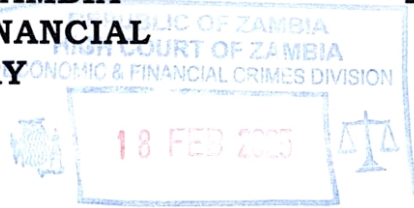


**IN THE HIGH COURT FOR ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES DIVISION REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2022/HPEF/12



**IN THE MATTER OF: SECTIONS 29, 131 AND 71 OF THE
FORFEITURE OF PROCEEDS OF CRIME
ACT NUMBER 19 OF 2010**

AND

**IN THE MATTER OF: SECTION 309 OF THE PENAL CODE
CHAPTER 87 OF THE LAWS OF ZAMBIA**

BETWEEN:

THE ANTI-CORRUPTION COMMISSION APPLICANT

AND

**IN RE-PROPERTY: SUB-DIVISION 'N' OF SUB-DIVISION NO. 16 OF
FARM NO. 916 COMPRISING OF 18 SHOPS, SUB-DIVISION 'C' OF SUB-
DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 2 RESIDENTIAL
UNITS, SUB-DIVISION 'E' AND 'F' OF SUB-DIVISION NO. 26 OF FARM
NO. 916 COMPRISING OF 6 RESIDENTIAL UNITS, SUB-DIVISION 'B'
OF SUB-DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 5
RESIDENTIAL UNITS, SUB-DIVISION 'N' OF FARM NO. 916
COMPRISING OF 4 RESIDENTIAL UNITS, SUB-DIVISION 'P' OF SUB-
DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 4 RESIDENTIAL
UNITS, SUB-DIVISION 'N' OF LOT NO. 15260/M COMPRISING OF 14
SHOPS, UNNUMBERED DOUBLE STOREY RESIDENTIAL PROPERTY
SITUATE AT LUSAKA, UNNUMBERED PROPERTY COMPRISING 4
RESIDENTIAL UNITS SITUATE AT LUSAKA, UNNUMBERED
PROPERTY COMPRISING 3 RESIDENTIAL UNITS SITUATE AT
LUSAKA, UNNUMBERED PROPERTY COMPRISING 3 RESIDENTIAL
UNITS SITUATE AT LUSAKA, HOWO SINO TRUCK - REGISTRATION**

MARK BBA 1540ZM, HOWO SINO TRUCK - REGISTRATION MARK BBA 1746ZM, MITSUBISHI CANTER-REGISTRATION MARK BAP 5480ZM, TOYOTA DYNA- REGISTRATION MARK BLA 4813ZM, ISUZU D - MAX-REGISTRATION MARK BAR 3068ZM, HINO RANGER - REGISTRATION MARK BBA 16392NM, TOYOTA HILUX LEXUS 4144ZM, BAP MARK REGISTRATION LX570 REGISTRATION MARK BAL 8998ZM, SHANTUI GRADER REGISTRATION MARK BBA 2696ZM AND SHANTUI GRADER REGISTRATION MARK BBA 2697ZM, SUB-DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 18 SHOPS SITUATE AT LUSAKA, SUB-DIVISION 'C' OF SUB-DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 2 RESIDENTIAL UNITS SITUATE AT LUSAKA, SUB-DIVISION 'E' AND SUB-DIVISION 'F' OF SUB-DIVISION NO. 26 OF FARM NO. 916 COMPRISING OF 6 RESIDENTIAL UNITS SITUATE AT LUSAKA, SUB-DIVISION 'B' OF SUB DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 5 RESIDENTIAL UNITS SITUATE AT LUSAKA, SUB-DIVISION NO. 17 OF SUB-DIVISION 'N' OF FARM NO. 916 COMPRISING OF 4 RESIDENTIAL UNITS SITUATE AT LUSAKA, SUB-DIVISION 'P' OF SUB-DIVISION NO. 16 OF FARM NO. 916 COMPRISING OF 4 RESIDENTIAL UNITS SITUATE AT LUSAKA, SUB-DIVISION NO. 1 OF SUB-DIVISION 'B' OF LOT NO. 15144/NM COMPRISING 16 FLATS SITUATE AT LUSAKA, NAMELY SUB-DIVISION 'N' OF LOT NO. 15260/M COMPRISING 14 SHOPS SITUATE AT LUSAKA, AN UNNUMBERED DOUBLE STOREY RESIDENTIAL PROPERTY SITUATE AT LUSAKA, AN UNNUMBERED PROPERTY COMPRISING 4 RESIDENTIAL UNITS SITUATE AT LUSAKA, AN UNNUMBERED PROPERTY COMPRISING 8 RESIDENTIAL UNITS SITUATE AT LUSAKA, AN UNNUMBERED PROPERTY COMPRISING 3 RESIDENTIAL UNITS SITUATE AT

