being declared redundant by the Defendant on 31st October, 2021, vide letters dated 18th October, 2021;

In the alternative, Orders for damages for:

a) Unfair dismissal or termination;

b) Unlawful dismissal or termination; and

c) Wrongful dismissal or termination.

(ii) Damages for constructive dismissal;

(iii) Punitive and exemplary damages for the Defendant's blatant disregard of the provisions of the Constitution of Zambia [as Amended by Act No. 2 of 2016] and the Employment Code Act of 2019;

(iv) Damages for defamation or embarrassment;

(v) Damages for stress and shock;

(vi) Further relief(s) apparent from the pleadings and facts/evidence of this matter;

(vii) Interest on the said damages; and

(viii) Costs.

2.4 The Defendant, with Leave of Court, filed Memorandum of Appearance and Defence on 4th February, 2025, denying each and every allegation contained in the Plaintiffs' Statement of Claim.

3. THE APPLICATION BY THE DEFENDANT

- 3.1 The Defendant, on 5th February, 2025, re-filed an Affidavit in Support of Summons for an Order for Stay of Proceedings pending the determination of an Application for Costs in **Complaint No. IRDLK/026/22**.
- 3.2 The Affidavit was deposed to by **NKANDU CHIBUYE**, an Advocate of the High Court for Zambia in the employ of Messrs. Nchito & Nchito, seized with the conduct of this Matter on behalf of the Defendant.
- 3.3 It was deposed that the Plaintiffs commenced this action by way of Writ of Summons and Statement of Claim filed on 11th March, 2022.
- 3.4 The Deponent avowed that however, prior to this action, the Plaintiffs had commenced another action against the Defendant in the Industrial Relations Division, under **Complaint No. IRDLK/026/22** which action was commenced by Notice of Complaint and Affidavit filed on 19th January, 2022. A copy of the said Notice of Complaint and Affidavit was produced and marked **"NC1."**
- 3.5 The Deponent submitted that the Defendant in **Complaint No. IRDLK/026/22** proceeded to take all necessary steps in defending itself in that action by retaining Counsel, seeking advice, filing an Answer and so on and so forth.
- 3.6 The Deponent averred that the Complainants then unexpectedly discontinued their suit against the Defendant on 16th March, 2022. A copy of the Notice of Discontinuance filed in the IRD was produced and marked **"NC2"**.

- 3.7 It was the Deponent's averment that as a consequence, the Plaintiffs unreasonably caused the Defendant to bear unwarranted legal costs in **Complaint No. IRDLK/026/22**, which has now prompted the Defendant to apply for an Order for Costs under the said Complaint and a copy of the Defendant's Application for Costs in the IRD was produced and marked "**NC3**".
- 3.8 The Deponent averred that in the interest of justice, the Defendant now seeks a Stay of proceedings until its Application for the recovery of Costs in the discontinued action is fully and finally determined and until the eventual recovery of those Costs.
- 3.9 In their Skeleton Arguments of even date, Counsel submitted that the Application was made pursuant to **Order 3 Rule 2** as read with **Order 17 Rule 2** of the **High Court Rules** of the **High Court Act, Chapter 27** of the **Laws of Zambia** which provisions state as follows:

"Order 3/2 - 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."

"Order 17/2 - If any subsequent suit shall be brought before payment of the costs of a discontinued suit, for the same or substantially the same cause of action, the Court or a Judge may

order a stay of such subsequent suit until such costs shall have been paid.” (Emphasis theirs)

- 3.10 Counsel submitted that the Rules above not only clothe this Court with the authority to make any interlocutory Order necessary for doing justice, but also permits the Court to Stay an action pending the payment of costs in a discontinued action.
- 3.11 Counsel argued that the Application is also made pursuant to the inherent jurisdiction of the Honourable Court as espoused by the Supreme Court in the case of **Savenda Management Services Limited Vs Stanbic Bank Zambia Limited** ⁽¹⁾.
- 3.12 Counsel gave a background of the events leading up to this Application as in the Affidavit in Support and contended that the Plaintiffs commenced this action in this Court only to then discontinue the Complaint in the IRD.
- 3.13 It was Counsel’s submission that the Matter before this Court presents the exact circumstances to the ones under which they sued in the IRD, the only difference being that they added claims for reinstatement and several other types of damages, which, Counsel argued, they could have claimed in the IRD by way of amendment of Pleadings.
- 3.14 Counsel referred to **Black’s Law Dictionary** at page 465 which defines a discontinued suit as:

