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



2023/HP/0748

BETWEEN:

IMAGE CIVIL AND ELECTRICAL ENGINEERING LIMITED PLAINTIFF

AND

ELEANA STELLA KOUKLOUDIS

1st DEFENDANT

(Trading as Aetos Estates)

JULIET MUBABE

2nd DEFENDANT

(Trading as Aetos Estates)

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 20th
DAY OF OCTOBER, 2025**

For the Plaintiff : Mr G. Tembo, Messrs James & Doris Legal Practitioners
For the 1st Defendant : No appearance
For the 2nd Defendant : Mr C. Chilufya, Messrs DMK Legal Practitioners

R U L I N G

CASES REFERRED TO:

1. *Collet v Van Zyl Brothers Limited* 1966 ZR 65.
2. *Ministry of Foreign Affairs Trade and Industry v Vehicle and Suppliers Limited* 1991 4 ALL ER 65
3. *Zambia Export and Import Bank Limited v Mkuyu Farms Limited and Elias Andrew Spyron and Mary Ann Langley Spyron* 1993 - 1994 ZR 36
4. *Sonny Paul Mulenga, Vismer Mulenga, Chainama Hotels Limited, Elephants Head Hotle v Investrust Bank Limited* 1999 ZR 101
5. *Southern Cross Company Limited v Nonc Systems Technology Limited* 2011/HK/223 (unreported)
6. *Bwalya v Mwanamuto Investments Limited* (CAZ 8 139 OF 2017) ZMCA 148

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 30 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. **Atkins Court Forms Fourth Edition Vol 39 at page 290**
2. **Halsbury's Laws of England, 4th Edition, Vol 37**
3. **Zambian Civil Procedure: Commentary and Cases: Vol 2 by Patrick Matibini, Lexis Nexis 2017**

1. INTRODUCTION

- 1.1 Juliet Mubabe who trades as Aetos Estates, and is the 2nd Defendant in this matter, on 2nd June, 2025 applied for an Order to stay these proceedings pending determination of the appeal against the Ruling dated 2nd April, 2025.
- 1.2 In support of the application which was made pursuant to **Order 3 Rule 2** and **Order 30 Rule 11 (a) of the High Court Rules, Chapter 27 of the Laws of Zambia**, she filed an affidavit and a List of Authorities and Skeleton Arguments.
- 1.3 The application was opposed by an affidavit in opposition and a List of Authorities and Skeleton Arguments which were filed on 4th June, 2025.
- 1.4 The record shows that a Notice of Motion to determine the matter on points of law, pursuant to **Order 14A Rule 2** as read with **Order 33 Rule 3 of the Rules of the Supreme Court of England, 1965, 1999 Edition** was filed by Eleana Stella Koukoudis and Juliet Mubabe both trading as Aetos Estates on 28th October, 2024.
- 1.5 They sought determination of the following questions:
 - i. *Whether Image Civil and Electrical Engineering Limited is registered with the Zambia Institute of Architects for purposes of offering architectural services in the Republic of Zambia;*

- ii. *Whether Image Civil and Electrical Engineering Limited's claim for the sum of United States Dollars US\$7, 629.00 and damages for repudiation of contract of the agreement are not illegal and unenforceable for breach of various provisions under the Zambia Institute of Architects Act, Chapter 442 of the Laws of Zambia;*
- iii. *Whether this Court has jurisdiction to hear and determine Image Civil and Electrical Engineering Limited's action in light of the issues raised above.*

1.6 In a Ruling dated 23rd April, 2025, I held as follows:

The fact that the averments in the affidavit in opposition dispute facts which are alleged in the affidavit which was filed in support of the Notice of Motion, shows that the application is not suitable to be determined under Order 14A of the Rules of the Supreme Court of England, as seen from the explanatory notes in Order 14A/2/8 of the Rules of the Supreme Court of England which I have cited above.

This is because, the affidavit in opposition in part traverses, challenges and contradicts the facts as deposed to in the affidavit in support.

Whilst it was argued that the pleadings do not allege that the claim is being made on behalf of a third party, that does not bring the application within the ambit of Order 14A of the Rules of the Supreme Court of England, as the explanatory

notes which I have referred to above, speak to facts which are contained in the affidavits which are filed in respect of the application, and not the pleadings.

