

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL NO. 47/2025

HOLDEN AT NDOLA

(Civil Jurisdiction)



BETWEEN:

TULAMBO KUMWENDA AND OTHERS

APPELLANTS

AND

SOLWEZI DAIRY FARM LIMITED

1ST RESPONDENT

SOLWEZI DISTRICT COUNCIL

2ND RESPONDENT

UNKNOWN ILLEGAL OCCUPIERS

3RD RESPONDENT

ATTORNEY GENERAL

4TH RESPONDENT

CORAM: CHASHI, NGULUBE AND BANDA-BOBO, JJA.

On 18th and 25th March, 2026.

For the Appellants: Mr. J. M. Hara, Mrs. L. Ng'ambi-Mumba, Mr. M. M. Kaipambe – Hara and Company

For the 1st Respondent: Mr. M. Khunga – Barnaby Chitundu and Khunga Advocates and Mr. P. Mapulanga – Japhet Zulu Advocates.

For the 2nd Respondent: No appearance.

For the 3rd Respondent: No appearance.

For the 4th Respondent: No appearance.

J U D G M E N T

NGULUBE, JA delivered the Judgment of the Court.

Cases referred to:

1. *London Ngoma and Others vs LCM Company Limited and Another, (1999) ZR 75*
2. *Enala Chirwa, Kachena Financial Limited, Anne Zulu vs Noah Mwansa, SCZ Appeal Number 030/2012 (unreported)*
3. *Eureka Construction Limited vs Attorney-General, Consolidated Lighting Zambia Limited (Proposed Intending Party) (2008) ZR 64 Vol 2 (SC)*
4. *Sonny Paul Mulenga and Others vs Investment Merchant Bank Limited, (1999) ZR 101*
5. *Stanbic Bank vs Micoquip Zambia Limited, SCZ Selected Judgment Number 22 of 2018*
6. *Charles Laima vs Pulse Financial Limited, CAZ Appeal Number 192/2023*
7. *Yonjun Zhuang and Others vs Bumu General Trading FZE, CAZ Appeal Number 223/2021*
8. *Fred Mmembe and the Post Newspapers vs Abel Mboози and 5 Others, SCZ Appeal Number 007/2021*
9. *Barclays Bank Zambia Plc vs ERZ Holding Limited and Another, SCZ Appeal Number 71/2007*
10. *Mike Hamusonde Mweemba vs Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (Intended Joinder), (2006) ZR101*

Legislation referred to

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

1.0 INTRODUCTION

1.1 This is an interlocutory appeal against the Ruling of Justice R. Chibbabbuka, High Court Judge, General Division, dated 30th May, 2024, in which the court ruled that where Judgment has been entered, a party may be joined to an action in instances where there is an appeal or where there is an application to review. The court declined to grant an order of stay of execution as it was of the view that the first respondent would be prejudiced by a stay of execution since the land allocated to it was not in contention. The court dismissed the applications for joinder and stay of execution, with costs.

2.0 BACKGROUND FACTS

2.1 The brief background to the matter is that, it was concluded by way of Consent Judgment on 30 January, 2022. The appellants then filed an application on 8 December, 2023, seeking to be joined to the action and to stay execution of the Consent Judgment, pending proceedings to set aside the Consent Judgment.

2.2 The appellants, as intended joinders filed an affidavit in support of the application on 8 December, 2023, deposed to by Tulambo

Kumwenda, who stated that the property in issue is owned by the 1st respondent and that the appellants, as intended jointers reside on the 1st respondent's land and did not know about the matter leading to the Consent Judgment.

2.3 It was deposed that the 1st respondent is aware that the intended jointers bought and paid for plots of land on the 1st respondent's dairy farm which it wants to take possession of through the Consent Judgment. It was contended that the 1st respondent did not disclose, prior to execution of the Consent Judgment that the appellants had bought land from it through its directors and agents.

2.4 According to the appellants, they have an interest in the matter and have been affected by the Consent Judgment. It was deposed that if the Consent Judgment is not stayed, the appellants will be evicted from the farm, notwithstanding the fact that they have paid for the plots that they are in occupation of.

