

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

2022/HP/1118

(CIVIL JURISDICTION)

BETWEEN:

MAXWELL MWIINGA

MODROW MPANDE

LIVERT LWIINDI

BENSON CHILAPYA

SIANA MOONO

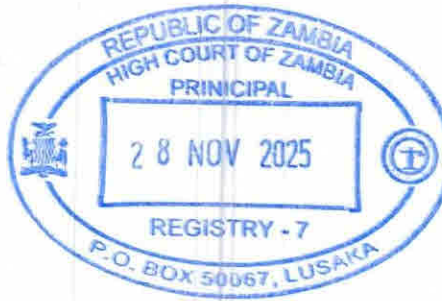
KILLIAN MACHULU

AND

KALEYA SMALLHOLDERS COMPANY LIMITED DEFENDANT

For the Plaintiffs: Mrs. K. Tembo Muyombe – Messrs. Milner & Paul Legal Practitioners

For the Defendant: Mr. Z. Sampa – Simeza Sangwa & Associates



1ST PLAINTIFF

2ND PLAINTIFF

3RD PLAINTIFF

4TH PLAINTIFF

5TH PLAINTIFF

6TH PLAINTIFF

**RULING ON AN APPLICATION TO STAY
PROCEEDINGS**

A. MALATA-ONONUJU J. DELIVERED THE RULING OF THIS COURT

CASES REFERED TO:

1. *Owner of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Limited KECA 48 KLR (1989);*
2. *Citibank Zambia Limited Vs Suhayi Dudhia Appeal No. 6 of 2022;*
3. *Sonny Paul Mulenga & Vismer Mulenga (both personally and practicing as SP Mulenga International), Chainama Hotels Limited and Elephants Head Hotel Limited Vs Investrust Merchant Bank Limited (199) Z.R. 101;*
4. *Shaw Vs Holland (1900) 2 Ch. 305;*
5. *Michelo Special Georges Mwiinga (sued as Mortgagor and Guarantor and Florence Kachesa Mwiinga (sued as Mortgagor and Guarantor) Vs Zambia National Commercial Bank PLC SCZ Judgment No. 51 of 2014;*
6. *Linotype-Hell Finance Ltd Vs Baker (1992) 4 All ELR 887;*

7. *Zambia Revenue Authority Vs The Post Newspaper SCZ Judgment No. 18 of 2016;*
8. *Felopater Zambia Ltd and 2 Others Vs Zambia National Commercial Bank PLC CAZ Application No. 26 of 2022;*
9. *JCN Holdings Limited Vs Development Bank of Zambia Appeal No. 87 of 2012;*
10. *Naik Vs Burgress and Others Appeal No. 45 of 2020;*
11. *Proximity Engineering and Mining Limited Vs Paulgil Cheick Enterprises Limited Appeal No. 170 of 2022;*
12. *The Attorney-General Vs The Law Association of Zambia (2008) 1 Z.R. at page 21;*
13. *Yosi Miti Vs The Attorney-General SCZ/8/201/2015;*
14. *Winchester Cigarette Machinery Limited Vs Payne No. 2: CA (1993) Time Law Reports;*
15. *Barclays Bank PLC Vs Njovu and Others SCZ Judgment No. 21 of 2019;*
16. *University of Lusaka Limited Vs The Attorney-General and Others CAZ Appeal No. 2 of 2024;*
17. *Omar Dirie Hirsi Vs The Attorney-General 2017/HP/0380;*
18. *Zimco Properties Limited Vs Lapco Limited (1988-1989) Z.R. 92; and*
19. *Shell and BP (Z) Limited Vs Conidaris and Others (1975) Z.R. 174.*

LEGISLATION AND WORKS REFERRED TO:

1. *The Rules of the Supreme Court of England, (White Book), 1965 Edition;*
2. *Halsbury's Laws of England on Practice and Procedure, 4th Edition, Volume 37, LexisNexis Butterworths (2001); and*
3. *The Court of Appeal Rules, Act No. 7 of 2016.*

1. INTRODUCTION

- 1.1 This is a Matter where the Defendants herein, on 16th October, 2025, filed into Court Summons for an Order to Stay Proceedings pending Determination of the Appeal pursuant to **Order 59 Rule 13(1)** of the **Rules of the Supreme Court of England (White Book), 1965** ⁽¹⁾
- 1.2 The said Application was accompanied by an Affidavit as well as List of Authorities and Skeleton Arguments of even date.
- 1.3 In response, the Plaintiff filed an Affidavit in Opposition to the Defendants Application on 6th November, 2025,

and the said was accompanied by Skeleton Arguments and List of Authorities.

- 1.4 Being at liberty to do so, the Defendants filed their Reply to the Plaintiffs Affidavit in Opposition on 13th November, 2025, with Skeleton Arguments and List of Authorities.

2 THE DEFENDANT'S APPLICATION

- 2.1 The Affidavit in Support was sworn by **PAUL MUNDIA**, a Finance Manager and Company Secretary in the employ of the Defendant company.
- 2.2 The Deponent avowed that on 9th August, 2022, the Defendant filed a Notice of Motion for an Order to Dismiss the proceedings for want of jurisdiction on the grounds that this entire Matter is a subject of an arbitration agreement between the Parties.
- 2.3 That on 6th March, 2025, this Honourable Court delivered a Ruling dismissing the Defendant's Application with Costs.
- 2.4 That the Defendant is dissatisfied with the Ruling and has appealed the said Ruling to the Court of Appeal and a copy of the Memorandum of Appeal with the grounds of Appeal was exhibited as "**PM1**".
- 2.5 It was the Deponent's averment that the Appeal has realistic prospects of success, and there are special reasons warranting the Stay of proceedings before this Court.
- 2.6 That the Appeal hinges on whether the Court has the requisite jurisdiction to adjudicate this Matter.

