

**IN THE COURT OF APPEAL OF ZAMBIA – APPLICATION NO. 99 OF 2025  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**B E T W E E N:**

**GEOFFREY MUYONGA SITWALA KALIKI** 1<sup>ST</sup> APPLICANT

**VINCENT LUBINDA** 2<sup>ND</sup> APPLICANT

**AND**

**AHMED ABDULKADIR BARAKADLE MOHAMMED** 1<sup>ST</sup> RESPONDENT  
*(Suing in his capacity as  
the Administrator of the Estate of the  
late Ali Mohammed Hirsi)*

**GOLIS TRADING CENTRE LIMITED** 2<sup>ND</sup> RESPONDENT

**CORAM: Chashi, Ngulube and Banda-Bobo , JJA**

**ON: 12<sup>th</sup> November 2025, 21<sup>st</sup> January and 11<sup>th</sup> February 2026**

*For the 1<sup>st</sup> and 2<sup>nd</sup> Applicants: N/A*

*For the 1<sup>st</sup> and 2<sup>nd</sup> Respondents: A. Ramsey, on behalf of C. Phiri  
(Ms), Messrs Central Chambers*

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**R U L I N G**

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**Legislation referred to:**

1. *The Court of Appeal Act, No. 7 of 2016*

**Rules referred to:**

1. *The Court of Appeal Rules, Statutory Instrument No. 65 of 2016*

## 1.0 INTRODUCTION

- 1.1 On 17<sup>th</sup> September 2025, we delivered our Judgment in Appeal No. 153 of 2023. In the said Judgment, we allowed the appeal by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, who are the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the application before us.
- 1.2 Dissatisfied with our Judgment, Messrs Andrew & Partners Legal Practitioners, on 1<sup>st</sup> October 2025, filed a notice of motion for leave to appeal to the Supreme Court. Attendant to that, they on 15<sup>th</sup> October 2025, filed a notice of motion for stay of execution.

## 2.0 THE APPLICATIONS

- 2.1 The application for leave to appeal to the Supreme Court was filed pursuant to Section 13 of **The Court of Appeal Act<sup>1</sup>** and Order 10/2 (1) of **The Court of Appeal Rules<sup>1</sup> (CAR)**.
- 2.2 According to the affidavit co-deposed to by Geoffrey Kaliki and Vincent Lubinda, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, dated 1<sup>st</sup> October 2025, the Applicants are of the view that they have good grounds upon which to be granted leave to appeal to the Supreme Court.

2.3 They are of the view that:

***(a) The intended appeal raises points of law of public importance which require consideration by the Supreme Court;***

***(b) The intended appeal has reasonable prospects of success;***

***(c) In addition to raising points of law of public importance and having reasonable prospects of success, there are compelling reasons to allow the intended appeal to be heard.***

2.4 As regards the motion to stay execution, it was made pursuant to Order 13/3 **CAR**. The affidavit in support dated 15<sup>th</sup> October 2025, was deposed to by Vincent Lubinda, the 2<sup>nd</sup> Respondent. According to the deponent, if the Judgment is not stayed, the actions of the Respondents will not only disturb, but will irreversibly alter the substratum of the intended appeal, thereby rendering nugatory any favourable determination of the Respondents motion for leave or of the appeal itself, should leave be granted to the Applicants and should the appeal be determined in favour of the Applicants.

### **3.0 OPPOSITION**

3.1 In opposing the applications, the Respondents on 7<sup>th</sup> November 2025, filed an affidavit deposed to by the 1<sup>st</sup> Respondent. According to the deponent, his advocates on record received a letter from the 1<sup>st</sup> Applicant dated 31<sup>st</sup> October 2025, indicating that he was satisfied with the Judgment of the Court of Appeal and did not intend to appeal to the Supreme Court. The letter is exhibited as exhibit "**AM2**".

3.2 Further according to the Respondents, they have already performed their part in satisfaction of the Judgment and therefore the application for stay of execution is misconceived and an abuse of the court process.

### **4.0 THE HEARING**

4.1 When the matter came up for hearing in Ndola, on 12<sup>th</sup> November 2025, HN Nalishuwa of Legal Aid Board stood in for Messrs Andrew & Partners Legal Practitioners. He informed the court that Counsel seized with conduct of the matter on behalf of the Applicants had not been able to attend court due to circumstances beyond their control.

- 4.2 C. Phiri (Ms), Counsel for the Respondents then brought to our attention exhibit **“AM2”** in the affidavit in opposition. According to Counsel, there is no notice of appointment of the current advocates and the letter from the Applicants is that they are satisfied with the Judgment and they have not given instructions to any lawyers to appeal.
- 4.3 When Mr Nalishuwa was asked for a response, he stated that he did not have sufficient instructions. It was on that basis that we adjourned the motion to Lusaka for hearing.
- 4.4 When the matters came up for hearing on 21<sup>st</sup> January 2026, the lawyer for the Applicants were not present. We were then informed by the Clerk of the Session that Messrs Andrew and Partners Legal Practitioners, had that very morning filed a notice of withdrawal as advocates for the Respondents.
- 4.5 A Ramsey, Counsel for the Respondents, submitted that given the circumstances, their application was that the motions be dismissed.

## 5.0 ANALYSIS AND DECISION

5.1 We have considered the motions and the arguments by the parties and what has unfolded in this matter. We have noted on the part of the 1<sup>st</sup> Applicant that he did on 31<sup>st</sup> October 2025, write a letter to the Respondent's advocates indicating that he was satisfied with the Judgment and he had no intentions of appealing and that he had not given instructions to any lawyers to appeal. This letter though contradicts the fact that the 1<sup>st</sup> Applicant had co-deposed to and signed an affidavit with the 2<sup>nd</sup> Applicant for leave to appeal to the Supreme Court. We can only assume that between the signing of the affidavit and the writing of the letter, there had been a change of position.

5.2 However, that is not the position with the 2<sup>nd</sup> Applicant as there is no evidence of him disassociating himself with the motions. We would therefore assume that he is still interested in pursuing the motions.

5.3 Given the peculiar circumstances of this matter, we are not persuaded to dismiss the two motions in respect to the circumstances surrounding the 2<sup>nd</sup> Applicant. However, in view of the 2<sup>nd</sup> Applicants non attendance at the hearing,

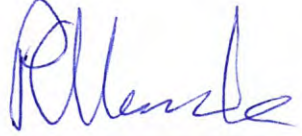
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we order that the two motions be struck off from the active cause list with liberty to restore within the next fourteen (14) days from the date hereof, failure to which, both motions shall stand dismissed for want of prosecution. Each party shall bear its own costs.



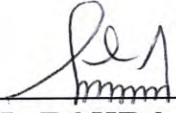
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**J. CHASHI**  
**COURT OF APPEAL JUDGE**



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**P.C.M. NGULUBE**  
**COURT OF APPEAL JUDGE**



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**A.M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**