“The cessation of the pleadings in an action where the Plaintiff voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the

answer, or at any other time by order of the court or a judge. Under rules of practice, “dismissal” is an appropriate word for discontinuance; may be voluntary or involuntary and may effect counterclaim, cross claim or third-party claim. Costs may be assessed.”

3.15 It was Counsel’s argument that the above provisions and definitions are evidently, not limited to one division of the High Court. Counsel submitted that “discontinued suits” referred to in the rule provided above refers to all discontinued suits of the High Court (emphasis theirs) as such, **Order 17 Rule 2** is applicable in the circumstances before this Court and a Stay of Proceedings is warranted.

3.16 It was Counsel’s submission that the learned authors of **Halsbury’s Laws of England** at paragraph 437 provide further guidance on instances where a Stay of proceedings should be granted. The said provision states as follows:

“A stay of proceedings arises under an order of the court which puts a stop or stay on the future 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 prejudice being occasioned to the opposite party or to prevent the abuse of process ... the court’s power to stay

proceedings may be exercised under particular statutory provisions or under the Rules of the Supreme Court or under the court's inherent jurisdiction or under one or all of these powers."

(Emphasis theirs)

- 3.17 In their final arguments, Counsel contended that it is in the interest of justice for this action to be Stayed pending determination of the Defendant's Application for Costs of the discontinued suit in order to prevent abuse of process, as the Plaintiffs' commenced, re-commenced a second action and then discontinued the first, causing prejudice to the Defendant, for their own convenience when they could have amended their pleadings in the IRD.
- 3.18 It was Counsel's prayer that this action be Stayed pending the determination of the Application for Costs in **Complaint No. IRDLK/026/22** and in the event that the Defendant's Application for Costs be successful, that these proceedings remain Stayed until the Plaintiffs pay the Costs in full.
- 3.19 The Defendant filed Submissions as per Leave and Order of the Court on 12th May, 2022, and in the Background, repeated their submissions above.
- 3.20 The first issue addressed by Counsel for the Defendant was whether the **High Court Rule** that permits a Stay of Proceedings pending payment of costs of a discontinued suit is applicable to a suit that has been discontinued in the IRD; and alternatively, even if the Rule is inapplicable, whether an Order for a Stay of these proceedings pending the costs application in the IRD is still applicable.

- 3.21 Counsel submitted that **Order 17 Rule 2** of the **High Court Rules** permits the Court to Stay a suit pending the payment of costs of a discontinued suit and went on to define 'suit' and 'discontinued suit' as per **Black's Law Dictionary** at pages 1434 and 465 respectively. Counsel submitted further that the definitions are not limited to one division of the High Court, and submitted that **Order 17 Rule 2** is applicable in circumstances before this Court and that a Stay of Proceedings is warranted.
- 3.22 Counsel submitted that even if the Rule is inapplicable, the circumstances of this case still warrant a Stay of Proceedings until the full and final determination of the cost application in the IRD.
- 3.23 Counsel referred the Court to **Halsbury's Laws of England** at page 437 as quoted above at 3.16 and submitted that in the circumstances of this case, where the Defendant has expended time and costs to defend an action, that the Plaintiffs later discontinued, it is just and convenient to grant an Order for Stay to allow the Defendant to pursue costs of the discontinued action, as the Parties and circumstances of the claims in the IRD action and in this action are the same.
- 3.24 Additionally, Counsel submitted that it is in the interest of justice to grant a Stay of Proceedings to prevent prejudice to the Defendant who has unreasonably borne the costs of defending an action in the IRD only for it to be discontinued and recommenced at the Plaintiffs' whim.
- 3.25 It was Counsel's final submission that it is also in the interest of justice that these proceedings be Stayed pending

