

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

2014/HPC/0230

BETWEEN:

SABBIR SULEMAN PATEL
LASTON ALIZWANI KUNDA
AND
REV. RICHARD SAITI KAMBULU



1ST PLAINTIFF
2ND PLAINTIFF
DEFENDANT

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

For the Plaintiffs: Mr. C Syanondo
Malambo & Company

For the Defendant: Mr. Ford M Chombo
Messrs J C Mulunga & Co.

RULING

Legislation referred to:

1. Clause 131(2) of the Constitution of Zambia as read with Order III Rule 2 of the High Court Rules Cap 27 of the Laws of Zambia

This is the Defendant's *Ex-parte* Summons for Leave to Appeal to a Single Judge of the Court of Appeal pursuant to **Clause 131(2) of the Constitution of Zambia** as read with **Order III Rule 2 of the High Court Rules Cap 27 of the Laws of Zambia.**

The application is supported by an affidavit together with skeleton arguments filed on 2nd June 2015.

I have examined the affidavit as well as the skeleton arguments in support of the application.

As rightly stated in the skeleton arguments filed in support of the application filed on 2nd June 2016, an application for review shall not of itself operate as a Stay of Execution of Judgment.

The affidavit in support of the application to appeal to the Court of Appeal purportedly attached Exhibit "RSK2", a copy of the proposed grounds of Appeal. The Certificate of Exhibits does show Exhibit "ESK1" the Writ of Possession but has not exhibited Exhibit "RSK2", the proposed grounds of Appeal. In my view it is the proposed grounds of appeal which should inform the Court on the Merits of the intended appeal to the Court of Appeal. The Court therefore has no basis on which to base its decision to allow this application.

More importantly pursuant to Practice Direction No. 1 of 2016 issued on 1st March 2016, paragraph (ii) thereof, *"Appeals from the High Court and the Industrial Relations Court after the enactment of the Constitution of Zambia (Amendment) Act shall continue to lie to the Supreme Court until the Court of Appeal is operational. Consequently leave to appeal will continue to be granted by the High Court to the Supreme Court"*.

As the Court of Appeal is not yet operational, an appeal cannot lie to a non operational Court.

In the event the application is dismissed.

Matter comes up as scheduled on 7th July 2016 at 10:00 hours.

Dated this.....9th.....day ofJune.....2016



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Prisca M. Nyambe, SC
JUDGE