

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

2024/HP/403



BETWEEN:

ARMSAFETY SECURITY LIMITED

PLAINTIFF

AND

**CHRISTABEL BUPE MWAMBA
HENDRIX CHILUFYA**

**1st DEFENDANT
2nd DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THE 15th DAY
OF MAY, 2025**

For the Plaintiff : Mr L. Sikalumbi, Messrs Ngosas and Associates for Messrs
Lennard Lane Partners

For the Defendants : Mr M.C. Kanga, Messrs Makebi Zulu Advocates

R U L I N G

CASES REFERRED TO:

- 1. Ministry of Foreign Affairs Trade and Industry v Vehicle and Suppliers Limited 1991 4 ALL ER 65**
- 2. Sonny Paul Mulenga and Vismer Mulenga (both practicing as SP Mulenga International) Chainama Hotels limited and Elephants Head Hotel v Investrust Merchant Limited 1999 ZR 101**
- 3. Aristogerasimos Vangelatos v Demetre Vangelatos Metro Investments Limited King Quality Meat Products Limited SCZ No 10 of 2007**
- 4. Shoprite Checkers Holding Limited & another v Lewis Chisanga Mosho and another Appeal No 86 of 2013**
- 5. Rosemary Bwalya v Mwanamuto Investments, Commissioner of Lands and the Attorney General CAZ/08/139/2017**
- 6. Finance Bank Zambia Limited v The Official Receiver and Filandria Kouri SCZ/8/37/2019**
- 7. Ndambuki and another v National Land Commission and two others 2024 KECA 534 KLR at R18**

LEGISLATION REFFERRED TO:

- 1. The Rules of the Supreme Court of England, 1965, 1999 Edition**

OTHER WORKS REFERRED TO:

1. ***Atkins Court Forms Fourth Edition Vol 39***
2. ***Halsbury's Laws of England, 4th Edition, Vol 37***

1. INTRODUCTION

- 1.1 This Ruling is on an application which was filed by the Defendants, Christabel Bupe Mwamba and Hendrix Chilufya to stay proceedings pending determination of the appeal. The application was made pursuant to ***Order 59/13/2 of the Rules of the Supreme Court of England, 1965, 1999 Edition.***
- 1.2 It was supported by an affidavit and a List of Authorities. In opposition to the application, Armsafety Security Limited filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition.

2. BACKGROUND

- 2.1 Armsafety Security Limited on 20th March, 2024 instituted this action by Writ of Summons which was accompanied by a statement of claim and the other documents. The reliefs sought were:
 - i. *An Order for the repudiation of the contract dated 7th March, 2024 and that Christabel Bupe Mwamba and Hendrix Chilufya be refunded the sum of K450, 000.00;*
 - ii. *An Order of injunction restraining Christabel Bupe Mwamba and Hendrix Chilufya from harassing the occupants of Lot 37047, Lusaka;*
 - iii. *Costs and any other relief that the Court may deem fit.*

2.2 An application was made to amend the Writ of Summons and statement of claim was made on 24th July, 2024 which was opposed. On 15th November, 2024, I delivered Ruling on the application allowing the amendment as prayed.

2.3 It is that Ruling that prompted the application which is subject of this Ruling to be filed.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR CHRISTABEL BUPE MWAMBA AND HENDRIX CHILUFYA

3.1 In making the application, Counsel for Christabel Bupe Mwamba and Hendrix Chilufya submitted that they applied for an order to stay the proceedings pending determination of the appeal. He stated that in making the application, reliance was placed on the affidavit which was filed in support of the application together with the List of Authorities and Skeleton Arguments in support.

3.2 In briefly augmenting, Counsel stated that they contended that the application was properly before Court, and that it is settled law that the granting of such an application is within the Court's discretion.

3.3 Further submission was made, that Christabel Bupe Mwamba and Hendrix Chilufya had satisfied the requirements in Order for the application to be granted. Reference was made the memorandum of appeal which had been exhibited to the affidavit, stating that it revealed that that an arguable appeal had been made out, which entailed that the appeal need not necessarily succeed, but was one

which showed merit. Thus, it ought to be fully argued before the appellate Court, and need not be frivolous.

