

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

2017/HP/2064



BETWEEN

BRUCE HAMUSONDE MWEEMBA

PLAINTIFF

AND

GILLAN MASIYALETI

DEFENDANT

***BEFORE THE HON. MRS. JUSTICE S. KAUNDA NEWA ON THE 29th DAY OF
NOVEMBER, 2017.***

R U L I N G

This is an *ex parte* summons for an order to stay sale of the goods seized in execution, made pursuant to Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia, and filed by the Defendant.

According to the affidavit filed in support of the application, this matter is before the Subordinate Court pending an application to set aside the default Judgment.

However the trial Magistrate by a Ruling dated 22nd November, 2017 declined to stay execution of the Judgment pending the hearing of the application to set aside the said default Judgment, and granted the Defendant leave to appeal before a Judge at Chambers within fourteen (14) days of the date of the order.

The Defendant has not appealed against the order declining to stay execution of the Judgment, and has instead filed an ex parte summons with an accompanying affidavit to stay execution.

Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia pursuant to which the application has been made states that,

“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 an order has been expressly asked by the person entitled to the benefit of the order or not.”

This order empowers a Judge or a Court to make any interlocutory order that is necessary for doing justice, subject to any particular rules.

Section 28 (1) of the Subordinate Court Act, Chapter 28 of the Laws of Zambia states that an appeal shall be to the High Court from any Judgment, order or decision of a Subordinate Court, whether interlocutory or final, and that where the appeal is from an order made ex parte or by consent, or as to costs, special leave shall be obtained from the Subordinate Court.

In this matter the learned Magistrate made an ex parte order denying the stay of execution, and granted leave to the Defendant to appeal against the order. Leave having been granted, the Defendant should have within fourteen (14) days of the date of the order, being an interlocutory one, appealed, if he was dissatisfied with it.

He cannot apply for the grant of a fresh stay of execution, as it is contrary to the rules of Court. Therefore Order 3 Rule 2 of the High Court

Rules, cannot be invoked to grant the order sought. On that basis I find that the application is irregularly before me, and I accordingly set it aside, with no order as to costs.

Leave to appeal is granted.

DELIVERED IN CHAMBERS THIS 29th DAY OF NOVEMBER, 2017.

S. Kaunda

**S. Kaunda Newa
HIGH COURT JUDGE**