Moreover, there are other claims for payment for manning of the building which claim is not in relation to the claim for payment for the drawings, which is subject of the Notice of Motion. There is also a claim for damages for repudiation of the agreement, which claim I have to determine whether it can be lawfully claimed.”

- 1.7 Dissatisfied with the Ruling, Eleana Stella Koukoudis and Juliet Mubabe lodged an appeal to the Court of Appeal, and Juliet Mubabe now seeks that the proceedings in this matter be stayed pending determination of the appeal.

2. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR JULIET MUBABE

- 2.1 At the hearing, Counsel stated that they relied on the affidavit which was filed in support of the application together with the List of Authorities and Skeleton Arguments.
- 2.2 The submission in augmentation, was that they were of the view that the decision of the Court that if it arrived at a decision in favour of Eleana Stella Koukoudis and Juliet Mubabe, it would decide the matter against Image Civil and Electrical Engineering Limited, still held on appeal.

- 2.3 It was also Counsel's submission that Image Civil and Electrical Engineering Limited had in the affidavit in opposition, stated that if this Court were to exercise its' discretion to stay the matter, and the application was decided in its' favour, it would pay back the money that was claimed in the application.
- 2.4 He added that a company profile had been exhibited to justify the ability to pay back the money.
- 2.5 Counsel however took the view that the company profile was not sufficient proof of ability to pay back, stating that the requirements that need to be satisfied in order for a party to be allowed to pay a Judgment sum in instalments applied.
- 2.6 It was further submitted that in such applications, it is a requirement that a party should in support of a claim relating to their solvency, produce evidence of income, the nature and value of property, and details of their indebtedness to other persons.
- 2.7 As authority, the case of ***Southern Cross Company Limited v Nonc Systems Technology Limited*** ⁽⁵⁾ was relied on.
- 2.8 Further reliance was placed on the case of ***Zambia Export and Import Bank Limited v Mkuyu Farms Limited and Ellias Andrew Spyron and Mary Ann Langley Spyron*** ⁽³⁾, stating that in that matter, the Court stressed that one's solvency or liquidity could only be assessed by examination on oath, of their means and ability to pay the debt.

- 2.9 Counsel stated that there was nothing in the affidavit in opposition that spoke to Image Civil and Electrical Engineering Limited's liquidity or ability to pay.
- 2.10 His position was that the irreparable damage that would be occasioned if a stay of proceedings pending appeal was not granted, was that if on appeal, the Court of Appeal decided in favour of Eleana Stella Koukoudis and Juliet Mubabe, there would be two conflicting decisions, which would bring the Court into disrepute, and it would be difficult for the lay people to appreciate the conflicting decisions.
- 2.11 Further submission was made, that Image Civil and Electrical Engineering Limited had complained that the matter would be delayed, and would not be concluded soon enough.
- 2.12 Counsel however took the view that Eleana Stella Koukoudis and Juliet Mubabe enjoyed the right to defend themselves and they had a right to be heard when vindicating their rights.
- 2.13 It was added that an appeal is part of the judicial process and on that score, the prayer was that the application be granted.

RESPONSE BY COUNSEL FOR IMAGE CIVIL AND ELECTRICAL ENGINEERING LIMITED

- 2.14 It was Counsel's submission in response, that they relied on the affidavit in opposition and the List of Authorities and Skeleton Arguments in opposition which were filed on 4th June, 2025.

- 2.15 Counsel stated that from the authorities that they had cited, the Court of Appeal had held that a stay of proceedings should be sparingly granted.
- 2.16 He went on to state that the submission that had been made regarding the capacity of Image Civil and Electrical Engineering Limited to pay were misconceived, as they applied to applications to pay Judgment sums in instalments, after the question of liability had been adjudged by the Court.
- 2.17 It was also Counsel's submission that no authority had been cited to show that the Court is allowed to apply such a standard in an application to stay proceedings pending appeal.
- 2.18 Counsel contended that ***Order 59 Rule 13 of the Rules of the Supreme Court of England, 1965, 1999 Edition***, provides that an applicant must show that in the event that a stay of proceedings is not granted, the respondent would be unable to pay the sums awarded and not the other way around.
- 2.19 It was stated in conclusion, that the application lacked merit and should be dismissed, so that Image Civil and Electrical Engineering Limited could prosecute its' case.

