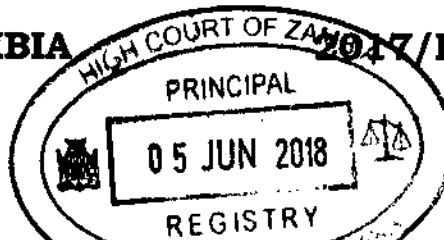


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**



2017/HP/1916

IN THE MATTER OF:

**S.I. NO. 156 OF 1999 OF THE
FUNDAMENTAL FREEDOMS & RIGHTS**

IN THE MATTER OF:

**THE CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1 OF THE LAWS
OF ZAMBIA**

IN THE MATTER OF:

**ARTICLE 16 OF PART III FOR THE
PROTECTION OF THE FUNDAMENTAL
RIGHTS AND FREEDOMS OF AN
INDIVIDUAL CAP 1 OF THE LAWS OF
ZAMBIA**

IN THE MATTER OF:

**SECTIONS 3, 4 AND 5 OF THE LANDS
ACT CHAPTER 184 OF THE LAWS OF
ZAMBIA**

IN THE MATTER OF:

**SECTION 58 OF THE LANDS AND DEEDS
REGISTRY ACT, CHAPTER 185 OF THE
LAWS OF ZAMBIA**

IN THE MATTER OF:

**WHETHER THE PETITIONERS HAVE THE
CONSTITUTIONAL RIGHT TO OCCUPY
AND POSSESS THE REMAINING EXTENT
OF FARM 1957 WHICH THEY HAVE
OCCUPIED SINCE 1970**

B E T W E E N :

JACKSON MAMBO SAKALA & 200 OTHERS

PETITIONERS

AND

**KWATHU FARMS LIMITED
JOHN WILLIAM KELLY CLAYTON
THE ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 5th day of June, 2018

For the Petitioners : *Mr. O. Hatimbula & Mr. R. Chafwakale
Mesdammes Mushipe & Associates*
For the 1st & 2nd Respondent : *Mr. B. Macheleta, Messrs AM Wood &
Company*
For the 3rd Respondent : *No Appearance*

R U L I N G

Cases Referred To:

1. *Michael Chilufya Sata v Chanda Chimba III, Zambia National Broadcasting Corporation, Muvi TV Limited, MOBI TV International Limited 2010/HP/1282*
2. *Sony Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited (1999) Z.R 101 (S.C)*
3. *Watson Nkandu Bowa v Fred Mubiana & ZESCO SCZ Appeal No. 121 of 2011*
4. *Nyampala Safaris and 4 Others v Wildlife Authority and 6 Others (2004) Z.R 49 (S.C)*

Legislation Referred To:

1. *Rules of the Supreme Court, 1999 Edition*

This is the Petitioners' application for a stay execution of Ruling dated 25th January, 2018. It is supported by an Affidavit sworn by **Alfred Ngambi**. The background facts are that the 2nd Respondent sued the 1st and 2nd Petitioners on 28th April, 1999 in Cause No. 1999/HP/684. The Court delivered judgment on 14th November,

2012 against the Petitioners. On 26th August, 2015, the Petitioners unsuccessfully appealed the judgment out of time. They renewed their application in the Supreme Court on 4th February, 2016 but were equally unsuccessful. They proceeded to file a Notice of Motion to the full bench of the Supreme Court, which is pending hearing.

The Petitioners thereafter, commenced another action under cause no. 2014/HP/0528 against the 1st and 2nd Respondents over the same subject matter. On 2nd December, 2014, the Court dismissed their action on the ground that it was *res judicata* and an abuse of the process of Court. They appealed that decision to the Supreme Court on 4th December, 2014 and the matter was still outstanding on the date of this Ruling.

In the Ruling, I determined that this cause had no merit and amounted to a multiplicity of actions because a final judgment was rendered in cause no. 1999/HP/00684. I also ordered the Petitioners' Advocates who are on record in the Supreme Court to personally bear the costs. This is the source of grievance and they have appealed the order on costs to the Court of Appeal.

... which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the Court and the Court will grant it where the special circumstances of the case so require.... But the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour."

In the case of **Nyampala Safaris and 4 others v Wildlife Authority and 6 others**⁴, the Supreme Court re-stated this position of law, when it declared that a stay should only be granted where good and convincing reasons have been advanced by a party. It went on to state that the rationale for the position is that a successful litigant should not be deprived of the fruit of litigation as a matter of course.

In the case of **Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited**², the Supreme Court held that:

- “(i) In terms of our rules of Court, an appeal does not automatically operate as a stay of execution and it is pointless to request for a stay solely because an appeal has been entered.**
- (ii) In exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of the proposed appeal succeeding.**
- (iii) The successful party should not be denied immediate enjoyment unless there are good and sufficient grounds.”**

Considering the guidelines outlined in the above cited cases, the question is, have the Petitioners met the criteria set as outlined above to provoke my discretionary power to grant a stay of execution of the judgment? In other words, have the Petitioners demonstrated

that there are good and convincing reason(s) for granting a stay of execution of judgment? Have they shown in their application that their appeal has prospects of succeeding and if a stay is not granted, then their appeal would be rendered nugatory an academic exercise?

In applying the above principles to the application before me, I am of the firm view that the Petitioners have not advanced good reasons for a stay of execution of Ruling. The Petitioners' appeal attacks costs, which are within the discretion of a Court and does not raise any difficult point of law. It is therefore, unlikely to succeed.

I accordingly refuse to grant a stay of the Ruling and dismiss this application. I award costs to the 1st and 2nd Respondents to be taxed in default of agreement.

Dated this 5th day of June, 2018.

M. Mapani-Kawimbe
M. Mapani-Kawimbe
HIGH COURT JUDGE