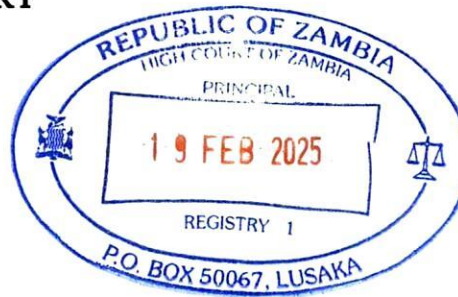


IN THE HIGH COURT FOR ZAMBIA  
 AT THE PRINCIPAL REGISTRY  
 HOLDEN AT LUSAKA  
 (Civil Jurisdiction)

2024/HP/0251



**BETWEEN:**

**MORGAN SANDONGU LUVWEYI**

**1<sup>ST</sup> PLAINTIFF**

**CRIYL LUVWEYI**

**2<sup>ND</sup> PLAINTIFF**

**FLORENCE NSAMBA**

**3<sup>RD</sup> PLAINTIFF**

**AND**

**FOOD RESERVE AGENCY**

**DEFENDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

**FOR THE PLAINTIFF: MS. T. CHALWA HIBAJENE MULUNDA ADVOCATES**

**FOR THE DEFENDANT: MRS. N. CHIPALO WITH MR. E. MBEWE BOTH OF  
 M ASSOCIATES**

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## RULING

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### **CASES REFERRED TO:**

1. *Premesh Patel vs. Raphidim Institute* 2011 ZR 134
2. *Water Wells Limited vs. Wilson Samuel Jackson* 1984 ZR 198
3. *Stanley Mwambazi vs. Morester Farms Limited* 1977 ZR 103
4. *Govindbhai Baghighai Vallabhai Bagabhai Patel vs. Monile Holding Company Limited* 1993-94 ZR 20
5. *John W.K. Clayton vs. Hybrid Poultry Farm Ltd* (2006) ZR 70

### **LEGISLATION REFERRED TO:**

*High Court Act, Chapter 27 of the laws of Zambia*

*The Rules of the Supreme Court, Whitebook (1999 edition)*

## **1. Introduction and Background.**

- 1.1 This ruling emanates from an application filed by the Defendant to stay execution and set aside default judgement dated 8<sup>th</sup> August 2024. The application is made pursuant to Order 20 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia as read together with Order 47 of the Rules of the Supreme Court of England, whitebook 1999 edition.
- 1.2 The Plaintiffs commenced an action against the Defendant by way of Writ of Summons and statement of claim dated 15<sup>th</sup> February 2024.
- 1.3 The Defendant did not enter appearance and defence, thus the Plaintiffs filed a judgment in default which was granted on 13<sup>th</sup> August 2024.

## **2. Affidavit evidence.**

- 2.1 In support of this application, one Mzondi Mwanza, legal officer of the Defendant deposed to the affidavit dated 26<sup>th</sup> August 2024.
- 2.2 It was deposed that on 15<sup>th</sup> February 2024, the Plaintiffs commenced an action by way of a Writ of Summons and Statement. Upon receipt of the documents, the Defendant's

legal department needed to contact various departments within and outside the Defendant so as to obtain sufficient details of the matter.

2.3 It was stated that the sufficient details were not furnished timeously by the various departments within and outside the Defendant. Consequently, the period within which the Defendant ought to have responded to the Writ of Summons elapsed.

2.4 Furthermore, it was deposed that the Defendant has a defence which not only discloses a defence on merit but triable issues which should be circumvented by the default judgment filed by the Plaintiffs. A copy of the intended defence was exhibited and marked as "MM1".

2.5 That if the execution of the default judgment is not stayed and set aside, the Defendant's defence will be rendered nugatory thus, denying the Defendant the right to be heard and defend the allegations by the Plaintiffs.

### **3. Skeleton arguments in support**

3.1 Order 47 Rule 1 of the Rules of the Supreme Court of England and Order 20 Rule of the High Court Rules, Chapter 27 of the

laws of Zambia were quoted to reinforce the Court's powers to grant the application herein.

3.2 The cases of **Premesh Patel vs. Raphidim Institute<sup>1</sup>**, **Water Wells Limited vs. Wilson Samuel Jackson<sup>2</sup>**, **Stanley Mwambazi vs. Morester Farms Limited<sup>3</sup>** and **Govindbhai Baghighai Vallabhai Bagabhai Patel vs. Monile Holding Company Limited<sup>4</sup>** were cited to reinforce that the case in casu has triable issues. Thus, the Court should set aside the default judgment so as to afford all the parties an opportunity to be heard.

