

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



2016/HP/0370

BETWEEN:

BIG WILLAS TRANSPORT AND GENERAL SUPPLIERS LIMITED 1st PLAINTIFF

PETER MBAYA BUKASA 2nd PLAINTIFF

AND

FIRST NATIONAL BANK DEFENDANT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 9th DAY OF AUGUST, 2017

For the Plaintiffs : Mr M. Bwalya, Ellis and Company

For the Defendant : Mr M. Moonga, Legal Manager

R U L I N G

CASES REFERRED TO:

1. ***Attorney General V Marcus Achiume 1983 ZR 1***
2. ***Sonny Paul Mulenga & Vismer Mulenga (Both personally & Practising as SP Mulenga International) and Chainama Hotels Limited and Elephants Head Hotel Limited V Investrust Merchant Bank Limited SCZ No 15 of 1999***
3. ***Nyampala Safaris (Z) Limited, Baobab Safaris (Z) Limited, Nyumbu Safaris (Z) Limited, Exclusive Safaris (Z) Limited, Busanga Trails (Z) Limited V Zambia Wildlife Authority, Zambia National Tender Board, Attorney General, Luangwa Crocodile and Safari Limited, Sofram and Safaris Limited, Leopard Ridge Safaris Limited, Swanepoel & Scandrol Safaris Limited 2004 ZR 49 SC***
4. ***Communications Authority V Vodacom Zambia Limited SCZ No 21 of 2009***
5. ***Ndongo V Moses Mulyanga and Rotisco Banda SCZ No 4 of 2011***
6. ***Michael Chilufya Sata V Chanda Chiimba 2011 Vol 2 ZR 445***
7. ***Watson Nkandu Bowa (swing as administrator of the estate of the late Ruth Bowa) V Fred Mubiana and ZESCO Limited 2012 Vol 3 ZR 165***

LEGISLATION REFERRED TO:

- 1. Statutory Instrument No 65 of 2016(Court of Appeal Rules 2016), Court of Appeal Act No 7 of 2016**
- 2. The High Court Rules, Chapter 27 of the Laws of Zambia**

This is a ruling on an application made by the Defendant for an order to stay execution of the judgment, pending the determination of the appeal. The application was made pursuant to Order XXXVI Rule 10 of the High Court Rules, and Order X Rule 5 and Order XIII Rule 12 of Statutory Instrument No 65 of 2016 (Court of Appeal Rules 2016) under the Court of Appeal Act No 7 of 2016 of the Laws of Zambia.

Counsel relied on the affidavit sworn by Euphrice Kombe, and submitted that the Defendant had appealed against the judgment delivered by this court on 28th June, 2017. It was stated that they had applied that the said judgment be stayed, so that the appeal would not be rendered academic.

Counsel further in the submissions stated that it was their belief that the grounds of appeal that they had advanced have merit, and therefore the appeal has real prospects of success. Further that no prejudice would be occasioned to the Plaintiffs if the stay of execution were to be granted, as should the Court of Appeal uphold this court's judgment, there will be an order as to costs, which would be adequate compensation to the Plaintiffs.

It was also stated that they were alive to the fact that stays of execution are granted at the court's discretion, and that this done only where sufficient grounds are shown. That as the appeal has reasonable prospects of success, this was sufficient ground warranting stay of execution of the judgment. Counsel accordingly prayed that the application be granted.

