IN THE HIGH COURT FOR ZAMBIA **2015/HPC/0352**

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

FIRST NATIONAL BANK ZAMBIA LIMITED **PLAINTIFF**

AND

LEWIS MOSHO **DEFENDANT**

Before the Honourable Mr Justice W.S Mweemba at Lusaka in Chambers.

For the Plaintiff: *Mr M. Moonga- Legal Manager- FNB Zambia Ltd in House Counsel Mr M Mwansa- Messrs Mambwe Siwila & Lisimba Advocates.*

For the Defendant: *Captain I. M. Chooka of Lewis Nathan Advocates.*

RULING

LEGISLATION REFERRED TO:

1. Order XX Rule 3 of the High Court Rules, Cap 27 of the Laws of Zambia.
2. Order X Rule 1 (3) of the High Court Rules, Cap 27 of the Laws of Zambia.

CASES REFERRED TO:

1. Stanley Mwambazi v Morrester Farms Limited (1977) ZR 108 (S.C)
2. Water Wells Limited v Wilson Samuel Jackson (1984) ZR 98 (S.C)

This is an application by the Defendant to set aside Judgment in Default of Appearance and Defence. It is supported by an Affidavit sworn by Lewis Mosho the Defendant herein and Skeleton Arguments filed into Court on 11th September, 2015.

He deposed that he recently came to learn from the Post Newspaper that the Plaintiff had commenced this action and service in the same was made at Messrs Lewis Nathan Advocates' premises and not at his residential address indicated in the Affidavit in Support, and that the Plaintiff had now entered default judgment against him. The newspaper advert dated 9th September, 2015 was exhibited as "LM1."

Further that sometime in November to December 2014 he made an over the counter cash withdrawal of ZMW195, 000.00 from his own funded bank account held at the Plaintiff's Premier Banking Branch at Arcades Lusaka and collected the cash as property belonging to him and not to the Plaintiff as reported in the press.

He also deposed that following his over-the-counter withdrawal aforesaid the Plaintiff neglected to debit his account immediately as required by law and only debited it 3 to 4 months later sometime between March and April 2015 in the following year.

It is also deposed that the Plaintiff was a 21st century licensed bank with modern banking operating systems and could not allege that its own 4 month negligent omission to pass a debit entry was inadvertent.

Further that at the time the Plaintiff passed a debit entry the account was below the amount that would facilitate it to be successful.

Moreover, that he was not aware how the Plaintiff arrived at the sum of ZMW212, 761.35 and it was his desire to establish this before the Plaintiff was allowed to earn unjustified profits out of its own negligent acts in Zambian competitive financial markets.

It was also his deposition that due to this he instructed his Advocates to file a Defence in which he raised various matters which required determination by this Court, including but not limited to whether the Plaintiff, as a result of its own default or omission, had charged penal interest and whether it was lawful to do so; and whether or not the Plaintiff had been presenting false periodical financial or regulatory reports to Bank of Zambia during the period in which the Plaintiff continuously omitted to debit his account, including a determination on his counterclaims against the Plaintiff for damages for his loss of good will occasioned by the Plaintiff's own negligence or omissions and for breach of statutory duty. His Defence was exhibited as **"LM2."**

Mr. Mosho also deposed that his Advocates attempted to file the Defence but could not do so due to the Default Judgment entered by the Plaintiff and in the circumstances he wished to have it set aside so that he could file the Defence and have the matter heard on its merits.

He also stated that the delay in filing the Defence was due to the improper service by the Plaintiff and this was deeply regretted.

There was also an Affidavit in Opposition filed into court on 5th November, 2015 sworn by Godfrey Mwanza the Sales and Service Manager of the Plaintiff.

He stated that the Defendant was made aware of the action against him on the day he was served with the Writ of Summons and Statement of Claim.

Further that the record would show by Affidavit of service filed into Court on 21st August, 2015 on behalf of the Plaintiff that the Defendant was served with the process on 19th August, 2015, which date precedes the Post publication date referred to in the Affidavit in Support.

Moreover, that he had been advised by Counsel for the Plaintiff that personal service of court process could be effected at any location and what was key was that the service had been effected on the recipient personally and he or she had acknowledged it.