3.4 Counsel stated that his submissions were fortified by the decision by the Court of Appeal of Kenya in the case of ***Ndambuki and another v National Land Commission and two others*** ⁽⁷⁾.

3.5 On that score, Counsel prayed that the application to stay the proceedings pending determination of the appeal before the Court of Appeal should be granted.

RESPONSE BY COUNSEL FOR CHRISTABEL BUPE MWAMBA AND HENDRIX CHILUFYA

3.6 In response, Counsel stated that in opposition to the application, they had filed an affidavit in opposition and a list of Authorities and Skeleton Arguments in opposition on 13th January, 2025.

3.7 Counsel submitted that the granting of a stay of proceedings was entirely within the Court's discretion, and that it was not a matter of right. He added that in Order for the Court to grant the application, it had to be demonstrated that special circumstances existed. The contention was that in this matter, Christabel Bupe Mwamba and Hendrix Chilufya had not demonstrated that special circumstances existed, which warranted the grant of the application.

3.8 Authority was placed on the case of ***Rosemary Bwalya v Mwanamuto Investments, Commissioner of Lands and the Attorney General*** ⁽⁵⁾.

3.9 It was also submitted that Christabel Bupe Mwamba and Hendrix Chilufya not having demonstrated that special circumstances exist which warranted the grant of the application, the said application should be dismissed with costs to Armsafety Security Limited.

REPLY BY COUNSEL FOR CHRISTABEL BUPE MWAMBA AND HENDRIX CHILUFYA

3.10 Counsel in reply, stated that Counsel for Armsafety Security Limited in arguing that no special circumstances had been demonstrated, which warranted the grant of the application had cited the case of *Rosemary Bwalya v Mwanamuto Investments, Commissioner of Lands and the Attorney General* ⁽⁵⁾. Counsel's submission was that the Court of Appeal in that case, had stated that the prospects of success of the appeal should be considered by the Court in granting an application.

3.11 With that said, Counsel submitted that the grounds of appeal as lodged, showed that there was an arguable appeal. Therefore, in the interests of justice, a stay of proceedings pending determination of the appeal should be granted.

4. DECISION OF THIS COURT

4.1 I have considered the application. *Order 59/13/2 of the Rules of the Supreme Court of England* provides that:

“An appeal does not operate as a stay on the order appealed against, except to the extent that the court below, or the Court of Appeal (or a single Lord Justice) otherwise directs (O.59, r.13 (1)(a)). It

follows that service of notice of appeal and setting down the appeal does not, by itself, have any effect on the right of the successful party to act on the decision in his favour and to enforce the order of the court below (except in the case of appeals from the I.A.T. see para. 59/13/6, below). If an appellant wishes to have a stay of execution, he must make express application for one (see further para. 59/13/7, below). 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, and locking up funds to which prima facie he is entitled", pending an appeal..."

- 4.2 In this matter the basis of the application being made, as revealed by the affidavit which was filed in support of the application, and which was deposed to by Christabel Bupe Mwamba, gave a background to how this matter was commenced. Further averment was made that herself and Hendrix Chilufya settled their defence and counterclaim on 26th March, 2024.
- 4.3 It was deposed that thereafter, Armsafety Security Limited applied to amend the Writ of Summons and the statement of claim midway, which application was opposed.

- 4.4 However, this Court by the Ruling which was exhibited as 'CBM1' granted leave to Armsafety Security Limited to amend the Writ of Summons and statement of claim.
- 4.5 Then as shown by the Notice of Appeal and Memorandum of Appeal which was exhibited as 'CBM2', an appeal had been lodged. It was deposed that the appeal had high prospects of success.
- 4.6 In the List of Authorities and Skeleton Arguments in support, the law in **Order 59/13/2 of the Rules of the Supreme Court of England** as well as that in **Order 47 Rule 5 of the High Court Rules** was cited.
- 4.7 The case of **Sonny Paul Mulenga and Vismer Mulenga (both practicing as SP Mulenga International) Chainama Hotels limited and Elephants Head Hotel v Investrust Merchant Limited** ⁽²⁾ was relied on, as having held that where desirable, a stay of execution pending appeal may be entered into.
- 4.8 As for a stay of proceedings, the case of **Ministry of Foreign Affairs Trade and Industry v Vehicle and Suppliers Limited** ⁽¹⁾ was submitted having described as stay of proceedings as:

"A stay of proceedings is an order which puts a stop to further conduct of the proceedings in a Court before a tribunal at the stage at which they have reached, the object being to avoid a hearing or a trial taking place. It simply means that the relevant Court or tribunal cannot whilst the stay

endures effectively entertain any further proceedings except for purposes of lifting the stay.”