- determination of the cost application in the IRD in order to prevent abuse of process as the Plaintiffs commenced, discontinued and recommenced an action causing prejudice to the Defendant for their own convenience when they could have amended their pleadings in the IRD.
- 3.26 The second issue Counsel raised was whether the Plaintiffs discontinuance of the IRD action and commencement of this action was done to avoid multiplicity and whether the nature of the claims raised in the IRD and those raised before this Court are so substantially different as to justify the discontinuance of the IRD lawsuit and commencement of this action.
- 3.27 It was Counsel's submission that the Plaintiffs did not discontinue the IRD action to recommence this one to avoid multiplicity, but that instead it was done out of mere convenience. Counsel submitted that the claims raised by the Plaintiffs in the IRD and those raised in the action before this Court as exhibited arise from the same set of facts and could have all been heard and determined in the action before the IRD by amendments of pleadings.
- 3.28 Counsel contended that in any event, they rely on the arguments in the first issue being that the Rules of the High Court allow the Stay of a suit pending determination of payment of costs.
- 3.29 It was Counsel's prayer that on the basis of the submissions, these proceedings be Stayed to enable the Defendant to pursue the costs of the suit discontinued by the Plaintiffs.

4 THE PLAINTIFF'S RESPONSE

- 4.1 On 29th April, 2022, the Plaintiffs filed an Affidavit in Opposition to the Defendant's Application for Summons for an Order to Stay proceedings pending determination of an Application for Costs in **Complaint No. IRDLK/026/22**.
- 4.2 The said Affidavit was deposed to by **SIMON ZIMBA**, a Zambian National and the 1st Plaintiff herein.
- 4.3 The Deponent avowed that the Defendant's Affidavit in Support clearly confirmed, which is an admission, that there is no Court Order against the Deponent and the other Plaintiffs to pay Costs to the Defendant in **Cause No. IRDLK/026/22** or in any proceedings.
- 4.4 On the advice of Counsel, the Deponent averred that a mere application for costs, which has been opposed, cannot be the basis for Staying these proceedings as an application is not a Court Order.
- 4.5 Further, that the Defendant's Application is pre-emptive of the proceedings in **Cause No. IRDLK/026/22** as the Court therein has not made any Order for Costs. Copies of the Affidavit in Opposition to the Defendant's Application and Skeleton Arguments were produced and marked "**SZ1**" and "**SZ2**," respectively.
- 4.6 The Deponent avowed on the advice of Counsel and verily believed the same to be true, that costs are a discretion of the Court, and thus, the Defendant's Application is premised on speculation that the Court in the stated **Cause No. IRDLK/026/22** will Order the Plaintiffs to pay Costs and Courts do not make Orders based on speculation.

- 4.7 In their Skeleton Arguments filed on the same date, Counsel submitted that this Application is intended to delay disposal of this Matter.
- 4.8 Counsel contended that as demonstrated by the Affidavit Opposing the Defendant's Application for Stay of proceedings, there is no Order for Costs that can be a basis for Staying these proceedings.
- 4.9 That asking this Court to Stay the proceedings on the basis of a mere Application for Costs is tantamount to asking the Court to interfere with, and is pre-emptive of, the outcome of the Application in **Cause No. IRDLK/026/22** as the Court in that Matter has not made any Order for Costs against the Plaintiffs.
- 4.10 Counsel submitted that they would rely on the Ruling rendered by Justice Chitabo, SC, as he then was, in the case of **Francisco Kassongo and Mwaka E. Kassongo Vs Kaldis Emmanuel and Copperbelt Food Industries Limited** ⁽²⁾ wherein it was stated at page R28 that:
- “Similarly, this Court cannot interfere with issues pertaining to costs before another Court.”***
- 4.11 It was Counsel's submission that the Judge ruled as above in relation to the defendant's prayer to Stay Proceedings before him pending payment of costs, when in actual fact there was no Order for costs (by another Court) against the Plaintiffs.
- 4.12 It was contended that this position is similar to the position in *casu*, and as such, there is no liability on the part of the Plaintiffs to pay any Costs.