Mr. Mwanza also stated that in any event the Defendant being Managing Partner in his law firm acknowledged service of court process from his law firm by endorsing his signature on the covering letter to which the court process was attached.

He also deposed that prior to commencement of these proceedings, the Defendant had been communicating with the Plaintiff using the same disputed law firm address following letters of demand which the Defendant responded to using the very address of service.

Further that efforts to locate the Defendant at his residential premises were always futile as he was elusive and his residential premises were always locked and he never answered his telephones, leaving the Bank with no options. Exhibit **"GM 1"** were copies of an email sent from the firm's domain and a demand letter showing an acknowledgment of receipt stamped with the law firm address.

That it was not true that the Defendant made an over the counter withdrawal as alleged but a Real Time Gross Settlement System Payment Request (RTGS) by order of Mr. Lewis Mosho in favour of Lewis Nathan Advocates in the sum of K195, 000 on 3rd October, 2014. Exhibits **"GM 2"** and **"GM 3"** being copies of the proof of payment and an extract of the Defendant's bank statement respectively were exhibited before Court.

Moreover, that the said account of Lewis Nathan Advocates was held with Barclays Bank of Zambia Plc and not Zambia National Commercial Bank as inadvertently stated in the Plaintiff's pleadings.

He also deposed that the Plaintiff did not make any reports to the press or otherwise and that publication of the article in question was not done at the instance of the Plaintiff contrary to assertions made in the Affidavit in Support of Summons to Set Aside default Judgment.

That the Plaintiff exerts no control whatsoever over the business, editing, reporting or coverage of the Post Newspapers Limited or any news publication at all and this notwithstanding, court cases were within the public domain whose records were easily accessible by members of the public.

Mr. Mwanza also deposed that the contents of paragraph 5, 6, 7, 8 and 9 were aimed at an attempt to pre-empt the main matter and have it determined at a preliminary stage and that he had been advised by counsel for the Plaintiff that the matter at hand pertained to an application to set aside the Default Judgment granted against the Defendant in favour of the Plaintiff.

Moreover that despite this the Bank has a short messaging system (SMS) alert which advises customers on all transactions going through one's account. The Defendant knew that the K195, 000 was not processed but proceeded wrongly so to draw on it. Further, notwithstanding the inadvertent oversight by the Plaintiff, the Plaintiff has a duty and mandate to effect corrections on customers' accounts regardless of any time lags.

That the sum of K212, 761.35 was arrived at due to the interest accrued on the overdrawn account, and this was stated and explained to the Defendant in the demand letters copies of which were exhibited as **"GM 4"** which letters where acknowledged by email dated 12th May, 2015, sent by Mr. Lewis Mosho and addressed to him a copy of which was exhibited as **"GM 5."**

He also added that no penal interest was ever charged to the Defendant's account as the Defendant was at all material times cautioned on the normal accruing interest charges on his account which charges were on account of the overdrawn position which he elected to ignore.

Moreover that he had been advised by his lawyers that that the Defendant was accorded the period required by law within which to file a Defence but he neglected to do so.

Mr. Mwanza also deposed that the service of the court process was not defective as the Defendant personally acknowledged receipt of the same when he endorsed his signature on the cover letter to which the court process was attached as the record will show.

Further that the Defendant had no arguable and meaningful defence on the merits as he had admitted by the Affidavit in Support of Summons to set Aside Default Judgment his liability but merely disputed the quantum of the claim.

It was also deposed that the Defendant had failed to demonstrate proper cause upon which this Court could set aside the Default Judgment and the Plaintiff would be prejudiced and inconvenienced further by setting it aside as the application was not *bonafide*.

Counsel for the Defendant filed Skeleton Arguments in support of the application before Court. He relied on Order 20 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia which provides that:

> ***"Any judgment by default, whether under this Order or under any of these Rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as the Court or Judge may think fit."***

Based on this it was contended that Order 20 Rule 3 grants this Court wide power and discretion to grant an order to set aside a judgment by default as long as the applicant has disclosed sufficient grounds.

He also argued that the defendant averred that the Writ of Summons and Statement of Claim were served at the Premises of Lewis Nathan Advocates, and not at the Defendant's residence as required. He then added that if the service was rightly effected by the Plaintiff he would have filed his Defence and Counter Claim before the 14 days lapsed.

