

IN THE HIGH COURT FOR ZAMBIA
COMMERCIAL DIVISION
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2016/HPC/0124

BETWEEN:

PAN AFRICAN BUILDING SOCIETY

PLAINTIFF

AND

ASSHIA HAULAGE LIMITED

1ST DEFENDANT

MICHAEL SPANOU

2ND DEFENDANT

PEMBA LAPIDARIES LIMITED

INTENDED 1ST INTERVENER

LAPEMBA TRADING LIMITED

INTENDED 2ND INTERVENER

CORAM: Hon. Lady Justice Dr. W. S. Mwenda in Chambers at Lusaka this 6th day of May, 2020.

For the Plaintiff:

Mr. K. Musaila of Chonta Musaila and Pindani Advocates

For the Defendants:

No Appearance

For the Intended Interveners:

Mr. K. Nchito of Kapungwe Nchito Legal Practitioners

RULING

Cases referred to:

- 1) *Rea Zambia v. The Attorney General, SCZ Appeal No. 112 of 2018.*
- 2) *Development Bank of Zambia and PKMG Peat Marwick v. Sunvest Limited and Sun Pharmaceuticals Limited (1995-1997) Z.R. 187.*
- 3) *BP Zambia v. Interland Motors Limited (2001) Z.R. 37.*
- 4) *London Ngoma and Others v. LCM Company Limited and Another, SCZ Judgment No. 22 of 1999.*

Legislation cited:

- 1) *Sections 64 (2) (e) and 76 (1) (b) and (c) of the Banking and Financial Services Act, No. 7 of 2017.*
- 2) *Order 33, rule 7 of the Rules of the Supreme Court of England and Wales, 1999 Edition (the White Book).*
- 3) *Order 5, rule 15 of the High Court Rules, Chapter 27 of the Laws of Zambia (the High Court Rules).*
- 4) *Order 14, rule 5 (1) of the High Court Rules.*
- 5) *Order 3, rule 2 of the High Court Rules.*
- 6) *Order 15, rule 6 (2) (b) of the White Book.*
- 7) *Editorial Note 15/6/9 of the White Book.*

On 6th August, 2019, the Intended 1st and 2nd Interveners filed an application to be joined to the proceedings as interveners and for stay of execution of the Judgment of this Court dated 20th May, 2019, but before the application could be heard, the Plaintiff, filed a Notice to Raise Preliminary Issues on 13th August, 2019, pursuant to Section 76 (1) (b) and (c) of the Banking and Financial Services Act, No. 7 of 2017 and Order 33, rule 7 of the Rules of the Supreme Court of England and Wales, 1999 Edition (the White Book). The preliminary issues raised are as follows:

1. That the intended interveners' application is misconceived, premature and/or incompetent in view of the stay of execution by the Ndola High Court of the Ruling dated 20 May, 2019;
2. That the Charging Order issued under Cause No. 2006/HN/330 by Ruling dated 20 May, 2019 has been vacated on the basis of section 76 (1) (b) of the Banking and Financial Services Act No. 7 of 2017; and

3. That pursuant to section 76 (1) (c) of the Banking and Financial Services Act No. 7 of 2017, the Plaintiff's assets and/or the property which is the subject of this action cannot be attached.

The Notice to Raise Preliminary Issues was augmented by an Affidavit in Support of Notice to Raise Preliminary Issues (hereinafter referred to as "the Affidavit in Support"), deposed to by one Maibiba Mulala, an employee of the Bank of Zambia serving as Possession Manager (Without Personal Liability) of the Plaintiff, who deposed to the contents of the Affidavit by virtue of the said position.