LUSAKA, AN UNNUMBERED DOUBLE STOREY RESIDENTIAL PROPERTY SITUATE AT CHILANGA, AN UNNUMBERED PROPERTY COMPRISING 4 RESIDENTIAL UNITS SITUATE AT CHILANGA, AN UNNUMBERED PROPERTY COMPRISING 6 RESIDENTIAL UNITS SITUATE AT CHILANGA, AN UNNUMBERED PROPERTY COMPRISING 8 RESIDENTIAL UNITS SITUATE AT CHILANGA, A DWELLING HOUSE COMPRISING FOUR (4) BEDROOMS SITUATE AT LUSAKA, SUB-DIVISION 'S' OF SUB-DIVISION NO. 1 OF FARM 916 COMPRISING FOUR (4) RESIDENTIAL UNITS SITUATE AT LUSAKA, RESIDENTIAL PROPERTY COMPRISING EIGHT (8) RESIDENTIAL UNITS SITUATE AT LUSAKA.

PITTSCON ZAMBIA LIMITED	1ST INTERESTED PARTY
EMMANUEL SIPANDE MUGALA	2ND INTERESTED PARTY
PETER MALAO	3RD INTERESTED PARTY
EDSON MUGALA	4TH INTERESTED PARTY
LUCKY SIMBEYE	5TH INTERESTED PARTY
PUMULO MALAO	6TH INTERESTED PARTY
ALEXANDER MUMBA SAKALA	7TH INTERESTED PARTY
CHRISTINE KALELEMBA	8TH INTERESTED PARTY

BEFORE THE HONOURABLE JUSTICES P. K. YANGAILO, A. MALATA-ONONUJU AND S. V. SILOKA ON THIS 18TH DAY OF FEBRUARY, 2024.

For the Applicant:

Ms. G. M. Muyunda, Director Legal – Anti-Corruption Commission; Mr. D. Ngwira, Senior Legal & Prosecutions Officer – Anti-Corruption Commission

For the 1st – 5th Interested Parties: Mr. I. Simbeye – Messrs. Malisa & Partners Legal Practitioners

For the 6th – 8th Interested Parties: Mr. L. C. Lemba – Messrs.
Mulungushi Chambers; and Mr. J.
Tembo – Messrs. Linus Eyaa &
Partners

R U L I N G

Siloka S. V., J. delivered the Ruling of the Court.

CASES REFERRED TO:

1. *Linotype – Hell Finance Limited Vs Baker* (1992) 4 AII ER;
2. *Sonny Paul Mulenga and Others Vs Investrust Merchant Bank Limited* (1999) Z. R. 101;
3. *Smith Vs Cosworth Casting Processes Limited* (1997) 4 ALL ER 840;
4. *Nyampali Safaris & 4 Others Vs Zambia Wildlife Authority & 6 Others* (SCZ No. 6 of 2004) ZMSC 95;
5. *Carminie Safaris Zambia Limited and Another Vs Zambia National Tender Board and 6 Others* (SCZ Appeal No. 145/2003);
6. *Mothercare Limited Vs Robson Books Limited* (1979) FSR 466 at 474;
7. *Richard M. Chizyuka and Betty Chizyuka Vs Credit Bank* (Appeal No. 113 of [1999]) ZMSC 47;
8. *Southern Cross Limited Vs Nonc Systems Technology and Others* (HK 223 of 2011 [2011]) ZMHC 198; and
9. *Monk Vs Bartram* (1891) 1 Q.B. 346.

LEGISLATION REFERRED TO:

1. Section 309 of the Penal Code Chapter 87 of the Laws of Zambia;

2. Sections 29, 31 and 71 of the Forfeiture of Proceeds of Crime Act Number 19 of 2010 of the Laws of Zambia; and
3. The Court of Appeal Rules 2016.

