

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



2011/HP/826

B E T W E E N :

WEST STAR PROPERTIES LIMITED

PLAINTIFF

AND

ROSEMOL GENERAL SUPPLIERS LIMITED
ROSEMARY BWALYA
LAMASAT INTERNATIONAL LTD
KOBIL ZAMBIA LIMITED

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
INTERVENER**

**Before the Honorable Mrs. Justice M. Mapani-Kawimbe in
Chambers on 10th April, 2017**

For the 2nd Defendant : In Person

EX TEMPORE RULING

This is the 2nd Defendant's ex-parte application to set aside an order for joinder and stay of execution. It is made pursuant to Order 3, Rule 2 of the High Court Rules.

I have seriously considered the ex-parte application and the contents of the Affidavit filed in Support. In my considered view, the application raises two issues in which the Applicant firstly, seeks to set aside the Order of joinder of the 3rd Defendant and Intervener from these proceedings on ground that the Plaintiff abandoned its claim; and secondly the application seeks to set aside a stay of execution.

Order 5 Rule 1 of the High Court Rules empowers the Court to join or misjoin parties to proceedings. More particularly the Sub Rule states that at a hearing of a suit, as indeed before the hearing, all persons who may be entitled to or claim some share of interest in the subject matter of the suit or who may be likely affected by the result may be joined to proceedings.

The Court is given wide power under Order 5 Rule 1 to wholistically consider a case and to anticipate the likely effect its decision would have on a party who is joined or misjoined to proceedings.

In this case, the 2nd Defendant contends that she intends to prosecute her counterclaim, which resides on the property that the 3rd Defendant and Intervener are in occupation of. Given the circumstances, I cannot accept the 2nd Defendant's simple contention that the 3rd Defendant and 1st Intervener have no interest in these proceedings when they are in possession of the disputed property.

Therefore, if I was to order their misjoinder, I would by that decision be rendering injustice to them as they would be affected by the outcome of these proceedings. In my view, this is not the spirit in which litigation should be conducted, as every person who has a right to be heard by the Court ought to be heard. Since I am called to do justice in cases which come into my dependency, I consider it just to refuse the 2nd Defendants prayer to remove the 3rd Defendant and Intervener from these proceedings for the reasons I have given above.

On the application to set aside the stay of execution, the 2nd Defendant submits that the Plaintiff abandoned its claim and thus the order should be discharged. I note that there have been so many applications on record, which in most instances have taken their natural course. In fact, the application to set aside the stay of execution is one of those. That being the case, I have no doubt that the matter is res judicata and there is no need for the Court to revisit its ruling dated 19th January, 2016.

In the result, I find no merit in the 2nd Defendant's application and dismiss it accordingly.

Leave to appeal is granted.

Dated this 10th of April, 2017

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE