

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

2017/HP/A012

BETWEEN:



MALE PASTOR

PLAINTIFF

AND

MAGGIE MAMBA MAMBWE

1ST RESPONDENT

ENALA PHIRI

2ND RESPONDENT

KAREN LONGWA CHILEYA

3RD RESPONDENT

Before Hon. Mr. Justice M. L. Zulu at Lusaka, the 18th day of August, 2017

*For the Plaintiff: Mrs. F. Muchiya of Barnaby and Chitundu and Advocates
For the Respondents: Mrs. Z. Ng'ambi of Legal Aid Board*

RULING

This is the Application by the Appellant for an Order to stay proceedings pending Appeal pursuant to Order 3 Rule 2 of the High Court Rules, Cap 27 of the Laws of Zambia.

The application was supported by an Affidavit deposed by the Appellant, filed on 24th May, 2017 into Court.

The Appellant deposed that when the matter was scheduled to be heard on 24th March, 2014, he did not attend the Lands Tribunal proceedings, but the Court proceeded to determine and entered judgment in favour of the 1st Respondent on the strength of the Affidavit of Service filed by the 1st Respondent that he had been served with the process.

The Deponent states also that he made an application to set aside the judgment of 8th May, 2014, on the ground that he was not served with the notice of hearing and Court process, and that only the 2nd Respondent had been served, but that on 28th February, 2017, the Lands Tribunal dismissed the Appellant's Application to set aside its Judgment.

The 1st Respondent filed an Affidavit in Opposition to the Affidavit in support of summons for an Order to stay proceedings pending Appeal, deposed by the 1st Respondent, who deposed that the Appellant was served with all the Court process but declined to receive the documents and were duly served with notices of hearing.

The Affidavit further alleges that the Appellant does not have a Defence on merit hence the Tribunal's refusal to set aside their Judgment of 8th May, 2014 in their Ruling of 23rd February, 2017. The deponent went on to argue that this application should be refused as the Applicants are Appealing out of time and that the 30 days allowed to appeal had elapsed

from the judgment of 8th May, 2014. At the hearing, the parties placed reliance on the affidavits on record.

I have considered the application for an Order to stay proceedings pending Appeal herein, and have examined the Affidavits filed by the parties in support of and in opposition of the Application.

An Injunctive relief, an equitable remedy recourse at the discretion of the court, is granted when certain conditions are met by an Applicant.

The present application emanates from the decision of the Lands Tribunal, in which it made the following orders:

- 1. That the Sale Agreement of the land herein entered into by the parties herein is valid and binding;***
- 2. That the Complainant is entitled to the ownership and quiet enjoyment of the land herein;***
- 3. That we declare the purported sale of the land herein by the 1st Respondent to the 2nd Respondent to be null and void abinitio;***
- 4. That the 2nd respondent is at liberty to claim whatever monies he may have paid to the Respondent;***
- 5. That the 1st Respondent is at liberty to get the balance of the purchase price i.e K 3, 000 from the Complainant and this should be done in the presence of the police;***
- 6. That we grant the Complainant a permanent injunction restraining the Respondent whether by themselves, their agents,***

servants or whomsoever from interfering with the Complainant's ownership, possession and quiet enjoyment of the land herein.

The above ruling delivered by the Lands Tribunal falls under the **Lands Tribunal Act no. 39 of 2010**.

This application has been made pursuant to **Order III (2) of the High Court Rules, Cap 27** of the Laws of Zambia and provides in clear terms that: -

“Subject to any particular rules, the Court or judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefits of the order or not.”

The Application at hand, it emanates from the decision and subsequent refusal by the Lands Tribunal to grant the Appellant the stay of its decision of 8th May, 2015, in its ruling of 23rd February, 2017.

The Applicant's complaint is essentially that he was not given an opportunity to be heard by the Lands Tribunal. The Appellant's position is that he was not served the process or indeed served with the notice of

hearing. On the other hand, the 1st Respondent argues that the Appellant refused to acknowledge the process.

The Tribunal findings were clear on this aspect, that concluded that actually the Appellant was served with the notice of hearing and disposed the matter on Affidavit evidence pursuant to **Rule 12 of the Lands (Lands Tribunal) Rules** and **Section 11 (1) (b) of the Land Tribunal Act**.

The Lands Tribunal in its Ruling of 23rd February, 2017, allowed Joinder of 3rd Respondent and adjourned the hearing of Ms. Chileya to the next session.

The Lands Tribunal further granted the parties leave to Appeal to the High Court.

Section 16 of the Lands Tribunal Act, no. 39 of 2010 states:

“A person aggrieved with the decision of the Tribunal may within thirty days of the receipt of its decision, appeal to the High Court.”

The Appellant in this case filed his Notice of Appeal on 23rd March, 2017, and sought leave to file the record of Appeal out of time pursuant to **Order 2 Rule 2 and Order 3 Rule 2 of the High Court Rules, Cap 27 of the Laws of Zambia**.

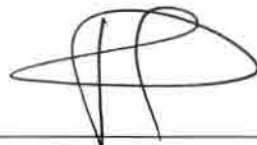
I have considered the Affidavit in Support of the leave being sought and circumstances of the case. I accept the reasons for the late lodging of the Record of Appeal. Accordingly, I will proceed to grant the leave to file the record of appeal out of time, pursuant to **Order 2 Rule 2 and Order 3 Rule 2 of the High Court Rules.**

However, this Court does not possess the power to stay the proceedings under LAT/22/2014 on hearing of the 3rd Respondent by the Lands Tribunal. Instead, I will stay the execution of the Judgment of 8th May, 2014 pending hearing of the Appeal in accordance with **Section 16 of the Lands Tribunal Act, no. 39 of 2010.**

I make no order to costs.

Leave to Appeal is granted.

Dated the 18th day of Aug 2017



**M. L. ZULU
HIGH COURT JUDGE**