1.0 INTRODUCTION

1.1 This Application came before us by way of Summons, accompanied by an Affidavit and Skeleton Arguments for Leave to Appeal and an Order for Stay of Execution.

2.0 BACKGROUND

- 2.1 On the 19th day of April, 2024, at the instance of the 1st to 5th Interested Parties, an Application for an Order to set Aside the Order adjourning the Matter for Judgment was made. This was to enable them file their already prepared Affidavit and formal written arguments in opposition.
- 2.2 Following that Application, this Court on 19th day of June, 2024, dismissed the Application made on 19th April, 2024.
- 2.3 The Ruling of 19th of June, 2024, gave way to the delivery of Judgment on 21st of August, 2024.
- 2.4 Following the delivery of Judgment on the 21st of August, 2024, the Interested Parties made an *Ex-Parte* Application to appeal to

the Court of Appeal. By our Ruling dated 18th of September, 2024, we declined to grant Leave to Appeal to the Court of Appeal.

2.5 By an Order dated the 22nd of October, 2024, a single Judge of the Court of Appeal found that the Appeal was not baseless but had prospects of success and ultimately granted Leave to Appeal against the substantive Judgment dated 21st August, 2024.

2.6 On 1st November, 2024, the Interested Parties made an *Ex-Parte* Application for Leave to Appeal the Ruling delivered by this Court on the 19th day of June, 2024, and Stay of Execution of the Judgment.

2.7 It must be made clear that in the instant Application, the Interested Parties are challenging the Ruling delivered by this Court on the 19th of June, 2024 and also applying for a Stay of Execution of the Judgment.

3.0 AFFIDAVIT IN SUPPORT

3.1 The Affidavit in Support was deposed to by Isaac Simbeye, an Advocate, seized with the conduct of this Matter on behalf of the 1st to 5th Interested Parties who deposed that on the 19th of April, 2024, at the instance of the 1st to 5th Interested Parties, his Law Firm caused to be filed into Court the Application for an Order to

set aside the Order of the Court adjourning the Matter for Judgment to enable them file their already prepared Affidavit and exhibited formal written arguments in opposition to the Originating Notice of Motion.

- 3.2 That it has come to his attention that in fact the Court rendered its Ruling on the 19th day of June, 2024, declining the aforesaid Application.
- 3.3 The Deponent averred that by an Order dated 22nd of October, 2024, a single Judge of the Court of Appeal found that the Appeal is not baseless but has prospects of success and ultimately granted the Interested Parties Leave to Appeal against the substantive Judgment of this Court dated the 21st day of August, 2024, as per exhibit marked **“IS1”**, thus he verily believes that the Appeal on the Ruling has high prospects of success.
- 3.4 That the Notice and Memorandum of Appeal have already been filed into the Court of Appeal as per exhibit marked **“IS2a-b”**.
- 3.5 That he verily believes that in the circumstances the 1st to 5th Interested Parties can apply to the Court for an Order that the execution of the substantive Judgment delivered by the

Honourable Court on the 21st day of August, 2024, be stayed pending determination of the Appeal.

4.0 SKELETON ARGUMENTS IN SUPPORT

4.1 It was Counsel's submission that this Application was made pursuant to **Order 10 Rule 4 (1)** of the **Court of Appeal Rules 2016**. This Order provides:

“The High Court or Quasi-Judicial body may grant or refuse Leave to Appeal to the Court without formal Application at the time when Judgment is given, and in that event the Judgment shall record that Leave has been granted or refused accordingly.”

4.2 It was Counsel's submission that the Rules of Court gives this Court two options at the point of rendering its Judgment or Ruling which are either to grant or deny Leave.

4.3 It was Counsel's submission that in *casu*, the Court neither granted nor denied Leave. According to Counsel, since this Court did not grant Leave, the Interested Parties herein have to then comply with **Order 10 Rule 4 (3)** of the **Court of Appeal Rules**.

This Order provides:

“An Application to the High Court or Quasi-Judicial body for Leave to Appeal shall be by Motion or Summons

and shall state the grounds of the Application and shall, if necessary be accompanied by an Affidavit.”