He also contended that the Defendant had shown in the affidavit in support of this application that there were triable issues in this action and for which the

Defendant was intending to counter claim against the Plaintiff. In light of this, it was his submission that the Defendant had good prospects of defending the claim by the Plaintiffs and that the matter should be determined on the merits.

Moreover that in the light of a plethora of authorities on the question of setting aside judgments or orders, there was good chance that the Defendant's application for an order to set aside the default judgment herein would be granted by this Court as the law required that matters should be heard on their merits and generally in the interest of justice, where there were triable issues.

Counsel also cited the celebrated case of **STANLEY MWAMBAZI V MORESTAR FARMS LIMITED (1)** and **WATER WELLS LIMITED V WILSON SAMUEL JACKSON (2)** where the Supreme Court categorically established that the courts should set aside default judgments in the interest of justice and if the Defendant had a defence on the merits.

In the **STANLEY MWAMBAZI CASE**, the Supreme Court held that:

> ***"it is practice in dealing with bona fide interlocutory applications for courts to allow triable issues to come to trial despite the default of the parties, where a party is in default he may be ordered to pay costs, but it is not in the interest of justice to deny him the right to have his case heard."***

Counsel then added that in this case, the Supreme Court allowed an application by the Defendant to stay the execution of default judgment despite the Defendant having failed or neglected to enter appearance or to file a defence within the time stipulated by the law and even after the defendant had been granted leave to file his defence and had again failed to do so and even after a second default judgment was obtained against him.

Furthermore, in the **WATER WELLS LIMITED V WILSON SAMUEL JACKSON (2)** case, the Supreme Court held that:

'Although it is usual on an application to set aside a default judgment not only to show a defence on the merits, but also to give an explanation of that default, it is the defence on the merits which is the more important point to consider. If no prejudice will be caused to a plaintiff by allowing the defendant to defend the claim, then, the action should be allowed to go to trial.'

Counsel contended that the defendant has demonstrated that he had a good case to set aside the Default Judgment herein.

In view of this it was submitted that since the Defendant had exhibited a meritorious case there was a good chance that this Court should allow its application to set aside default judgment in accordance with the principles enunciated by the Supreme Court in the **STANLEY MWAMBAZI AND WATER WELLS LIMITED** cases referred to above.

On the basis of these authorities and skeleton arguments, it was reiterated that the Defendant had demonstrated sufficient reasons and grounds for this Court to grant him an order to set aside Default Judgment.

Moreover that since the Judgment in Default of Appearance was obtained in an irregular manner this Court should grant the application and award costs to the Defendant.

The Plaintiff also filed Skeleton Arguments in Opposition to the Defendant's application for an order to set aside Judgment in Default of Appearance and Defence. He relied on the High Court Rules Chapter 27 of the Laws of Zambia and ccontended that the service of the Writ of Summons was regular as the process was served on the Defendant personally at the offices of Lewis Nathan Advocates, although not at the Defendant's residential address.

It was submitted that the Defendant's argument was untenable at law and in discounting the assertion in the Affidavit in Support and indeed the Argument

in the submissions in relation to the same, the Plaintiff relied on the provisions of Order X Rule 1 (3) which provides:

> ***"Any person serving a Writ of Summons or other Originating process, default of appearance to which would, under Order XII, entitle the Plaintiff to enter final judgment, shall request the party served to acknowledge receipt by signing on the original or other copy of the process or on some other document tendered for the purpose, and the fact of any refusal to sign shall be so endorsed by the person serving."***

He also added that the record would show, by Affidavit filed into Court on 21st August, 2015 and the exhibit marked "TTG 1" attached thereto, that there is evidence on record showing that the Defendant endorsed his signature on the cover letter to which the process was attached in conformity with the rule cited above.

Moreover that in paragraph 3 of the Affidavit in Support of Summons to Set Aside Default Judgment, the deponent thereto alleged having been made aware of the action by the Plaintiff against the Defendant through the Post News Papers Limited's article which appeared in their newspaper *The Post* on 9th September, 2015. But that as the evidence on record showed, this allegation was false.

It was also contended that the Defendant had not disputed the signature and to do so now or hereafter would be an afterthought. Further notwithstanding the issue of the place of service, the Defendant having received the Writ had an opportunity to enter his Defence, if any, within the allowed time provided by law which he elected not to do. Further that the Defendant was not coming to equity with clean hands.