- 4.13 Counsel submitted that as regards the Defendants arguments on inherent jurisdiction, the said jurisdiction cannot be invoked in the absence of an Order for Costs and therefore, the authorities cited by the Defendants are all irrelevant.
- 4.14 The Plaintiffs filed what they referred to as Further Skeleton Arguments on 13th May, 2022, which Counsel clarified as being the Plaintiffs' Submissions or Arguments in response to the Defendant's Submissions filed by Order of Court.
- 4.15 Counsel submitted that it is highly misleading for the Defendant's Advocates to rely on **Order 17 Rule 2** of the **High Court Rules, Chapter 27** of the **Laws of Zambia**.
- 4.16 That the High Court Rules do not apply to the Industrial and Labour Relations Division as the said Division has its own Rules, being **the Industrial and Labour Relations Court Rules**, under **Chapter 269** of the **Laws of Zambia**.
- 4.17 It was Counsel's submission that the Court will note that the discontinued **Complaint No. IRDLK/026/22** was filed in the Industrial and Labour Relations Division, and not the General Division where the cause before this Honourable Court has been filed.
- 4.18 Counsel was fortified by the case of **Zambia Telecommunications Company Limited Vs Mirriam Shabwanga and 5 Others** ⁽³⁾ where the Supreme Court stated at paragraph 101 as follows:

“Before we conclude, we would like to observe in passing that going forward, as the Industrial Relations Court, is now a Division of the High Court

presided over by a High Court Judge, under the High Court Act the issue of costs is one left in the discretion of the Judge, there is need to revisit both the Industrial and Labour Relations Act as well as the Rules in order to make them conform with the new role of the court, as a Division of the High Court.” (Emphasis theirs)

- 4.19 Counsel submitted that clearly the two Divisions of the High Court are currently regulated by different Rules and it follows therefore, that all the authorities relating to the meaning of “suit” and stay of proceedings cited by the Defendant are irrelevant as it is the inapplicable **Order 17 Rule 2** above, that used the word ‘suit’.
- 4.20 That in fact, the **Industrial and Labour Relations Court Rules** do not have an equivalent of **Order 17** as is the case with the **High Court Rules**. That is to say, the **Industrial and Labour Relations Rules** do not have a Rule that entitles a party to apply for Costs following a discontinuance of a Notice of Complaint in the manner **Order 17** does for matters commenced in the General Division.
- 4.21 Counsel submitted that this is the reason the Defendant herein, in their initial arguments relied on **Rule 44** of the **Industrial and Labour Relations Act, Chapter 269** which Counsel had demonstrated applies to trial or to an Application, and upon the existence of the instances prescribed therein, and whose determination is not for this Court.

- 4.22 It was Counsel's argument that if the **Industrial and Labour Relations Court Rules** provided for payment of Costs upon the discontinuance of a Matter in that Division, the Defendant's Advocates would have easily reproduced it in these proceedings.
- 4.23 Counsel submitted that they would rely on the maxim '**expression unios est exclusion alterius**' meaning the expression of one thing excludes the other thing not expressed, which, in relation to the IRD, are Costs on discontinuance of a matter.
- 4.24 Furthermore, that in the face of express provisions on Costs, this Court cannot be called upon to exercise its inherent jurisdiction as inherent jurisdiction is not meant to contradict provisions of the law.
- 4.25 Counsel argued that there was no Order for Costs under **Complaint No. IRDLK/026/22** and as such there is no basis on which this Court can grant the Order sought by the Defendant.
- 4.26 Counsel drew the Court's attention to the case of **National Milling Corporation Limited Vs Macadams Bakery Limited and Aziz Kapali** ⁽⁴⁾ in which Mutuna, J., as he was then, ruled as follows:

"Similarly, Order 62 Rules 2 and 3 vests the discretion to award costs in the court. In doing so, it bars the parties to an action from recovering costs except where the court has given an order. Further, that in the exercise of its discretion, the court will award costs to the winning party unless

they (sic) are circumstances that militate to the contrary.” (Emphasis theirs)

4.27 It was Counsel’s submission that from the above excerpt, the following conclusions can be made:

- (i) *That costs are a discretion of the Court;*
- (ii) *That a person cannot recover costs in the absence of an Order for Costs in their favour; and*
- (iii) *That costs are awarded to a successful or winning party.*

4.28 Counsel put forth the argument that it is speculative for the Defendant to seek an Order to Stay Proceedings on the basis of a mere Application and Courts do not grant speculative Orders.