4.4 It was Counsel’s submission that the 1st to 5th Interested Parties, being desirous to appeal against the subject Ruling, are procedurally right to bring the present Application seeking Leave to Appeal.

4.5 According to Counsel, the reason for the delay in making the Application is that the Ruling was not brought to the attention of the 1st to 5th Interested Parties’ Advocates on Record, thus, the Court should deem the reason as being sufficient for purposes of extending time within which to Appeal. Counsel referred the Court to **Order 13 Rule 3** of the **Court of Appeal Rules 2016** which provides:

“3. (1) The Court may, for sufficient reason extend the time for:

a. Making an application including an Application for Leave to Appeal;

b. ...”

4.6 Counsel further referred to **Order 10 Rule 5** of the **Court of Appeal Rules 2016**, which states as follows:

“5. An Appeal shall not operate as a Stay of Execution or of proceedings under the Judgment appealed against

unless the High Court, Quasi-Judicial body or the Court so orders and no immediate act or proceeding shall be invalidated except so far as the Court may direct”.

4.7 It was Counsel’s submission that the proceedings leading to the Judgment being appealed against were civil and therefore the legal principles and jurisprudence relating to granting the Orders for Stay in civil matters do apply to the present matter.

4.8 In support of the above proposition, Counsel relied on the English case of ***Linotype – Hell Finance Limited Vs Baker***⁽¹⁾ where Stanghton L. J. stated at page 88, *inter alia* that:

“It seems to me that if a Defendant can say that without a Stay of Execution he will be ruined, and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a Stay of Execution... As a general rule the only ground for a Stay of Execution is an Affidavit showing that the damages and costs were paid there is no reasonable probability of getting back if the Appeal succeeds, seems to be far too stringent a test today”.

4.9 Further, Counsel referred to the case of ***Mulenga and Others Vs Investrust Merchant Bank Limited***⁽²⁾ where the erstwhile Chief Justice Ngulube, as he then was, held that:

“In terms of our rules of Court, an Appeal does not automatically operate as a Stay of Execution and it is utterly pointless to ask for a stay solely because an Appeal has been entered. More is required to be advanced to persuade the Court below or this Court that, it is desirable, necessary and just to stay a Judgment pending appeal. The successful Party should be denied immediate enjoyment of a Judgment only on good and sufficient grounds...In exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of the proposed Appeal”.

4.10 It was Counsel’s submission that the Stay of Execution should be granted because there were prospects of success as found by the Court of Appeal.

5.0 AFFIDAVIT IN OPPOSITION

5.1 The Affidavit in Opposition was deposed to by Chawezi Martha Nalwenga, a Legal and Prosecution Officer in the employ of the Applicant who deposed *inter alia* that on 30th October, 2022, the Applicant commenced Non-Conviction Based Forfeiture Proceedings against the property in issue herein by way of Originating Notice of Motion accompanied by an Affidavit in Support and List of Authorities and Skeleton Arguments.

- 5.2 That on 1st August, 2023, the Applicant filed an amended Affidavit in Support of the Originating Notice of Motion following an Order granting Leave to Amend, dated 30th June, 2023.
- 5.3 That on 20th May, 2024, the 6th,7th and 8th Interested Parties filed into Court their Affidavit in Opposition to the Applicant's Amended Affidavit in Support of the Originating Notice of Motion which was accompanied by a list of Authorities and Skeleton Arguments.
- 5.4 The Deponent further deposed that the 1st to 5th Interested Parties were duly served with Court Process but they nonetheless opted not to file any opposition to the Application for Non-Conviction Based Forfeiture.
- 5.5 That she is informed by Counsel seized with conduct of this Matter and verily believes the same to be true that following the adjournment, the 1st to 5th Interested Parties filed an Application to set aside the Ruling to adjourn the Matter for Judgment in order for them to file a response.
- 5.6 That further to the above, on 19th June, 2024, this Honourable Court dismissed the 1st to 5th Interested Parties' Application and proceeded to deliver Judgment on 21st August, 2024.

