

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

**2023/HP/1782**

**BETWEEN:**

**MULYATA KAZENENE**

**PLAINTIFF**

**AND**

**JOHN MBASELA**

**1<sup>ST</sup> DEFENDANT**

**DICKSON MUKUTUMA**

**2<sup>ND</sup> DEFENDANT**

**BENNY MUMA**

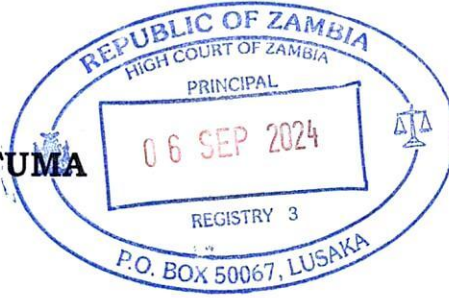
**3<sup>RD</sup> DEFENDANT**

**ALIMANDO SHABA**

**4<sup>TH</sup> DEFENDANT**

**YUSUF PHIRI**

**5<sup>TH</sup> DEFENDANT**



**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA IN  
CHAMBERS ON THE 6<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**For the Plaintiff:** N/P

**For the Defendants:** Mr. Mukanda A – HH Ndhlovu & Company

---

**R U L I N G**

---

**CASES REFERRED TO:**

1. *BIMZI Limited VS B & C Commodities and Shipping Limited* (SCZ/8/177 98).
2. *Thomas Investment and Securities Plc Vs Benjamin and Others* (1984) 3 AII ER.

**LEGISLATIONS REFERRED TO:**

*1. Order III Rule 2 and Order 27 Rule 2, High Court Rules, High Court Act Cap 27 of the Laws of Zambia.*

## **1.0 INTRODUCTION**

1.1 On the 16<sup>th</sup> of May, 2024, the Defendants filed Ex-Parte Summons for an Order to Stay Proceedings Pending Payment of Costs of a discontinued Matter pursuant to **Order III Rule 2** and **Order 27 Rule 2, High Court Rules, High Court Act Cap 27 of the Laws of Zambia**. The Summons were accompanied by an Affidavit in Support, Skeleton Arguments and List of Authorities dated the 16<sup>th</sup> of May, 2024.

## **2.0 AFFIDAVIT IN SUPPORT OF EX-PARTE SUMMONS**

2.1 The Affidavit in Support was deposed to by Dickson Mukutuma, the Defendant in this Matter.

2.2 The Deponent deposed that the Plaintiff had previously brought a Matter before this Court on the same issue and against the same Defendants but the same was discontinued as per exhibit **“DM1”**.

2.3 The Deponent further deposed that a letter was written to the Plaintiff for the payment of costs of the discontinued Matter

but the said letter has not been responded to as per exhibit **“DM2”**.

2.4 That through his Advocates, the Deponent has applied before the Taxing Master for Taxation of the Bill of Costs as per exhibit marked **“DM3”**.

2.5 That by discontinuing a Matter and commencing another one on the same facts and cause of action, the Deponent has been grossly inconvenienced into litigation without any form of recompense.

2.6 That he has been reliably advised by his Advocate on record and verily believes the same to be true that this Court has jurisdiction to stay proceedings pending the payment of costs in the previous Matter.

### **3.0 SKELETON ARGUMENTS IN SUPPORT**

3.1 In his submission Counsel for the Defendant submitted that this Court has jurisdiction to grant the Application pursuant to **Order 3 Rule II** of the **High Court Rules, High Court Act Cap 27**.

3.2 It was further submitted that the High Court pursuant to **Order XVII** of the **High Court Rules, High Court Act Cap**

**27** of the **Laws of Zambia** has jurisdiction to grant this Application. This Section Provides:

*“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 Judge may order a stay of such subsequent suit until such costs shall have been paid”.*

#### **4.0 THE HEARING**

4.1 The Matter came for Ex-Parte Hearing on 29<sup>th</sup> of August, 2024.

4.2 During the Hearing, Counsel for the Defendants informed the Court that he would rely on the summons, Affidavit in Support and Skeleton Arguments filed on the even dates.

