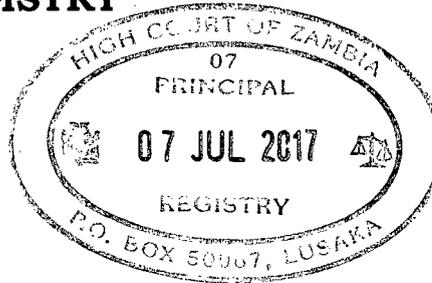


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/1613



BETWEEN:

ROBINSON KALOTA	1ST PLAINTIFFS
TASILA CATHERINE PHIRI & 204 OTHERS	2ND PLAINTIFFS
AND	
GILBERT NOMBWANA MUDENDA	1ST DEFENDANT
COMMISSIONER OF LANDS	2ND DEFENDANT
LUSAKA CITY COUNCL	3RD DEFENDANT
ATTORNEY GENERAL	4TH DEFENDANT

BEFORE HONORABLE MR.JUSTICE MWILA CHITABO, SC

For the Plaintiff: G.M Kaulungombe of Messrs Marshal
Chambers

For the 1st Defendant: Mr. M. Chitundu of Messrs Barnaby
Chitundu Advocates

For the 2nd defendants: N/A

R U L I N G

Cases referred to:

1. *Hakainde Hichilema and another v. The Attorney General* 2016/HP/1738
2. *Michael Chilufya Sata v. Chanda Chimba III and 3 others* (2011) 2 ZR 444
3. *Zambia Revenue Authority v. Post Newspaper Limited, Appeal No. 36 of 2016, SCZ/87/2015 (unreported)*

This is an application for stay of proceedings pending appeal to the Court of Appeal (CAZ/08/04/2016) provoked by this Court's Ruling dated 23rd December, 2016 dismissing the Plaintiffs action for abuse of Court process on account of multiplicity and duplicity.

The application is supported by an affidavit the gravamen of which is that they believe the appeal is likely to succeed and if the Ruling is not stayed the appeal will be a mere academic exercise as the subject matter property would have been alienated by the defendants.

The application was opposed by an affidavit in opposition the essence of which was that contrary to the view held by the plaintiffs, there are no prospects of the appeal succeeding.

On the hearing date, directions were issued as to the order of filing of submissions by the parties. Regrettably there has been total non compliance with the said directions.

Faced with the stay application, I revisited the Ruling of this Court dated 23rd May, 2017 in the case of ***Hakainde Hichilema v. The***

Attorney General¹, where I discussed the celebrated case of **Michael Chilufya Sata v. Chanda Chimba III and 3 others** where his Lordship Dr. Matibini SCJ (as he then was) in an orderly concise fashion laid down the guidelines the Court may follow in considering whether to grant or not grant a stay of a Judgment pending appeal. At pages R6 – R8 in the **Hichilema¹** Ruling, I observed as follows:-

*“I then had occasion to visit the case of last resort of **Zambia Revenue Authority and Post Newspaper Limited³**, where his Lordship Mervin Sitwala Mwanamwambwa DCJ reading the Judgment of the Court compressed the guidelines to consider as to when to grant or refuse a stay application. He put it this way at page J119:-*

‘Further where a Judgment or Ruling is stayable the principles state that stay of execution pending appeal is a discretionary remedy. A party is not entitled to it as a matter of right. And such discretions must be exercised judiciously and on well established principles.

Firstly, the successful party should not be denied the immediate enjoyment of a Judgment unless there are good and sufficient reasons. Stay of execution should not be granted for the convenience of the Post Newspaper. Neither should it be granted purely on sympathetic or moral consideration.

Secondly, in exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of success of the proposed appeal. In particular, where the judgment appealed against involves payment of money, the appellant must show that if such money is not paid, then there will be no reasonable prospect of recovering it in the event of the appeal succeeding. Such proof is what amounts to good and sufficient grounds warranting stay. See

(a) Rules of the Supreme Court [1999]; Order 59 Rule 3

(b) Sonny Mulenga and another v. Investments Merchant Bank Limited (1999) ZR 101

(c) Carminé and Watson Nkandu Bowa (sued as Administrator of the estate of the Ruth Bowa vs. Fred Mubonda and ZESCO Limited (2012) ZR 165)

His Lordship continued at page 20:-

‘We wish to emphasise that the prospects of success of the pending appeal is a key consideration in deciding whether or not to stay execution of the Judgment appealed against. Here we wish to affirm the two fold test as stated in our decision in Carminé case’

Having thus explored the law I now turn to the case in casu.

Apart from religiously stating that the plaintiff entertains prospects of succeeding, it has not been demonstrated how that conclusion has been reached upon. Neither has it been demonstrated that if

the appeal were to succeed the appeal would be rendered nugatory or academic.

I say so because if the appeal was to succeed the subject matter which is land will still be there and the successful litigant will claim his award to the land.

However, having said this, I have gleaned the memorandum of appeal which is couched in the following manner:-

“Ground One

That the Honourable Court below proceeded to deliver a Judgment on the entire matter when the only issue before it related to the Respondents seeking an order to direct the Deputy Registrar to hear an interlocutory application on its merit”

The Plaintiff has wrongly referred to the Ruling as a Judgment. However, the important thing is that I understand the ground as questioning the Court’s jurisdiction to adjudicate on the issues it had pronounced itself on.

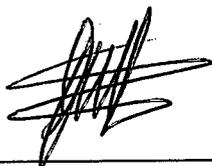
In my view, jurisdiction goes to the root of the matter. It is therefore right, just and judicious that the superior Court hears the complaint.

For that reason alone, I will grant the stay of the Ruling dated 23rd August, 2016 pending the determination of the appeal.

I will make no Order as to costs.

Leave to appeal granted.

Delivered under my hand and seal this ^{7th}..... day of July, 2017



**Mwila Chitabo, SC
Judge**