The deponent deposed that pursuant to section 64 (2) (e) of the Banking and Financial Services Act No. 7 of 2017, the Bank of Zambia took possession of the Plaintiff with effect from the 19th day of July, 2019 on account of insolvency. A copy of the notice of taking possession of the Plaintiff was produced as exhibit "MM1". Further, that the intended interveners were relying on a Ruling under Cause No. 2006/HN/330 dated 20th May, 2019 which had been stayed following the Plaintiff's appeal to a judge in chambers as per exhibit "MKK7" in the intended interveners' Affidavit in Support of Summons for an application to be joined as interveners and application for stay of execution.

The deponent deposed in addition, that the intended interveners are seeking interim attachment of the property which is the subject of this action as per paragraph 27 of the intended interveners' Affidavit in Support of Summons for an application to be joined as interveners and application for stay of execution.

The Notice to Raise Preliminary Issues was opposed by the intended interveners who filed an Affidavit in Opposition to Affidavit in Support of Notice to Raise Preliminary Issues (hereinafter referred to as "the Affidavit in Opposition") on 13th September, 2019, sworn by one Mulenga Kaoma Kasenge, the Administration Manager in the intended interveners' companies, who deposed that the Plaintiff's application is misleading and misconceived for the reasons that follow. He asserted that the basis for the intended interveners' application is not the Ndola High Court Ruling dated 20th May, 2019, nor an application to attach the Plaintiff's property. That, the basis for the application is that the intended interveners are persons who may be entitled to and have some claim or share or interest in the mortgaged property, subdivision A of Stand No. 7183, Lusaka, which is the subject matter of this suit and they may likely be affected by the result in this matter and as such are applying to be made parties.

He averred that he was advised by Counsel and believed the same to be true, that the legal rights of the intended interveners have been affected and they have sufficient interest in the outcome of this matter and should be allowed to join this action because in or about 29th November, 2006, the intended interveners commenced an action against Industrial Credit Company (hereinafter referred to as "ICC"). On or about 14th January, 2011, judgment was entered in favour of the intended interveners. A copy of the said judgment was produced as exhibit "MKK1". It was contended that despite being aware of the judgment aforementioned in favour of the intended interveners against ICC, on or about 12th February, 2012, the Plaintiff with

William Saunders, a director in both the Plaintiff and ICC, entered into an agreement with ICC which contained the assets subject of this action. A copy of the said agreement was produced as exhibit "MKK2". The deponent averred that despite William Saunders, who is a director in the Plaintiff and ICC being aware of the judgment exhibited as "MKK1", he stated in the agreement, exhibit "MKK2" dated 12th February, 2012, that there were no existing or pending judgments against ICC when in actual fact he knew that there was a judgment dated 14th February, 2011 against the Plaintiff in favour of the intended interveners. After the judgment marked "MKK1" aforementioned, ICC applied for special leave to review the judgment, which was denied. However, the Judge granted the company leave to appeal to the Supreme Court. On or about 5th August, 2016, the Supreme Court delivered judgment, exhibited as "MKK3" in which the Court dismissed the appeal.

The deponent averred that the ICC is a shell and not in active operation after the sale of the assets and the business belonging to the company to the Plaintiff. On or about 23rd February, 2018, the Registrar of the High Court at Ndola delivered judgment on assessment in favour of the intended interveners for USD8,963,663.00. A copy of the said judgment was produced as exhibit "MKK4". According to the deponent, the intended interveners are unable to enforce the judgment on ICC because it has remained a shell corporation after the business and assets were sold to the Plaintiff.

It was asserted that the action of the Plaintiff in buying the assets of ICC with William Saunders as the prime mover, establishes an impropriety and the action was meant to avoid the legitimate legal obligation that ICC owed the intended interveners after the delivery of the judgment on assessment in favour of the intended interveners. Further, that the Plaintiff, working with William Saunders, a director in the Plaintiff and ICC, was knowingly a party to the selling of the assets and business of ICC to the Plaintiff, when at the material time the Plaintiff knew through William Saunders or ought to have known, that there was a judgment dated 24th January, 2011, against ICC, against the assets which they were buying.

