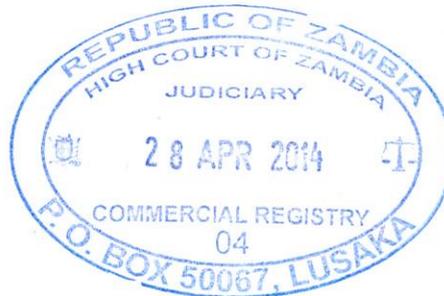


IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2014/HPC/0053



BETWEEN:

PETER JOHN NEL

PLAINTIFF

AND

UKZED CARS LIMITED

DEFENDANT

**BEFORE HON. MADAM JUSTICE PRISCA MATIMBA NYAMBE, SC AT
LUSAKA IN CHAMBERS**

For the Plaintiff:

Mr. Alfred Roberts
Alfred Roberts & Co.

For the Defendant:

Mr. Oscar Mudenda
Milner Katolo & Associates

RULING

List of authorities referred to:

1. Stanley Mwambazi V Morester Farms Limited (1997) ZR 108

This is the Defendant's application to set aside Judgment in Default of Appearance dated 18th February, 2014 by the Hon. Deputy Registrar and Stay of Execution of the same.

I have read the affidavits, lists of authorities as well as skelton arguments filed herein by both parties. I note in particular paragraph 6 of the Affidavit in Support of *Ex parte* Summons for an Order of Stay of Execution deposed to by one **MINEZ McKILLIGAN** to the effect that at the time the Writ of Summons and Statement of Claim were served on his Advocates he was frantically searching for his father who was missing and in that panic situation he was unable to instruct his Advocates correctly on the Defendant's Defence and actually sent the same to a wrong e-mail address. He has requested the Court to grant the Defendant an opportunity to be heard and that he has a defence on the merits to the claim.

Having perused documents filed herein, I believe this application is *bona fide*. As stated in the case of **Stanley Mwambazi V Morester Farms Limited (1997) ZR 108:-**

*"It is the practice in dealing with bona fide interlocutory applications for Courts to allow triable issues to come to trial despite the default of the parties, where a party is in default he may be ordered to pay costs, but **it is not in the interest of justice to deny him the right to have his case heard**". (my emphasis)*

With the above in view the Defendant's application to set aside the Default Judgment and Stay of Execution of the said Judgment is hereby granted.

I make no order as to costs.

Matter will come up for Scheduling Conference on 13th May, 2014 at 16:00 hours.

Dated this 28th day of April 2014



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Prisca M. Nyambe, SC
JUDGE