

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

**2023/HP/1081**

**BETWEEN:**

**CHAINAMA HOTELS**

**AND**

**ATTORNEY GENERAL**



**APPLICANT**

**DEFENDANT**

**Before the Honourable Ms. Justice S. Chocho, in Chambers.**

*For the Applicant:*

*Mr. C. Nkhata & Mrs C. Chanda Messrs Paul  
Norah Advocates*

*For the Defendant:*

*No Appearance*

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

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- i. James Miling Com Limited V Imex International (Pty) Ltd the SCZ  
No. 20 of 2002*
- ii. Amanita Zambia Limited Vs Nkosi Breweries Limited 2011 ZR*

**Legislation referred to:**

- i. Order 39 Rule 2 of the High Court Rules Chapter 27 of the Laws of  
Zambia*

**1. INTRODUCTION**

- 1.1. This Ruling is in respect of the Applicant's application for special leave to review this Court's ruling of 1<sup>st</sup> February, 2024.

2. **BACKGROUND**

- 2.1. The applicant commenced their action against the Respondent by Originating Summons dated 22<sup>nd</sup> June, 2023. The Applicant sought the removal of caveat on its Property placed by the Respondent.
- 2.2. The main matter was heard on 20<sup>th</sup> July, 2023 and both parties attended. At the close of the hearing the Applicant's counsel made an application for this Court to withhold handing down of its Ruling in respect of removal of the caveat. Mr. Simukonda requested for a month to enable the Parties conclude discussions and file consent order the application was not objected to by the Respondent.
- 2.3. The application in 2.2 above was granted and matter was given administrative date of 21<sup>st</sup> August 2023.
- 2.4. On the 21<sup>st</sup> August 2023, no consent order had been filed and when contacted the Applicant's Counsel advised the Court marshal that the Parties needed more time to file the Consent Order. The matter was adjourned to 27<sup>th</sup> November for another administrative date.
- 2.5. After the 27<sup>th</sup> November 2023 and the parties having not filed a Consent Order this Court proceeded to write its Ruling that was delivered on 1<sup>st</sup> February 2024 by which ruling the caveat was ordered to be removed.

3. **AFFIDAVIT EVIDENCE**

- 3.1. The Applicant relies on the averments of its Affidavit in support of Summons herein. The gist of the application as gleaned from the said affidavit is that the Applicant avers that it delayed in filing the application for review within the legally stipulated 14 days because negotiations with the Respondent delayed.

- 3.2. The Applicant further avers that the Parties agreed to 'Settle' the matter by the Applicant paying to the Respondent the sum of USD 452,764.00 being the amount paid for the property by NHEF and in return the Respondent would withdraw the caveat.
- 3.3. The Applicant further avers that the USD 452,764 was paid to the Respondent on 26<sup>th</sup> September 2023 and the Respondent withdrew the caveat in the month October 2023.
- 3.4. The Applicant avers that the USD 452,764 was paid as a 'substitute' for the caveat.
- 3.5. The Applicant further avers that the payment and discharge of caveat constitute the fresh evidence that would move this court to review its ruling.
- 3.6. The Respondent did not file any affidavit in opposition nor attend court to respond/argue viva voce against the Applicant's application.

#### 4. **THE LAW/SUBMISSIONS**

- 4.1. I have had occasion to review and consider that Applicant's application having heard Counsel for the Applicant, the affidavit evidence, skeleton arguments and list of authorities cited herein for which I am grateful.
- 4.2. This Court has jurisdiction to grant special leave to file for review out of time. The same is provided for under Order 39 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia.
- 4.3. The Applicant relied on various authorities for its application which I shall not repeat as the same are on record.

Order 38 Rule 2 provides: -

***“Any application for review of any judgment/decision must be made no later than fourteen days after such judgment/decision. After the expiration of fourteen days, an application for review shall not be admitted, except by special leave of the Judge on such terms as seem just.”***

- 4.4. In the case of **JAMES MILING COM LIMITED V IMEX INTERNATIONAL (PTY) LTD THE SUPREME COURT<sup>1</sup>** held: -

***“For review under Order 39 Rule 2 of the High Court to be available, the party seeking it must show that he has discovered fresh material evidence which has had material effect upon the decision of the Court and has been discovered since the decision but could not with reasonable diligence have been discovered before.”***

## **5. COURT’S ANALYSIS AND DECISION**

- 5.1. The clear and undisputed facts are that this Court did deliver Ruling dated 1<sup>st</sup> February, 2024 for the removal of caveat placed by the Respondent on the Applicant’s property.
- 5.2. It is also an undisputed fact that the Parties sought the Court’s indulgence to delay it’s ruling to enable them settle on their own terms.
- 5.3. It is clear to me now that even though the Parties did not file a Consent Order, they did come to some agreement on settling this matter. The Applicant paid USD 452,764.00 to the Respondent who discharged the caveat suffice it to state that such information/Consent agreement was not filed within the 60 days granted to the Parties, or at all.
- 5.4. It would appear the Applicant’s claims were satisfied in 2023 in the months between September and October **BUT** this was not formally communicated to Court. The Court’s Ruling granted the Applicant’s

application for removal of caveat and now the Applicant seeks the Court to order refund of the sum it surrendered to the Respondent.

Interestingly my Ruling of 1<sup>st</sup> February, 2024 mentions in paragraph 5.8

***“My reading of Section 15 of the Probation and Prevention of Money Laundering Act No. 15 of 2001 as amended by Act No 44 of 2012 entitles the Respondent to seize/freeze the monies received by the Applicant. The Applicant admits having received the sum of US \$ 452,764.00 from the company under investigation. This is the property the Respondent claims NHEF paid for using monies fraudulently received from members of the public.”***

- 5.5. The Application suggests that the ‘excuria settlement’ between the Parties is fresh material evidence that it has discovered which would affect my Ruling of 1<sup>st</sup> February, 2024.
- 5.6. In the Jamas Milling case, it is clear that the test for granting such special leave as sought by the Applicant in casu, ***a party needs to show that it has discovered fresh material evidence which has had material effect upon decision and further the fresh material evidence could not with reasonable diligence has been discovered before.*** (Emphasis my own).

I opine in casu, that what the Applicant terms as fresh evidence is information that was in their possession in September – October 2023, with the full knowledge that the Court’s Ruling had not been passed. It is information that would have easily been advanced to this Court when the Applicant made payment or noted the removal of Caveat.

- 5.7. I further opine that the Applicant totally failed to show reasonable excuse for its disregard of the 14-day rule in which a party can file application for review, of a Court’s decision. It is trite law that a Party

that disregards or fails to strictly follow rules of Court does so at its own peril. The case of **AMANITA ZAMBIA LIMITED VS NKOSI BREWERIES LIMITED 2011 ZR<sup>2</sup>** refers.

5.8. I see no reason to grant the Applicant special leave to file for review of ruling out of time.

6. **CONCLUSION**

6.1. With the above in mind I cannot exercise my discretion in favour of the Applicant. Therefore, the Applicant's application fails.

6.2. I hereby dismiss the Applicant's application with costs as it is bereft of merit.

**Delivered at Lusaka on 30<sup>th</sup> May, 2024.**



**S. CHOCHO**  
**HIGH COURT JUDGE**