It was the deponent's further testimony that on or about 29th March, 2018, the intended interveners applied in relation to the enforcement and execution of the judgment dated 14th January, 2011 and the judgment on assessment dated 23rd February, 2018, under Cause No. 2006/HN/330, for an order for the joinder of the Plaintiff and William Saunders and lifting the corporate veil against William Saunders and a charging order on the property belonging to ICC. The Court delivered its decision in favour of the intended interveners. A copy of the said ruling was produced as exhibit "MKK6". It was averred that the Plaintiff and William Saunders have appealed against the ruling exhibited as "MKK6" and obtained a stay of execution of the said ruling pending the hearing of the appeal to a Judge in chambers. A copy of the *ex parte* order staying the execution of the ruling is exhibited as "MKK7".

According to the deponent, the intended interveners' application is for this Court to order to join them to this action because they will be adversely affected by the outcome of this action since the assets which are the subject of this action form part of the assets and business which the ICC sold to the Plaintiff as confirmed by the judgment of this Court at page J3. It was contended further, that the Plaintiff actively participated and colluded with the ICC in buying the business and assets of ICC resulting in ICC avoiding its legitimate legal obligation towards the intended interveners after the judgment and judgment on assessment aforementioned. That, the intended interveners are applying to be joined to this action as interested parties in the outcome of this matter and are also applying for a stay of execution pending the determination of their interest in the mortgaged property, the subject of this action. Further, that the intended interveners are not seeking interim attachment being aware that the Plaintiff has been taken over by the Bank of Zambia pursuant to section 64 (2) (e) of the Banking and Financial Services Act which precludes the intended interveners from seeking an interim attachment of property.

The Plaintiff filed an Affidavit in Reply on 14th October, 2019, also sworn by Maibiba Mulala, wherein he deposed that paragraph 27 of the intended interveners' Affidavit in Support of summons for application to be joined as interveners and application for stay of execution, is self-explanatory and explicitly states that the intended interveners are asking this Court to:

“grant an order to join the 1st and 2nd intended interveners as interveners and to order the interim attachment of property which is the subject of this action because the Plaintiff is the one in possession of the property and assets which are the subject of judgment and judgment on assessment aforementioned exhibit “MMK1” and “MMK4” pending the outcome of the Plaintiff’s appeal to a judge in chambers under Cause No. 2006/HN/330 in Ndola aforementioned.”

That, in view of the above, it is fallacious for the intended interveners to now claim in paragraph 7 of their Affidavit in Opposition that the basis of the intended interveners’ application is not the Ndola High Court Ruling dated 20th May, 2019 nor is the basis an application to attach the Plaintiff’s property. It was further averred that contrary to the claim in paragraph 8 of the Affidavit in Opposition, the intended interveners have no connection whatsoever to the subject matter of this action or indeed to the Plaintiff. That, the only basis upon which the intended interveners can claim any relief whatsoever from the Plaintiff is the Ndola High Court Ruling dated 20th May, 2019 which has been stayed following the Plaintiff’s appeal.

It was further contended that moreover, by Ruling dated 13th September, 2019, under Cause No. 2019/HPC/0241, the learned Mr. Justice Musona stayed proceedings began by the intended interveners pending hearing of the appeal to a judge in chambers under Cause No. 2006/HN/330. A copy of the said Ruling dated 13th September, 2019 was produced as exhibit “MM1”. That, by seeking joinder and attachment of property herein, having also commenced Cause No. 2019/HPC/0241, the intended interveners are in fact engaging in a multiplicity of actions and abuse of court process.