3.3 In conclusion, the Defendant asserted that the Court has an obligation to set aside and stay execution of the default judgment.

#### **4. Affidavit in opposition**

4.1 It was deposed by one Morgan Sandongu Luvweyi the 1<sup>st</sup> Plaintiff herein and dated 3<sup>rd</sup> October 2024.

4.2 It was deposed that a demand letter was sent to the Defendant. Upon receipt of the demand letter, the Defendant

through its legal counsel requested copies of the documents evidencing the Plaintiffs' ownership of the properties. A copy of the said letter from the Defendant was exhibited and marked as "MSL1".

4.3 That the advocates of the Plaintiffs complied with the Defendant's advocate's request and availed the said documents. Copies of the Plaintiffs' advocate letter was exhibited and marked "MSL2" and "MSL5".

4.4 It was deposed that the Defendant had ample time to enter appearance and defence. That the said defence discloses no defence on merit.

4.5 It was stated that a default judgment is an enforceable judgement. For it to be set aside, the Court requires tangible evidence or material to be placed before it.

4.6 That the application by the Defendant is a ploy to deny the Plaintiffs the fruit of their judgment.

## **5. Skeleton arguments in support of the affidavit in opposition.**

5.1 The cases of **Water Wells Limited vs. Wilson Samuel Jackson<sup>(2)</sup>** and **Govindbhai Baghighai and Vallabhai Bagabhai Patel vs. Monile Holding Company Limited<sup>(4)</sup>**

were cited to reinforce the threshold within which an application to set aside and stay execution of a default judgement can be entertained by the Court.

5.2 It was contended that a perusal of the Defendant's defence does not show a defence on merit. It's merely stating that they were offered the said pieces of land of which they did not exhibit any proof to support their averments.

5.3 In conclusion, it was asserted that since the Defendant have demonstrated that they do not have a defence on merit, staying and setting aside the default judgment will greatly prejudice the Plaintiff.

## **6. Hearing.**

6.1 The matter came up on 26<sup>th</sup> September 2024 and both counsel were present. Counsel submitted that they were relying on the documents.

## **7. Consideration and determination**

7.1 I have considered all the evidence and the submissions by the parties herein.

7.2 This Court is moved pursuant to **Order 20 Rule 3** of the High Court Rules, Chapter 27 of the laws of Zambia as read

together with **Order 47 Rule 1** of the Rules of the Supreme Court of England, white book 1999 edition which provides as follows;

*Order 20 Rule 3 of the HCR*

***“Any judgment by default, whether under this Order of under any of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as the Court or Judge may think fit.”***

*Order 47 Rule 1 of the RSC*

***“Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution -  
(a) that there are special circumstances which render it inexpedient to enforce the judgment or order, or  
(b) that the applicant is unable from any cause to pay the money, then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.***

7.3 The issue that falls for determination is whether this is a proper case for the exercise of my discretionary power to set aside and stay the default judgment.

7.4 It is trite that once a Writ of Summons and Statement of Claim is served on the Defendant, it becomes the duty of the Defendant to provide a swift response by entering appearance

and an elaborate defence. The defence as a rule, is supposed to be filed and served on the Plaintiff within the stipulated time.

7.5 Order 20 Rule 3 quoted above, has been explained in many cases but the case that immediately comes to mind, that sets out the terms upon which default judgment may be set aside by the Court, is the case of **Water Wells Limited vs. Jackson**<sup>(2)</sup> in which the Supreme Court had this to say:-

***“Although it is usual on an application to set aside a default judgment, not only to show a defence on the merits but also to give an explanation of the default, it is the defence on the merits, which is the more important point to consider. We agree ... that it is wrong to regard the explanation for the default, instead of the arguable defence, as the primary consideration.”***

7.6 The Supreme Court as per Ngulube DCJ, as he then was, went on to state that:

***“If no prejudice will be caused to a plaintiff by allowing the defendant to defend the claim, then the action should be allowed to go to trial”.***

7.7 I am of the considered view that no prejudice will be caused to the Plaintiffs by allowing the Defendant to defend the claim as held in the case of **Water Wells Limited v. Willson Samuel Jackson**, supra.

7.8 I accordingly set aside the default judgment dated 13<sup>th</sup> August, 2024, and order that the matter proceeds to trial as there is a defence on the merits on record.

7.9 I award no costs.

Leave to appeal is granted.

Dated at Lusaka this.....19<sup>th</sup>.....day of February....., 2025

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**ELITA PHIRI MWIKISA  
HIGH COURT JUDGE**