3.0 EVIDENCE AND ARGUMENTS IN THE HIGH COURT ON JOINDER AND STAY OF EXECUTION

3.1 In the skeleton arguments, the appellants referred to ***Order 14 Rule 5(1) of the High Court Rules Chapter 27 of the Laws of Zambia*** to further the argument that all interested parties to a

suit should be joined so that matters in dispute in the cause are effectually determined.

3.2 The cases of ***London Ngoma and Others vs LCM Company Limited and Another***¹ and ***Enala Chirwa, Kachena Financial Limited, Anne Zulu vs Noah Mwansa***², were referred to, buttressing the argument that the High Court has inherent jurisdiction to order joinder even after Judgment has been delivered. It was argued on behalf of the appellants that they have an interest in the land in dispute as they purchased portions of land from the first respondent.

3.3 It was contended that the appellants have sufficient interest in the matter and that they ought to be joined to the proceedings. It was further argued that the appellants would like to challenge the Consent Judgment which was executed by the respondents and that the 1st respondent did not inform the appellants that there was an active matter in court so that they could defend themselves prior to the execution of the Consent Judgment. It was further argued that the 1st respondent did not disclose to the court that there were parties who had bought pieces of land from it who should have been parties to the Consent Judgment. The

lower court was urged to stay the Consent Judgment as the appellants may be evicted from the portions of land that they purchased from the 1st respondent.

3.4 In its affidavit in opposition the 1st respondent deposed that all parties who had an interest in the land in issue were sued by the 1st respondent and that the appellants do not have any Certificates of Title, because they purchased the land from persons who held themselves out as the 1st respondent's agents when they had no authority to do so.

3.5 It was deposed that the intended joinders were granted an opportunity to approach the 1st respondent and legalise their stay. However, only fifteen of the said illegal developers engaged the 1st respondent. It was contended that the intended joinders have not demonstrated sufficient interest in the property in issue because they are squatters.

3.6 The first respondent argued that it did not give mandate to anyone to sell portions of its land. It was argued that the intended joinders had not met the threshold to be granted an order of joinder and an order of stay. It was argued that the intended joinders are trespassers as they failed to exhibit

contracts of sale between them and the 1st respondent and that they reside on the 1st respondent's land without authority.

3.7 To further the argument that a party who has failed to show sufficient interest or *locus standi* should not be joined to an action, the case of ***Eureka Construction Limited vs Attorney-General, Consolidated Lighting Zambia Limited (Proposed Intending Party)***³ was referred to.

3.8 It was argued that the intended joinders cannot be joined to the action as they have not shown sufficient interest in the property since they are mere trespassers.

3.9 Regarding the application for stay, the case of ***Sonny Paul Mulenga and Others vs Investment Merchant Bank Limited***⁴ was referred to and it was argued that prior to granting an order of stay, the court should look at the prospects of success.

3.10 The 2nd respondent filed an affidavit in opposition which was deposed to by Julard Muchima. It was deposed that the 1st respondent holds title to the property in issue and that the intended joinders are squatters on Farm 9047. It was argued that they had an opportunity to apply for joinder prior to the

execution of the Consent Judgment as they were aware of the matter which commenced in 2017.

4.0 DECISION OF THE HIGH COURT

- 4.1 The learned Judge considered the application before her in the combined Ruling. Regarding the application for joinder, the learned Judge opined that **Order 14 Rule 5(1) of the High Court Rules** can only be utilized to join a party to an action after judgment has been entered.
- 4.2 The court was of the view that where judgment has been entered, a party may be joined to the action where there is an appeal or an application for review.
- 4.3 The case of **Stanbic Bank vs Micoquip**⁵ was also cited where the Supreme Court held that, a joinder made after judgment in the absence of an appeal or application for review is irregular because after a Judgment is delivered the court is rendered *functus officio*.
- 4.4 The court was of the view that after it entered Judgment it became *functus officio* and could not join the intended joinders in the absence of an appeal. The court declined to grant the order of stay of execution as there were no convincing reasons upon

which the stay would be granted. The two applications were dismissed.