- 5.7 It is averred that this Honourable Court is clothed with jurisdiction to grant Orders for Leave to Appeal and Stay Execution of Judgment provided it is disclosed by the Interested Parties that there are high prospects of success, special and compelling reasons to grant the said Orders and no prejudice will be occasioned on the successful litigants.
- 5.8 That she has perused the 1st to 5th Interested Parties' Court Process in support of this Application and verily believes that they have not demonstrated any real prospects of success of appeal against the Ruling dated 19th June, 2024 as they opted not to file any response until after the hearing of the substantive matter.
- 5.9 The Deponent further deposed that the exhibit marked **"IS2a-b"** attached to the Affidavit in Support of this Application does not demonstrate any special or compelling reason to warrant the Stay of the Execution of the Judgment dated 21st August, 2024.
- 5.10 The Deponent also averred that the Applicant risks suffering prejudice and injustice if the Court grants an Order to Stay Execution of Judgment of 21st August, 2024 as it would operate as delay of the enjoyment of the fruits of the said Judgment.

6.0 SKELETON ARGUMENTS IN OPPOSITION

6.1 It was Counsel's submission that it is trite that Leave to Appeal to the Court of Appeal may be sought either from this Court or the Court of Appeal where such Leave is not granted by this Court and that such Leave may be granted where one of the two grounds is established. The first test for permission is whether the Appeal has any real prospects of success, for a fanciful prospect is insufficient and the second test is whether there is a compelling reason why the Appeal should be granted.

6.2 In support of the above position, Counsel relied on **Order 59 Rule 14 (18)** of the **Rules of the Supreme Court of England 1965 (White Book) 1999** edition which provides:

“The general test which the Court applies is this: leave will normally be granted unless the grounds of appeal have no realistic prospects of success. The Court of Appeal may also grant Leave if the question is one of general principle, decided for the first time or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage”.

6.3 Counsel further referred the Court to the case of **Smith Vs Cosworth Casting Processes Limited**⁽³⁾, where it was stated as follows:

“The Court will only refuse Leave to Appeal if satisfied that the Applicant has no realistic prospect of succeeding on the Appeal. This test is not meant to be any different from that which is sometimes used, which is that the Applicant has no arguable case”.

6.4 As regards the Stay of Execution of the substantive Judgment, Counsel submitted that the 1st to 5th Interested Parties have cited provisions of **Section 11 (4) (c)** of the **Forfeiture of Proceeds of Crime Act** in support of this Application. According to Counsel, the cited provision is not applicable in *casu* as the same falls under Division 2 of the Act which deals with Forfeiture Orders on conviction while the Matter before Court pertains to Non-Conviction Based Forfeiture which is governed by Division 4 of the Act.

6.5 It was also Counsel’s submission that a perusal of the 1st to 5th Interested Parties’ Affidavit in Support, reveals that this Application has not demonstrated any special or exceptional circumstances. In support of that proposition, Counsel referred

the Court to the case of **Sonny Paul Mulenga and Others Vs Investrust Merchant Bank Limited**⁽²⁾ where the Supreme Court of Zambia stated:

“...its utterly pointless to ask for a Stay solely because an Appeal has been entered. More is required to persuade the Court below or this Court that it is desirable, necessary, and just to stay a Judgment pending Appeal”.

6.6 Further, Counsel drew the attention of the Court to the case of **Nyampali Safaris and 4 Others Vs Zambia Wildlife Authority and 6 Others**⁽⁴⁾ wherein the Supreme Court stated that:

“A Stay of Execution is only granted on good and convincing reasons...The Application for Stay of Execution must therefore clearly demonstrate the basis on which such a Stay should be granted”.

6.7 It was also Counsel’s submission that the onus of satisfying this Court of the existence of the exceptional circumstances falls squarely on the 1st to 5th Interested Parties herein. He contended that having failed to demonstrate the exceptional circumstances of this case, it follows that 1st to 5th Interested Parties have not shown how this Application is necessary. Counsel referred the Court to the case of **Carminie Safaris Zambia Limited and Another Vs**

Zambia National Tender Board and 6 Others⁽⁵⁾ where the Supreme Court stated:

“The Court does not make a practice of depriving a successful litigant of the fruits of litigation except where the Applicant satisfies the Court that there is good reason and that there are reasonable prospects of the Applicant’s success at trial”.

6.8 It was Counsel’s submission that from the decision of the Court in **Carmaine Safaris Zambia Limited**⁽⁵⁾, it is evident that Courts frown on the practice of unnecessarily depriving a successful litigant. According to Counsel, before the Court even considers exercising its discretionary jurisdiction to grant an order staying the execution of the Judgment, the Applicant must satisfy the Court that there are good prospects of success.