The Notice to Raise Preliminary Issues came up for hearing on 15th October, 2019. Mr. Musaila, learned Counsel for the Plaintiff, submitted that the Plaintiff would rely on the Affidavit in Support and Skeleton Arguments filed on 13th August, 2019, as well as the Affidavit in Reply filed on 14th October, 2019. Counsel submitted that paragraph 37 of the intended interveners' Affidavit in Opposition is an admission of the effect of the Bank of Zambia taking possession of the Plaintiff. He further submitted that this Court should not rely on the contents of paragraphs 6, 12, 17, 21, 23, 24, 25, 26 and 32 of the said Affidavit for containing extraneous matter by way of objection or legal argument contrary to Order 5, rule 15 of the High Court Rules, Chapter 27 of the Laws of Zambia. He prayed that the preliminary issues raised be allowed and the *ex parte* order for stay of execution obtained by the intended interveners be discharged forthwith.

In response, Mr. Kapungwe, learned Counsel for the intended interveners, submitted that his clients were relying on the Affidavit in Opposition filed in Court on 13th September, 2019 and Skeleton Arguments of even date. He submitted that the intended interveners' application is anchored on Order 14, rule 5 (1) of the High Court Rules. He argued that the intended interveners have shown that they have an interest in the subject matter and that is the minimum threshold envisioned by the law cited. That, the law does not provide for any other consideration, the only consideration being that they should show an interest in the subject matter. Counsel invited the Court to look at exhibit "MKK2" in the Affidavit in Opposition for the

interest; exhibit "MKK2" being an agreement between the Plaintiff and ICC in which the Plaintiff bought the assets of ICC. According to Counsel, the assets which were sold, the subject matter of the action before Court, form part of the assets which were sold to the Plaintiff. Therefore, the intended interveners have a direct interest in the property which is the subject matter in the proceedings before Court.

Mr. Nchito submitted that their position is that the connection of the intended interveners to the matter before this Court is not the Ruling in Ndola which has been stayed; that the Ruling was referred to for a historic perspective. That, on the contrary, the connection is exhibit "MKK2" in the Affidavit in Opposition which is a sale agreement between the Plaintiff and ICC. He submitted further, that the property which is subject of this action forms part of that property and the intended interveners are interested in that property. He submitted further, that the action that has been taken by the Bank of Zambia does not preclude the intended interveners from exercising their rights in the property. That, it does not matter whether the property is with the Bank of Zambia or the Plaintiff. The interest of the intended interveners is how either the Bank of Zambia or the Plaintiff came into possession of the property. The intended interveners have a claim on the property which is subject of this action. He submitted that the preliminary issues must fail for the reasons that have been given above and that costs be for the intended interveners.

In reply, Mr. Musaila reiterated that the Court should look at paragraph 27 of the intended interveners Affidavit in Support of Summons for an application to be joined as interveners and for stay of execution filed on 6th August, 2019, which states the order they are seeking from this Court, namely, interim attachment of the property which is the subject of this action.

At this point, Mr. Kapungwe conceded that pursuant to section 76 (1) (c) of the Banking and Financial Services Act, the Plaintiff's properties cannot be attached.

Mr. Musaila continued his submissions by stating that the only connection between the Plaintiff and the intended interveners is the Ruling under Cause No. 2006/HN/330, which has been stayed. That, the only claim the intended interveners have arises under the Judgment exhibited as "MKK1" (2006/HN/330) which is a money judgment against ICC and the only way the Plaintiff is linked to that Judgment is through the Ruling of 20th May, 2019 which has been stayed. That, consequently, the application for joinder is misconceived since at best the intended interveners can only be considered unsecured creditor, but even that determination cannot be made because the Ruling has been stayed. Therefore, any application for joinder can only be made after the appeal to a judge in chambers under Cause No. 2006/HN/330 is disposed of. Counsel prayed that the preliminary issues succeed with costs.

It was submitted that in this action the intended interveners are seeking to enforce the Ruling dated 20th May, 2019 delivered by the Registrar under Cause No. 2006/HN/330. That, the Plaintiff has

appealed against the said Ruling to a judge in chambers and the Ruling has since been stayed per order of stay of execution exhibited as “MKK7” in the Affidavit in Support of Summons for an application to be joined as interveners and an application for stay of execution. Further, that under Order 3, rule 2 of the High Court Rules, this Court has the power to make any interlocutory order which it considers necessary for doing justice. However, the intended interveners’ application is misconceived, premature and/or incompetent in view of the stay of execution by the Ndola High Court of the Ruling dated 20 May, 2019.