- 2.7 That it is in the interest of justice for the proceedings in this action to be Stayed to avoid the entire proceedings being nullified in the event that the Appellate Court holds that this Matter ought to have been referred to arbitration.
- 2.8 In their Skeleton Arguments of even date, Counsel submitted that On 6th March, 2025, the Court delivered its Ruling dismissing the Defendant's Application challenging the Court's jurisdiction to hear this Matter in light of the fact that the agreement, which is the subject of these proceedings, has an arbitral clause.
- 2.9 That the Defendant has appealed the Ruling of this Court to the Court of Appeal and now seeks an order to Stay proceedings pending the hearing and determination of the Appeal by the Court of Appeal.
- 2.10 Counsel drew the Court's attention to the learned authors of **Halsbury's Laws of England on Practice and Procedure** ⁽²⁾ who opine as follows with regards to the law on Stay of proceedings:

"In general, a stay of proceedings arises under an order of the court which puts a stop or 'stay' on the further conduct of the proceedings in that court at the stage which they have then 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 claim taking place, where the court thinks it is just and convenient to make the order, to

prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process. The order is made generally in the exercise of the court's discretionary jurisdiction, and by way of summary process, that is without a trial on the substantive merits of the case, and, at any rate in the exercise of its inherent jurisdiction, an order for the stay of proceedings is made very sparingly and only in exceptional circumstances. The court's power to stay proceedings may be exercised under particular statutory provisions, or under the Civil Procedure Rules or under the Court's inherent jurisdiction or under one or all of these powers, since they are cumulative, not exclusive, in their operation." (Emphasis Theirs)

2.11 Counsel also referenced **Order 59 Rule 13 (1)** of the **Rules of the Supreme Court of England, 1965** ⁽¹⁾ which states as follows:

"13. Stay of execution, etc.

(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct

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(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;"

2.12 It was Counsel's submission thus, that a party dissatisfied with any decision of the High Court while exercising his right of appeal is entitled to seek an order

Staying the proceedings under the decision of the High Court in order that the intended appeal is not rendered nugatory.

- 2.13 That the Applicant must however demonstrate to the Court that he meets the requirements for the grant of a Stay *vis* that there are special circumstances warranting the grant of a Stay of proceedings and secondly that the appeal has realistic prospects of success.

The Appeal has realistic prospects of success

- 2.14 Counsel contended that without delving in detail into the arguments, it is clear from the intended Grounds of Appeal in the Memorandum of Appeal that the issue in the appeal is centred on this Court's jurisdiction to hear this Matter.
- 2.15 That the Appeal herein primarily challenges the Court's holding that the arbitration clause in the agreement which is the subject of these proceedings is inoperable and declining to cede jurisdiction to the arbitration process.
- 2.16 It was submitted that since the Court's jurisdiction is at the centre of the Appeal, it would be unwise for the proceedings herein to continue as that will undermine the pending Appeal and could render the Appeal nugatory, and in any event, if the Court of Appeal is to agree with the Defendant that this Court had no Jurisdiction to hear the matter, the proceedings before this Court including the orders made thus far will be

nullified and in which case, it would not be an efficient way of deploying the resources of this Court.

- 2.17 That another issue raised in the intended Grounds of Appeal questions this Honourable Court's Ruling as touching on matters not pleaded by either of the parties to this action, the argument being that it is trite that pleadings define the issues for determination by a Court and that once pleadings are settled, both parties to the action and the Court are bound by the pleadings.
- 2.18 That the Defendant will contend that the Court went beyond the scope of what the Parties have pleaded in its Ruling which is the subject of Appeal.
- 2.19 It was Counsel's submission that it will be argued that KAST is not a party to the proceedings and none of the Parties raised the issues relating to KAST, which however formed the basis of the Court's decision.
- 2.20 That the Defendant will argue that the Court volunteered a Ruling in adjudicating on matters that were not before the Court and did not form part of the application.
- 2.21 Counsel submitted that clearly therefore, the grounds of Appeal have real prospects of success and that therefore the stay order ought to be granted.
- 2.22 That as regards the question of jurisdiction of a Court, Counsel drew upon the authority of the Kenyan case of **Owner of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Limited⁽¹⁾**, which Zambian Superior Courts, time without number, have adopted with approval and where it was held that:

“Jurisdiction should be the overriding consideration for a Court in determining whether it can proceed to entertain any question before it, for jurisdiction is everything (and that) without it, a Court has no power to make one more step [...] where the Court takes it upon itself to exercise jurisdiction which it does not possess. its decision amounts to nothing.” (Emphasis Theirs)

2.23 Counsel also placed reliance on the case of **Citibank Zambia Limited v Suhayi Dudhia⁽²⁾**, where the Supreme Court held as follows:

“A jurisdictional question can be brought up at any stage of the proceedings either by formal application or viva voce, even on appeal, whether or not it was raised in the court below and even where it is not pleaded in the grounds of appeal or filed heads of argument. The nature of jurisdictional questions is that, once they are brought to the attention of the Court, they must be dealt with immediately. This is because if a court decides to proceed without addressing the jurisdictional issue and, it is later established that it had no jurisdiction, the court will have wasted both its own time and that of the litigants because the proceedings and everything that flows from them will be rendered a nullity and of no effect...” (Emphasis Theirs)

2.24 It was Counsel's assertion that flowing from the above, it is submitted that not only does the intended Appeal have good prospects of success, but further that there are special circumstances warranting the grant of the Stay of these proceedings, so as to avoid the Court proceeding with a matter with the real possibility that the entire proceedings herein may be rendered a nullity and of no legal effect should the Appeal questioning the Court's jurisdiction succeed.

2.25 That this is a proper case for the Court to Stay the proceedings herein pending the hearing and determination of the Appeal to the Court of Appeal because not only does the Appeal have realistic prospects of success, but further that there are special circumstances warranting the grant of the order for Stay.

2.26 It was Counsel's prayer that the proceedings herein be Stayed pending the determination of the Appeal to the Court of Appeal.

3 THE PLAINTIFF'S RESPONSE

3.1 6th November, 2025, the Plaintiff filed an Affidavit in Opposition to the Defendants instant Application.

3.2 The said Affidavit was sworn by **MAXWELL MWIINGA**, the 1st Plaintiff herein.

3.3 He deposed that he had perused the Grounds of Appeal and reasonably believed that the Appeal has no realistic prospects of success.