Counsel cited Paragraph 1000 of Halsbury's' Laws of England Vol 14 at page 530 in the maxim *"he who comes to equity must come with clean hands"*

(formally expressed as "he who has committed iniquity shall not have equity" that a court must refuse relief to a Plaintiff (Defendant included) whose conduct in regard to the subject matter of litigation has been improper.

Counsel urged this Court to dismiss the argument by the Defendant alleging irregular service as being the reason the Defendant did not file his Defence before the 14 days lapsed as alleged in the Affidavit filed in support of this application as well as the submissions to that effect.

Counsel went on to cite **Practice Direction No. 4 of 1977** which provides:

> ***"It is hereby notified for the information and guidance of practitioners, the registrar, District Registrar and Assistant Registrars that the time within which appearance must be entered on Court Writs shall be as follows:-***
>
> 1. ***Where a Writ is to be served at a place less than 100 kilometers from the issuing Registry, the time within which an appearance must be entered shall be fourteen days."***

Counsel submitted that the evidence on record showed that the Defendant was served with the Writ of Summons under this cause on the 19th of August, 2015 and acknowledgement of the said service was given on the very day. The Plaintiff applied for Judgment in Default of Appearance and Defence on 4th September, 2015, and the record showed that this was 16 days after acknowledgement of the Writ.

Thus it was contended that the averments in paragraph 10 of the Affidavit in Support that the Plaintiff filed for Default Judgment "speedily" which rendered the Defendant unable to file his Defence were untrue and lacked merit. Moreover that the Practice Direction above required appearance to Court Writs to be within 14 days in the present circumstances.

He also submitted that the Defendant was accorded the period as prescribed by the law within which to enter an appearance, and that the Plaintiff's exercise of its rights in filing for Default judgment after the expiry of the prescribed time could not be raised as an excuse for not having entered Appearance and Defence, especially since the exercise of such rights was done within the confines and provisions of the Law. On this basis Counsel urged the Court to dismiss the application before Court.

Counsel also cited the cases of **Stanley Mwambazi v Morrester Farms Limited (1)** and **Water Wells Limited v Wilson Samuel Jackson (2)** and stated that these cases set the principles for the circumstance under which Judgment in Default could and should be set aside, *viz*:

1. **Applicant must demonstrate an arguable and meaningful defence as a primary consideration and not an explanation of the default alone.**

2. **The application and conduct of the Applicant must been proper and *bonafide*.**

Based on this it was submitted that the Defendant's application did not meet this criterion to warrant the setting aside of the Default Judgment entered earlier. Further that the celebrated cases cited by the Defendant namely **Water Wells Limited** & **Stanley Mwambazi** could be distinguished from the present case.

That in both these cases cited above, the party wishing to have the Judgment in Default set aside denied the claims of the opposing party in their entirety whilst in this matter it was contended that the evidence on record would show that the Defendant did not dispute his monetary liability to the Plaintiff but only the interest. Counsel also drew this Court's attention to, *inter alia*, paragraph 8 of the Affidavit filed on behalf of the Defendant in support of the application to set aside the Default Judgment.

Moreover that the exhibits to the Affidavit filed on behalf of the Plaintiff in Opposition of this application clearly showed that the money was not withdrawn over the counter, and instead was transferred to the account of Lewis Nathan Advocates held with Barclays Bank Zambia Plc, and the Defendant was made aware of his insufficiently funded account at the time of the debit entry and asked to normalize the account to which he agreed to subject to nonaccrual of interest in good faith.

On this basis it was submitted that this Court dismiss the application to set aside the Default Judgment or at the very least enter judgment on admission in the sum of K195, 000 and order that the Defendant's counterclaim proceed to trial. According to Counsel it is trite law that a counter claim is a separate claim which can be tried separately from this matter, further that the counterclaim as exhibited in the Defendant's Affidavit in Support was no defence to the Plaintiff's claim.

It was lastly contended that the defendant's application be dismissed with costs.

During the hearing on 10th February, 2016 only Counsel for the Plaintiff was before Court and he prayed that the application for setting aside Default Judgment be dismissed and the stay of execution discharged.

I have considered the Affidavit evidence, the Skeleton Arguments and the authorities cited by both learned Counsel for the Plaintiff and the Defendant.