#### **5.0 ISSUES FOR DETERMINATION**

*i. Whether the Court has jurisdiction to hear this Application.*

*ii. Whether this Court can order Stay of Proceedings pending payment of costs?*

#### **6.0 ANALYSIS AND DECISION OF THE COURT**

*i. Whether the Court has jurisdiction to hear this Application?*

6.1 This Court pursuant to **XL Rule 8** of the **High Court** has got jurisdiction to hear this Application.

6.2 **Order XL Rule 8** of the **High Court Rules** provides:

*“Where the Court or a Judge orders costs to be paid or security to be given to any Party, the Court or a Judge may, if it or thinks fit, order all proceedings by or on behalf of that Party in the same suit or proceedings, or, connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment”.* (emphasis, mine)

*ii. Whether the Court can order stay of proceedings pending payment of costs.*

6.3 In **BIMZI Limited VS B & C Commodities and Shipping Limited**<sup>(1)</sup>, Lewanika J. S confirmed that a Stay of Execution is a discretionary remedy that is exercisable on well settled principles these being:

- a. That the Court is satisfied that there are good reasons for doing so and or;*
- b. There are special circumstances warranting it.*

6.4 The **BIMZI** case cited above guides that the grant of a stay is a discretionary remedy that has to be used on good reasons and well settled principles.

6.5 In resolving the issue before me, resort will be had to the **Order XL Rule** of the **High Court** cited above.

6.6 Further in the case of **Thomas Investment and Securities Plc Vs Benjamin and Others**<sup>(2)</sup>, it was held that:

*“Where an Application for particular relief is dismissed with costs and the Applicant has failed to pay, the Court should, as a general rule exercise its discretion to refuse to allow the Applicant to make a second Application for the same or equivalent relief”.* (emphasis, mine)

6.7 In my understanding of **Order XL Rule 8** of the **High Court** and the case of **Thomas Investment** cited above, for an Application to Stay Proceedings Pending Costs to be granted, there must be an order of the Court granting the costs.

6.8 Once this Order is granted, the Party who was awarded costs can then make an Application for the payment of the same and if not paid, an Application for a stay can be granted.

- 6.9 Therefore, before an Application for the payment of costs and stay are applied for, there must be an order for costs, which the successful Party will rely on.
- 6.10 This then implies that a Party cannot claim for costs without any order of the Court, see **Order XL** and the case of **Thomas Investment** cited above.
- 6.11 Granted that in this Matter, the Plaintiff had discontinued this Matter, and later recommenced this Matter which in all fairness should result in the Defendant receiving costs.
- 6.12 However, the Defendant needed to first apply before Court for costs for the discontinued Matter pursuant to **Order 17** of the **High Court Rules**. Armed with that Order, the Defendant was then going to apply for a Stay pending the payment of the costs ordered by the Court in the discontinued Matter, pursuant to **Order 17 (2)** of the **High Court Rules**.
- 6.13 My considered view is that the Defendant in the case in *casu* has jumped the gun because he has applied for a Stay of Proceedings pending payment of costs when no costs were ordered by the Court.
- 6.14 Further, I note that the Defendant herein has exhibited a Notice of Taxation pursuant to Statutory Instrument No. 6 of


2017. In my view, that Notice is of no effect because there was no Court Order granting the Defendants costs. As such the Taxing Master has no jurisdiction to proceed with taxation in this Matter.

6.15 As it is, even if the Taxing Master was approached, no taxation was to be conducted because there is no Court Order granting costs.

## **7.0 CONCLUSION**

7.1 In light of what has been stated above, it is my considered view that this is not a proper Application in which I can exercise my discretion to grant a Stay Pending Payments of Costs. The Application for Stay of Proceedings Pending Payment of Costs is declined.

**DELIVERED AT LUSAKA IN CHAMBERS THIS 6<sup>TH</sup> DAY OF  
SEPTEMBER, 2024.**

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