- 3.4 That in applications for Stay of proceedings, exceptional circumstances should be highlighted and demonstrated in order for the Court to exercise its discretion to grant the Stay and the Defendant herein has not demonstrated the exceptional circumstances for which this Honourable Court should exercise its discretion.
- 3.5 The Deponent averred that this is not a proper case in which this Honourable Court should exercise its discretion in favour of the Defendant.
- 3.6 That Staying these proceedings will prejudice the Plaintiffs who have been ousted out of their farms and are unable to farm, use their farms and yield any harvests therefrom despite there being an order of injunction allowing the Plaintiffs to remain on their Estates.
- 3.7 That the Defendant is denying the Plaintiffs access to their farms on the premise that an earlier eviction notice dated 7th February, 2022, is instead being enforced to oust the Plaintiffs out of the farms and the farms are being given to other people who are now enjoying the fruits of the Plaintiffs sweat. Copies of the letter exchanges were produced and marked **“MM1(a)-(e)”**.
- 3.8 That if the proceedings are Stayed until the Appeal is heard, the Plaintiffs shall continually be prejudiced as an Appeal can take years to be heard while the Plaintiffs livelihood would be cut short.

- 3.9 That should this Honourable Court grant a Stay of proceedings; this Court can put up conditions upon which the Stay can be granted.
- 3.10 The Deponent avowed that this Honourable Court can order that the Plaintiffs be allowed to remain on their farms, use their field and continue farming on their fields and have access to all their farming benefits as a condition attached to the grant of the Stay of proceedings.
- 3.11 That setting this condition will enable the *status quo* to be maintained and for the Plaintiffs to not suffer any prejudice upon the grant of the Stay of proceedings.
- 3.12 Accompanying the Affidavit in Opposition, were Skeleton Arguments where Counsel submitted the following:

Power of the Court to Stay Proceedings

- 3.13 It was Counsel's submission that this Honourable Court is conferred with jurisdiction to Stay proceedings in the High Court pending determination of an Appeal by virtue of **Order 10 Rule 5** of the **Court of Appeal Rules**⁽³⁾ which provides as follows:

“An appeal shall not operate as a stay of execution or of proceedings under the Judgment appealed against unless the High Court, quasi-judicial body or the Court so orders and no intermediate act or proceedings shall be invalidated except so far as the Court may direct.” (Emphasis Theirs)

3.14 That **Order 59 Rule 13** of the **Rules of the Supreme Court of England, 1965**⁽¹⁾ confers power on this Court to order, *inter alia*, a Stay of proceedings pending determination of an Appeal by the Court of Appeal.

3.15 Further, that **Order 59 Rule 13** *supra*, in its explanatory notes under **Order 59 Rule 13(2)** provides, *inter alia*, that:

“The court is likely to grant a stay where the appeal would otherwise be rendered nugatory (Wilson v. Church (No. 2) (1879) 12 Ch.D. 454 at 458, 459, CA), or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the court (Becker v. Earl’s Court Ltd (1911) 56 S.J. 206; The Ratata [1897] P. 118, p.132; Att.-Gen. v Emerson (1889) 24 Q.B.D, 56 at 58, 59) and the court will grant it where the special circumstances of the case so require.” (Emphasis Theirs)

3.16 It was Counsel’s assertion that they are fortified in their submission by the case of **Sonny Paul Mulenga & Vismar Mulenga (Both personally and practicing as SP Mulenga International), Chainama Hotels Limited and Elephants Head Hotel Limited Vs Investrust Merchant Bank Limited**⁽³⁾, wherein the Supreme Court held that:

“The successful litigant should not be denied immediate enjoyment of a judgment unless there good and sufficient grounds.” (Emphasis Theirs)

3.17 That the Supreme Court further held that:

“More is required to be advanced to persuade the court below or this court that it is desirable, necessary and just to stay a judgment pending appeal.” (Emphasis Theirs)

3.18 Counsel referenced the case of **Shaw Vs Holland**⁽⁴⁾ where Lord Alverstone, M.R. had this to say on the issue of Stay of proceedings pending Appeal at page 313:

“The general rule, I think, should be that the proceedings under a judgment should not be stayed pending an appeal unless on special grounds... But I think that in every case some special ground should be shown upon any application to the Court for a stay.” (Emphasis Theirs)

3.19 Counsel contended that it is clear from the foregoing authorities that for a party to be entitled to a stay of a judgment pending determination of an appeal, the applicant ought to satisfy the Court with two things, namely:

- (i) That the Appeal has prospects of success; and
- (ii) There are special circumstances warranting the grant of the Stay of execution of judgment/proceedings.

3.20 That the Application by the Defendant does not meet the above criteria for the grant of a Stay of proceedings pending Appeal as their arguments would show that the Appeal has no prospects of success and the Defendant has not raised any special circumstances warranting the grant of the Stay of proceedings by this Honourable Court.

The Appeal has no Prospects of Success

3.21 Counsel submitted that it is trite that an Applicant for Stay of proceedings pending Appeal ought to satisfy the Court that the Appeal has some prospects of success.

3.22 Counsel drew upon the authority of the case of **Michelo Special Georges Mwiinga (Sued as Mortgagor and Guarantor) and Florence Kachesa Mwiinga (Sued as Mortgagor and Guarantor) Vs Zambia National Commercial Bank PLC**⁽⁵⁾ where it was held that:

“In exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of the proposed appeal.” (Emphasis Theirs)

3.23 Counsel also referred to the case of **Linotype-Hell Finance Ltd Vs Baker**⁽⁶⁾ where Staughton LJ said at page 888 that:

“It seems to me that, if a defendant can say that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a stay of execution.” (Emphasis Theirs)

3.24 It was Counsel's submission that the most recent case decided by the Supreme Court on this point is that of **Zambia Revenue Authority Vs The Post Newspaper Limited** ⁽⁷⁾, in which it was stated:

“Further, where a Judgment or Ruling is stayable, the principles state that stay of execution pending appeal, is a discretionary remedy. A party is not entitled to it as of right. And such discretion must be exercised judiciously and on well-established principles. Firstly, the successful party should not be denied the immediate enjoyment of a Judgment, unless there are good and sufficient grounds. Stay of execution should not be granted for mere convenience of the Post. Neither should it be granted purely on sympathetic or moral considerations. Secondly, in exercising its discretion, whether to grant a stay or not, the Court is entitled to preview the prospects of success of the proposed appeal. In particular, where the Judgment appealed against involves payment of money, the Appellant must show that if such money is paid, then there will be no reasonable prospect of recovering it in the event of the appeal succeeding. Such proof is what amounts to good and sufficient grounds warranting a stay.” (Emphasis Theirs)

3.25 The Court concluded:

“We wish to emphasize that the prospect of success of the pending appeal is a key consideration, in deciding whether or not to stay execution of the judgment appealed against. Here we wish to reaffirm the two-fold test, as stated in our decision in Carmine and Watson Nkandu Bowa (sued as Administrator of the Estate of Ruth Bowa v Fred Mubiana and ZESCO Limited, as quoted by Mrs. Goramota and Mr Mwamba on page 16 of this Judgment.” (Emphasis Theirs)

3.26 That it is clear from the foregoing authorities that for this Honourable Court to grant an Order for Stay of proceedings, it needs to be satisfied that there is a likelihood that the Appeal will succeed.