4.29 That as regards the issue that ‘costs are awarded to a successful or winning party,’ because **Complaint No. IRDLK/026/22** ended by way of discontinuance, Counsel contended that there is no successful or winning party therein.

4.30 Additionally, it was submitted that the Court will note that in addition to Costs being a discretion of the Court, the position in the Industrial Relations Division is different from matters commenced in the General List or Registry to which the **High Court Act** and **Rules** apply.

4.31 It was Counsel’s contention that in the Industrial Relations Division, by virtue of **Rule 44(1)** of the **Industrial and Labour Relations Court Rules**, Costs are rarely granted in the Industrial Relations Division on appeal, in matters from the same Division.

4.32 That this supports their argument that the Defendant is asking the Court to make a speculative Order.

4.33 Counsel referred to the case of **Zambia National Commercial Bank Vs Joseph Kangwa** ⁽⁵⁾ where the Supreme Court held as follows:

“With regard to costs, Rule 44 of the Industrial Relations Court Rules contained in the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia provides that a party should only be condemned in costs if they have been guilty of misconduct in the prosecution or defence of the proceedings. We wish to adopt the principle in that rule since this is a matter coming from the Industrial Relations Court. We do not find any misconduct in the respondent’s defence of this appeal. Therefore, either party will bear their own costs, both here and in the court below.”

4.34 Counsel also referred to the case of **Zambia Telecommunications Company Limited** ⁽³⁾, *supra*, where the Supreme Court in paragraphs 92 and 99 to 101 held as follows:

“92. Considering the history of the IRC, that it was established as an Employment Tribunal, we have no doubt that the rules were intended to guard against abuse of the court process through unreasonable delays, unnecessary or vexatious applications whilst ensuring that genuine litigants were not discouraged from pursuing and asserting

their rights on account of cumbersome rules of evidence and litigation costs to which they could be condemned.” (Emphasis theirs)

4.35 And further at paragraphs 99 to 101:

“99. The fact that all the grounds of appeal have succeeded notwithstanding, we have held in ground three, that there must be evidence of any one of the specified grounds in rule 44 (1) for condemning a party to costs of the proceedings and reversed the order condemning the appellant in costs.

100. In the absence of any misconduct in the respondent's defence of this appeal and in line with our holdings in the Amiran Limited and Joseph Kangwa cases, we find that an appropriate order on costs, is for each party to bear their own costs, both here and in the court below.

101. Before we conclude, we would like to observe in passing that, going forward, as the Industrial Relations Court, is now a Division of the High Court presided over by a High Court Judge; and, under the High Court Act the issue of costs is one left in the sole discretion of the Judge, there is need to revisit both the Industrial and Labour Relations Act as well as the Rules in order to make them conform with the new role of the court, as a Division of the High court”. (Emphasis theirs)

4.36 It was Counsel's submission that they had belabored to produce the above excerpts to demonstrate that the chances

- or prospects of a party being awarded costs in the Industrial Relations Division range from very slim to impossible.
- 4.37 That they are fortified in *casu*, by the fact that **Complaint No. IRDLK/026/22** did not even go to trial and that a Notice of Discontinuance or Withdrawal is not an application to be classed either as unnecessary or vexatious.
- 4.38 And that Counsel is further fortified by the fact that **Order 17 Rule 2** of the **High Court Rules** does not apply to **Complaint No. IRDLK/026/22**, as demonstrated above.
- 4.39 Counsel reiterated that discontinuance of a matter to avoid a multiplicity of actions is in fact, proper conduct.
- 4.40 It was Counsel's submission that the foregoing authorities confirm that the Defendant's Application seeks this Court to issue a speculative Order and thus prayed that the Application be dismissed with Costs.