6.9 In support of the above position, Counsel referred the Court to the case of **Mothercare Limited Vs Robson Books Limited**⁽⁶⁾ where the Supreme Court stated:

“All that has to be seen is whether the Plaintiff has prospects of success which in substance and reality exist. Odds against success no longer defeat the Plaintiff unless they are so long, that the Plaintiff can have no expectation of success but only a hope. If

prospects of success are so small that they lack substance and reality, then the Plaintiff fails, for he cannot point to any question to be tried which can be called ‘serious’ and no prospect of success which can be called real”.

6.10 It was Counsel’s submission that the Applicant will suffer prejudice if the Stay of Execution is granted because it will deny it the immediate enjoyment of the fruits of its Judgment. Counsel referred the Court to the case of **Sonny Mulenga and Others Investrust Merchant Bank Limited**⁽²⁾ where the Supreme Court stated that:

“The successful Party should not be denied immediate enjoyment of a Judgment only on good and sufficient grounds”.

6.11 Further, the Court was referred to the case of **Nyampali Safaris and 4 Others Vs Zambia Wildlife Authority and 6 Others**⁽⁴⁾ where it was held that:

“... a Stay of Execution is only granted on good and convincing reasons. The rationale for this position 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 a Stay should be granted”.

7.0 ISSUES FOR DETERMINATION

- i. Whether the two Applications are properly before Court;*
- ii. Whether Leave to Appeal the impugned Ruling can be granted; and*
- iii. Whether a Stay of Execution can be granted.*

8.0 ANALYSIS AND DECISION

- i. Whether the two Applications are properly before Court.*
 - (a) Whether the Application to Appeal Ruling is properly before Court.*

8.1 It was Counsel’s submission that the Application was made pursuant to **Order 10 Rule 4 (1)** of the **Court of Appeal Rules 2016** which is reproduced in paragraph 4.1 above.

8.2 Further, Counsel submitted that since no Leave was granted when the Ruling was granted, the 1st to 5th Interested Parties had to comply with **Order 10 Rule 4 (3)** of the **Court of Appeal Rules**, which is reproduced in paragraph 4.3 above.

8.3 We have considered the Application before us and the Section upon which the said Application has been anchored. In our considered

view, the Application for Leave to Appeal has been correctly made before us.

(b) Whether the Application for Stay of Execution has been correctly made before us.

8.4 The Application for Stay of Execution of the Judgment was made pursuant to **Section 11 (4) (a)** of the **Forfeiture of Proceeds of Crime Act No. 19 of 2010** and **Order 10 Rule 5** of the **Court of Appeal Rules 2016**.

8.5 **Section 11 (4) (a)** of the **Forfeiture of Proceeds of Crime Act** provides:

“(4) Where the Court makes a Forfeiture Order against property –

a. the property shall not except with Leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the State, before the relevant date; and

b. ...”

8.6 On the other hand, Counsel for the Applicant submitted that the Application by the Interested Parties has been anchored on a wrong

Section. According to Counsel, **Section 11 (4)** of the **Forfeiture of Proceeds of Crime Act** does not apply in the matter before Court.

8.7 We have considered the arguments of both Parties. As rightly submitted by Counsel for the Applicant, the Interested Parties herein have moved us using a wrong Section. **Section 11 (4)** of the **Forfeiture of Proceeds of Crime Act** relied upon does not apply in *casu* because this Matter is based on Non-Conviction Based Forfeiture. **Section 11 (4)** relied on is suitable for Conviction Based Forfeiture. Though the Interested Parties relied on a wrong Section, we shall proceed to determine the Application.

(ii) Whether Leave to Appeal the impugned Ruling can be granted

8.8 It was Counsel's submission that Leave to Appeal to the Court of Appeal must be granted because the Appeal has prospects of success. On the other hand, Counsel for the Applicant has urged us not to grant the Leave to Appeal because the Appeal has no prospects of success and that there are no compelling reasons to do so.

8.9 We have considered the arguments of both Parties. In our humble but firm view, this Application for Leave to appeal our Ruling dated 19th June, 2024, has been rendered otiose because the Judgment in this Matter has already been delivered. Granting Leave to Appeal the Ruling will be an abuse of the Court Process because Judgment in the substantive Matter has already been delivered. Leave to Appeal the impugned Ruling is subsequently declined.

iii. Whether a Stay of Execution can be granted.