3.27 It was Counsel’s contention that at this stage, the prospects of success require a preview of the Grounds of Appeal as set out in the Memorandum of Appeal.

3.28 That the Defendant has lamentably failed to demonstrate before the Court the prospects of success of the Appeal.

3.29 That on face value, the Defendant raises Grounds of Appeal challenging this Honourable Court’s jurisdiction as a result of an arbitral clause and the Ruling of this Honourable Court reveals the Court’s careful study of the facts before the Court and the applicability of the arbitral clause between the Parties and rightly found that the arbitral clause is inoperative as between the

Parties and the dispute between the Parties is not covered under the said clause.

3.30 It was therefore Counsel's submission that this Honourable Court was on firm ground to have found that the dispute was properly before it.

3.31 That from the foregoing, they contend and submit that the Appeal has no merit to warrant the Staying of the proceedings and further, that the Appeal will not be rendered nugatory if the proceedings herein are not Stayed because the Appeal has no prospects.

Special Circumstances Warranting a Stay of Judgment

3.32 Counsel asserted that in terms of special circumstances warranting an Order for Stay of the proceedings pending Appeal, the Defendant has raised none whatsoever making it difficult for this Honourable Court to exercise its discretion to grant the Stay.

3.33 It was Counsel's argument therefore that the Ruling of this Honourable Court being appealed against is proper with a proper analysis of all the evidence submitted by both Parties on the established legal principles surrounding the relationship between the Plaintiff and the Defendant and most importantly the finding of fact that this Honourable Court is vested with jurisdiction to determine the claims presented before it by the Plaintiffs.

3.34 Further, the Grounds of Appeal raised are frivolous which will definitely not be entertained by the Court of Appeal and therefore, there is no probable reason why

the Judgment of this Honourable Court should be Stayed.

Maintaining the Status Quo

- 3.35 It was Counsel's submission and as highlighted in the Plaintiffs' Affidavit in Opposition that despite there being an Order of Interim Injunction stopping the Defendant from evicting the Plaintiffs from the Estate, the Defendant has still proceeded to evict them.
- 3.36 Further, they Plaintiffs have been kept out of use of their farms and consequently from realising a living from their farming activities and all benefits related to.
- 3.37 That this Honourable Court is vested with jurisdiction to grant an Order for Stay of proceedings upon the satisfaction of certain conditions and this is so that the *status quo* is maintained or to prevent the party obtaining the Stay of execution an advantage against the victorious party to that party's detriment.
- 3.38 Counsel submitted that maintaining of the *status quo* should also be in circumstances where if the *status quo* is not maintained, a party will be ruined; and in this instance that the Plaintiffs stand to be ruined should the *status quo* not be maintained.
- 3.39 That the evidence on Record shows that the Defendant has been keeping the Plaintiffs out of use of the Estate; particularly their farming areas despite their being an operative injunction.

- 3.40 Further, it is clear from the Record that the Plaintiffs rely on these farms to maintain their livelihood and if the proceedings herein are Stayed, the Plaintiffs will have to wait for the Appeal to be heard which will, with practice, take long while they will be deprived of their livelihood.
- 3.41 Counsel submitted thus, that the Plaintiffs will certainly stand to be ruined should the Stay be granted without conditions.
- 3.42 It was Counsel's submission that this Honourable Court is vested with the discretion to grant a conditional Stay of proceedings so as to ensure the *status quo* is maintained and the Defendant does not permanently give away the Plaintiffs farms to other persons.
- 3.43 That the Plaintiffs' arguments have demonstrated that this is not a proper case for the Court to exercise its discretion and grant the Defendant an Order to Stay of proceedings as the Appeal has no prospects of success and there are no special circumstances warranting the Stay.
- 3.44 Counsel prayed that the Application for Stay of Proceedings pending Appeal be dismissed for want of merit with costs to the Plaintiff.

4 THE DEFENDANTS REPLY

- 4.1 The Defendant did file in a Reply to the Plaintiffs Affidavit in Opposition on 13th November, 2025.
- 4.2 The said Affidavit was sworn by **ZIKHALO MUBANGA SAMPA**, an Advocate of the High Court of Zambia in the employ of Messrs. Simeza Sangwa & Associates and

Counsel seized with the conduct of this Matter on behalf of the Defendant.

- 4.3 The Deponent avowed that by a Ruling dated 10th October, 2025, the single Judge of the Court of Appeal granted Leave to Appeal the decision of this Court and held that the Appeal has realistic prospects of success. A copy of the Ruling of the Court was produced and marked **“ZMS1”**.
- 4.4 That there are special circumstances warranting a Stay of proceedings herein as the Appeal seeks to challenge the jurisdiction of the Court, and that in the event that the Appeal is successful, it would render the entire proceedings herein and any Orders of the Court null and void for want of jurisdiction.
- 4.5 That by *ex-parte* Order of Interim injunction dated 3rd August, 2022, the Defendant herein was restrained from executing the letter to vacate dated 30th May, 2022, by evicting the Plaintiff's from the Estate until the final hearing and determination of this action. A copy of the *Ex-Parte* Order of the Court was produced and marked **“ZMS2”**.
- 4.6 The Deponent averred that the *Ex-Parte* Order was specifically in relation to the letter dated 30th May, 2022, by which the Defendant requested the Plaintiffs to vacate the estate and a copy of the letter was produced and marked **“ZMS3”**.
- 4.7 That the said Order neither provided the Plaintiffs exclusive rights of use or access to the farming areas,

nor reversed the termination of the Cane Farmers Agreement.