5 HEARING

- 5.1 At a Hearing held on 13th March, 2025, the Defendant submitted that they filed into Court an Affidavit in Support of Summons for an Order to Stay Proceedings, pending the determination of the Application for costs in a Matter in the Industrial Relations Court Complaint No. **IRD LK/026/2022** and this was accompanied by a List of Authorities and Skeleton Arguments.
- 5.2 The documents were filed into Court on 5th February, 2025 and Counsel submitted that they would be relying on the said documents.

- 5.3 Counsel for the Plaintiff submitted that they were opposing the Application and had accordingly filed an Affidavit in Opposition and Skeleton Arguments, filed on 29th April, 2022.
- 5.4 It was Counsel's submission that they would rely entirely on the said documents save to add that there was no Certificate of Taxation and there was also no Order for Costs in the Industrial Relations Court. That what was there was simply an Application for Costs filed in 2022, 3 years ago.
- 5.5 Counsel submitted that Costs become payable and enforceable after a Certificate of Taxation is signed by the Court and a mere application for Costs does not automatically Stay proceedings that have been commenced after a discontinued Matter, being that the actual amount of Costs being claimed was not known.
- 5.6 That this only becomes clear if there is a Certificate of Taxation. Counsel drew the Court's attention to the case of **Dorothy Chibwe Vs Investrust Bank (Plc)** ⁽⁶⁾ where Justice Kafunda had the opportunity to determine a similar Application as the one made by the Defendant, suffice to say that in his Extempore Ruling, the Judge dismissed the Application on the ground that since there was no Certificate of Taxation, there were no Costs that could be enforced by an Application to Stay Proceedings for payment of Costs and the Judge proceeded to trial.
- 5.7 It was Counsel's prayer that on the basis of the case cited above, the Application would be dismissed with costs.
- 5.8 In Reply, Counsel for the Defendant reiterated that the Application before this Court relates to the Staying of

proceedings pending the determination of an Application for Costs in the Industrial Relations Court.

5.9 That the Plaintiffs have not disputed that there is currently an Application in the Industrial Relations Court as of the date of this Hearing, therefore, Counsel did not see the argument on the basis that there is no Certificate of Taxation to hold any merit because the Application for Costs is before the Industrial Relations Court.

5.10 Counsel submitted that further, this case can be distinguished from the case cited by the Counsel for the Plaintiff on the basis that in this Matter, there is an Application for Costs whilst in the **Dorothy Chibwe** ⁽⁶⁾ case cited, *supra*, it seems as though there was Taxation that had happened, however, the Certificate of Taxation was not issued.

5.11 It was thus Counsel's prayer that this Court Stay the current proceedings pending the determination of the Application for Costs in the Industrial Relations Court.

5.12 Ruling was reserved for 25th April, 2025, with the same to be placed in the Parties' pigeon holes.

6 CONSIDERATION AND DECISION OF THE COURT

6.1 The Court acknowledges and expresses its gratitude for the written submissions filed by both Parties, as well as the accompanying documentary evidence adduced in Support of, and in Opposition to, the Defendant's Application, respectively.

6.2 This Ruling is in respect of the Defendant's Application for Summons for an Order for Stay of Proceedings pending the determination of an Application for Costs made pursuant to **Order 3 Rule 2** as read together with **Order 17 Rule 2** of the **High Court Rules** of the **High Court Act, Chapter 27** of the **Laws of Zambia**, which Orders give this Court jurisdiction to hear and determine the Defendant's Application.

6.3 Relying on the authoritative exposition set forth in **Atkin's Court Forms** paragraph 197 at page 171, it is pertinent to note that:

"[A] stay of proceedings is always a very serious and grave step, for its consequences may be of far-reaching importance to the parties. The general rule of procedural law is that a litigant is entitled to have his claim to the relief or remedy which he seeks tried on the substantive merits of the case and therefore a stay of proceedings is a discretionary jurisdiction which ought to be very sparingly exercised and only in exceptional cases."

