

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

**2015/HP/793**

**BETWEEN:**

**JAN AFRICA INVESTMENT LIMITED**

**PLAINTIFF**

**AND**

**FAMILY LEGACY MISSIONS LIMITED**

**DEFENDANT**



*Before Hon. Mr. Justice M. L. Zulu at Lusaka, the.....day of  
January, 2018*

*For the Plaintiff: No Appearance*

*For the Defendant: Mrs. O. Chirwa, of Ranchod Chungu  
Advocates.*

---

## **RULING**

---

**List of Authorities:**

- 1. Wilson v. Church (1879) 12 CHD**
- 2. Linotype-Hell Finance v. Baker (1992) 4 ALL ER 887.**

**Other Works referred to:**

1. **Order 47, Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia.**
2. **Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 17 at para 455**

On 19<sup>th</sup> January, 2018, the Defendant issued Ex parte summons for an Order for Stay of Execution of Judgment dated 5<sup>th</sup> January, 2018, and Stay of Execution of the sale and release of seized goods pending appeal pursuant to the provisions of Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.

The Application was accompanied by an Affidavit in Support dated 19<sup>th</sup> January, 2018 and a further Affidavit in Support of the Ex parte summons, dated 22<sup>nd</sup> January, 2018, the date I set to hear the Application.

Counsel for the Defendant, Mrs. Chirwa sought to rely on the said Affidavits in Support of the Application filed into Court herein. The Defendant contended that if the stay of execution of the Judgment was not granted, the Plaintiff will proceed to sale the goods seized rendering the Defendant's Appeal nugatory, citing the case of **Wilson v. Church** as the authority.

I have considered the evidence on record, the Affidavits filed into Court, and the oral submissions of the Defendant's counsel. **Order 47, Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia** states:

***“An Appeal shall not operate as a Stay of Execution or of proceedings under the Judgment or decision appealed from, except so far as the Court below or the Court may order, and no intermediate act or proceeding shall be invalidated, excepted so far as to the Court below may direct.”***

In granting a stay of execution, Order 59, Rule 13 of the Rules of the Supreme Court is instructive and states:

***“Neither the Court below nor the Court of Appeal will grant a Stay unless satisfied that there are good reasons for doing so. The Court does not “make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled,” pending an appeal.***

This applies not merely to execution but to the prosecution of proceedings under the Judgment or Order appealed from.

The Court may also grant a Stay where the appeal would be rendered nugatory as argued by the Defendant herein, or suffer loss which could not be compensated in damages.

Further, the **Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 17 at para 455** states:

***“The Court has absolute and unfettered discretion as to the granting or refusing of a stay, and as to the terms upon which will grant it.”***


In the case of **Linotype-Hell Finance v. Baker**, Stanghton, L.J. held that:

***“Where in unsuccessful defendant seeks a stay of execution pending an appeal to the Court of Appeal, it is legitimate ground for granting the application that the Defendant is able to satisfy the Court that without a stay of execution he will be ruined and that he has an appeal which has some prospect of success...”***

The Defendant contends that sale of the vehicles seized may render the appeal nugatory is sufficient considering the current circumstance. Therefore, to avoid paralyzing the entire operations of the Defendant company, or ruin it. I am satisfied that this is a case meriting the granting of the Stay of Execution pending the hearing of the Appeal.

It is hereby ordered that the judgment delivered on 5<sup>th</sup> January, 2018, be and is hereby stayed pending the determination of the Appeal, and further that the sale of seized goods be and is hereby stayed and the seized goods be released to the Defendant upon payment of costs of execution by the Sheriff of Zambia.

Dated at Lusaka this 28<sup>th</sup> day of Jan 2018



---

**M. L. ZULU**  
**HIGH COURT JUDGE**