5.0 THE APPEAL

5.1 The appellants were dissatisfied with the decision of the lower court, and appealed to this court, advancing the following ground of appeal –

1. ***The lower court misdirected itself in law and fact when it refused to join the intended joinder on the basis that there was no appeal against the Consent Judgment or an application for review of the Consent Judgment executed on the 30th of January, 2023.***

6.0 APPELLANTS' HEADS OF ARGUMENT

6.1 The appellants' heads of argument were filed on 3 March 2025. The sole ground of appeal attacks the lower court for refusing to join the intended joinders, stating that there was no appeal against the Consent Judgment nor was there an application for review of the said Consent Judgment. Our attention was drawn to the case of ***Charles Laima vs Pulse Financial Limited***⁶ where this court held that where a Consent Judgment is signed by the court, it acquires the force of a court judgment obtained by voluntary volition of the parties and binds them.

6.2 The case of ***Yonjun Zhuang and Others vs Bumu General Trading FZE***⁷ was referred to where this court held that:

“It is settled law that only a party to the proceedings can challenge a Consent Judgment. Courts have consistently held that for a non party to an action to challenge a Consent Judgment, the correct procedure involves applying for leave to join the proceedings or the executed Consent Judgment and subsequently initiating a new action to contest it.”

6.3 It was submitted that a party can challenge a Consent Judgment by seeking leave to join the proceedings and that this is the mode that the appellants adopted in applying to be joined to the proceedings.

6.4 The case of ***Fred M'membe and the Post Newspapers vs Abel Mboози and 5 Others***⁸ was referred to where the Supreme Court guided that only parties to an action/proceedings or who executed an order can set aside a Consent Judgment by commencing a fresh action on the basis of fraud or mistake.

6.5 Counsel referred to the Supreme Court guidance in the aforestated case which was that –

“At common law, courts have an inherent power to order joinder of parties where it is necessary to do so.

Ordinarily such an order is issued pursuant to an application by one of the parties, in a court of first instance, which would have been served upon the party whose joinder is sought. A court could, however, even on appeal, mero motu, raise the question of joinder to safeguard the interests of third parties and decline to hear a matter until such joinder has been effected.”

6.6 The cases of ***London Ngoma and Others vs LCM Company Limited (supra)*** and ***Barclays Bank Zambia Plc vs ERZ Holding Limited and Another***⁹ were referred to, where the court held that parties can apply to join proceedings even after a Consent Judgment has been entered but before execution and registration of the Consent Judgment. We were urged to set aside the lower court’s ruling and allow the joinder of the appellants to the proceedings so that they can challenge the Consent Judgment.

7.0 FIRST RESPONDENT’S HEADS OF ARGUMENT

7.1 The 1st respondent filed its heads of argument in response on 14 April, 2025.

7.2 Responding to the sole ground of appeal, it was submitted that the Superior Courts in Zambia have guided on the conditions

which interested parties ought to meet for them to be joined to an action after a Consent Judgment has been executed. The case of ***Youjun Zhuang and 2 Others vs Bumu General Trading FZE (supra)*** was referred to, where this court guided that the intended joinder should prove that he has *locus standi* and sufficient interest in the matter.

7.3 It was argued that the 1st respondent did not alienate any pieces of land on its property and that no Board resolution was made to alienate any land to third parties. According to Counsel, the absence of the said resolution proves that no entity or individual acquired legitimate interest in the first respondent's property. It was emphasized that the appellants failed to exhibit a contract of sale or a Deed of Assignment between them and the 1st respondent, to prove that they purchased pieces of land on the said property.

7.4 According to Counsel, the appellants had failed to show that they have sufficient interest in the subject property and that they are illegal squatters who should not be joined to the proceedings in an effort to set aside the Consent Judgment.

7.5 The case of ***Eureka Construction Limited vs Attorney - General, Consolidated Lighting Zambia Limited (Proposed Intervening Party)***³ was referred to, where the Supreme Court guided that –

“Where a party cannot show sufficient interest or locus standi showing the evidence to the court of his share, interest and how he will be affected by the result, an application for joinder will be dismissed.”

7.6 It was contended that the appellants have failed to show sufficient interest to warrant being joined to the proceedings and we were urged to uphold the lower court’s decision with costs to the 1st respondent.

