

**IN THE HIGH COURT OF ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**  
**(Civil Jurisdiction)**

**2012/HP/0519**

**BETWEEN:**

**THOMAS MWAZANISE**

**PLAINTIFF**

**AND**

**ZAMBIA TELECOMMUNICATIONS  
COMPANY LIMITED**

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

**WILLIAM MANJOWE**

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



**Before the Hon. Mrs. Justice A. M. Sitali in Chambers on 24<sup>th</sup> June, 2015**

*For the Plaintiff* : *Mr H. M. Munsanje of  
Messrs H. M. Munsanje & Company*

*For the Defendant* : *Mr J. B. Malama, Legal Counsel  
Zambia Telecommunications Company  
Limited*

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

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**Legislation referred to:**

**The High Court Rules, Chapter 27 of the Laws of Zambia, Order 3 rule 2**

This is the 1<sup>st</sup> defendant's application for an order to stay these proceedings pending the determination of the matter before the subordinate court and for an order for payment of rentals into Court. The application is made by way of summons supported by an affidavit deposed to by Ponsilio Zulu, the Facilities Services Specialist in the 1<sup>st</sup> defendant company. It is made pursuant to Order 3 rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.

In making this application the 1<sup>st</sup> defendant asserted that the plaintiff commenced this action against the 1<sup>st</sup> defendant for payment of rentals arising from a lease agreement entered into between the plaintiff as landlord and the 1<sup>st</sup> defendant as tenant. The lease relates to a portion of property known as LB/04/30 in Chingwele Village in Chazanga Compound off Great North Road. The 1<sup>st</sup> defendant asserted that it stopped paying the rentals to the plaintiff following a dispute over the ownership of the subject property arose between the plaintiff and the 2<sup>nd</sup> defendant which dispute affected the 1<sup>st</sup> defendant's quiet enjoyment of the property. This was after the 1<sup>st</sup> defendant was informed by the Chingwele Village Development Committee that the property belongs to the 2<sup>nd</sup> defendant and not to the plaintiff.

The 1<sup>st</sup> defendant averred that the plaintiff commenced an action against the 2<sup>nd</sup> defendant in the subordinate court seeking an order that he is the rightful owner of the disputed property, which action is still active. The plaintiff later commenced this action against the 1<sup>st</sup> defendant to which the 2<sup>nd</sup> defendant was subsequently joined seeking payment of the outstanding rentals notwithstanding the dispute over the ownership of the property.

The 1<sup>st</sup> defendant asserted that it has not refused to pay the rentals for the property but wishes to pay to the rightful owner of the property. The 1<sup>st</sup> defendant averred that it is only just that the ownership of the property should be determined before the plaintiff can demand the rentals through the court. It further averred that proceeding with this action while the matter before the subordinate court is still active will prejudice the course of justice as it is highly likely that the issue of the ownership of the property will arise in these proceedings, which situation may lead to conflicting decisions being made by the two courts. That the 1<sup>st</sup> defendant desires to pay the rentals into court as it will be prejudiced if it is made to pay the plaintiff the rentals as demanded and the Subordinate court decides in favour of the 2<sup>nd</sup> defendant to whom it will still have to pay rentals.

The plaintiff opposed the application and filed an affidavit in opposition in which he denied that the 1<sup>st</sup> defendant has been affected in any way or manner in its enjoyment of the premises on which it erected a radio equipment antennae and to which it has twenty-four hours uninterrupted free access in terms of the lease agreement executed between the plaintiff and the 1<sup>st</sup> defendant. The plaintiff asserted that the 2<sup>nd</sup> defendant who has been joined to this action at the instance of the 1<sup>st</sup> defendant has not challenged this action and the reliefs sought in the action before the lower court are different from those which he seeks in this action.

The plaintiff asserted that there is no legal reason advanced upon which these proceedings can be stayed and that since the 2<sup>nd</sup> defendant is party to these proceedings he has an opportunity to plead his case before this superior court and so proceeding with this action will not cause any prejudice to either defendant.

At the hearing of the application, Mr Malama counsel for the 1<sup>st</sup> defendant relied on the affidavit in support and reiterated that because the action before the subordinate court touches on ownership of the disputed property it is only just that this action should be stayed pending the determination of the other matter on condition that the rentals accruing on the subject property be paid into court. Counsel submitted that Order 3 rule 2 of the High Court Rules empowers this court to make any interlocutory order in the interest of justice and that section 13 of the High Court Act mandates this Court to exercise law and equity concurrently and empowers this court to grant all kinds of relief whether interlocutory or final as may seem reasonable.

Counsel further submitted that the 1<sup>st</sup> defendant in its defence has pleaded the fact that there is a dispute over ownership which is a subject of court proceedings and that there is a high likelihood that if this court proceeds to hear this matter the issue of ownership will inevitably arise leading to a

possible conflict of judgments between this court and the subordinate court. Mr Malama further submitted that it is the 1<sup>st</sup> defendant's contention that it stands to be prejudiced if it is made to continue paying rentals to the plaintiff and the subordinate court upholds the decision of the traditional court regarding the ownership of the property. Counsel observed that the plaintiff in his affidavit in opposition has not disputed the fact that the customary court's judgment has endorsed the 2<sup>nd</sup> defendant as the rightful owner of the property.