- 4.8 That the Plaintiffs' rights to use the farming areas stemmed from the Cane Farmers Agreements which were terminated by the letter dated 7th February, 2022, and which letter was not the subject of the *ex-parte* Order of Interim Injunction. A copy of the said letter was produced and marked "**ZMS4**".
- 4.9 It was the Deponent's averment that despite being allowed to reside on the estate by virtue of the Ex-Parte Order of Interim Injunction, the Plaintiffs are not entitled to use the Defendants farming areas as their Cane Farmers Agreements were terminated.
- 4.10 That in compliance with the Order of the Court, the Defendant has not executed the letter dated 30th May, 2022, by evicting the Plaintiffs from the Estate and the Plaintiffs are still resident on the Estate as is evident from the residential address of Maxwell Mwiinga, the Deponent of the Plaintiff's Affidavit in Opposition.
- 4.11 That it is in the interest of justice that these proceedings are Stayed because in the event that the Court of Appeal decides in favour of the Defendant, the proceedings will be rendered academic.
- 4.12 In their Skeleton Arguments of even date, Counsel submitted that the Plaintiffs had raised the following arguments in opposition to the Defendant's Application for Stay of proceedings:
- (i) The appeal has no prospects of success;

- (ii) There are no special and compelling circumstances to stay proceedings; and
- (iii) The status quo must be maintained.

The Appeal has no Prospects of Success

4.13 Counsel submitted that from the onset the question of whether the Appeal has realistic prospects of success has already been determined by the Single Judge of the Court of Appeal *vis* the Ruling dated 10th October, 2025, on the Application for Leave to Appeal the decision of this Court.

4.14 That the Court held:

“2.5. In view of the foregoing, I am satisfied that the intended appeal has prospects of success, particularly on the question whether the lower Court erred in assuming jurisdiction notwithstanding the existence of an arbitration clause. Accordingly, leave to appeal to the Court of Appeal is hereby granted.” (Emphasis Theirs)

4.15 That notably, despite the above, the Plaintiffs have continued to insist that the Appeal herein has no prospects of success and have in fact invited this Court to accept the said argument.

4.16 That however, by inviting the Court to find that the Appeal has no prospects of success, the Plaintiffs are essentially asking the Court to re-determine an issue that has already been addressed by a Higher Court.

4.17 Counsel referenced the case of **Felopater Zambia Ltd & 2 Others Vs Zambia National Commercial Bank PLC**

⁽⁸⁾ where the Court of Appeal held:

“In any case, such an action would have to be commenced in the lower Court but the High Court lacks jurisdiction to review decisions and processes of a superior court. We are well guided by the Supreme Court in the case of Hakainde Hichilema v The Attorney General where it was held that-

‘In deference to higher courts, a lower court should not purport to interrogate the conduct of a case which has been decided upon by a higher court with a view to determining whether the higher court conducted the case properly.’ (Emphasis Theirs)

4.18 It was Counsel’s submission that it follows from the above that this Court cannot review a decision of a superior Court.

4.19 That the Court of Appeal having held that the pending Appeal has prospects of success, this Court cannot entertain the same question relating to the same Appeal as this would amount to a review of the Court of Appeal’s decision.

4.20 That the question of whether an Appeal has prospects of success on an application for Leave to Appeal and on an application for Stay of proceedings is essentially the

same and therefore, the said question cannot be answered in the affirmative on one application, and in the negative on another as this would amount to two conflicting decisions on the same issue.

4.21 Counsel submitted that the question of whether the Appeal has prospects of success has already been determined by the Court of Appeal and therefore this Court is bound to embrace the same position and the Plaintiffs' argument to the effect that the Appeal has no prospects of success therefore ought to fail.

Special and Compelling Reasons

4.22 It was Counsel's contention that contrary to the assertions of the Plaintiffs herein that there are no special and compelling reasons for the Court to Stay these proceedings, it was submitted that the Application has demonstrated special and compelling reasons.

4.23 That quite notably, the Appeal is concerned with the jurisdiction of this Court to entertain the entire action in light of the arbitration clause contained in the Cane Farmers Agreement and therefore, in the event that the Court of Appeal finds that this Court has no jurisdiction and that this Matter ought to have been referred to arbitration, the effect of such a decision would be to void every step taken by this Court in this Matter.

4.24 Counsel stated that they are guided in the above submission by the guidance of the Supreme Court in **JCN Holdings Limited Vs Development Bank of**

Zambia⁽⁹⁾ on the importance of jurisdiction where the Supreme Court held as follows:

“It is clear from the Chikuta⁽³⁾ and New Plast Industries⁽⁴⁾ Cases that if a court has no jurisdiction to hear and determine a matter, it cannot make any lawful orders or grant any remedies sought by a party to that matter. Affirming our decisions in the Chikuta⁽³⁾ and New Plast Industries⁽⁴⁾ Cases, we hold that since this matter was improperly before Mutuna, J, he had no jurisdiction to hear and determine it. Also, he had no jurisdiction to make any order or grant any remedy. Consequently, the judgment and the ruling he delivered, which are the subject of this appeal, are null and void.” (Emphasis Theirs)

4.25 Counsel also drew the Court’s attention to the decision of the Court of Appeal in **Naik v Burgess and Others**⁽¹⁰⁾ where the Appellate Court held as follows at page J27 - J28:

“...We are guided by the cited case of Crossland Mutinta and Others v. Donovan Chipanda⁽⁷⁾ and the case of Antonio Ventriglia and Emmanuela Ventriglia v. Finsbury Investments Limited⁽¹⁰⁾, where the Supreme Court asked the question whether, having regard to the fact that the Respondent had purported to apply for leave to appeal at a time when the applicable period within which they could lawfully have done so

had long expired, the decision or outcome of that purported application could possibly stand. Their Lordships and Ladyships response was that it could not stand. The Court went on to express the view, based on the Latin maxim translation that “out of nothing, comes nothing” and held that what the Court of Appeal did in proceeding to hear the Respondents application in the circumstances amounted to nothing, from the stand point of both the means (i.e. the process) and the end (i.e. the outcome).” (Emphasis Theirs)

4.26 The Court stated further that:

“Since jurisdiction is paramount, in the absence thereof, the appeal cannot stand. The Order pursuant to which the appeal was made having been obtained outside the stated period, it means that the High Court had no jurisdiction to entertain it and by extension, neither does this Court; as indeed, it can only hear the appeal on its merits if it is satisfied that the ex-parte Order for leave arose out of proper proceedings.”
(Emphasis Theirs)

4.27 It was Counsel’s submission that it follows that in the event that the Court of Appeal finds that this Court has no jurisdiction, it would mean that every order granted by this Court in this action would be *void ab initio*, for out of nothing comes nothing.

