

IN THE COURT OF APPEAL OF ZAMBIA

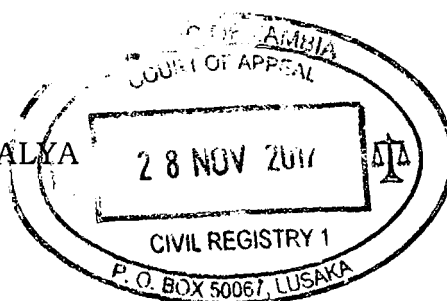
CAZ/08/139/2017

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

ROSEMARY BWALYA



APPLICANT

AND

MWANAMUTO INVESTMENTS LIMITED
COMMISSIONER OF LANDS
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

Before Justice F. M. Chishimba in Chambers.

For the Applicant : In Person.
For the 1st Respondent : Mr. Chenda of Messrs Simeza Sangwa & Associates
For the 2nd & 3rd Respondent : N/A

R U L I N G

CASES REFERRED TO:

1. Shaw Vs. Holland (1878) 2 Ch. 305
2. Carnival Furnishers (Zambia) Limited Vs. Time Trucking Limited SCZ/8/83/2015
3. Aristogerasimos Vangelatos vs. Demetre Vangelatos & Others (2005) ZR 132

LEGISLATION AND WORKS REFERRED TO:

1. The Rules of the Supreme Court of England (White Book) 1999 Edition
2. The Court of Appeal Rules, Statutory Instrument No. 65 of 2016
3. Halsburys Laws of England 4th Edition Vol. 37.

The Applicant seeks for an order to stay taxation proceedings pending the outcome of the investigations of the Judicial Complaints Commission made pursuant to **Order 59/1A (6) (m) of the Rules of The Supreme Court of England (White Book) 1999 Edition**. The application was supported by an affidavit dated 26th September, 2017 and skeleton arguments dated 13th October, 2017.

According to the supporting affidavit, the Appellant Rosemary Bwalya has lodged a complaint against Justice Hamaundu with the Judicial Complaints Commission. Further, that the complaint against Justice Hamaundu is with regards the manner in which he presided over a matter involving her. The said matter culminated into the costs subject of taxation. Taxation is now before this Court by way of a Notice of Appointment for Taxation.

It was deposed that the Appellant seeks the indulgence of the Court to stay proceedings for taxation pending final determination of the investigations by the Judicial Complaints Commission.

The affidavit in opposition was sworn by Counsel for the 1st Respondent, Mr. K. Chenda. He deposed that on 22nd May, 2017, the High Court, in cause 2005/HP/0237, dismissed the Appellant's application for leave to appeal. The Appellant renewed

the application for leave before this Court which application was dismissed and she was condemned in costs. On 28th July, 2017 the 1st Respondent's Advocates made a written demand for costs which the Appellant ignored. Consequently, the 1st Respondent took out taxation proceedings and served on the Appellant on 16th August, 2017. The taxation proceedings could not take off because the Appellant sought more time to acquaint herself with the Rules of Court and thereafter filed an application to stay proceedings.

It was stated that the Appellant is in the habit of reporting adjudicators who do not rule in her favour to the Judicial Complaints Commission. Further, that the complaint to the Judicial Complaints Commission is an afterthought meant to derail the taxation proceedings. In addition, that the costs complained of were not awarded by the High Court but by this Court in a Ruling dated 26th July, 2017.

The Appellant filed an affidavit in reply dated 13th October, 2017. It was deposed that there is no affidavit in opposition as the affidavit on record, which reveals factual issues, was sworn by Counsel for the 1st Respondent, Mr. K. Chenda. Further, that the affidavit in opposition and its attendant skeleton arguments ought to be expunged from the record.

The Appellant filed skeleton arguments dated 13th October, 2017. The same are a repetition of the affidavit in support of the application. The Appellant submits that **Order 59/1A (6) (m) of the Rules of the Supreme Court of England (White Book) 1999 Edition** does not bar her from staying taxation proceedings pending the outcome of the Judicial Complaints Commission investigations. Further, that the complaint also seeks to resolve the issues surrounding the 1st Respondent's *locus standi* in this matter. Consequently, the issue of *locus standi* will resolve the issue of whether or not the 1st Respondent is entitled to costs in the first place. The Appellant urged the Court to grant the sought order.