8.10 It was Counsel's submission that a Stay should be granted because a single Judge of the Court of Appeal has observed that the Appeal has prospects of success.

8.11 In response, Counsel for the Applicant submitted that this is not a proper case in which this Court should exercise its discretionary power and grant a Stay of Execution as the 1st to 5th Interested Parties' Affidavit does not reveal or demonstrate the existence of any special or exceptional circumstances.

8.12 We have considered the arguments of both Parties.

8.13 Stay of Execution is anchored on **Order XXX VI, Rule 10** of the **High Court Rules**. This Order provides:

“Except as provided for under Rule 9, the Court or Judge may, on sufficient grounds, order Stay or Execution of Judgment”.

8.14 Further **Order 47, Rule 1** of the **Rules** of the **Supreme Court of England 1999** edition provides:

“(1) 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 of the 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 of 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.”***

8.15 As guided by the two authorities, this Court has the discretion to Stay Execution of a Judgment. This discretion must be exercised judiciously; under exceptional circumstances.

8.16 In **Richard M. Chizyuka and Betty Chizyuka Vs Credit Bank**⁽⁷⁾, it was guided that it is for the Applicant to demonstrate the basis or grounds upon which a Stay should be granted.

8.17 Similarly in the case of **Southern Cross Limited Vs Nonc Systems Technology and Others**⁽⁸⁾ it was held that:

“...the Applicant ought to demonstrate some ‘significant reason’ in applying for a Stay. Under Order 47 Rule 1 of the Rules of the Supreme Court, there must be shown to be ‘special circumstance’ or cause’ which render it desirable to Order a Stay. This requires evidence to be adduced”.

8.18 Further, in the case of **Nyampali Safaris Zambia Limited and Others**⁽⁴⁾, it was held that:

“A Stay of Execution is granted on good and convincing reasons. The rationale of the position is clear which is that a successful litigant should not be deprived of the fruits of litigation as a matter of course. The Application must clearly demonstrate the basis of which a Stay should be granted”.

8.19 In the case of **Carmine Safaris Zambia Limited and Another Vs Zambia Tender Board and 6 Others**⁽⁵⁾, the Supreme Court stated that:

“The Court does not make a make a practice of depriving a successful litigant of the fruits of litigation except where the Applicant satisfies the Court that there is good reason and that there are reasonable prospects of the Applicant at trial”.

8.20 As regards special circumstances, Lord Esther, M.K in **Monk Vs Bartram**⁽⁹⁾ stated as follows:

“It has never been the practice in either case to stay execution after the Judge at the trail has refused to grant it, unless special circumstances are shown to exist. It is impossible to enumerate all the Matters that might be considered to constitute special circumstance but it must certainly be said that the allegations that there has been a misdirection that the verdict was against the weight of evidence, of that there was no evidence to support it are not special circumstance on which the Court will grant a Stay of Execution”.

8.21 The Interested Parties submitted that the Stay should be granted because a single Judge of the Court of Appeal stated so.

8.22 Having looked at the grounds of Appeal in light of our Judgment being appealed against, it is our considered view that the Application for a Stay cannot be granted because the Interested Parties herein have not met the threshold established in **Nyampali**


Safaris Zambia Limited and Others Vs Zambia Wildlife Limited and Others⁽⁴⁾, Carmine Safaris Zambia Limited and Another Vs Zambia National Tender Board⁽⁵⁾ and Monk Vs Bartram⁽⁹⁾ cited above.


9.0 CONCLUSION

9.1 From the foregoing, it is our considered view that the Interested Parties have not adduced special circumstances to enable us exercise our discretion to grant Leave to Appeal the Ruling and Stay of Execution of the Judgment dated 21st August, 2024, pending the hearing and determination of the Appeal. Both Applications are therefore declined.

DELIVERED AT LUSAKA THIS 18TH DAY OF FEBRUARY, 2024.


.....
P. K. YANGAILO
HIGH COURT JUDGE


.....
A. MALATA-ONONUJU
HIGH COURT JUDGE


.....
S. V. SILOKA
HIGH COURT JUDGE