4.9 Also relied on, with respect to a stay of proceedings, were the words of the *Hon Deputy Chief Justice Mr. Michael Musonda SC* in the case of ***Finance Bank Zambia Limited v The Official Receiver and Filandria Kouri*** ⁽⁶⁾ at page R18 where he referred to the leading text, ***Zuckerman on Civil Procedure: Principles of Practice*** where *Professor Adrian Zuckerman* stated that:

“where in the course of proceedings, it becomes known that issues of law arising in the proceedings have arisen in another Court and are presently subject to proceedings in another Court, the Court may stay the proceedings pending the outcome of the other case.”

4.10 Further authority was sought from ***Halsbury’s Laws of England, 4th Edition Vol 17 at page 272*** as stating that the Court has absolute and unfettered discretion as to the granting or refusing of a stay, and to the terms upon which it will grant it. That the Court will only grant a stay if there are special circumstances which must be deposed to in an affidavit, unless the application is made at a hearing.

4.11 It was argued that in this matter, special circumstances exist which warranted the grant of a stay of proceedings pending appeal. The argument in support of that position, was that a new cause of action had been introduced midway into the

proceedings which had created a complexity of confusion, and had rendered the continuance of the matter unjust and impractical. Therefore, in the interests of justice, the application should be allowed.

- 4.12 The inherent jurisdiction of the Court as stated in ***Halsbury's Laws of England 4th Edition Vol 37 in paragraph 14*** was recited, and the argument was that applying the same to this matter, it is in the Court's residual authority to put right what would otherwise be injustice and secure a fair trial of a matter.
- 4.13 Reliance was also placed on the case of ***Shoprite Checkers Holding Limited & another v Lewis Chisanga Mosho and another*** ⁽⁴⁾, stating that in that matter, the Supreme Court stated the following:

"We agree with State Counsel Nyirenda that the learned trial Judge should have taken into consideration the competing interests before arriving at a decision to stay the proceedings. In the case of Landis v North American Co the Court stated that:

The power to stay proceedings is incidental to the power inherent in every Court to control the disposition of causes on its' dockets with the economy of time and effort for itself, Counsel and litigants. How this can best be done calls for the exercise of

Judgment, which must weigh competing interests and maintain an even balance.

True, the suppliant of a stay must make out a clear case of hardship or inequity in being required to go forward....”

4.14 ***Atkins Court Forms Fourth Edition Vol 39 at page 290***

was further relied on as stating:

“The circumstances in which the Court may stay proceedings under its’ inherent jurisdiction are various, and.....

For the sake of clarity and convenience, the rules of Court have been made to deal with some of those circumstances in which the Court has customarily stayed proceedings under its’ inherent jurisdiction. Nevertheless, the Court’s inherent jurisdiction to stay proceedings in a proper case remains, and is not limited or absorbed, still less destroyed, by a rule of the Court dealing with the same circumstances in which it might otherwise be exercised; the two sources of the Court’s power to stay continues to exist side by side.”

4.15 Premised on the above, it was argued that a Court in granting a stay of proceedings, had to consider the competing interests. Further argument was made, that the object of an order to stay proceedings is to avoid trial or hearing from taking place, where the Court thinks it is just and convenient and to prevent undue prejudice being

occasioned to the other party or to prevent an abuse of the Court process.