REPLY BY COUNSEL FOR JULIET MUBABE

- 2.20 The submissions in reply were that the reason why authorities on payment of Judgment sums in instalments had been used a standard for measuring a company's

solvency or viability, was its' income statement and the balance sheet in the business world.

2.21 Therefore, if Image Civil and Electrical Engineering Limited claimed that is solvent and viable, it had to produce evidence of those factors.

2.22 Counsel reiterated the prayer that the application be granted.

3. DECISION OF THIS COURT

3.1 I have considered the application.

3.2 **Order 3 Rule 2 of the High Court Rules** provides that:

“2. Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.”

3.3 On the other hand, **Order 30 Rule 11 (a) of the High Court Rules** states that:

“11. The business to be disposed of in chambers shall consist of the following matters, in addition to the matters which under any other rule or by statute or by the law and practice for the time being observed in England and applicable to Zambia may be disposed of in chambers:

(a) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all

***applications relating to the conduct of any
cause or matter;...”***

- 3.4 Chanda Maxmilian Chilufya, the affiant of the affidavit which was filed in support of the application, stated that Eleana Stella Koukoudis and Juliet Mubabe being dissatisfied with the Ruling of this Court dated 23rd April, 2025, had as evidenced by the Notice of Appeal and Memorandum of Appeal collectively marked as ‘CMC1’ appealed to the Court of Appeal under cause number CAZ/08/217/2025.
- 3.5 He further averred that as rightly observed, this Court’s determination of the preliminary issues which were now on appeal would have a bearing on the application that Image Civil and Electrical Engineering Limited had filed for the entry of Judgment on admission.
- 3.6 In the List of Authorities and Skeleton Arguments in support of the application, the law that had been relied on in making the application, and ***Section 13 of the High Court Act*** was cited.
- 3.7 The gist of the opposition as contained in the affidavit in opposition which was deposed to by Jonathan Mwendabai, a director in Image Civil and Electrical Engineering Limited was that Image Civil and Electrical Engineering Limited would suffer prejudice if a stay of proceedings pending appeal was granted.
- 3.8 He also stated that this matter was commenced in 2023 and had prolonged.

- 3.9 Further averment was made, that Jonathan Mwendabai had been advised by his advocates, that an appeal in the Court of Appeal takes approximately two (2) years.
- 3.10 Jonathan Mwendabai deposed that if this matter were to be determined in Image Civil and Electrical Engineering Limited favour, and Eleana Stella Koukoudis and Juliet Mubabe succeeded on appeal, Image Civil and Electrical Engineering Limited being a profitable operating company would be in a position to comply with any Order of the Court, including repayment, as evidenced by its' company profile which was exhibited as 'JM1', which showed that is viable and a going concern.
- 3.11 In the List of Authorities and Skeleton Arguments in opposition, argument was made that under **Order 47 Rule 5 of the High Court Rules** and **Order 10 Rule 5 of the Court of Appeal Rules**, an appeal does not operate as a stay of execution or of the proceedings.
- 3.12 The provisions of **Article 118 (2) (e) of the Constitution** were also relied on, and the argument was that appeals before the Court of Appeal take a long time to be heard. Therefore, if a stay of proceedings was to be granted by this Court, Image Civil and Electrical Engineering Limited would be deprived of its' right to prosecute the matter as there would be delay.
- 3.13 It was also argued that granting a stay of proceedings is done in the Court's discretion, with reliance being placed on the case of **Collet v Van Zyl Brothers Limited** ⁽¹⁾.

3.14 Further reliance was placed on the case of ***Bwalya v Mwanamuto Investments Limited*** ⁽⁶⁾, stating that the Court of Appeal in that matter, noted as follows:

“It is trite that for a stay of proceedings to be granted there must be special circumstances demonstrated by the Applicant to satisfy the Court that there are good and convincing grounds to warrant a stay pending either appeal or the outcome of any proceedings.

