

**IN THE COURT OF APPEAL OF ZAMBIA**

**CAZ/08/82/2020**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**BETWEEN:**

**TECTONIC DRILLING SOLUTIONS LIMITED APPELLANT**

**AND**

**AMIS LIMITED**

**RESPONDENT**

**Before: The Hon. Mr. Justice Justin Chashi in Chambers**

**On: 5<sup>th</sup> March 2021**

*For the Appellant: N/A*

*For the Respondent: J. Mazumba, Messrs Douglas and Partner*

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## **R U L I N G**

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**Rules referred to:**

- **The Court of Appeal Rules, Statutory Instrument No. 65 of 2016**

## **1.0 THE APPLICATION**

- 1.1 This is an application by the Respondent to dismiss the cause herein for want of prosecution. The application was made on 17<sup>th</sup> November 2020 by way of summons accompanied by an affidavit deposed to by Emmanuel Chibeluka, Counsel having conduct of the matter on behalf of the Respondent.
- 1.2 The application has been made pursuant to Order 10/7 of **The Court of Appeal Rules (CAR)**.

## **2.0 BACKGROUND**

- 2.1 The brief background to this matter is that, Honourable Lady Justice A. Patel, SC on 30<sup>th</sup> January 2020 rendered a Ruling in the High Court of Zambia (Commercial Division) in which she granted the Respondent a mareva injunction. On 27<sup>th</sup> February 2020, the learned Judge rendered another ruling in which she refused to review her earlier ruling.
- 2.2 Disenchanted with both Rulings, the Appellant filed a notice of appeal in this Court together with a memorandum of appeal on 19<sup>th</sup> March 2020.

### **3.0 AFFIDAVIT EVIDENCE**

3.1 According to the Respondent, since filing the notice and memorandum of appeal, the Appellant has not taken any further step in prosecuting the matter.

3.2 That in particular, the Appellant has neither filed nor served the record of appeal and the Appellants heads of argument. That the Appellant has also not made any application for extension of time within which to do so.

### **4.0 CONSIDERATION AND DECISION**

4.1 I have considered the summons and affidavit evidence as well as the record. Although the Appellant was not in attendance at the hearing of the application, I decided to proceed and hear the application after being satisfied that the Appellant was served with the summons and notice of hearing at the registered office as evidenced by the affidavit of service filed into Court on 10<sup>th</sup> February 2021.



- 4.2 In considering the application, I noted that the Appellant did not file any document to challenge the Respondent's application.
- 4.3 A perusal of the court record confirms that indeed, since filing the notice and memorandum of appeal, the Appellant has sat back and not taken any step in prosecuting the appeal.
- 4.4 Order 10/7 **CAR**, which has been cited by the Respondent provides as follows:

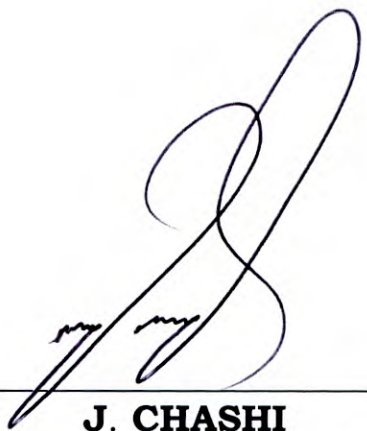
*"If an appeal is not lodged within the time stipulated under rule 6, the respondent may make an application to the Court for an order dismissing the appeal for want of prosecution or alternatively, for such other order with regard to the appeal as the respondent may require."*

- 4.5 The Appellant having not taken any step to prosecute the appeal herein, and having not challenged the application before this Court, I am satisfied that this is a proper matter in which to grant the application being sought by the Respondent. Therefore, the application is accordingly granted as prayed.

## **5.0 CONCLUSION**

5.1 The appeal herein is dismissed in accordance with Order 10/7 **CAR** for want of prosecution.

The costs are awarded to the Respondent to be paid forthwith. In default of agreement, the same are to be taxed.



A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish. The signature is written over a horizontal line.

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**J. CHASHI**  
**COURT OF APPEAL JUDGE**