

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

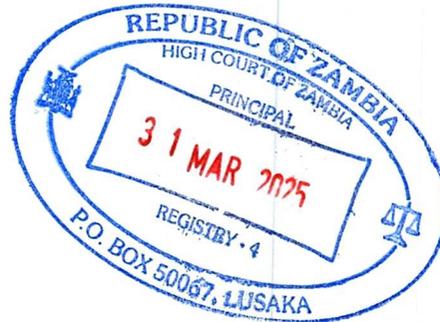
2025/HP/0218

BETWEEN

**PETER NGOSA**

AND

**ARNOLD TSHIANI KABEMBA**  
(T/A ARKAT RESTAURANT)



**APPELLANT**

**RESPONDENT**

**Before:** **The Hon. Mr. Justice Charles Zulu**

For the Plaintiff: Mr. H.M. Musanje, of Messrs H.M. Musanje & Co.

For the Defendant: Mr. B. Banda, Senior Legal Aid Counsel, of Legal Aid Board.

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**R U L I N G**

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Cases referred to:

- 1. Nyampala Safaris & Others v Zambia Wildlife Authority & Others (SCZ/A/179/2003).**
- 2. Watson Nkandu Bowa v Fred Mubiana and ZESCO Limited (S.C.Z Appeal No. 121 of 2011).**

Legislation referred to:

- 1. The High Court Rules Chapter 27 of the Laws of Zambia.**
- 2. Rules of the Supreme Court of England and Wales 1965, (White Book 1999 Edition).**
- 3. The Landlord and Tenant (Business Premises Act) Chapter 93 of the Laws of Zambia.**

## **1.0 INTRODUCTION**

1.1 This ruling is in respect of a renewed application dated February 14, 2025 at the instance of the Appellant, for a stay of execution of the judgment by the court below pending appeal to the High Court. The application was made pursuant to Orders III rule 2 and XLVII rule 5 of the ***High Court Rules Chapter 27 of the Laws of the Zambia***. The application for a stay was denied in the court below, hence the present renewed application.

## **2.0 BACKGROUND**

2.1 The relevant facts are decipherable from the judgment of the court below exhibited in this application. The Appellant and the Respondent shared a landlord and tenant relationship.

2.2 It is apparent from the judgment and findings of the court below that the Respondent, Arnold Tshiani Kabemba was in default in paying rentals to the Appellant. And as a result of this default, distress was levied on the Respondent, leading to the Respondent's eviction and seizure of his goods. The Appellant engaged one Benson Enock Mwale to levy distress.

2.3 Aggrieved by the said execution, the Respondent took out an action against the Appellant, seeking damages for wrongful eviction and recovery of goods seized in the said execution.

2.4 The learned Senior Resident Magistrate held that notwithstanding that the Respondent was in default, the said execution was wrongful and excessive. Wrongful in the sense that, the notice to vacate was in contravention of section 5 (2)

of the **Landlord and Tenant (Business Premises Act) Chapter 93 of the Laws of Zambia.** And it was said to be excessive, because, the goods seized appeared to be more in value than what was reasonably owed to the Appellant.

2.5 Dissatisfied with the said judgment, the Appellant launched an appeal to the High Court. The notice of intention to appeal stating the grounds of appeal was filed in the Subordinate Court dated January 23, 2025.

### **3.0 AFFIDAVIT EVIDENCE**

3.1 An affidavit in support of the application was deposed to by Peter Ngosa, the Appellant. The gist of his application was that he had since launched an appeal in the High Court and his appeal had high prospects of success. According to him, if the stay was not granted, the Respondent would proceed to execute the judgment before the appeal was heard.

3.2 An affidavit in opposition was deposed to by the Respondent, Arnold Tshiani Kabemba. In his opposition, he stated that the grounds of appeal advanced by the Appellant had no merit.

### **4.0 ARGUMENTS**

4.1 The Appellant's Counsel, Mr. Musanje argued that a perusal of the lower Court's judgment reveals that the learned Magistrate gravely misapprehended the facts, and misdirected himself both in law and fact. It was argued that the grounds of appeal advanced were meritorious and had high prospects of success.

4.2 In opposition, the Respondent's Counsel, Mr. Banda contended that the learned Magistrate was on firm ground to deny the

application for a stay, because, the Appellant's grounds of appeal lacked merit. And that the Appellant had not demonstrated any irreparable injury he would suffer in the absence of a stay.

## **5.0 DETERMINATION**

5.1 I have carefully considered the application. A general criterion to be considered for grant or not of a stay of execution was ably outlined in the case of **Nyampala Safaris & Others v Zambia Wildlife Authority & Others**<sup>1</sup> wherein the Supreme Court held:

5.1.1 ***A stay of execution is only granted on good and convincing reasons. The rationale for this is clear, which is that a successful litigant should not be deprived of the fruit of litigation as a matter of course. The application for stay of execution must therefore clearly demonstrate the basis on which such stay should be granted.***

5.2 Additionally, in the case of **Watson Nkandu Bowa v Fred Mubiana & Another**<sup>2</sup> it was held:

5.2.1 ***In an application for stay of execution pending appeal, the considerations are: the prospect of the appeal succeeding and the irreparable damage if a stay is not granted and the Appellant's appeal succeeds***

5.3 Therefore, based on the authorities cited above, apart from a demonstration that the grounds of appeal have high chance of success, an applicant ought to also demonstrate what irreparable damage he would suffer, if a stay was not granted.

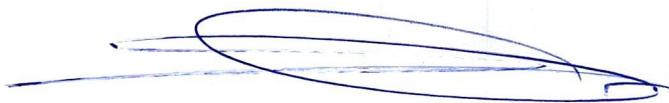
5.4 In the present case, apart from arguing that the appeal has prospects of success in the High Court, the Appellant has not demonstrated the nature of irreparable damage he would suffer if a stay of execution of judgment was not granted. Notably, the judgment does not take away the Appellant's right to recover his unpaid rentals.

**6.0 CONCLUSION**

6.1 In the light of the foregoing, the application for an order to stay execution of the judgment pending appeal is dismissed with costs.

6.2 Leave to appeal is granted.

**DATED THE 31<sup>ST</sup> DAY OF MARCH, 2025**



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**THE HON. MR. JUSTICE CHARLES ZULU**