

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

2016/HP/0354



B E T W E E N :

BIDWELL SIAME
LOMANZI BANDA

1ST PLAINTIFF

2ND PLAINTIFF

AND

REGINA CHIPITAMBILI

DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 30th day of January, 2018

For the Plaintiffs : Mr. A. Banda, Messrs LM Chambers
For the Defendant : No Appearance

R U L I N G

Cases Referred To:

1. *Nyampala Safaris and 4 Others v Wildlife Authority and 6 Others (2004) Z.R 49 (S.C)*
2. *Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investment Merchant Bank Limited (1999) Z.R 101 (S.C)*
3. *Shelter for All, Evans Mukula Chomba v Kingfred Ramsey and Precious Ramsey SCZ/8/192/2009*

Legislation Referred To:

1. *High Court Act, Chapter 27*
2. *Lands and Deeds Registry Act, Chapter 185*

This is the Plaintiffs' application to stay execution of judgment. It is filed pursuant to Order 47 Rule 1 of the High Court Rules. It is supported by an Affidavit.

The background facts are that the Plaintiffs and Defendant own neighbouring farms in Maloni village, Lusaka West, namely Lot 6284/M, Lusaka and Lot 6285/M, Lusaka respectively. They hold certificates of title for their properties, having been recommended by the Kafue District Council in 2015 for land allocation. I delivered judgment on 16th November, 2017 against the Plaintiffs, where I held that they misapprehended their boundary perimeters and illegally built structures on the Defendant's property, Lot 6285/M, Lusaka. I also held that they were not entitled to any compensation for their illegal structures, which were demolished by the Zambia Police.

At the hearing, Learned Counsel for the Plaintiffs relied on the Affidavit filed in Support. The gist of which is that the Plaintiffs being dissatisfied with the Judgment of this Court have lodged an appeal with the Court of Appeal. They believe that they have high

prospects of succeeding because there was no Court Order declaring the Plaintiffs as squatters.

The Plaintiffs contend that if the judgment is not stayed, their appeal will be rendered nugatory as the Defendant will continue building on the property. They desire to maintain the existing status quo, pre-litigation until final determination of the appeal.

The Defendant filed an Affidavit in Opposition wherein she stated that the Court dismissed the Plaintiffs case. Her property is separate from the Plaintiffs' and each party pays ground rent to the Ministry of Lands and Natural Resources annually. She contends that during trial, the 2nd Plaintiff testified that her property was surveyed in January, 2014, while theirs, Lot 6284/M was surveyed in May, 2014. That only the approval of the Plaintiff's diagram was done earlier than hers. She denies that she referred to the Plaintiffs as squatters, but that they wrongly built structures on her property. She prayed to Court to dismiss the application.

Learned Counsels for both parties filed Skeleton Arguments for which I am grateful. I have carefully examined the Affidavit and Skeleton Arguments filed herein. The Plaintiffs' application raises the question whether in the circumstances of this case, I can exercise my discretionary power to grant a stay of execution of judgment pending an appeal to the Court of Appeal.

It is a well settled principle of the law that the Court will not grant a stay of execution of judgment unless there are good and reasonable grounds for doing so. What amounts to "good and reasonable grounds" is posited in Order 59/13 of the Rules of the Supreme Court, which puts it thus:

"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... But the Court is likely to grant a stay where the appeal would otherwise be rendered nugatory, or the Appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the Court and the Court will grant it where the special circumstances of the case so require.... But the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour."

In the case of **Nyampala Safaris and 4 others v Wildlife Authority and 6 others, Mambilima, JS¹**, as she then was, re-stated this position of law, when she declared that a stay should only be granted where good and convincing reasons have been advanced by a party. She went on to state that the rationale for the position is that a successful litigant should not be deprived of the fruit of litigation as a matter of course.

In the case of **Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and Elephants Head Hotel v Investrust Merchant Bank Limited²**, the Supreme Court held that:

- “(i) In terms of our rules of Court, an appeal does not automatically operate as a stay of execution and it is pointless to request for a stay solely because an appeal has been entered.**
- (ii) In exercising its discretion whether to grant a stay or not, the Court is entitled to preview the prospects of the proposed appeal succeeding.**
- (iii) The successful party should not be denied immediate enjoyment unless there are good and sufficient grounds.”**

Considering the guidelines outlined in the above cited cases, the question is, have the Plaintiffs met the criteria set as outlined above to provoke my discretionary power to grant a stay of execution of the judgment? In other words, have the Plaintiffs demonstrated that

there are good and convincing reason(s) for granting a stay of execution of judgment? Have they shown in their application that their appeal has prospects of succeeding and if a stay is not granted, then their appeal would be rendered nugatory and an academic exercise?

In applying the above principles to the application before me, I am of the firm view that the Plaintiffs have not advanced good reasons for a stay of execution of judgment. They did not succeed in any of their claims before this Court. I have considered their appeal and it mainly attacks findings of facts. Moreover, some of the facts complained of were not laid as part of their evidence in Court. Their appeal does not raise difficult points of law and is unlikely to succeed.

The dispute between the parties concerns land, which is not a moveable asset. In the case of **Shelter For All, Evans Mukula Chomba v Kingfred Rumsey and Precious Ramsey**³, the Supreme Court stated that:

“land is an immovable asset and any developments on it have monetary value, which can easily be ascertained by assessment.”

Taking that principle of law into account, I hold that the Plaintiffs will not suffer irreparable damage if a stay is not granted. I find no reason to deny the Defendant her fruits of judgment.

I accordingly, dismiss this application. Costs are for the Defendant to be taxed in default.

Dated this 30th day of January, 2018.


M. Mapani-Kawimbe
HIGH COURT JUDGE