

**IN THE COURT OF APPEAL FOR ZAMBIA**  
**APPEAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

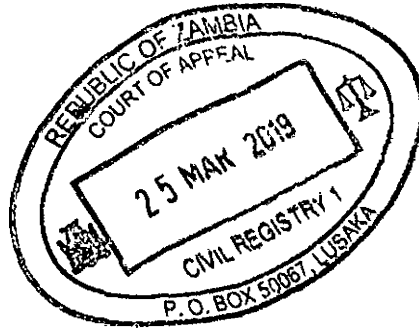
**CAZ/08/047/2019**

**BETWEEN:**

**NSAMA MULENGA**

**AND**

**JOSEPH FUNDULU**



**APPELLANT**

**RESPONDENT**

**Before the Hon. Justice D.L.Y. Sichinga in Chambers**

**On the 25<sup>th</sup> day of March, 2019**

*For the Appellant: Mr. K.I Mulenga of Messrs Kamusonde Chambers*

*For the Respondent: N/A*

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**RULING**

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**Cases referred to:**

- 1. Supreme Court Rules, 1999 Edition (White Book)*
- 2. Court of Appeal Rules, Statutory Instrument No. 65 of 2016, Act No. 7 of 2016*

This is an application by the appellant for an Order to stay execution of Ruling of 24<sup>th</sup> August, 2016. The application is made pursuant to **Order 59/13/1** as read together with **Order 59/13/9** of the **Rules of the Supreme Court, 1999 edition (White Book)**. The application is supported by an affidavit deposed to by counsel and filed into court on 7<sup>th</sup> March, 2019.

According to the affidavit evidence, on 21<sup>st</sup> January, 2019, the appellant herein filed an ex-parte summons in the court below supported by an affidavit for an Order to stay execution of the Ruling dated 24<sup>th</sup> August, 2016. The application was denied for lack of merit without giving reasons. The appellant had earlier filed ex-parte summons for an Order to stay execution of the Ruling of 24<sup>th</sup> August, 2016 in the Supreme Court, but the application was dismissed for want of jurisdiction. Counsel deposed further that the application was made before this court in the interest of justice.

The application was made ex-parte. However, Mr. Mulenga, counsel for the appellant informed the court that counsel for the respondent attended court on Friday, 22<sup>nd</sup> March, 2019 and he was informed

by the Court's marshal that this would be heard today. In any event, the application appears unopposed.


I have considered the application with the affidavit evidence by counsel.

Order 10 Rule 2(1) of the Court of Appeal Rules' provides:

***"An application to a single judge shall be made by notice of motion or summons within fourteen days from the date of the decision complained of."***

The decision complained of was made on 24<sup>th</sup> August, 2016. Thereafter the refusal to stay the Ruling by the Court below was made on 21<sup>st</sup> January, 2019 before the court below. The application was then renewed before the Supreme Court on 28<sup>th</sup> February, 2019 and accordingly dismissed for being incompetent. A perusal of the record shows that the appellant did not apply to extend the time within which to make the application before this court. I therefore find the application to be incompetently before me and I accordingly dismiss it.

Since the respondent did not file an affidavit in opposition nor appear before me, I make no order as to Costs.

  
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**D.L.Y. Sichinga**  
**COURT OF APPEAL JUDGE**