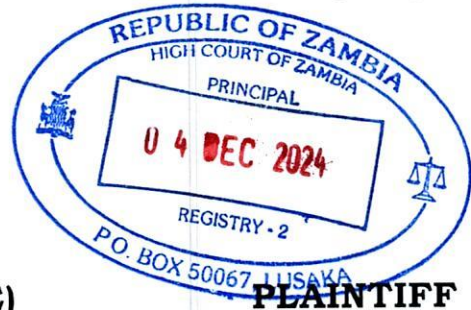


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2022/HP/1931



BETWEEN:

CHIZA CHONYA SIMPUNGWE (MALE)

PLAINTIFF

AND

**INNOVATE LIFE ASSSURANCE LIMITED
LANZ ISAAC ZULU**

1ST DEFENDANT

2ND DEFENDANT

***Before:* The Hon. Mr. Justice Charles Zulu.**

For the Plaintiff: Mr. S. T. Banda & Mr. C. Chongwe, of Messrs
Simeza Sangwa & Associates.

For the Defendants: Mr. M. Ntanda of Messrs Reagan Blainkfein
Gates Legal Practitioners.

R U L I N G

Cases referred to:

- 1. *Watson Nkandu Bowa v Fred Mubiana and ZESCO Limited (S.C.Z Appeal No. 121 of 2011).***
- 2. *Re: Avondale Housing Project Limited (S.C.Z Judgment No. 31 of 1982).***
- 3. *Nyampala Safaris & Others v. Zambia Wildlife Authority & Others (S.C.Z No. 6 of 2004)***
- 4. *Collet v Van Zyl Brothers Limited (1969) Z.R.65 (CA).***

Legislation referred to:

- 1. *The High Court Rules Chapter 27 of the Laws of Zambia.***
- 2. *The Rules of the Supreme Court of England and Wales 1965, (White Book 1999 Edition).***

1.0 INTRODUCTION

1.1 This ruling is in respect of an application dated November 6, 2024, at the instance of the first Defendant for stay of execution of the judgment dated October 16, 2024 pending appeal to the Court of Appeal. Notably, a writ of *fiery facias* was issued on November 6, 2024. The application was made pursuant to Order XXXVI rule 10 of the **High Court Rules Chapter 27 of the Laws of Zambia** read with Order 47 rule 1 (1) and Order 59 rule 13 (9) of the **Rules of the Supreme Court of England and Wales 1965, (White Book 1999 Edition)**.

2.0 BACKGROUND

2.1 The Plaintiff, Chiza Chonya Simpungwe, took out the present action against the Defendants, Innovate Life assurance Limited and Lanz Isaac Zulu, seeking the following reliefs:

- i. as against the 1st and 2nd Defendants payment of the sum of K650,000.00 same being money payable by the Defendants to the Plaintiff and the same being money lent by the Plaintiff to the Defendant;***
- ii. Interest on the said sum of K650,00.00 from the date of the writ of summons herein until payment or judgment; and***
- iii. costs of this action.***

2.2 On September 11, 2024, the Plaintiff applied for entry of judgment on admission. The parties were heard and the judgment on admission was entered by ruling dated October 16, 2024. It is the said ruling that the first Defendant seeks to impugn in the Court of Appeal.

3.0 AFFIDAVIT EVIDENCE

- 3.1 An affidavit in support of the application was deposed to by Luwabelwa Luwabelwa, a Director in the first Defendant. The reasons stated for the application were that the first Defendant had had since launched its appeal in the Court of Appeal. According to him, the appeal had high prospects of succeeding because, the Court did not properly address its mind to the Defendant's defence and counter-claim.
- 3.2 And that should the counter-claim succeed, and the judgment on admission remain in effect, this Court would be faced with two conflicting judgments.
- 3.3 An affidavit in opposition was deposed to by Chiza Chonya Simpungwe, the Plaintiff. The gist of his opposition was that the application for a stay did not demonstrate prospects of success because, there were no special circumstances to warrant the grant.

4.0 ARGUMENTS FOR AND AGAINST THE APPLICATION

- 4.1 The Defendant's Counsel, Mr. Ntanda, argued *inter alia* that, the appeal had high prospects of success because, the Court did not fully address the issues raised by the Defendant in its opposition against the application for entry of judgment on admission and, in its defence. The case of **Watson Nkandu Bowa v Fred Mubiana and ZESCO Limited**¹ was adverted to wherein the Supreme Court held:

- 4.1.1 ***In an application for stay of execution pending appeal, the considerations are the prospect of the appeal succeeding and the irreparable***

damage if a stay is not granted and the appellant's appeal succeeds.

4.2 It was contended that since the application was grounded on substantial merit, the stay ought to be granted.

4.3 In opposition, the Plaintiff's Counsel contended *inter alia* that the appeal had no real prospects of success. According to Counsel, the issues raised by the Defendants of illegality were already settled by the Court in its ruling.

4.4 Additionally, Counsel contended that the Defendants did not demonstrate that the Court's findings were perverse or that it misapplied the evidence before it to warrant success on appeal. The case of **Re: Avondale Housing Project Limited**² was cited in which it was held:

4.4.1 ***Before this court can reverse findings of fact made by a trial judge, we would have to be satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial court acting correctly could reasonably make.***

4.5 I was urged to dismiss the application.

5.0 DETERMINATION

5.1 I have carefully considered the application. The criterion to be considered for grant of a stay of execution was ably outlined in the case of **Nyampala Safaris & Others v Zambia Wildlife Authority & Others**³ wherein the Supreme Court held:

5.1.1 ***A stay of execution is only granted on good and convincing reasons. The rationale for this 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 stay should be granted.

5.2 In as much as a grant of a stay of execution is premised on the court's discretionary powers, judicial discretion must be judiciously exercised judiciously (see **Collet v Van Zyl Brothers Limited⁴**).

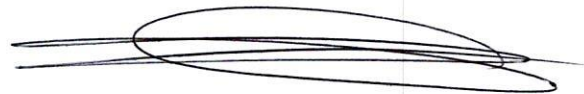
5.3 In the light of the above authorities, I agree with the Plaintiff's Advocates that there are no good and convincing grounds disclosed by the first Defendant to warrant the grant of the stay. The Plaintiff should be allowed to enjoy the fruits of his judgment. In any case, if the appeal were to be successful, which I highly doubt, the money judgment in favour of the Plaintiff is recoverable, so, there is no irreparable injury the Defendants will suffer.

6.0 CONCLUSION

6.1 In the light of the foregoing, the application for a stay of execution is dismissed for lack of merit.

6.2 Leave to appeal is granted.

DATED THE 4TH DAY OF DECEMBER 2024



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THE HON. MR. JUSTICE CHARLES ZULU