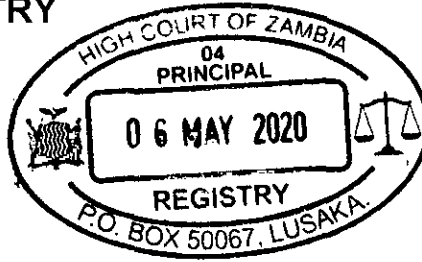


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2018/HP/0459



BETWEEN :

LEWIS KATEPA

PLAINTIFF

AND

LAMECK MTONGA

DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 6th day of May 2020.

For the Defendant : Exparte, Messrs Legal Aid Board

R U L I N G

Cases Referred To:

1. *Nyampala Safaris (Z) Limited, Baobab Safaris (Z) Limited, Nyumbu Safaris (Z) Limited, Exclusive Safaris (Z) Limited, Busanga Trails (Z) Limited v Zambia Wildlife Authority, Zambia National Tender Board, Attorney General, Luangwa Crocodile and Safari Limited, Sofram and Safaris Limited, Leopard Ridge Safaris Limited, Swanepoel & Scandrol Safaris Limited (2004) Z.R 49 (S.C)*

Legislation Referred To:

1. *High Court Act Chapter 27*
2. *Rules of the Supreme Court 1999 Edition*

1.1 This is the defendant's ex parte application for an order to stay execution of judgment pending the hearing of the appeal to the Court of Appeal. It is made pursuant to Order 3 Rule 2 of the High Court Rules.

1.2 I have considered the affidavit evidence. It is a well settled principle of law that a Court should 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."

1.3 In the case of **Nyampala Safaris and 4 Others v Wildlife Authority and 6 Others**¹, the Supreme Court re-stated the position of law, when it declared that a stay should only be granted where good and convincing reasons have been advanced by a party. The rationale for the position is that a successful litigant should not be deprived of the fruit of litigation as a matter of course.

1.4 Put in another way, the purpose of a stay is to preserve the subject of a suit so that if a litigant does succeed on appeal, the award will not be rendered nugatory. In exercising its discretion to grant or refuse a stay, a Court must consider the special circumstances of a case and its unique requirements.

- 1.5 Accordingly, an applicant must show that substantial loss may result to him/her unless the order is made. Substantial loss does not include a process of execution. Even when execution has been levied and completed, this action will not itself amount to substantial loss as long as it is shown that the execution was lawful. Instead, an applicant must show that the execution will create a state of affairs that will irreparably affect the applicant as a successful party on appeal. While a Court has latitude in granting a stay, it is also required to ensure that a deserving litigant is not deprived of the fruits of judgment as a matter of course.
- 1.6 Considering the guidelines outlined above, the question is, has the defendant met the criteria set above so as to be granted a stay of execution of the judgment in question? After considering the facts and the law and although I am not called upon at this stage to determine whether the defendant's intended appeal has prospects of success, speaking for myself and without in any way attempting to prejudice his chances on appeal, my opinion is that his situation will not improve on appeal.
- 1.7 Accordingly, I decline to grant the defendant a stay of execution of judgment and dismiss this application forthwith. I make no order as to costs.

R4

Dated this 6th day of May 2020.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE