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



2024/HP/1432

IN THE MATTER OF:

**AN APPLICATION FOR AN ORDER FOR
SUMMARY POSSESSION**

AND

IN THE MATTER OF:

SUBDIVISION C OF FARM NO 4300 LUSAKA

AND

IN THE MATTER OF:

**ORDER 113 OF THE RULES OF THE SUPREME
COURT OF ENGLAND, 1965, 1999 EDITION**

BETWEEN:

KWIKBUILD CORPORATION ZAMBIA LIMITED

APPLICANT

AND

**ALL UNKNOWN OCCUPANTS
EVANS MUMBI AND OTHERS
DENNY NYONI**

**1st RESPONDENT
2nd RESPONDENT
INTERESTED PARTY**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 8th DAY
OF SEPTEMBER, 2025**

*For the Applicant : Mr P. Chilembo with Mr D.M. Silavwe, Messrs Raso
Chambers*

*For the Interested Party : Mrs Melody Mwansa Mumba, Messrs Melody Mwansa
Legal Practitioners*

*For the 2nd Respondent : Mr Tresphord Chikonde, Messrs Teeford and Company-
and the interested party Co advocates*

R U L I N G

CASES REFERRED TO:

- 1. *Wilson v Church (No 2) 1879 12 CHD 454 at 458-459***
- 2. *Raphael Ackim Namung'andu v Lusaka City Council 1978 ZR 358***
- 3. *Linotype-Hell Finance Limited v Baker 1992 4 ALL ER 887***
- 4. *Ndola City Council v Charles Mwansa 1994 SC 78***

5. *Sonny Paul Mulenga and two others v Investrust Merchant Bank Limited* 1999 ZR 101
6. *Nyampala Safaris Zambia Limited & others v Zambia Wildlife Authority & others* SCZ/8/17/2003 (unreported)
7. *Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwikbuild Corporation Zambia Limited, Bantu Capital Corporation Limited and National Pension Scheme Authority* 2017/HP/2193
8. *All Illegal Squatters on Farms v Benny Chundu Appeal No 77/2017 [2018] ZMCA 298*

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965, 1999 Edition*

1. INTRODUCTION

- 1.1 This Ruling is on an application, which was filed by the 2nd Respondent, Evans Mumbi and the interested party, Denny Nyoni on 2nd May, 2025, and another which was filed by Denny Nyoni on 15th May, 2025, for an Order to stay execution of the Ruling dated 29th April, 2025 pending determination of the appeal.
- 1.2 The applications were made pursuant to **Order XLVII Rule 5 and Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia** and were supported by affidavits and Lists of Authorities and Skeleton Arguments in support.
- 1.3 An affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition were filed on 28th May, 2025.

2. SUBMISSIONS AT THE HEARING

**SUBMISSIONS BY COUNSEL MELODY MWANSA MUMBA
FOR THE INTERESTED PARTY, DENNY NYONI**

- 2.1 Counsel submitted that they relied on the affidavit which was filed in support of the application, together with the List of Authorities and Skeleton Arguments in support.
- 2.2 In augmenting, Counsel stated that the grounds of appeal had prospects of success, and therefore, if the stay of execution was not granted, the appeal would be rendered an academic exercise.

SUBMISSIONS BY COUNSEL MR T. CHIKONDE FOR EVANS MUMBI AND DENNY NYONI

- 2.3 Also, in submission, Mr Chikonde stated that there were two applications that had been made. In that regard, his submission was that they had applied to stay the Ruling dated 29th April, 2025, and in making that application, reliance was placed on the affidavit and the List of Authorities and Skeleton Arguments which were filed on 2nd May, 2025.
- 2.4 Further in submission, Counsel stated that Evans Mumbi and Denny Nyoni had met the criteria that needed to be satisfied in Order for the Court to exercise its' discretion and grant the relief which was sought.
- 2.5 It was added that the amended Memorandum of Appeal showed that Evans Mumbi and Denny Nyoni had advanced grounds of appeal which had likelihood of success.
- 2.6 On that basis, the prayer was that the application be granted.

RESPONSE BY COUNSEL FOR KWICKBUILD CORPORATION ZAMBIA LIMITED

- 2.7 In response, Mr Chilembo stated that the documents were only served on them the previous day, in contravention of the Order by the Court.
- 2.8 Mr Silavwe on the other hand relied on the affidavit in opposition and the List of Authorities and Skeleton Arguments, which were filed on 28th May, 2025.
- 2.9 His submission in augmentation, was that the application should be dismissed, as Evans Mumbi and Denny Nyoni had failed to meet the criteria that had to be satisfied in Order for a stay pending appeal to be granted.
- 2.10 In that respect, his submission was that the appeal had no prospects of success, as it would deal with issues that this Court addressed in the Ruling dated 29th April, 2025 and in cause number 2017/HP/2193.
- 2.11 Therefore, Evans Mumbi and Denny Nyoni would not suffer any prejudice if the stay pending appeal was not granted.
- 2.12 Counsel further stated that the inescapable truth was that Evans Mumbi and Denny Nyoni were squatters who had no title to the land in question. The submission was also that a number of authorities had been cited in the List of Authorities and Skeleton Arguments which spoke to the rights of squatters, vis a vis a title holder to property.
- 2.13 The prayer was accordingly, that the application be dismissed with costs.