In opposing the application, Mr Munsanje counsel for the plaintiff submitted that the application to stay proceedings before this court has been made pursuant to Order 3 rule 2 of the High Court Rules when there are specific provisions of the law in the Rules of the Supreme Court, 1999 edition (the White Book) under which applications for stay should be made. Counsel submitted that in terms of the White Book an application for a stay of proceedings can be made where a plaintiff's action is vexatious or is an abuse of the process of the Court or are a fraud on the defendant or the party applying for a stay of the proceedings before a particular court. Counsel submitted that none of those instances apply to the application before this court.

Mr Munsanje further submitted that the fact that the 2<sup>nd</sup> defendant has been brought into these proceedings should prompt the continuation of this matter before this superior court so that issues are determined. Counsel submitted that the 2<sup>nd</sup> defendant has an opportunity to present his case regarding the ownership of the property which is the subject of the lease. He contended that the 2<sup>nd</sup> defendant is at liberty to make the application before the subordinate court to stay proceedings therein and that it is not for the 1<sup>st</sup> defendant to request this superior court to stay the proceedings before it pending the determination of proceedings before the lower court. Counsel submitted that there is no defence to this action as the existence of the lease agreement between the plaintiff and the 1<sup>st</sup> defendant has not been denied. He contended

that the claims and reliefs sought before the subordinate court and those before this court are different and that none of the instances for staying proceedings in terms of the White Book apply in this case.

Counsel submitted that it will be in the interest of justice contrary to the 1<sup>st</sup> defendant's submission that the matter before this court proceeds to trial so that all the matters in dispute or which are perceived to be in dispute among the parties can be determined by this court of superior jurisdiction. Counsel prayed that the application to stay these proceedings be denied and asserted that in any case the 1<sup>st</sup> defendant is at liberty to pay the rentals which are the subject of these proceedings into court pending the determination of this matter if they desire to do so.

In reply Mr Malama submitted that to delve into the issue of which court is superior would be a misdirection in these proceedings as the issue is that there is already a matter before the subordinate court which is a court of competent jurisdiction. Counsel submitted that the Supreme Court has in a plethora of cases including Development Bank Of Zambia and KPMG Peat Marwick vs. Sunvest Limited and Sun Pharmaceuticals Limited (1995-1997) ZR 187 stated that when dealing with duplication of actions the issue for consideration is whether the matters in question are before a court of competent jurisdiction as opposed to the issues of which court is superior to the other. He stated that the matter before the subordinate court was earlier in time to this action.

Regarding the issue of the application having been brought pursuant to Order 3 rule 2 of the High Court Rules as opposed to being brought pursuant to the White Book, Counsel submitted that the procedure before the High Court is that parties should only resort to the White Book where there is a lacuna in the High Court Rules which is not the case with this application. Counsel submitted that Order 3 rule 2 of the High Court Rules clearly empowers this

Court to make any interlocutory order in the interest of justice. Counsel submitted that the application is properly before this Court.

I have considered the application and the submissions by counsel for the respective parties. The 1<sup>st</sup> defendant has applied for an order to stay the proceedings in this action pending the determination of a matter between the plaintiff and the 2<sup>nd</sup> defendant before the subordinate court. The 1<sup>st</sup> defendant has also applied for an order to pay the rentals which are the subject of this action into court. The application is made pursuant to Order 3 rule 2 of the High Court Rules which provides that:

*“2. Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.”*

In this case the 1<sup>st</sup> defendant seeks to have the proceedings in this action stayed on the ground that a dispute has arisen regarding the ownership of the property known as LB/04/30 in Chingwele Village in Chazanga Compound off Great North Road, which property is the subject of a lease agreement between the plaintiff and the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant admits that it did enter into the lease agreement with the plaintiff for the lease of the said property and also admits that there are rentals payable under the said lease. However, the 1<sup>st</sup> defendant contends that it will suffer prejudice if this matter proceeds to trial and it is ordered to pay rentals to the plaintiff under the lease agreement if the matter before the subordinate court is determined in favour of the 2<sup>nd</sup> defendant as regards the ownership of the disputed property. The plaintiff therefore seeks a further order that it be allowed to pay the rentals due under the lease into court.

The 2<sup>nd</sup> defendant has been joined to these proceedings on account that he will be affected by the outcome of this action. As the 2<sup>nd</sup> defendant is a party to these proceedings I see no basis to stay the proceedings as the 2<sup>nd</sup> defendant will have an opportunity to have his case heard as regards the disputed ownership of the subject property and this Court in determining this action will consider all matters in controversy between the parties so as to conclusively determine the matter. Based on the foregoing reasons, the application to stay the proceedings herein is not granted and is dismissed.

The application to pay the rentals under the lease agreement into court pending the determination of the matter is granted. Leave to appeal is granted. The costs will be in the cause.

The matter is set down for a status conference on 2<sup>nd</sup> July, 2015 at 08:30 hours.

Dated this 24<sup>th</sup> day of June, 2015.

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**A. M. SITALI**  
**JUDGE**