

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



2017/HPC/0247

IN THE MATTER OF: THE ARBITRATION ACT OF ZAMBIA AND SECTION 11 THEREOF

IN THE MATTER OF: THE SUPPLY AGREEMENT FOR CONCRETE AND AGGREGATE
DATED 21ST JUNE, 2015

IN THE MATTER OF: ORDERS 27 r 4 AND 30 r 11 OF THE HIGH COURT RULES A.R.W
ORDER 29 OF RSC (1999) EDITION

BETWEEN:

KEREN MOTORS LIMITED

APPLICANT

AND

DAEWOO ENGINEERING AND CONSTRUCTION

COMPANY LIMITED

RESPONDENT

Coram: The Hon. Lady Justice Dr. W.S. Mwenda in Chambers at Lusaka the 4th
day of April, 2018.

For the Applicant: Mr. L.K. Phiri appearing with Ms. C. Mulenga, both of KBF
Partners.

For the Respondent: Mr. R. Petersen of Chibesakunda and Company.

RULING

Case Referred to:

1. *Moonda Jane Mungaila Mapiko and John Muchabi (Suing on behalf of the Traditional Council of Mungaila Royal Establishment) v. Victor Mukaba Chaande* (2010) Z.R. 397.

Legislation referred to:**1. Order 3, rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia**

This is an application by the Respondent to stay hearing of the Summons for Leave to File Contempt Proceedings pending determination of the preliminary issue raised in the matter by the Respondent on 14th November, 2017. The application is made pursuant to Order 3, rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.

The gist of the Respondent's application as submitted by Mr. Petersen, learned Counsel for the Respondent, is that since the preliminary issue of 14th November, 2017 challenges the validity of the entire action following the decision of the Court of Appeal of 31st October, 2017, if the preliminary issue of 14th November, 2017 succeeds, the application before court and indeed the entire action, will be held to be improperly before court. It is, therefore, the Respondent's contention that to hear the application for leave to file contempt proceedings before determination of the preliminary issue may end up to be an academic or moot exercise. It is on this basis that the Respondent seeks an order of this Court staying hearing of the application for leave to file contempt proceedings pending determination of the preliminary issue.

In opposing the application to stay hearing of the application for leave to file contempt proceedings, Mr. Phiri, learned Counsel for the Applicant, submitted that contempt proceedings by their very nature are for the purpose of securing compliance with a court order and that the basis for the application for leave to file contempt proceedings in this instance is that there was no compliance by the Respondent with the order of interim injunction which was granted by this Court. According to Counsel, it is the Applicant's desire that the Court determines whether the Respondent did or did not respect the order of interim injunction

during the active injunctive period notwithstanding that the injunction was later discharged. To augment his argument, learned Counsel referred this Court to the High Court case of *Moonda Jane Mungaila Mapiko and John Muchabi (Suing on behalf of the Traditional Council of Mungaila Royal Establishment) v. Victor Mukaba Chaande*¹, where Matibini J., opined, *inter alia*, that contempt of court extends to conduct that tends to abuse the court proceedings generally and any conduct that impedes the administration of justice. It was Counsel's view that the application by the Applicant is based on the fact that the Respondent, in its actions, which are alleged to be contemptuous, impeded the administration of justice given the fact that the order of interim injunction was there to maintain the status quo of the parties until judgment or until the injunction was discharged. It was thus the Applicant's submission that this Court should not stay the proceedings as by doing so, it would not be known whether the interim injunction was disobeyed or not.

In reply, Mr. Petersen submitted that Order 3, rule 2 of the High Court Rules entitles this Court to make such order as the Court considers necessary for doing justice and further, that it is trite law that the Court is likely to grant a stay of proceedings where to not do so would result in the Court making an academic or moot decision. It was Counsel's contention that the stay sought was to avoid such mischief. Counsel admitted that Counsel for the Applicant was correct in his submission on the importance of testing compliance with the order of interim injunction. He was, however, of the view that to begin down the path of testing compliance with the order of interim injunction in the face of what he termed, a looming threat that a decision on the preliminary issue awaiting ruling will bring the journey of enquiry to a quick end, would be unnecessary and that for this reason, it is the Respondent's contention that the interest of justice would be served by holding this application in abeyance until the issue of whether or not

this action is properly before this Court is determined. It was Counsel's prayer that the matter be stayed and that costs of the application be in the cause.

I have considered the submissions by learned Counsel for the Respondent in support of his oral application for stay of proceedings relating to the application for leave to file contempt proceedings. I have also considered the submissions in opposition by learned Counsel for the Applicant.

Order 30, rule 2 of the High Court Rules does indeed grant this Court the power to make such order as the Court considers necessary for doing justice. However, while agreeing with the submission that a court is likely to grant a stay of proceedings where not to do so would result in the court making an academic or moot decision, it is my considered opinion that proceeding with the hearing of the application for leave to file contempt proceedings would not, irrespective of the outcome of the preliminary issue, result in the court making an academic decision. I say so for the following reasons.

As Counsel for the Applicant correctly submitted, contempt proceedings by their very nature are for the purpose of securing compliance with court orders. It is immaterial that in the event that the preliminary issue of 14th November, 2017 succeeds, the entire action will be held to be improperly before the Court because the fact of the matter is that there was an *ex parte* order of Mandatory and Prohibitory Injunction granted to the Applicant by this Court on 22nd June, 2017 which offered injunctive relief to the Applicant until it was discharged by this Court on 13th July, 2017. It was the duty of the Respondent, its agents, servants or employees to abide by the injunction while it was active, failure to which the defaulting party risked being visited by penal sanctions. The Applicant filed Summons for Leave to File Contempt Proceedings on 11th July, 2017 against Dongchan Kim (in his capacity as Project Coordinator of the Respondent

Company) alleging that Dongchan Kim deliberately failed to respect and obey the order of the Court dated 22nd June, 2017. It is, therefore, imperative in my view, that this Court hears the application for leave to file contempt proceedings so that in the event that leave is granted, contempt proceedings can be commenced and thus enable this Court to make a determination as to whether or not the alleged contemnor did disobey the order of this Court as alleged. I opine that if hearing of the application for leave to file contempt proceedings was stayed and the preliminary issue proceeded to be heard and succeeded, the Court would not have the opportunity to decide on whether or not its order was deliberately disobeyed. The importance of testing compliance with the Court order cannot be overemphasised, as learned Counsel for the Respondent himself graciously alluded to in his submissions.

For the above reasons, I am of the view that in the circumstances of this case, the interest of justice will be better served if the application for leave to file contempt proceedings is heard before the issue of whether or not this application is properly before court is determined. The application for stay therefore fails and is dismissed with costs. The costs are to be agreed by the parties or taxed in default of agreement.

Dated at Lusaka the 4th day of April, 2018.


Winnie Sithole Mwenda (Dr.)
HIGH COURT JUDGE