The main issue for determination by this Court is whether the Judgment in Default of Appearance and Defence of 4th September, 2015 should be set aside.

The Defendant premised this application on two main grounds. That the Judgment in Default given on 4th September, 2015 should be set aside because the service of the originating process was irregular and because there is a defence on the merits available.

Regarding the issue of service of process, the Defendant stated that he only learnt through the Post Newspaper that this action had been commenced against him and that service of the process was only made at the offices of Lewis Nathan Advocates and not at his residential address.

In response to this ground the Plaintiff stated that the Defendant was actually made aware of the action against him on the day he was served with the Writ of Summons and accompanying Statement of Claim. That the record will show by Affidavit of Service filed into Court on 21st August, 2015 on behalf of the Plaintiff that the Defendant was served with process on 19th August, 2015 which date precedes the Post publication referred to by the Defendant.

It was also contended on behalf of the Plaintiff that at law personal service could be effected at any location and what was key was that it had been effected on the recipient personally and he or she had acknowledged it as such. Moreover that in this case, the Defendant as Managing Partner did acknowledge service of Court process from his firm by endorsing his signature on the covering letter to which the Court process was attached.

Order X Rule 1 (1) and (3) of the High Court Rules, Cap 27 of the Laws of Zambia on service of process state that:

> ***"(1) Personal service of a petition, notice, summons, order or other document, of which service is required may be made by any person.***
>
> ***...***
>
> ***(3) Any person serving a writ of summons or other originating process, default of appearance to which would, under Order X11, entitle the plaintiff to enter final judgment, shall request the party served to acknowledge receipt by signing on the original or other copy of the process or on some other document tendered for the purpose, and the fact of any refusal to sign shall be so endorsed by the person serving."***

The record in this matter shows that this matter was commenced on 13th August, 2015 and the Defendant was served on 19th August, 2015 as shown in the Affidavit of Service filed into Court on 21st August, 2015.

The record further shows that Judgment in Default of Appearance was only entered on 4th September, 2015. I have also noted that it is clear in exhibit "TTG1" the copy of the acknowledgment of service that the signature of the Defendant was endorsed thereon which shows that the Defendant did actually acknowledge service of the Court process herein.

Based on this I find that the service of Court process that was done by the Plaintiff was proper.

Moreover, both the Plaintiff and the Defendant have cited the landmark case of **WATER WELLS LIMITED V WILSON SAMUEL JACKSON (2)** where the Supreme Court held that:

> ***'Although it is usual on an application to set aside a default judgment not only to show a defence on the merits, but also to give an explanation of that default, it is the defence on the merits which is the more important point to consider. If no prejudice will be caused to a plaintiff by allowing the defendant to defend the claim, then, the action should be allowed to go to trial.'***

Following from this case it is important to consider whether there is any defence on the merits in this matter that would warrant that the Default Judgment entered on 4th September, 2015 be set aside in order for this matter to proceed to trial.

Order 20 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia provides that:

"Any judgment by default, whether under this Order or under any of these Rules, may be set aside by the Court or a judge, upon such terms as to costs or otherwise as the Court or Judge may think fit."

As shown above, it is trite law that any judgment given in default of appearance and defence may be set aside by the Court.

The Defendant has argued that on or about November to December 2014 he made an over the counter cash withdrawal of ZMW195, 000.00 from his own funded bank account held at the Plaintiff's Premier Banking Branch at Arcades Lusaka and got the cash as his property and not as was reported by the Plaintiff in the press.

He has also stated that following this the Plaintiff neglected to debit his account immediately as required by law and only debited it about 3 to 4 months later on or about March to April, 2015 the following year.

Further that he was not aware how the Plaintiff had arrived at the sum of ZMW212, 761.35 and that in the exhibited defence (LM2) on record which he intended to file, he felt that this Court could deal with a number of issues in this matter which included whether the Plaintiff, as a result of its own default had charged him penal interest and whether this was lawful and whether or not the Plaintiff had been presenting false periodical financial reports to Bank of Zambia during the time it continuously omitted to debit his account.