The 1st Respondent filed into Court skeleton arguments dated 6th October, 2017. It was argued that **Order 59/1A (6)(m) of the White Book** relied on by the Appellant does not clothe the Court with the power to grant a stay of taxation proceedings pending the outcome of investigations of the Judicial Complaints Commission. Further, that having failed to demonstrate the Court's power to grant the sought order, the application must fail.

The 1st Respondent submitted that a stay of proceedings cannot be granted as a matter of course but only in exceptional

circumstances where the Applicant demonstrates that there are good and convincing reasons. As authority, I was referred to the cases of ***Shaw Vs. Holland*** ⁽¹⁾ and ***Carnival Furnishers (Zambia) Limited Vs. Time Trucking Limited*** ⁽²⁾ where the Court emphasized the need for an applicant to show compelling reasons in order to warrant a grant of a stay of proceedings.

The 1st Respondent argued that the Appellant has not shown any compelling reasons to warrant a grant of the sought order as the reasons advanced for seeking the sought order are not convincing. Further, that the Judicial Officer complained of did not make any order regarding costs. The outcome of the lodged complaint has no bearing on the order for costs. In addition, that there is no appeal that is likely to affect the Ruling of this Court dated 26th July, 2017.

The 1st Respondent prays that the application be dismissed with costs for the additional expenses the 1st Respondent has incurred since the Ruling dated 26th July, 2017.

I have considered the application to stay proceedings pending the outcome of the investigations in respect of a complaint lodged at the Judicial Complaints Commission against Judge Hamaundu by the Applicant. It is trite that for a stay of proceedings to be

granted there must be special circumstances demonstrated by the Applicant to satisfy the Court that there are good and convincing grounds to warrant a stay pending either an appeal or outcome of any proceedings.

Aside from exceptional circumstances to justify the stay of proceedings, merit of the appeal or complaint must be shown and irreparable harm if the stay of proceedings is not granted.

The power to stay proceedings is discretionary. The effect of a grant of a stay is that it renders the proceedings inactive pending the determination of the appeal or outcome of investigations as in *casu*. The rights acquired under the proceedings are suspended. I refer to the case of ***Aristogerasimos Vangelatos vs. Demetre Vangelatos & Others*** ⁽³⁾ and **Halsburys Laws of England 4th Edition Vol. 37.**

The issue is whether the Applicant in the circumstances of this case has shown that there are special circumstances to warrant staying the taxation proceedings.

I had earlier refused leave to appeal and awarded costs to the 1st Respondent who in turn filed a Notice of taxation before the Court. Before the taxation proceedings could be heard by the

Master of the Court, the Applicant filed a stay of proceedings. The basis being the complaint lodged against Justice Hamaundu with the Judicial Complaints Commission (JCC) as regards the manner in which he allegedly presided over a matter involving the Applicant which resulted into costs subject of the taxation proceedings.

I am of the firm view that the complaint lodged to the JCC against Justice Hamaundu who had delivered the High Court Judgment is not an exceptional circumstance that would warrant a stay of proceedings. Further, the complaint therein and allegations levelled would not render the continued taxation proceedings nugatory or academic. The applicant seeks to stay proceedings of taxation arising from my order of costs. The order of costs by this Court has no bearing on the pending investigations by the Judicial Complaints Commission over the alleged manner of conduct of the case in the Court below by Justice Hamaundu as he then was.

The applicant not having shown the prejudice to be suffered by her if proceedings are not stayed, and not having shown convincing grounds or exceptional circumstances, It is my view that there is no merit in the application.

For the foregoing reasons, I accordingly dismiss the application for an order for stay of taxation proceedings.

Costs to the 1st Respondent.

Dated the 28th day of November, 2017



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Hon. Mrs. Justice F. M. Chishimba

COURT OF APPEAL JUDGE