

IN THE HIGH COURT FOR ZAMBIA **2014/HP/690**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

MWAJIONERA PUBLISHERS LIMITED **1ST APPLICANT**

MAIDEN PUBLISHERS LIMITED **2ND APPLICANT**

KAPESO NTAMBAKWA (Suing as
Chairman of the Publishers
Association of Zambia) **3RD APPLICANT**

INSAKA PRESS PUBLISHERS CO. LTD **4TH APPLICANT**

AND

THE ATTORNEY GENERAL **RESPONDENT**

Before the Hon. Mrs. Justice J.Z. Mulongoti
in Chambers on the²⁰¹⁴ day of April, 2015.

For the Applicants: *Mr. J. Zimba of Messrs Makebi Zulu & Associates*

For the Respondent: *Mrs. S. Wanjelani, Principal State Advocate*

R U L I N G

Cases referred to:

1. *Mumba and Others V Zambia Red Cross Society (2006) ZR 137 (SC)*
2. *Zulu V Avondale Housing Project Limited (1982) ZR 172*
3. *Mohamed V The Attorney General (1982) ZR 49*

Legislation referred to:

1. *Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia*

This is the ruling on the applicants' application for stay pending review of the ruling dated 27th March, 2015 in which this Court refused to grant the applicants a stay of execution of judgment pending appeal. The application is made pursuant to Order 3 Rule 2 of

the High Court Rules Chapter 27 of the Laws of Zambia. The application was supported by an affidavit dated 7th April, 2015 sworn by one Alice Mkandawire.

She deposed inter alia that the decision of the respondent will result in irreparable damage to the applicants because they will not be in operation for the next ten years as the curriculum runs for ten years. The applicants have been running their businesses for over 20 years and had a running contract with the respondent which the respondent undertook to renew. She stated that the respondent through the Ministry of Education floated a tender and wanted to use the centralised system of procurement which the applicants objected to. The applicants then commenced judicial review proceedings on 8th May, 2014 which were dismissed. They subsequently obtained an ex parte order for stay of execution which was discharged by the ruling dated 27th March, 2015. That as a result of that ruling the applicants stand to lose more than US\$4,000,000.00 to foreign companies and the publishers are being forced to close down and lay off over 400 employees.

She further deposed that the publishers have invested huge sums in developing various text books under the new curriculum of approximately K17,000.00 per title and that more than 200 titles have been so far developed as shown by the exhibited list of approved books. And that the expected loss amounts to about K25,000,000.00

At the hearing, learned counsel for the Applicants, Mr. Zimba relied on the affidavit in support. He argued that the said affidavit outlines the injury and loss which the applicants would suffer. He argued that since there was no affidavit in opposition, the application was unopposed. He prayed for an order for stay of execution of the ruling pending review.

Mrs. Wanjelani opposed the application on behalf of the respondent. She relied on the case of **Mumba and others V Zambia Red Cross Society (1)** wherein the Supreme Court held that “*when a Court grants an ex parte injunction which is later dissolved, the only remedy available is appeal*”. Learned counsel argued that the matter was wrongly before Court. And that the affidavit in support did not reveal any new information which was unavailable to the applicant when the matter was heard.

In reply, Mr. Zimba submitted that the case cited by Mrs. Wanjelani is distinguishable from the matter at hand as it relates to injunctions. He argued that the affidavit in support contains new evidence of loss which was only arrived at after a careful calculation was done. And that the question of new evidence should be determined at review stage. He submitted that the application was correctly made under a provision of the law which allows the Court to make an order which is in the interest of justice. He urged the Court to allow the application. I have carefully considered the affidavit evidence and the submissions by both learned counsel. I am inclined to agree with Mrs. Wanjelani

that the entire application is misconceived. I am fortified by the decision of the Supreme Court in the Mumba case cited by the respondent wherein the Supreme Court held that:

“The Court below should have asked itself, before granting the said stay as to ‘what was there to stay’... There was nothing to be stayed by the Court i.e. which could be enforced as a court order if the application had not been granted. We wish to emphasize the point that when a court grants an ex-parte injunction which is later dissolved, the only remedy remaining, to the party applying for it, is to appeal against such refusal.”

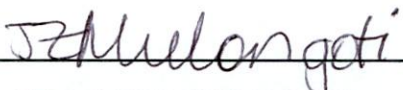
In casu, the applicants seek an order for stay of execution of the ruling dated 27th March, 2015 in which I dismissed their application for stay of execution of the final judgment pending appeal and discharged the ex parte order hence the current application to stay the ruling pending the application for review. I am of the considered view that there is nothing to be stayed at this stage because there is nothing which could be enforced by the respondent if the stay is not granted. I am guided by the Mumba case, supra. I therefore, do not agree with Mr. Zimba’s argument that this case only relates to injunctions as the underlying principle is the same and applies to other situations as the one in casu involving a stay. And the case actually dealt with the issue of a stay.

What the applicants want is to have the final judgment stayed pending their appeal. I opine that the proper recourse available to them at this stage is to appeal against my ruling refusing to stay the judgment pending appeal. I thus concur with the learned principal state advocate that the application is misconceived and that nothing new has been raised.

I also must state that the issue of irreparable injury was dealt with in my earlier ruling. The applicants have done nothing more than simply attach figures to the loss they think they would suffer which is neither here nor there. For the avoidance of doubt, I wish to reiterate my findings in my earlier ruling of 27th March, 2015 that they will not suffer irreparable damage. The respondent would be in a position to compensate them for their loss, should their appeal succeed.

For the foregoing, the application is dismissed, with costs to the respondent, to be taxed in default of agreement. Leave to appeal is granted.

Delivered at Lusaka this ^{20th}.....day of April, 2015.



J.Z. MULONGOTI
HIGH COURT JUDGE