In response to these assertions the Plaintiff stated that the Defendant did not actually make an over the counter withdrawal but a Real Time Gross Settlement System payment request (RTGS) by order of Mr. Lewis Mosho in favor of Lewis Nathan Advocates in the sum of K195, 000.00 on 3rd October, 2014 and that **"GM 2"** and **"GM 3"** being copies of the proof of payment and an extract of the Defendant's Bank Statement respectively were exhibited before Court.

It is also stated by the Plaintiff that the said account of Lewis Nathan Advocates was held with Barclays Bank Zambia Plc and not Zambia National Commercial Bank as inadvertently stated in the Plaintiff's pleadings.

Moreover that despite this the Bank had a short messaging system (SMS) alert which advised customers on all transactions going through one's account and that the Defendant knew that the K195, 000 was not processed but proceeded wrongly so to draw on it. Further, notwithstanding the inadvertent oversight by the Plaintiff, the Plaintiff has a duty and mandate to effect corrections on customers' accounts regardless of any time lags.

Mr. Mwanza also deposed that the sum of K212, 761.35 was arrived at due to the interest accrued on the overdrawn account, and this was stated and explained to the Defendant in the demand letters copies of which were exhibited as **"GM 4"** which letters where acknowledged by email dated 12th May, 2015, sent by Mr. Lewis Mosho and addressed to him a copy of which was exhibited as **"GM 5."**

He also added that no penal interest was ever charged to the Defendant's account but the Defendant was at all material times cautioned on the normal accruing interest charges on his account which charges were on account of the overdrawn position which he elected to ignore.

I have noted from the record in exhibit **"GM2"** the proof of payment that the sum of K195, 000.00 was remitted from the Plaintiff Bank on Account number 62229063962 (the Defendant's Account) to that of Lewis Nathan Advocates Account No. 0171102170 held at Barclays Bank Zambia PLC on 3rd of October, 2014.

I therefore find it as a fact that the Plaintiff did in fact carry out or effect a Real Time Gross Settlement System payment request (RTGS) on the order of the Defendant in favor of Lewis Nathan Advocates in the sum of K195, 000.00 on 3rd October, 2014.

Without delving much into the merits of this case I have also considered the fact that generally, an account holder has the obligation to ensure that his balance is at all times sufficient to cover any debit entry on his account despite any delay by a bank in effecting the debit. This was not the case here despite the commitment that the Defendant gave in his email of 12th May, 2015 to Mr. Mwanza the Sales and Service Manager of the Plaintiff.

It is clear that the Defendant admits owing the Plaintiff the sum of K195,000.00 but disputes the interest thereon of K15,761.36. At paragraph 8 of the Affidavit in Support of Summons to Set Aside Default Judgment Mr. Mosho deposes as follows;

> ***"That I am not aware of how the Plaintiff has arrived at the sum of ZMW212,761.35 and it is my desire to establish this fact before the Plaintiff is allowed to earn unjustified profits or before it is allowed to make earnings out of its own negligent acts in the Zambian competitive financial markets."***

I do not accept the Defendants assertion that he did not know how the Plaintiff arrived at the sum claimed of K210,761.36 as at 10th August 2015 or indeed K212,761.35. The Plaintiff's Letters of Demand dated 7th April, 2015 and 4th May 2015 made it clear that the overdrawn positions on his Account would continue to accrue interest at MPC Rate (then 12.50%) plus 12% from the dates of demand to date of payment. The two letters are exhibited as "GM4" to the Affidavit in Opposition. Further the Legal Letter of Demand dated 5th May, 2015 from the Plaintiff's Legal Counsel reiterated that the Defendant's indebtedness then of K199,279.73 would continue to accrue interest until fully repaid. That letter is exhibit "GM1" to the Affidavit in Opposition.

As the principal sum claimed of K195,000.00 is admitted and given that the Defendant knew the interest rate applicable to the overdrawn position namely MPC Rate (then 12.50%) plus 12% the Defendant does not have a defence on the merits and he has no counterclaim to prosecute.

I therefore find no merit in the application of the Defendant to set aside the Default Judgment entered on 4th September, 2015. The application is refused.

The Ex-parte Order Staying Execution of Judgment granted on 12th October, 2015 is hereby discharged.

Costs to the Plaintiff.

Leave to appeal is granted.

Delivered in Chambers at Lusaka this 24th day of March 2017.

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WILLIAM S. MWEEMBA
HIGH COURT JUDGE