4.28 That when the jurisdiction of the Court is in question, the determination of such issues is of paramount importance and ought to be determined first before it can proceed to take any further steps in the matter.

4.29 Counsel submitted that they were guided by the decision of the Court of Appeal in the case of **Proximity Engineering and Mining Limited Vs Paulgil Cheick Enterprises Limited**⁽¹¹⁾ where the Court of Appeal observed as follows:

“8.3. The Apex Court in several celebrated authorities, and more recently in its Ruling, delivered in the case of Mwampole Brighton Kasawindo Vs Crawford Mwiinga⁽⁴⁾, stated with regard to jurisdiction-

“The importance of determining this question before any other is that jurisdiction goes to the root of a matter. In this instance, the question is whether a Court is clothed with the requisite power or authority to entertain a matter before it and indeed any other ancillary matter that may arise therefrom.”

8.4. We have also noted that the issue in the lower Court, centred on the dispute in relation to who between the Appellant and the Respondent held the Mining License over Plot 278, Lufwanyama District.” (Emphasis Theirs)

4.30 That furthermore, in the event that the Court proceeds to hear this matter, and the Court of Appeal holds that

this Court lacked jurisdiction to hear this Matter, every order made by the Court in pursuance of these proceedings will be rendered null and void.

4.31 That in fact, the entire Court proceedings herein would be rendered academic, which the Supreme Court has frowned upon heavily and in this regard, Counsel referred the Court to the case of **Attorney General vs The Law Association of Zambia**⁽¹²⁾ where the Court held that:

“It is a notorious fact that the elections are since gone. Even if the petitioner was to be successful on the cross-appeal, it is quite clear that the order would serve no purpose apart from being an unnecessary academic exercise. This court frowns upon making academic orders.” (Emphasis Theirs)

4.32 That from the above. the Court herein ought not to be invited to entertain proceedings which may be rendered academic upon the Appeal being decided given that it is this Court’s jurisdiction that is in question.

4.33 Counsel submitted thus, that in light of the above, there are compelling reasons for this Court to Stay the proceedings herein, and reiterated that this is a proper case for the Court to exercise its powers for stay.

Status quo must be Maintained

4.34 It was Counsel’s submission that the Plaintiffs further argued that the Court is vested with jurisdiction to grant an order of Stay execution of proceedings to ensure that

the *status quo* is maintained or to prevent a party obtaining an advantage against the victorious person through the stay of execution.

4.35 That from the outset, whereas the Court considers similar factors in determining applications for Stay of execution and Stay of proceedings, the two processes are distinct and cannot be used interchangeably.

4.36 That what the Defendants are seeking herein is an order to Stay proceedings pending the determination of the Appeal before the Court of Appeal, which Appeal touches on the jurisdiction of this Court to hear and determine this entire action.

4.37 Counsel contended that therefore, the Application before Court is not a Stay of execution, and is not concerned with the rights of a victorious party as the dispute is yet to be determined in favour of any party.

4.38 That moreover, as argued by the Plaintiffs and indeed the Defendant in the Skeleton Arguments in support of the Application for an order for Stay of proceedings, in such an application, the Court is concerned with whether the appeal has prospects of success, and whether there are special and compelling reasons and therefore, maintaining the *status quo* does not fall within the considerations for such an Application and this argument therefore ought to fail.

4.39 It was Counsel's submission that this Application ought to succeed.

- 4.40 That the Plaintiffs' attempt to re-litigate the prospects of success is an invitation for this Court to sit in judgment of the Ruling of the Court of Appeal which cannot be entertained in the slightest.
- 4.41 That conversely, the Defendant has shown a profound and compelling reason to Stay this Matter: The Appeal is not peripheral but strikes at the very heart of this Court's power to hear the action at all and to proceed in the face of a jurisdictional challenge, and in defiance of the principle; "*out of nothing, comes nothing*", would be an improper exercise of the Court's discretion.
- 4.42 Counsel submitted that the Plaintiffs opposition is, in its entirety, misconceived, and prayed that the Court grants the Application for Stay of proceedings pending Appeal as prayed.

5 HEARING

- 5.1 At the Hearing of the Application held on 13th November, 2025, Counsel for the Defendant submitted that they did file Summons for Stay of proceedings on 16th October, 2025, and the same was supported by an Affidavit and Skeleton Arguments of even date. That they intended to rely on the above-mentioned documents in supported of the Application.
- 5.2 Counsel for the Plaintiff submitted that in Opposition, they had filed an Affidavit and Skeleton Arguments dated 6th November, 2025, and they would be relying on the said documents.

- 5.3 Counsel for the Defendant stated that they had filed in an Affidavit in Reply on 13th November, 2025, accompanied by Skeleton Arguments and they would equally rely on the same.
- 5.4 The Court noted that the Orders for Directions had not been complied with and Counsel for the Defendant submitted that they had difficulties finding documents, which led to them not adhering. It was Counsel for the Plaintiffs submission that they too did not adhere.
- 5.5 By agreement, by Parties agreed to amend the Orders for Directions dated 6th October, 2025, to now have both Parties file Bundles of Documents and Witness Statements on or before, 3rd December, 2025.
- 5.6 The Ruling of the instant Application was reserved for 1st December, 2025, to be placed in the Parties pigeon holes.

6 CONSIDERATION AND DECISION OF THE COURT

- 6.1 The Court acknowledges, with appreciation, the written submissions furnished by Counsel for the respective Parties concerning the pending Application. The arguments presented have been of considerable assistance to the Court and will be instrumental in its deliberation of the matters presented for adjudication.
- 6.2 This Ruling pertains to the Defendant's Application made pursuant to **Order 59 Rule 13(1)** of the **Rules of the Supreme Court of England, 1965⁽¹⁾**, for Summons for an Order to stay proceedings pending the determination of the Appeal.

6.3 **Order 59 Rule 13(1)** *supra*, states as follows:

“13(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-

(a)An appeal shall not operate as a stay of execution or of proceedings under the decision of the court below ”

6.4 The Application was supported by an Affidavit and Skeleton Arguments dated 16th October, 2025. The Defendant, being dissatisfied with the Ruling of this Court rendered on 6th March, 2025, appealed to the Court of Appeal on the basis that the Appeal has raised important points of law and fact and there are prospects of success.

6.5 The Defendant in the present Matter exhibited the Memorandum of Appeal, contending that the Court erred on points of law and fact as highlighted therein.