8.0 HEARING

8.1 At the hearing of the appeal, the respective Counsel for the appellants and the 1st respondent relied on the arguments filed with brief augmentation.

9.0 CONSIDERATION OF THE APPEAL AND DECISION OF THE COURT

9.1 We have considered the record of appeal, heads of argument and the authorities cited. The appeal challenges the lower court’s decision to decline to grant an order of joinder to the appellants.

This court is required to ascertain whether the lower court was on firm ground when it declined to grant the order of joinder.

9.2 A brief recap of the background is that the matter was concluded by way of Consent Judgment on 30 January, 2022. The appellants filed an application for joinder on 8 December, 2023, seeking to be joined to the action and to stay execution of the Consent Judgment pending proceedings to set aside the Consent Judgment.

9.3 The appellants state that they did not know about the matter leading to the Consent Judgment and that they purchased plots on the 1st respondent's land. They seek to be joined to the Consent Judgment because they contend that they have sufficient interest in the matter.

9.4 The learned Judge in the lower court declined to grant the application for joinder because there was no appeal nor application for review.

9.5 The 1st respondent's contention in respect of the decision for joinder made by the lower court is that the appellants have no interest in the land because they purchased the same from

persons who held themselves out as the 1st respondent's agents when in fact they had no authority to sell the land.

- 9.6 It is trite that a court can order joinder where it appears to the court that all persons who may be entitled to or claim some share or interest in the subject matter of the suit or who may be likely to be affected by the suit require to be joined.
- 9.7 In the case of ***Mike Hamusonde Mweemba vs Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (Intended Joinder)***¹⁰ the court held that a court can order a joinder if it appears to it that all persons who claim some share or interest in the subject matter of the suit or who may be likely affected by the result.
- 9.8 What is at the core of this appeal is the court's decision to decline to grant joinder to the appellants.
- 9.9 It is settled law that only a party to the proceedings can challenge a Consent Judgment. The correct procedure involves applying for leave to join the proceedings or to the executed Consent Judgment.
- 9.10 In the present case, the application for joinder was made after the Consent Judgment had already been executed. The

appellants were not parties to the proceedings prior to the execution of the Consent Judgment.

9.11 We are of the view that where Judgment has been entered, a party may be joined to an action if there is an appeal or an application for review. In the ***Stanbic Bank vs Micoquip case (supra)***, the Supreme Court stated that –

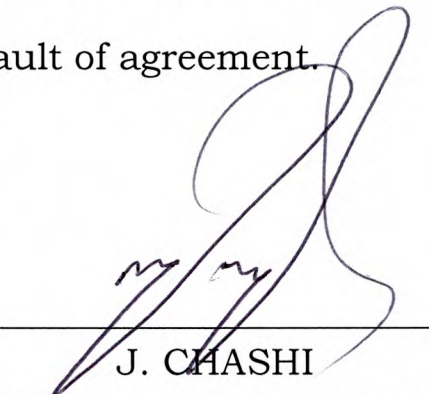
“an action usually terminates with the delivery of the Judgment and enforcement of the Judgment unless, of course, there is an appeal or an application for review, none of which have happened in the present case.”

9.12 As the Supreme Court guided, an action cannot be open ended as there must be an end to litigation. We agree with the Supreme Court in the ***Stanbic Bank vs Micoquip case (supra)*** that an application for joinder that is made after Judgment where there is no appeal or an application for review is irregular.

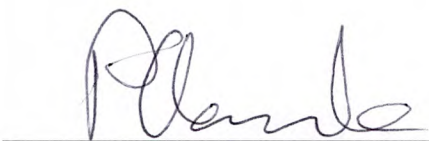
9.14 Consequently, we are of the view that the lower court was on firm ground when it declined to join the appellants to the action for purposes of challenging the Consent Judgment as there was no appeal nor application for review.

10.0 CONCLUSION


10.1 The sole ground of appeal having failed, for lack of merit, this appeal is accordingly dismissed with costs to the 1st respondent, to be taxed in default of agreement.



J. CHASHI
COURT OF APPEAL JUDGE



P. C. M. NGULUBE
COURT OF APPEAL JUDGE



A. M. BANDA-BOBO
COURT OF APPEAL JUDGE