It was also submitted that section 76 (1) (b) of the Banking and Financial Services Act No. 7 of 2017, provides as follows:

“Where the Bank of Zambia takes possession of a financial service provider-

(c) an attachment or lien shall not attach to assets or property of the financial provider during the period that the possession continues, except an attachment created –

or

(ii) in favour of a payment system, settlement system or settlement in netting or gross settlement arrangement.”

According to the Plaintiff, the intended interveners are seeking interim attachment of the property which is the subject of this action per paragraph 27 of the intended interveners’ Affidavit in Support of Summons for an application to be joined as interveners and an application for stay of execution. In view of section 76 (1) (c) of the Banking and Financial Services Act, there cannot be an attachment of the Plaintiff’s assets while the possession of the Plaintiff by the Bank of Zambia continues. That, as shown by exhibit “MM1” in the

Plaintiff's Affidavit in Support of Notice to Raise Preliminary Issues, the Bank of Zambia took possession of the Plaintiff with effect from 19th July, 2019. The intended interveners' application herein is therefore, misconceived and ought to be dismissed with costs.

The intended interveners filed Skeleton Arguments on 13th September, 2019 where they submitted that they were relying on Order 14, rule 5 (1) of the High Court Rules for their application to be joined to this suit. They contended that the Plaintiff's Notice to Raise Preliminary Issues is misconceived and meant to mislead this Court because the intended interveners' application cannot be misconceived, premature and incompetent as alleged because of the stay of execution by the Ndola High Court Ruling dated 20th May, 2019. That, the intended interveners' application is not based on the Ndola High Court Ruling. The two matters are separate in that the Ndola High Court Ruling is based on lifting the corporate veil and attaching stand number 1200, Ndola, also known as stand number 44 Buteko Avenue, Ndola, whilst the matter in *casu* is based on the intended interveners' interest in subdivision A of stand number 7183, Lusaka, which is the mortgaged property.

It was contended further, that the provision of the law on which the intended interveners are relying has set a benchmark which is that the persons applying to be joined may be entitled to, or claim some share or interest in, the subject matter of the suit, or may be likely affected by the result. That, the intended interveners have proved that they are interested in the subject matter of this action because it forms part of the assets which the Plaintiff bought from

ICC and the intended interveners have alleged that the sale was intended to circumvent a judgment and the matter is still active before the Ndola High Court.

It was further submitted that the intended interveners are further relying on the case of *Rea Zambia v. The Attorney General*¹, where it was held that in order for a party to be joined to proceedings under Order 14, rule 5 (1) of the High Court Rules, it must either be a person who may be entitled to claim some share or interest in the subject matter of the suit or who may likely be affected by the result or outcome of the suit. That, the facts and information in the Affidavit filed by the 1st and 2nd Intended Intervenors have shown to a large extent that both of them have sufficient interest and are likely to be affected by the result or outcome of the proceedings in this matter where the Plaintiff has a judgment in its favour. That, it is an incontrovertible fact that the assets which are the subject of this action form part of the assets over which the 1st and 2nd Intended Intervenors have established an interest in the action under Cause No. 2006/HN/330.

The intended interveners also relied on Order 15, rule 6 (2) (b) of the White Book and submitted that the intended interveners are persons who should be joined as parties to the proceedings and whose presence before this Court is necessary to ensure that all matters in dispute in this action may be effectually and completely determined and adjudicated upon. Further, that Editorial Note 15/6/9 of the White Book explains that a person who was not a party could be added against the wishes of the Plaintiff on the application

of the Defendant or intervener or in rare cases, the Court's own motion.

