

IN THE HIGH COURT FOR ZAMBIA

2011/HP/0851

AT THE LUSAKA PRINCIPAL REGISTRY

(Civil Jurisdiction)

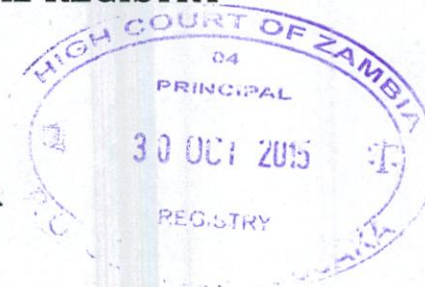
**BETWEEN:**

**ZACKS CHISHA MUSONDA**

**AND**

**PERFECT MILLING COMPANY LIMITED**

**MADISON INVESTMENT COMPANY  
LIMITED**



**PLAINTIFF**

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

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

Before The Honourable Mrs. Justice J.K.Kabuka in Chambers, The  
30<sup>th</sup> day of October, 2015.

**FOR THE PLAINTIFF:** Mr. K. Kaunda, Messrs. Ellis & Co.

**FOR THE 1<sup>ST</sup> DEFENDANT:** N/A

**FOR THE 2<sup>ND</sup> DEFENDANT:** Mr. L. Zulu, Messrs. Tembo, Ngulube &  
Associates.

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### **RULING**

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#### **Cases and Legislation referred to:**

1. Sonny Paul Mulenga and Vismer Mulenga (Both Personally and practising as SF Mulenga International) and Chainama Hotels Limited and Elephants Head Hotel Limited and Investrust Merchant Bank Limited SCZ No. 15 of 1999.
2. Nyampala Safaris (Zambia) Limited and Others vs Zambia Wildlife Authority and Others SCZ No. 8 /179/2003.
3. Shell and B.P. vs Conidaris and Others ( 1975) Z.R.

Rule 51 of RSC as read with Order 3 Rule 2 of the High Court Act.



The Plaintiff applies for stay of execution of a judgment of this court dated 27<sup>th</sup> April, 2015 which found the 2<sup>nd</sup> Defendant liable to pay the sum of K21, 003.00 to the Plaintiff.

The application is made pursuant to Rule 51 of the Rules of the Supreme Court as read with Order 3 Rule 2 of the High Court Act. In the affidavit in support of the Application, the 2<sup>nd</sup> Defendant contends its appeal is premised purely on a point of law and the 2<sup>nd</sup> Defendant will be prejudiced should the amount found due to the Plaintiff by this Court, be in the meantime, paid by the said Defendant, in the event that the appeal is successful. This in substance was the position of Learned Counsel for the 2<sup>nd</sup> Defendant at the hearing of the application inter-partes.

The application was opposed by the Plaintiff and at the hearing of the Learned Counsel re-iterated this position contending that, there are no prospects of success on appeal. He cited as authority for the submission the case of **Sonny Paul Mulenga and Vismer Mulenga (Both Personally and practising as SP Mulenga International) and Chainama Hotels Limited and Elephants Head Hotel Limited and Investrust Merchant Bank Limited (1)**. Counsel further cited the case of **Nyampala Safaris (Zambia) Limited and Others vs Zambia Wildlife Authority and Others (2)** which decided that, to be entitled to a stay of execution, the applicant must demonstrate good and convincing reasons as well as the irreparable damage they may suffer if they were to succeed on appeal and they stay is not granted. The case of **Shell and B.P. vs Conidaris and Others (3)** was further relied on as defined irreparable injury to mean as injury that cannot be atoned for in damages.



**R3**

I have considered the submissions by Counsel and the authorities to which I was referred and find that in the circumstances of this case, the 2<sup>nd</sup> Defendant would be prejudiced in the event of success on appeal, should the Judgment in the meantime, be executed and the monies awarded in favour of the Plaintiff paid to him. The stay of execution granted ex-parte on 25<sup>th</sup> June, 2015 is accordingly hereby confirmed.

**DELIVERED THE 30<sup>TH</sup> DAY OF OCTOBER, 2015**

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke ending in an arrowhead pointing to the right.

**J. K. K A B U K A**

**JUDGE**