REPLY BY COUNSEL MELODY MWANSA MUMBA FOR DENNY NYONI

- 2.14 Counsel in reply, submitted they disagreed that the issues that had been raised on appeal were dealt with by this Court, as Evans Mumbi and Denny Nyoni were not heard.
- 2.15 It was also Counsel's submission, that if the stay was not granted, Evans Mumbi and Denny Nyoni would suffer irreparable injury or damage.
- 2.16 Counsel therefore prayed that the stay be granted.

REPLY BY COUNSEL TRESFORD CHIKONDE FOR EVANS MUMBI AND DENNY NYONI

- 2.17 It was stated that reliance was placed on the affidavit in reply, which was dated 19th June, 2025, with particular emphasis being placed on paragraph 5.8.

3. DECISION OF THIS COURT

- 3.1 I have considered the applications.
- 3.2 **Order XLVII Rule 5 of the High Court Rules** provides that:
“5. An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed from, except so far as the court below or the Court may order, and no intermediate act or proceeding shall be invalidated, except so far as the court below may direct.”
- 3.3 Then **Order 3 Rule 2 of the said High Court Rules** states 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.”

- 3.4 Evans Mumbi, in the affidavit which was filed in support of the application on 2nd May, 2025, deposed that he is dissatisfied with the Ruling that this Court delivered on 29th April, 2025. He also averred that as shown by the Notice of Appeal and the Memorandum of Appeal, which were exhibited as ‘JM1a-b’, the appeal had high prospects of success.
- 3.5 Denny Nyoni in the affidavit which was filed on 15th May, 2025 also reiterated the averments as made by Evans Mumbi.
- 3.6 In the Lists of Authorities and Skeleton Arguments, which were filed in support of the application, the case of ***Nyampala Safaris Zambia Limited & others v Zambia Wildlife Authority & others*** ⁽⁶⁾ was stated as having held as follows:

“A stay of execution is 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 fruits of litigation as a matter of course. The application must therefore clearly demonstrate the basis on which a stay should be granted.”

- 3.7 Other authorities which were relied on, was the case of ***Linotype-Hell Finance Limited v Baker*** ⁽³⁾ stating that the holding in that case was:

“Where an unsuccessful defendant seeks a stay of execution pending an appeal to the Court of Appeal, it is a legitimate ground for granting the application that the defendant is able to satisfy the Court that without a stay of execution he will be ruined and that he has an appeal which has some prospects of success. The old rule that a stay of execution would only be granted where the appellant satisfied the Court that if the damages and costs were paid there would be no reasonable prospect of recovering them if the appeal succeeded is now far too stringent a test and does not reflect the Court’s current practice. 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.”

- 3.8 Other authorities which were relied on, were the cases of ***Wilson v Church (No 2)*** ⁽¹⁾, ***Ndola City Council v Charles Mwansa*** ⁽⁴⁾ and ***Sonny Paul Mulenga and two others v Investrust Merchant Bank Limited*** ⁽⁵⁾.

- 3.9 Further reliance was placed on the provisions of **Order 45 Rule 11 of the Rules of the Supreme Court of England, 1965, 1999 Edition**, which state that:

“Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.”

- 3.10 It was argued that as the appeal had prospects of success, the Ruling dated 29th April, 2025 should be stayed.
- 3.11 The gist of the affidavit in opposition, which was deposed to by Mike Machila, a director for Kwikbuild Corporation Zambia Limited, was that Kwikbuild Corporation Zambia Limited as the legal owner of the property, which is known as Subdivision ‘C’ of Farm No 4300, commenced this action on 4th October, 2024 in which it claimed an Order for the summary possession of the said property, against all the unknown occupants of the property.
- 3.12 He also stated that following the commencement of the proceedings, as service of the Court process was attempted but was unsuccessful, Kwikbuild Corporation Zambia Limited on 9th October, 2024, obtained an order to serve the Court process by substituted service.