6.6 It was deposed by the Defendant that the Appeal has realistic prospects of success, and that there are special reasons warranting the Stay of proceedings before this Court. That the Appeal hinges on whether the Court has the requisite jurisdiction to adjudicate in this Matter.

6.7 Counsel for the Defendant argued that since the Court’s jurisdiction is at the centre of the Appeal, it would be unwise for the proceedings herein to continue as that will undermine the pending Appeal and could render the Appeal nugatory.

- 6.8 That not only does the intended Appeal have good prospects of success, but further, there are special circumstances warranting the grant of the Stay of these proceedings so as to avoid the Court proceeding with a matter with the real possibility that the entire proceedings herein may be rendered a nullity and of no legal effect should the Appeal questioning the Court's jurisdiction succeed.
- 6.9 On 6th November, 2025, the Plaintiff filed in an Opposition to the Defendant's Application. It was avowed by the Plaintiff that the Defendant herein has not demonstrated the exceptional circumstances for which this Honourable Court should exercise its discretion. That Staying these proceedings will prejudice the Plaintiffs who have been ousted out of their farms and are unable to farm.
- 6.10 Furthermore, that should the Court grant a Stay of proceedings, it can put up conditions upon which the Stay can be granted and Order that the Plaintiffs be allowed to remain on their farms, use their fields and have access to all their farming benefits as a condition attached to the grant of stay of proceedings.
- 6.11 Counsel for the Plaintiffs put forth the argument that for a party to be entitled to a Stay of judgment pending determination of an appeal, the applicant ought to satisfy the Court with two things namely; that the appeal has prospects of success and there are special

circumstances warranting the grant of the stay of execution of judgment/proceedings.

- 6.12 That the Defendant's Application does not meet the above criteria for the grant of a Stay of proceedings pending appeal as the Appeal has no prospects of success and the Defendant has not raised any special circumstances warranting the grant of the Stay of proceedings by this Honourable Court.
- 6.13 Further, that the Appeal will not be rendered nugatory if the proceedings herein are not Stayed because the Appeal has no prospects.
- 6.14 In a Reply dated 13th November, 2025, the Defendant averred that there are special circumstances warranting a Stay of the proceedings herein as the Appeal seeks to challenge the jurisdiction of the Court, and in the event that the Appeal is successful, it would render the entire proceedings and any Orders of the Court null and void for want of jurisdiction.
- 6.15 That it is in the interests of justice that these proceedings are Stayed because in the event that the Court of Appeal decides in favour of the Defendant, the proceedings will be rendered academic.
- 6.16 Counsel for the Defendant argued that the question with regards to whether the Appeal has realistic prospects of success was already been determined by a single Judge of the Court of Appeal vis the Ruling dated 10th October, 2025, on the Application for leave to Appeal the decision

of this Court wherein it was stated as follows at paragraph 2.5:

“In view of the foregoing, I am satisfied that the intended appeal has prospects of success, particularly on the question of whether the lower Court erred in assuming jurisdiction notwithstanding the existence of an arbitration clause. Accordingly, leave to appeal to the Court of Appeal is hereby granted.”

6.17 That by inviting the Court to find that the Appeal has no prospects of success, the Plaintiffs are essentially asking the Court to re-determine an issue that has already been addressed by a Higher Court and it follows that this Court cannot review a decision of a superior Court.

6.18 It was Counsel’s contention that the Application has demonstrated special and compelling reasons and in the event that the Court of Appeal finds that this Court has no jurisdiction, and that this Matter ought to have been referred to arbitration, the effect of such decision would be to void every step taken by this Court in this Matter.

6.19 That while the Plaintiffs have argued that the Court is vested with jurisdiction to grant an order for Stay of execution of proceedings to ensure that the *status quo* is maintained, and whereas the Court considers similar factors in determining applications for Stay of execution and Stay of proceedings, the two processes are distinct and cannot be used interchangeably.

- 6.20 That the instant Application is not a Stay of execution and is not concerned with the rights of a victorious party as the dispute is yet to be determined in favour of any party.
- 6.21 Counsel submitted thus, that this Application ought to succeed as the Defendant has shown a profound and compelling reason to stay this Matter.
- 6.22 The Supreme Court has in a plethora of cases guided on what must be taken into consideration when deciding whether or not to grant a stay.
- 6.23 The legal standard governing applications for a stay was firmly established by the Supreme Court's decision in **Yosi Miti Vs The Attorney-General**⁽¹³⁾, which affirmed the principle articulated in the English case of **Winchester Cigarette Machinery Limited Vs Payne & Another**⁽¹⁴⁾ where it was held that the Court retains an inherent discretion to refuse an order where the other party's position would be jeopardized.
- 6.24 Pursuant to this binding authority, the grant of a Stay is a discretionary remedy contingent upon an applicant's ability to establish special circumstances that distinguish the case from the norm. The primary condition for granting a Stay of proceedings is that the application must demonstrate the existence of a pending action or appeal, or that the initiation of such a proceeding is imminent.
- 6.25 In the case of **Barclays Bank PLC Vs Njovu & Others**⁽¹⁵⁾, the Court held that:

“The Supreme Court has been consistent in its position that orders staying execution of 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.”

6.26 In the case of **University of Lusaka Limited Vs The Attorney-General and Others**⁽¹⁶⁾ the Court of Appeal stated as follows:

“The grant of a stay is discretionary and an equitable remedy. It may be granted on the following principles:

- (i) Where special circumstances of the case so require; or*
- (ii) Where if the stay is not granted the appeal will be rendered nugatory and academic; and*
- (iii) Where the appellant/applicant would suffer loss which could not be compensated in damages. (See Order 59/13/2 RSC)*

6.27 It is a well-settled principle of law that a Stay of proceedings will not be granted absent a showing of good and reasonable grounds. What constitutes “good and

reasonable grounds” is posited in **Order 59 Rule 13** of the **Rules of the Supreme Court**⁽¹⁾ which provides that:

“Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not “make a practice of depriving a successful litigant of the fruits of his litigation... But the Court is likely to grant a stay where the appeal would otherwise be rendered nugatory, or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the Court and the Court will grant it where the special circumstances of the case so require... but the Court made it clear that a stay should only be granted where there are good reasons for departing from the principle that the successful party should not be deprived of the fruits of the judgment in his favour.”