Aside from exceptional circumstances to justify the stay of proceedings, merit of the appeal or complaint must be shown and irreparable harm if the stay of proceedings is not granted. The power to stay proceedings is discretionary.

The effect of a grant of a stay of proceedings is that it renders the proceedings inactive pending determination of the appeal or the outcome of investigations as in casu. The rights acquired under the proceedings are suspended. I refer to the case of *Vangelatos v Demtre Vangelatos & others* and *Halsbury’s Laws of England, 4th Edition Vol 37.*”

3.15 On other authorities on which reliance was placed, the learned author ***Patrick Matibini*** in the book, ***Zambian Civil Procedure: Commentary and Cases: Vol 2, Lexis Nexis, 2017, at page 1414***, was cited, stating that he refers

to *Halsbury's Laws of England* in explaining a stay of proceedings as follows:

“A stay of proceedings arises under an order of the Court which puts a stop or stay on the further conduct of the proceedings in the court at the stage they have reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the action taking place, where the court thinks it is just and convenient to prevent abuse of the court process. The order is made generally in the exercise of the court’s discretionary jurisdiction, and by way of summary process, that is, without trial on the substantive merits of the case, and at any rate in the exercise of its’ inherent jurisdiction, an order for stay of proceedings is made very sparingly only in exceptional circumstances”.

3.16 Further authorities that deal with stay of execution were also cited, being ***Order 59 Rule 13 of the Rules of the Supreme Court of England, 1965, 1999 Edition*** and the case of ***Sonny Paul Mulenga, Vismer Mulenga, Chainama Hotels Limited, Elephants Head Hotle v Investrust Bank Limited*** ⁽⁴⁾.

3.17 The argument was that the appeal was just a ploy to delay the matter, and that Eleana Stella Koukoudis and Juliet Mubabe had not shown what irreparable injury they would

suffer in the event that the proceedings in this matter continued.

3.18 It was also stated that the authorities that had been cited had held that a stay of proceedings should be granted sparingly, and only in exceptional circumstances. Thus, as the application lacked merit, it should not be granted.

3.19 Juliet Mubabe seeks an order of this Court to stay the proceedings pending determination by the Court of Appeal in respect of the issue relating to whether Image Civil and Electrical Engineering Limited by virtue of not being registered with the Zambia Institute of Architects for purposes of offering architectural services, can claim payment for such services.

3.20 The case of ***Ministry of Foreign Affairs Trade and Industry v Vehicle and Suppliers Limited*** ⁽²⁾ 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.”

3.21 Further, ***Atkins Court Forms Fourth Edition Vol 39 at page 290*** states that:

“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.”

3.22 Then ***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.”

- 3.23 I did in my Ruling dated 23rd April, 2025, note that the claims as made by Image Civil and Electrical Engineering Limited do not only relate to the claim in respect of payment for the architectural drawings, but also to claims for payment for manning the building and a claim for repudiation of the agreement to construct.
- 3.24 The claims for payment for manning the building and for repudiation of the agreement for the construction works, are independent of the design works.
- 3.25 What therefore will be determined on appeal before the Court of Appeal, is whether not being registered with the Zambia Institute of Architects for purposes of offering architectural services, Image Civil and Electrical Engineering Limited can claim payment for the design works.
- 3.26 That being the position, as only part of the claims in this matter are affected by the appeal, it would not be just and equitable to stay the proceedings pending determination of the appeal.

3.27 This Court can proceed to hear the claim for manning the building while the appeal as regards the payment for the design is heard.

3.28 I note that Image Civil and Electrical Engineering Limited has filed an application to enter Judgment on admission for payment the design works.

4. CONCLUSION

4.1 There being an appeal that is pending with respect to whether Image Civil and Electrical Engineering Limited can claim payment for the design works in light of the fact that is not registered with the Zambia Institute of Architects for purposes of offering architectural services, I stay determination of the application to enter Judgment on admission pending the outcome of the appeal.

4.2 The matter shall come up on 16th February, 2026 at 09:00 hours for continued trial with respect to the payment for manning the property.

DATED AT LUSAKA THE 20th DAY OF OCTOBER, 2025

fraud
S. KAUNDA NEWA
HIGH COURT JUDGE

