

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

2013/HP/943

BETWEEN:

CHARITY KATANGA

AND

MUVI TV LIMITED



PLAINTIFF

DEFENDANT

Before Hon. Mr. Justice Mathew L. Zulu, at Lusaka the 10th day of April 2018

For the Plaintiff: N/A

For the Defendant: Mr. M. Sitali, Messrs. Milner and Paul legal Practitioners

RULING

Cases referred to:

1. Linotype- Hell Finance Limited v. Barker [1992] 4 ALL E.R at page 887.
2. Watson Nkandu Bowa (suing as Administrator of the Estate of the Late Ruth Bowa Nkandu) v.Fred Mubiana and ZESCO Limited (Appeal No.121/2011) at page 13.
3. Zambia Revenue Authority v. The Post Newspaper Limited (Appeal No.36 of 2016) at page 20.

Legislation referred to:

- 1. *The High Court Rules, Cap 27 of the Laws of Zambia.***
- 2. *Order 59 Rule 13 of the Rules of the Supreme Court, 1999 edition (White book).***

This is a ruling on the defendant's ex parte application for an Order to stay execution of Judgment dated 15th February, 2018 pending Appeal pursuant to Order 36 Rule 10 of the High Court Rules and Order 59 Rule 13 of the Rules of the Supreme Court.

The application is supported by an Affidavit dated 21st March, 2018 deposed by Alfred Tembo, the Administrative and Human Resource Director in the defendant Company. The deponent avers that the defendant has lodged an appeal against the judgment of this Court in which it awarded the plaintiff the sum of K20, 000.00 plus interest. He deposes that unless the execution of the said Judgment is stayed, the defendant's appeal will be nugatory as the plaintiff is desirous of executing the said judgment.

When the matter came up for hearing, the plaintiff's counsel relied on the Affidavit in Support which he briefly augmented orally. Counsel submitted that if the stay is not granted ground 1 and 3 of the defendant's appeal would be rendered nugatory. He contended

that a stay should be granted where the applicant shows that they will be ruined if the stay is not granted citing **Linotype- Hell Finance Limited v Barker**¹ as authority for that proposition.

I have carefully considered the affidavit evidence before me and counsel's arguments. The issue for determination is whether this is a proper case where I can exercise my discretion to grant an ex parte Order staying execution of the Judgment dated 15th February, 2018 pending appeal.

Order 36 Rule 10 of the High Court Rules grants this Court discretion to stay execution of a judgment where there are sufficient grounds. The Supreme Court in **Watson Nkandu Bowa (suing as Administrator of the Estate of the late Ruth Bowa) v. Fred Mubiana and Zesco Limited**² restated the two- fold test that has to be applied when considering an application for a stay of execution of a judgment pending an appeal. Firstly, the court must consider the prospect of the appeal succeeding and secondly, the irreparable damage if a stay is not granted and the appellant's appeal succeeds.

The Supreme Court further in **Zambia Revenue Authority v. The Post News Paper Ltd**³ pronounced itself on what amounts to good

and sufficient grounds warranting a stay where the judgment appealed against involves the payment of money and it stated the following:

....whether to grant a stay or not, the court is entitled to preview the prospects of success of the proposed appeal in particular, where the judgment appealed against involves payment of money, the appellant must show that if such money is paid, then there will be no reasonable prospects of recovering it in the event of the appeal succeeding. Such proof is what amounts to good and sufficient grounds warranting a stay. (The underlining is for emphasis only)

In view of the above authorities, I will now consider whether the defendant has satisfied the two-fold test as espoused above. On the first test, I have carefully considered the Affidavit in Support of this application and the Memorandum of Appeal exhibited thereto as **“AT1”**, and I am of the considered view that the defendant’s appeal has no prospects of success.

On the second test, the defendant has argued that unless the execution of the judgment is stayed, the appeal in grounds 1 and 3 apropos the award of K20, 000.00 will be rendered nugatory. I have perused the evidence before me and I am of the considered view that the defendant has not shown that it will suffer irreparable

damage or damage which cannot be atoned in damages if a stay is not granted. Moreover, as the stay being sought is on account of an award ordering the payment of money, the defendant has not shown that there are no reasonable prospects of recovering the K20,000.00 plus interest in the event that the said amount is paid to the plaintiff pending the determination of the appeal, and in the event that the defendant succeeds on its appeal. I, therefore, find that there are no good and sufficient grounds warranting a stay.

In view of the foregoing, I see no reason why the plaintiff should be denied the immediate enjoyment of the fruits of her judgment and I accordingly dismiss the defendant's application for stay of execution of the judgment dated 15th February, 2018 pending appeal.

I make no order for costs.

Leave to appeal is granted.

Delivered at Lusaka the 10th day of April 2018.



MATHEW. L. ZULU
HIGH COURT JUDGE