6.28 The established jurisprudence governing Stay applications imposes a duty upon the Court to undertake a preliminary assessment of the proposed Grounds of Appeal to evaluate whether the applicant has demonstrated arguable prospects of success. This exercise, however, is not an occasion for a definitive examination of the substantive merits of the Appeal.

6.29 In the case of **Omar Dirie Hirsi Vs The Attorney-General**⁽¹⁷⁾, Mrs. Justice Kawimbe stated the following at page **R5**:

“It is trite, in considering an application for a stay that I have a duty to examine the grounds of appeal, to determine whether an applicant has prospects of succeeding. This however, by no means implies that I should delve into the merits of each ground of appeal.”

6.30 The legal principle governing grants of a Stay of proceedings is well-settled. An applicant seeking a Stay of proceedings must satisfy a two-stage test: firstly, that the appeal is predicated on arguable grounds and is not frivolous; and secondly, that the balance of convenience justifies the intervention, that is, that the appellant would suffer irreparable harm that cannot be compensated in damages should the stay be denied and the appeal subsequently succeeds.

6.31 A perusal of the proposed grounds of Appeal shows that the Defendant has met the initial threshold as the contention that this Court volunteered a central finding, that the Plaintiffs were not parties to the arbitration agreement, on a basis not advanced by either party, presents an arguable issue for appeal.

6.32 An Appellate court may find that this engages fundamental principles of natural justice and the proper

limits of judicial intervention in the adversarial process. This Ground cannot be said to be unarguable.

- 6.33 The Application however, founders on the decisive second limb of the test: the balance of convenience. The term “balance of convenience” denotes a judicial doctrine applied by a Court when exercising its discretionary power to grant or deny interlocutory relief. In this process, the court engages a comparative assessment of the relative hardship or prejudice that would be occasioned to the applicant if the relief were refused against the hardship or prejudice that would be occasioned to the respondent if the relief were granted.
- 6.34 The paramount objective of this analysis is to preserve the *status quo* in a manner that minimizes the risk of irremediable injustice to either party, pending a final adjudication of the substantive rights and claims at issue in the main Matter.
- 6.35 The Defendant herein is effectively arguing that the balance of convenience favours granting a Stay. The Defendant’s argument that the Appeal will be rendered nugatory and the proceedings merely academic if a Stay is refused is in essence an invocation of the balance of convenience. In this regard, **Zimco Properties Limited Vs Lapco Limited**⁽¹⁸⁾ is directly applicable and binding upon this Court. The Supreme Court provided a clear and unequivocal test stating:

“We must make it clear that the question of balance of convenience between the parties only arises if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered as a result of the actions of the defendant which it is sought to restrain. It is therefore inappropriate in this case to discuss the question of balance of convenience. It is clear that if the plaintiff is successful in its action, it will be adequately compensated by an award of damages.”

6.36 Applying the principle established in the **Zimco**⁽¹⁸⁾ case, the Court must determine if the Defendant has demonstrated irreparable harm.

6.37 The Defendant contends that should the substantive Matter be permitted to proceed and the Appeal later succeeds, the Appeal would be rendered nugatory, as the Parties would have been put to the time and expense of a trial that should have been stayed in favour of arbitration.

6.38 While the Court acknowledges the force of this contention, it is not, in the circumstances of this case, dispositive. The harm alleged is one of inconvenience and potential duplication of effort, which is compensable and remediable. It does not in my view, reach the high threshold of being irreparable. The “nugatory” effect

must be assessed in light of the nature of the potential prejudice.

6.39 Here, any financial cost or procedural delay incurred from allowing the suit to proceed is, in principle, compensable by an award of Costs should the Appeal succeed. The gravamen of the Defendant's argument is the inefficiency of undergoing a trial, not that the trial itself would cause an irreversible change in the Parties' legal positions or destroy the subject matter of the Appeal.

6.40 In the case of **Shell and BP Zambia Limited Vs Conidaris and Others**⁽¹⁹⁾, it was laid down that:

“A court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the Plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury means ‘injury which is substantial and can never be adequately remedied or atoned for by damages not injury which cannot possibly be repaired’.”

6.41 Conversely, to grant a Stay would effectively prevent the Plaintiffs from pursuing their claim in the forum which this Court has held to be a correct one, based on a finding that they are not bound by the arbitration clause. This prejudice to the Plaintiffs, who have a judgment in their favour, outweighs the compensable inconvenience to the Defendant.

- 6.42 The refusal to grant a Stay thus merely maintains the *status quo*, permitting the primary litigation to advance.
- 6.43 The alleged error on the other hand can be fully remedied on Appeal should the Defendant succeed. Any prejudice to the Defendant is merely procedural and can be rectified upon a successful appeal by an order remitting the matter to arbitration and an award of costs.
- 6.44 Consequently, the prerequisite for engaging in a balance of convenience analysis has not been met. The Defendant has not demonstrated that any irreparable harm would be occasioned from the denial of this interlocutory relief.
- 6.45 Additionally, a comprehensive review of the facts and arguments presented herein reveals an absence of any qualifying special circumstances, and accordingly the Application must be denied.
- 6.46 I will be remiss not to add that being granted Leave to Appeal by a single Judge of the Court of Appeal does not mean that the Matter has been finally determined. It is permission granted by the Court of Appeal to challenge this Court's impugned decision and does not mean the Appeal itself has succeeded or that the underlying judgment or Ruling is overturned. It simply means the higher Court agrees the Ground of Appeal raises issues worth examining. Therefore, once Leave is granted, the Appeal proceeds, and the Appellate Court will hear

arguments, review the Record, and then decide whether to uphold, vary, or overturn the original decision.

6.47 This is an Application for Stay of proceedings. It is not an unorthodox review of the Court of Appeal's decision to grant Leave to Appeal. This Court, upon judicious review of an application, consequently still has the powers to exercise its inherent discretion to grant or not to grant such an application.

7 CONCLUSION

7.1 For the reasons set forth above, and based upon the foregoing analysis, the Court now renders its determination.

7.2 Under the circumstances, I do not see what prejudice and irreparable harm the Defendant will suffer if a Stay is not granted.

7.3 I therefore exercise my discretion and dismiss the Application for Stay of proceedings.

7.4 Costs for this Application shall be for the Plaintiffs to be taxed in default of agreement.

DELIVERED AT LUSAKA THIS 28TH DAY OF NOVEMBER, 2025



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A. MALATA-ONONUJU
HIGH COURT JUDGE