6.4 In the English case of **Monk Vs Bartram** ⁽⁷⁾, it was held that:

"Where an applicant has shown that special circumstances exist on which to grant a stay, a court should grant it."

6.5 A Court may exercise its inherent jurisdiction to grant a Stay of Proceedings where it is satisfied that a trial would inevitably be rendered unfair, or would be manifestly oppressive and unjustifiable as to amount to an abuse of process, or where the proceedings have been instituted or

- pursued for a purpose extraneous to the legitimate administration of justice.
- 6.6 This Application falls within the ambit of **Order 3 Rule 2** of the **High Court Rules**, which confers upon this Honourable Court the discretionary power to grant interlocutory relief in the interest of justice and to stay proceedings.
- 6.7 The Court may exercise its discretionary power to grant a Stay of Proceedings, thereby temporarily suspending the litigation, pending the resolution of a related matter in another judicial forum, particularly where there exist overlapping issues or a potential for conflicting determinations.
- 6.8 The instant Application is predicated upon the existence of a pending Application for Costs in **Complaint No. IRDLK/026/22** before the IRD, which had been duly filed prior to the institution of proceedings by the Plaintiff on 11th March, 2022, which culminated in the filing of this present Application.
- 6.9 It is a long-standing and well-established principle of law that a Stay of Execution or Proceedings will not be granted by the Court unless cogent and meritorious grounds, demonstrating sufficient cause, are adduced in support thereof.
- 6.10 The paramount consideration guiding the Court's discretion in determining whether to grant a stay of proceedings is the likelihood of success of the proposed appeal or pending application, being a consideration that underscores the principal of judicial caution in preserving the integrity of the litigation process.

6.11 Upon consideration of the submissions proffered by the Counsel for the Defendant's, it appears that the approach espoused regarding an award for costs aligns with the precedent established in the General List Division of the High Court.

6.12 The general principle is that costs follow the event. However, this rule is inapplicable to proceedings instituted in the Industrial Relations Division, wherein distinct regulations governing costs apply.

6.13 Costs in the Industrial Relations Court are expressly governed by **Rule 44(1)** of the **Industrial and Labour Relations Court Rules** which enacts as follows:

“Where it appears to the Court that any person has been guilty of unreasonable delay, or of taking improper, vexatious or unnecessary steps in any proceedings, or of other unreasonable conduct, the Court may make an order for costs or expenses against him.” (Emphasis Ours)

6.14 Generally, the Industrial Relations Division does not award costs. Costs will only be awarded against a party in a matter before the IRD if there has been an infringement of **Rule 44(1)** of the Rules. An award of costs will not be granted unless a party to a cause has acted unreasonably in prosecuting or defending the matter.

6.15 In the case of **Kansanshi Mining Plc Vs Mathews Mwelwa**⁽⁸⁾, it was held as follows:

“In order for one to be awarded costs the onus falls on them to demonstrate that the claim falls under

one of the exceptions. The long and short is that the general rule of costs follows the event does not apply in matters under the Industrial Relations Division unless one is guilty of unreasonable delay or taking improper vexatious or unnecessary steps in any proceedings or the other unreasonable conduct.”

6.16 Unreasonable and improper conduct as envisaged in **Rule 44** has been explained in the case of **Amiran Limited Vs Robert Bones** ⁽⁹⁾ and **Zanaco Vs Joseph Kangwa** ⁽⁵⁾. In the **Amiran** case it was held that:

“With regard to costs, Rule 44 of the Industrial Relations Court Rules contained in the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia provides that in matters before the Industrial Relations Court, costs can only be awarded against a party if such party is guilty of unreasonable delay, or of taking improper, vexatious or unnecessary steps in any proceedings, or of other unreasonable conduct. With appeals that come from the Industrial Relations Court, we adopt the principle in that rule. In this case, the appeal was filed by the appellant and it has succeeded. The respondent had no choice but to come and defend the appeal. In the course of this appeal, the respondent has not been guilty of any conduct that would warrant costs being ordered

against him. Therefore, we shall order that each party bear their own costs.