It was further submitted that the intended interveners were also relying on the cases of *Development Bank of Zambia and PKMG Peat Marwick v. Sunvest Limited and Sun Pharmaceuticals Limited*², and *BP Zambia v. Interland Motors Limited*³, which illustrate the point that all parties to a dispute relating to one subject matter should be brought to court at the same time so that disputes may be determined without delay, inconvenience and expense of separate actions.

It was argued that the intended interveners had shown that they have *locus standi* and a direct interest in the staying of execution of the judgment in this matter pending the hearing of the appeal to a judge in chambers under Cause No. 2006/HN/330. Further, that it is immaterial that judgment has been entered in this matter as decided in the case of *London Ngoma and Others v. LCM Company Limited and Another*⁴, where the Court stated that the lower court had erred in holding that the appellants could not be joined to the action after consent judgment had been granted as the consent judgment was one of which the appellants were not parties and were not aware of a hearing.

It was contended that the Plaintiff's notice to raise preliminary issues is incompetent and misleading because the intended interveners' application is not anchored on the Ruling of the Ndola High Court, but rather on the sufficient interest that the intended interveners have in the subject matter before this Court and they

have met the threshold as provided by the law to be joined to this action and to stay the judgment of this Court pending the determination of all matters of controversy between the parties.

The intended interveners conceded that the Charging Order under Cause No. 2006/HN/330 by Ruling dated 20th May, 2019, had been vacated on the basis of section 76 (1) (b) of the Banking and Financial Services Act. However, it was their submission that the vacation of the Charging Order is irrelevant to the intended interveners' application because they have shown their interest in the subject matter before this Court which qualifies them to be joined as parties. The intended interveners also conceded that pursuant to section 76 (1) (c) of the Banking and Financial Services Act No. 7 of 2017, the Plaintiff's assets and/or the property which is subject of this action cannot be attached. That, however, the application by the intended interveners is not to attach the property which is subject of this action, but to be joined as interveners and to stay the execution of the judgment herein. Further, that the application is premised on the fact that the intended interveners have proved that they are entitled and have a claim and interest in the subject matter before this Court which is the threshold allowable by the law for them to be joined. The intended interveners therefore, prayed that the Plaintiff's Notice to Raise Preliminary Issues be dismissed with costs for being incompetent and misleading.

I have carefully considered the Notice to Raise Preliminary Issues and supporting documents and I am grateful to Counsel on both sides for the same.

As earlier indicated, there are three preliminary issues raised by the Plaintiff for determination by this Court, namely:

1. That the intended interveners' application is misconceived, premature and/or incompetent in view of the stay of execution by the Ndola High Court of the Ruling dated 20 May, 2019;
2. That the Charging Order issued under Cause No. 2006/HN/330 by Ruling dated 20 May, 2019 has been vacated on the basis of section 76 (1) (b) of the Banking and Financial Services Act No. 7 of 2017; and
3. That pursuant to section 76 (1) (c) of the Banking and Financial Services Act No. 7 of 2017, the Plaintiff's assets and/or the property which is the subject of this action cannot be attached.

It is common cause that the Bank of Zambia took possession of the Plaintiff on 19th July, 2019 pursuant to section 64 (2) (e) of the Banking and Financial Services Act No. 7 of 2017 (hereinafter referred to as "the Act"), on account of insolvency.

Section 76 (1) (b) of the Act provides as follows:

"Where the Bank of Zambia takes possession of a financial service provider-

(b) an attachment or lien, except for an attachment or lien existing twelve months prior to the taking possession of the financial provider, shall be vacated."

Section 76 (1) (c) of the Act states as follows:

"Where the Bank of Zambia takes possession of a financial service provider-

(c) an attachment or lien shall not attach to assets or property of the financial provider during the period that the possession continues, except an attachment created -

or
(ii) in favour of a payment system, settlement system or settlement in netting or gross settlement arrangement."

