

IT

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

2023/HP/2174

(Civil Jurisdiction)

Between:

JIMMY HANYANGA SIMOONGA



AND

PULSE FINANCIAL SERVICES LIMITED

DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 05TH JUNE, 2024 - IN CHAMBERS

For the Plaintiff : In Person

*For the 1st Defendant: Ms. T. Chongo Mwamba, In-House Counsel - Pulse
Financial Services Limited*

RULING

The plaintiff commenced this action by way of writ of summons and statement of claim dated the 5th December, 2023. The plaintiff's claim is for the following:

- 1. A declaration that the execution executed by the defendant to take possession of the plaintiff's property being house/shop 04 stock 141/04 situated in Kanyama improvement area, Lusaka is null and void.*
- 2. A declaration that the exorbitant compound interest demanded by the defendant in the sum of K408,974.74 is null and void.*

3. *An order for interim injunction restraining the defendant either by itself, servants, agents and or whosoever from harassing, evicting and or taking possession of the property House/ shop 04 block 141/04 situated in Kanyama improved area, Lusaka until full and final determination of the main matter.*
4. *An order that the admitted outstanding balance should not be calculated using the compound interest method as it is an alien.*
5. *Punitive damages*
6. *Any other relief the court may deem fit.*

In a judgment dated the 25th April, 2022 under cause 2021/HPC/0715 my brother The Honourable Mr. Justice B. Mbewe based on the evidence adduced and the law made a finding that this was a proper case for him to enter judgment in favour of the applicant ***Pulse Financial Services Limited (Trading As Entrepreneurs Financial Center.***

Judgment was entered in the sum of ZMW408,974.07 plus contractual interest up to the date of taking out the originating summons. The respondent was to settle the debit within 90 days from the date of judgment. That in default, the applicant shall be at liberty to take possession of the mortgaged property.

In the matter before me an application to raise a preliminary issue was head. The court found that this matter is res judicata and

was dismissed with costs to the defendants to be taxed in default of agreement.

On the 26th February, 2024 the applicant Jimmy Hanyanga filed summons for an application for an order to stay execution of the sale and set aside writ of possession dated 14th November, 2023 pending determination of appeal in the Court of Appeal. Filed also was an affidavit in support. The court has noted the contents of the affidavit in support. The court has taken note of the notice of appeal as well as the Memorandum of Appeal as well as the other exhibits. The court has also noted the joint composite affidavit in opposition of ex-parte summons for an order to stay execution and in opposition to setting aside writ of possession pending appeal.

The court's attention was drawn to the fact that the applicant once applied for leave to appeal to the Court of Appeal out of time and to stay execution of judgment pending appeal. This application was made before a single Judge. The Judge having considered the appellant's application for leave to appeal out of time and the application to stay execution of judgment pending appeal noted that the appellant did not seek leave to appeal from the lower court. This the court stated was an irregularity. The court went on the state that the application was improperly before the Judge and accordingly dismissed it. Both applications were dismissed and costs were awarded to the respondent to be taxed in default of agreement. This ruling is dated the 30th December, 2022.

It's very very disturbing indeed that the plaintiff before me (Mr. Jimmy Hanyanga Simoonga) did not make the effort to seek leave to apply to file appeal out of time from the lower court. That is before my brother the Honourable Mr. Justice B. Mbewe. In his wisdom he decided a year or so later to file fresh proceedings before me. Whether or not this was done in order to achieve a different result only he knows. In my ruling I stated as follows:

“Furthermore, this court find as a matter of fact that well after the plaintiff had failed to take advantage of the Moratorium which my learned brother Justice Mbewe had granted him in the judgment under cause No. 2021/HPC/0715 in favour of the defendant and in all probability, well after the defendant had started enjoying the fruits of that judgment; the plaintiff by commencing this matter can only best describe as desperate measures aimed at frustrating the defendant's success in the commercial division of this court.”

Having found that this matter is resjudicata I was clearly stating that the matter cannot be raised again and thus denying the applicant the court's reconsideration of the matter.

I am clearly stating that the court that first dealt with this matter adjudicated all the issues involved believing that all the interested parties who were obligated to bring all issues in that matter before that particular court did so **(Kelvin Mulubisha (2008) ZR 82.**

Having found that the matter before me was resjudicata means that it was not in my place to allow the applicant deploy his grievances piecemeal in scattered litigation and keep on hauling the same opponent over the same matter before various courts. (*BP Zambia PLC V Interland Motors Limited 2001 ZR 37*).

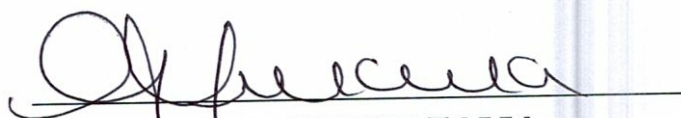
Having decided that the matter before me was resjudicata means that what followed that is the issuance of the writ of possession was not irregularly issued.

The principle that a cause of action may not be relitigated cited once it has been judged on. To promote efficiency and fairness the application for an order to stay execution of sale and set aside writ of possession which should have been made before my brother Honourable Justice Mbewe and the fact that the attempt to then go to the Court of Appeal failed, the chances of success without a doubt is nil.

Leave to Appeal to the Court of Appeal is hereby denied.

Costs to the defendant.

DELIVERED AT LUSAKA THIS 05TH DAY OF JUNE, 2024.


G.C. CHAWATAMA
HIGH COURT JUDGE