- 4.16 It was stated that allowing the proceedings in this matter to continue, would cause prejudice and therefore, the balance tilted in favour of the application being granted. Thus, special circumstances exist in this matter, and that if the stay of proceedings pending appeal was not granted, the appeal would be rendered a mere academic exercise.
- 4.17 The averment in the affidavit in opposition which was deposed to by Charity Musopelo Mulenga Khosa, a director in Armsafety Security Limited, while acknowledging the events as tabulated in the affidavit which was filed in support of the application, stated that this Court was on firm ground, when it granted the application to amend the Writ of Summons and statement of claim.
- 4.18 She contended that the appeal had no prospects of success, and that Christabel Bupe Mwamba and Hendrix Chilufya would not be prejudiced by the amendment as Armsafety Security Limited intended to only recast the matter based on the same facts and the evidence.
- 4.19 It was also stated that Armsafety Security Limited would be prejudiced as Christabel Bupe Mwamba and Hendrix Chilufya would continue to enjoy the benefits of the property whose consideration they had failed to pay for.
- 4.20 In the List of Authorities and Skeleton Arguments in opposition, it was argued that the appeal sought to challenge this Court's finding, in allowing the amendment to the Writ

of Summons and statement of claim. Further argument was made, that the **Rules of the Supreme Court of England** are only resorted to when there is lacuna in our rules.

- 4.21 It was stated that **Order 18 Rule 1 of the High Court Rules** is sufficient in provision, and that Christabel Bupe Mwamba and Hendrix Chilufya had restricted themselves to only a portion of the explanatory notes in **Order 20/8/2 of the Rules of the Supreme Court of England**. However, this Court in deciding, considered the entire provisions of the said explanatory notes.
- 4.22 Therefore, in view of that, the prospects of success of the appeal were slim.
- 4.23 In further arguing, the contention was that even assuming that the said cause of action accrued on 1st July, 2024, the date on which Christabel Bupe Mwamba and Hendrix Chilufya were contractually supposed to meet their obligations, their pleadings did not show that they had met their obligations. Thus, by the appeal, they intended to create new conditions favourable only to themselves, which this Court frowned upon.
- 4.24 The argument was that those who come to equity must come with clean hands, and that Christabel Bupe Mwamba and Hendrix Chilufya had continued to derive benefit from the property by operating it as a car park, but they had failed to pay consideration for the property in full.

DECISION

- 4.25 The Defendants Christabel Bupe Mwamba and Hendrix Chilufya seek a stay of these proceedings, on the basis that they have launched an appeal against my Ruling dated 15th November, 2024, which appeal has high prospects of success.
- 4.26 Thus, if the stay of proceedings pending appeal is not granted, they will be prejudiced as their appeal will be rendered nugatory.
- 4.27 In opposition the contention is that the appeal has very slim prospects of success.
- 4.28 ***Halsbury's Laws of England, 4th Edition, Vol 37*** at pages 330 and 332, states that;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore, the Court’s general practice is that a stay of proceedings should not be imposed, unless proceeding beyond all reasonable doubt ought not to be allowed to continue....

This is a power which it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... It will be exercised where the proceedings are shown to be frivolous, vexatious and harassing or to be manifestly groundless or in which there is clearly no cause of action in law or

in equity. The Applicant for a stay on this ground must not merely show that the Plaintiff might not, or probably succeed on the basis of the pleading and the facts of the case.”

4.29 Therefore, what is important is for an Applicant to demonstrate that there are sufficient grounds for staying the proceedings pending appeal, with the prospects of success of the appeal being high, and the appeal likely to be rendered nugatory if it succeeds, if the stay of proceedings is not granted, being one such factor.

4.30 The holding on the case of ***Aristogerasimos Vangelatos v Demetre Vangelatos Metro Investments Limited King Quality Meat Products Limited*** ⁽³⁾ was;

“the stay of proceedings is actually to suspend the rights the appellant may have in that proceedings in the court below pending the determination of the appeal in order to avoid a situation where, the decision on appeal is rendered nugatory and merely academic.”

5. CONCLUSION

5.1 Looking at the principles that guide on when a stay of proceedings may be granted, as it has an effect of suspending a party’s right to have their matter heard, my view, without going into the merits of the appeal, is that the appeal has very low prospects of success.

5.2 Based on that, this is not a proper case where a stay of the proceedings pending the determination of the appeal should

R15

be granted. I accordingly decline to grant the application. The amended Writ of Summons and statement of claim shall be filed by 30th May, 2025. Costs shall be in the cause and leave to appeal is granted.

DATED AT LUSAKA THE 15th DAY OF MAY, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