- 3.13 Thus, on an affidavit of service being filed, at the hearing on 15th November, 2025, the Court granted an Order for summary possession of the land. Then on 26th November, 2024, Kwikbuild Corporation Zambia Limited took out a Writ of Possession to recover possession of the said property.
- 3.14 Averment was made, that the Sheriff of Zambia on 17th January, 2025 conducted the exercise of possession of the property with the Zambia Police Service. Mike Machila deposed that however, on 21st January, 2025, a stay of the Writ of Possession was obtained, pending hearing interpartes on 14th February, 2025, which Order was exhibited as 'MM1'.
- 3.15 Mike Machila averred that after the hearing, the Court on 29th April, 2025, delivered a Ruling which discharged the stay of execution.
- 3.16 It was also his averment, that as advised by his advocates, the Notice of Appeal and Memorandum of Appeal had advanced grounds that Evans Mumbi and Denny Nyoni had argued that they were not joined to the proceedings and therefore, they were not given opportunity to be heard.
- 3.17 It was stated that the record showed that Evans Mumbi and Denny Nyoni were served the Court process and that they did in fact participate in the proceedings, and were given opportunity to be heard, after they obtained a stay of execution.
- 3.18 Other averments were made, that Denny Nyoni claimed that he is entitled to the property by virtue of being the

Administrator for the estate of the late Violet Nyoni. However, he and Evans Mumbi had not produced a certificate of title to evidence ownership of the said property.

- 3.19 It was also deposed that Denny Nyoni had made several applications in Court claiming ownership of the property with the case of ***Jonathan Van Blerk v The Attorney General, Lusaka City Council, Legacy Holdings, Kwikbuild Corporation Zambia Limited, Bantu Capital Corporation Limited and National Pension Scheme Authority*** ⁽⁷⁾ being stated as where this Court, in a Ruling, held that the estate of the late Violet Nyoni and its' beneficiaries had no interest in the property or any portion of Farm No 4300, Lusaka.
- 3.20 It was also Mike Machila's averment, that Hon Lady Justice R. Chibbabuka in cause number 2019/HP/0551, held that claims arising from the estate of the late Violet Nyoni were statute barred, an abuse of the Court process and res judicata.
- 3.21 Mike Machila deposed that Denny Nyoni did not appeal the two decisions.
- 3.22 In still deposing, Mike Machila stated that in cause number 2023/HP/1848, Hon Lady Justice Chocho on 4th March, 2025, dismissed an application by Denny Nyoni for joinder to the proceedings, which Ruling was exhibited as 'MM2'.
- 3.23 On other proceedings, the averment was that Denny Nyoni commenced a matter before the Lands Tribunal seeking reliefs as had been sought in matters before this Court,

which Kwikbuild Corporation Zambia Limited applied to have dismissed for being res judicata, an abuse of the court process and forum shopping.

- 3.24 The complaint that was filed before the Lands Tribunal and the preliminary objection which was raised in that matter, were exhibited as 'MM3'.
- 3.25 Also exhibited as 'MM4', was a Memorandum of Understanding which was executed by Evans Mumbi, Denny Nyoni, Leonard Mapuranga, Eugene Sumbulelo and Hastings Banda, which showed that they agreed to sell portions of Kwikbuild Corporation Zambia Limited's land without its' authority.
- 3.26 In the List of Authorities and Skeleton Arguments in opposition, various authorities that espoused the principles that govern the granting of stays of execution were cited, including the cases of ***Sonny Paul Mulenga and two others v Investrust Merchant Bank Limited*** ⁽⁵⁾ and ***Nyampala Safaris Zambia Limited & others v Zambia Wildlife Authority & others*** ⁽⁶⁾ which were relied on by Evans Mumbi and Denny Nyoni.
- 3.27 In arguing that the appeal had no prospects of success, the case of ***All Illegal Squatters on Farms v Benny Chundu*** ⁽⁸⁾ was relied on, as where the Court of Appeal held that service of the notice of hearing by substituted service was necessary where service personally on the Respondents could not be done.

3.28 It was also argued that in the case of **Raphael Ackim Namung'andu v Lusaka City Council** ⁽²⁾ it was held that:

“Squatters build on their own risk and if the owners of the land withdraw their permission or licence or if they decide to demolish a structure built in the absence of any permission or other lawful relationship, the squatters' losses though very much regrettable are not recoverable in a court of law.”

3.29 The principles that govern the grant of a stay of execution pending appeal are very clear from the authorities that both parties relied on.

3.30 Those authorities state that a stay of execution will be granted on good and convincing reasons, which include that the appeal has prospects of success, and if the stay of execution is not granted, and the appellant succeeds on appeal, the appeal will be rendered nugatory or an academic exercise.

3.31 Further those grounds are that, if a stay of execution is not granted, and execution is levied, the appellant will suffer injury or loss which cannot be atoned for by an award of damages.

3.32 Without even delving into the merits of the appeal, and on perusal of the Notice of Appeal and the Memorandum of Appeal, my view is that the appeal has no prospects of success, as I addressed the issue of service of the Court process, and Evans Mumbi and Denny Nyoni were heard on

the application to set aside the Order for summary possession of the property.

4. CONCLUSION

4.1 Based on the above, I decline to Stay my Ruling dated 29th April, 2025, and I dismiss the applications. Any party that is dissatisfied with my Ruling, can renew the application before the Court of Appeal. Costs of and incidental to the application go to Kwikbuild Corporation Zambia Limited, which shall be taxed in default of agreement.

DATED AT LUSAKA THE 8th DAY OF SEPTEMBER, 2025


S. KAUNDA NEWA
HIGH COURT JUDGE