6.17 In the subsequent case of **Joseph Kangwa**, it was held as follows:

“With regard to costs, Rule 44 of the Industrial Relations Court Rules contained in the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia provides that a party should only be condemned in costs if they have been guilty of misconduct in the prosecution or defence of the proceedings. We wish to adopt the principle in that rule since this is a matter coming from the Industrial Relations Court. We do not find any misconduct in the respondent's defence of this appeal. Therefore, either party will bear their own costs, both here and in the court below.”

6.18 The issue is whether the Defendant is entitled to an award of costs, as sought, consequent upon the Plaintiff's voluntary discontinuance of the action. And the Plaintiffs have argued that because there is no order for Costs, the Defendant has no basis for arguing that the proceedings be Stayed.

6.19 A perusal of **Rule 44(1)** reveals that the Industrial Relations Court does not provide for an award of Costs in circumstances where a matter is discontinued. In fact, the aforementioned provision unequivocally stipulates the grounds upon which an award or order for costs may be granted.

6.20 Following a diligent examination of the precedential guidelines enunciated in the aforementioned authorities, a crucial question arises as to whether the Defendant has adequately satisfied the requisite criteria, as outlined above, thereby prompting the exercise of my discretionary authority to grant a Stay of Proceedings. In essence, has the Defendant substantiated the existence of compelling and persuasive reasons warranting the grant of a Stay of Proceedings?

6.21 The Court may decline to grant a Stay of Proceedings where:

- (a) *The appeal is deemed to lack merit and is unlikely to succeed on its substantive grounds;*
- (b) *The Applicant fails to adduce sufficient evidence or demonstrate exceptional circumstances warranting the grant of a stay; and*
- (c) *The Court determines that the suspension of proceedings would occasion undue prejudice, hardship or injustice to the Respondent or other interested parties.*

6.22 In the case of **Barclays Bank Zambia PLC Vs Jeremiah Njovu and 41 Others** ⁽¹⁰⁾, it was stated that:

“The Supreme Court has been consistent in its position that orders staying execution or proceedings shall not be routinely granted as they often have the effect of either denying successful parties of the benefits of their judgments or unduly delaying conclusion of matters to attain the much-needed finality to litigation.”

- 6.23 Upon applying the aforementioned principles to the instant Application, I am firmly persuaded that the Defendant has failed to proffer sufficient justification for the grant of Stay.
- 6.24 I am inclined to concur with the Plaintiff's submission in this Matter, that the relief sought by the Defendant has not been previously granted in connection with **Complaint No. IRDLK/026/22**, and consequently, it is purely speculative to suggest that they would succeed in obtaining such relief.
- 6.25 The Application for Costs submitted by the Defendant, before the Industrial Relations Court, is severable from, and does not impact the merits of, the underlying action commenced by the Plaintiff. The determination of costs is a separate and distinct issue, which is yet to be adjudicated independently of the substantive claims presented in the principal proceeding.
- 6.26 After careful consideration, it is my considered view that the Plaintiff's voluntary discontinuance of the proceedings before the IRD, does not constitute unreasonable conduct. Consequently, the prospects of the Defendant's Application for succeeding before the IRD appear exceedingly remote, if not improbable.
- 6.27 In light of this, I hold that there is no basis for Staying the Proceedings instituted by the Plaintiffs' in *casu*.

7 CONCLUSION

- 7.1 Having carefully considered the Application made by the Defendant, I find that the Defendant has failed to adequately

demonstrate the prejudice and irreparable damage they will suffer in the event that a Stay of Proceedings is not granted.

- 7.2 Further, the Court is persuaded that there are no exceptional circumstances warranting the exercise of the Court's discretionary power to grant a Stay of Proceedings.
- 7.3 Having regard to the preceding observations, I find that the Defendant's Application lacks merit, and accordingly, dismiss the Application.
- 7.4 Costs are for the Plaintiff to be taxed in default of agreement.
- 7.5 The Matter in the main will proceed as per Order for Directions issued on 3rd April, 2025.

DELIVERED AT LUSAKA THIS 25TH DAY OF APRIL, 2025



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A. MALATA-ONONUJU
HIGH COURT JUDGE