

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

**2012/HPC/0174**

**BETWEEN:**

**STATUS MINERAL EXPLORATION LIMITED**

**PLAINTIFF**

**AND**

**OCEANA ORE LIMITED**

**1<sup>ST</sup>**

**DEFENDANT**

**MAGGIE MUSONDA**

**2<sup>ND</sup>**

**DEFENDANT**

**BEFORE HON. JUSTICE NIGEL K. MUTUNA THIS 30<sup>TH</sup> DAY OF  
JANUARY 2013**

For the Plaintiff : Mrs. Zaloumis of Dove Chambers

For the 1<sup>st</sup> Defendant : Mr. Simwanza of Nhari Mushemi & Associates

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**R U L I N G**

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Authorities referred to:

**1) Supreme Court Act, Cap 28**

**2) Supreme Court Practice (1999) Volume 1**

This is the Plaintiff's application for an order for leave to appeal to the Supreme Court. It is made by way of summons dated 9<sup>th</sup> November, 2012 and it seeks leave to appeal against the ruling of the Court granted on 30<sup>th</sup> October, 2012.

In support of the application, the Plaintiff filed an affidavit sworn by one Andronikos Andonipoulos.

The brief facts of this case as they are relevant to this application are as follows: The Plaintiff commenced this action on 13<sup>th</sup> April, 2012 against the First and Second Defendants. Simultaneously, it filed an ex-parte application for an injunction which was granted on 16<sup>th</sup> April, 2012.

The matter came up for hearing of the injunction inter partes on 20<sup>th</sup> April, 2012 but it was struck off for non attendance. As a consequence of this, the ex-parte order of injunction granted on 16<sup>th</sup> April, 2012 was discharged. Subsequently, the application for an injunction was restored and heard inter partes on 30<sup>th</sup> October, 2012. Following the hearing, the application was dismissed. No leave to appeal was granted by this Court.

It is this decision dismissing the application for an injunction that the Plaintiff seeks the leave of this Court to appeal against.

The evidence in support of the application is contained in the affidavit in support. It begins by giving the background to the matter. It also reveals that the Plaintiff is dissatisfied with the decision of the Court of 30<sup>th</sup> October, 2012 and is desirous of appealing. Further that the Plaintiff believes that this is an appropriate case in which leave should be granted for purposes of the appeal.

The matter came up for hearing on 22<sup>nd</sup> January, 2012. In her arguments counsel for the Plaintiff Mrs. Zaloumis indicated that she was relying on the affidavit in support and skeleton arguments. She argued in the said skeleton arguments that by virtue of the section 24(1) of the Supreme Court Act a person dissatisfied with a decision of this Court delivered in Chambers

cannot appeal to the Supreme Court as matter of right. There is need, she argued for leave of this Court to be granted.

In his response counsel for the First Defendant, Mr. Simwanza did not oppose the application, but left it in the discretion of the Court.

I have considered the affidavit evidence and arguments by counsel for the Plaintiff. As she has rightly argued there is need for a party to be granted leave to appeal if he is to exercise his right to appeal against an interlocutory order of this Court, given in Chambers without the leave of this Court. Section 24(1)(e) of the **Supreme Court Act** states in this respect as follows:

***“No appeal shall lie***

***(a)....***

***(b)....***

***(c).....***

***(d)....***

***(e) from an order made in Chambers by a Judge of the High Court of from an interlocutory judgment made or given by a Judge of the High Court, without the leave of the Judge or, if that has been refused, a Judge of the Court...”***

In this matter the facts I have highlighted in the earlier part of this ruling indicate that leave to appeal was not granted by this Court. Therefore, this is a proper case for such an application to be made in terms of section 24(1)(e) of the Supreme Court Act: There is a similar provision under Order 59(1B)(6) of **the Supreme Court Practice (1999)** white book which states as follows:

***“Under 0,59, r.1B(1)(f) leave to appeal is required in the case of an appeal against any interlocutory order or interlocutory***

***judgment made or given by the High Court or any other Court...”***

Having established that leave to appeal is required against a decision such as the decision rendered by this Court on 30<sup>th</sup> October, 2012, the issue that arises is whether or not this is a case warranting the grant of such leave. The provisions of the **Supreme Court Act** are silent as to the instances such an application for leave to appeal will be granted. The **white book** however has indicated under Order 59 rule 14 subrule 18 circumstances in which leave will be granted. It states as follows:

***“The general test which the Court applies in deciding whether or not to grant leave to appeal is this: leave will normally be granted unless the grounds of appeal have no realistic prospect of success. The Court of Appeal may also grant leave if the question is one of general principle, decided for the first time or a question of importance upon which further argument and a decision of the Court of appeal would be to the public advantage.”***

It is clear from the foregoing Order that at the High Court level leave will be granted as a general rule, except where the grounds of appeal have no realistic chance of success. As such in making an application for leave to appeal, an applicant must demonstrate to the Court that the grounds he has advanced or intends to advance have a realistic chance of success. This is my considered opinion, is for purposes of ensuring that only those matters that are deserving of an appeal go on appeal.

In advancing arguments in favour of the grant of leave to appeal, the deponent of the affidavit in support of the application has stated that the Plaintiff is dissatisfied with the ruling of this Court of 30<sup>th</sup> October, 2012. He has not indicated that the grounds of appeal the Plaintiff intends advancing

have a realistic prospects of success and neither has he argued that, prima facie, the intended appeal has merit. In the circumstances and in the absence of indication by the Plaintiff of the prospects of success of the appeal, I am left with no choice but to assume that the intended appeal does not have reasonable prospects of success. I accordingly find that this is not a proper case for the grant of leave to appeal and I dismiss the application with costs.

I further order that the matter come up for a scheduling conference on 13<sup>th</sup> February, 2013 at 08:20 hours.

Delivered in Chambers on 30<sup>th</sup> January, 2013.

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**NIGEL K. MUTUNA**  
**HIGH COURT JUDGE**