(Underlining provided by the Court for emphasis only)

Counsel for the intended interveners has graciously conceded that the Charging Order issued under Cause No. 2006/HN/330 by Ruling dated 20th May, 2019 has been vacated on the basis of section 76 (1) (b) of the Act, aforesaid. Counsel has also conceded that the assets of the Plaintiff cannot be attached pursuant to section 76 (1) (c) of the Act. What the above means in effect is that preliminary issues number (2) and (3) have merit and are sustained. What remains to be considered is preliminary issue number (1), namely, that the intended interveners' application is misconceived, premature and/or incompetent in view of the stay of execution by the Ndola High Court of the Ruling dated 20 May, 2019.

The Plaintiff has alleged that the intended interveners are relying on the Ruling on 20th May, 2019 under Cause No. 2006/HN/330 which has been stayed pending the Plaintiff's appeal to a judge in chambers. It has been contended that contrary to the intended interveners' claim that the basis of their application is neither the Ndola High Court Ruling dated 20th May, 2019, nor the application to attach the Plaintiff's property, paragraph 27 of the intended interveners' Affidavit in Support of Summons for an application to be joined as interveners and application for stay of execution clearly shows that the intended interveners are appealing to this Court to grant an order of interim attachment of the property which is the subject of this action pending the outcome of the Plaintiff's appeal to

a judge in chambers under Cause No. 2006/HN/330. That, contrary to the intended interveners' claim, they have no connection whatsoever to the subject matter of this action, or indeed the Plaintiff and the only basis upon which they can claim any relief whatsoever from the Plaintiff, is the Ndola High Court Ruling of 20th May, 2019, which has been stayed following the Plaintiff's appeal.


On the other hand, it has been contended on the intended interveners' behalf, that they have shown that they have an interest in the subject matter of the action before this Court, which is the only benchmark that persons applying to be joined need to meet. Further, that the intended interveners' application is not based on the Ndola High Court Ruling which is based on lifting of the corporate veil and attaching Stand No. 1200, Ndola, but on their interest in Subdivision A of Stand No. 7183, Lusaka, which is the mortgaged property under this cause. It was further submitted that the connection of the intended interveners to the matter before Court is not the ruling in Ndola but exhibit "MKK2" in the Affidavit in Opposition (the Sale Agreement between the Plaintiff and the ICC). That, the property which is subject of this action forms part of the property comprised in the Sale Agreement between the Plaintiff and ICC and the intended interveners are interested in that property.

Before going any further, I wish to state that I am in agreement with the submission by learned Counsel for the Plaintiff that paragraphs 6, 12, 17, 21, 23, 24, 25, 26 and 32 of the Affidavit in Opposition contain extraneous matter by way or objection or legal argument, contrary to Order 5, rule 15 of the High Court Rules.

Therefore, I will disregard them. That said, I am of the view that contrary to the Plaintiff's contention with regard to preliminary issue number (1), the intended interveners' application to be joined to these proceedings and for stay of execution of the judgment herein is not misconceived, premature and/or incompetent for the reason that the said application is not based on the Ruling by the Ndola High Court of 20th May, 2019, which has since been stayed, but on the fact that they are parties who may be entitled to, or claim some share or interest in, the subject matter of the suit herein, being the mortgaged property Subdivision A of Stand No. 7183, Lusaka or may likely be affected by the result of the action. As submitted by the intended interveners, they are applying to be joined to this action as interested parties in the outcome of this matter and are also applying for stay of execution of the judgment herein pending the determination of their interest in the said mortgaged property which is the subject of this action. Therefore, I find preliminary issue number (1) to be without merit and I dismiss it accordingly.

Preliminary issue number (1) having been dismissed, the intended interveners' application to be joined as interveners and for stay of execution of the judgement herein shall proceed for hearing. Costs shall be in the cause.

Delivered at Lusaka this 6th May, 2020.


DR. W. S. MWENDA
HIGH COURT JUDGE