

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

2006/HP/0437



Between:

JENNIFER LINTINI (Administratrix of the estate
Amarah Doran Lintini (deceased)

PLAINTIFF

AND

CR HOLDINGS LIMITED

1ST DEFENDANT

CASSIUS RUMSEY

2ND DEFENDANT

Before the Hon. Mrs. Justice C. Lombe Phiri in Chambers.

For the Plaintiff: N/A

For the Defendant: Ex-parte

R U L I N G

CASES REFEREED TO:

- 1. Caltex Oil Zambia Limited v Theresa Transport (2002) ZR 97**
- 2. Michael Chilufya Sata v Chanda Chiimba III Zambia National Broadcasting Corporation Muvi TV Limited Mobi TV International Limited (2011) ZR**

3. Trinity Engineering (pvt) Limited v Zambia National Commercial Bank Limited (1997) S.J. 12 (S.C.)

This is a matter where the Applicants (Defendants) are seeking an Order to Stay the Execution of a Writ of Fieri Facias (Fifa) pending the hearing and determination of an appeal against the decision of the Deputy Registrar refusing to grant them a stay of the execution of a Judgment of the Supreme Court on grounds that the Deputy Registrar has no jurisdiction to grant such a stay.

The brief background to this case is that the Plaintiff in this matter (who is the Respondent for purposes of this application) obtained a Judgment in the Supreme Court. The said Judgment included interest. The Respondent made a demand on the Applicants for payment of the Judgment sum including the interest. It appears the Applicants had a dispute on the said amount and sought that the said interest be assessed by the Registrar. However, before this assessment could take place the Respondent took out a Fifa in execution of the said disputed interest on the Judgment sum. The Applicant then sought intervention of the Deputy Registrar by way of an application for stay of execution of the Fifa pending the assessment of the interest on the judgment sum. The Deputy Registrar, however, dismissed the application for stay on grounds that she did not have jurisdiction to hear the matter and ordered that the Applicants make the application for stay before the Supreme Court, being the Court that rendered the Judgment in question. That decision by the

Deputy Registrar is the one that is being challenged by the Applicant on Appeal to a Judge in Chambers.

The Applicants in support of their application for stay relied on the Ex-parte Summons and affidavit filed into Court on 21st January, 2020. The Affidavit was sworn by one Dorothy Simmons Ramsey and basically stated the facts as has been outlined above, in summary. The Applicant further relied on the certificate of urgency filed into Court on equal date. At the hearing of the matter Counsel briefly submitted that the stay was necessary in order to do justice to the matter. The gist of the submission was that this case was an issue of execution of judgment. The case of **Caltex Oil Zambia Limited v Theresa Transport (2002) ZR 97**⁽¹⁾ was relied upon in demonstrating the principle that the High Court has jurisdiction to enforce judgments of the Supreme Court. It was further brought to the attention of the Court that there was also an application pending regarding dismissal of the Fifa based on the fact that it was defective. However, this application had not been heard by the Deputy Registrar therefore there is no decision yet on that matter.

I have carefully considered the arguments before me. This is an application for stay of execution of a Fifa. In any case of stay pending the hearing of an appeal it is incumbent upon the Court hearing the application to consider a few issues. Key among these is that whether there is likelihood of success of the appeal. In the case of **Michael Chilufya Sata v Chanda Chiimba III Zambia National Broadcasting Corporation Muvi TV Limited Mobi TV**

International Limited (2011) ZR⁽²⁾ Matibini J (S.C.) discussed the conditions required for a stay to be granted. He stated that:

“More is required to be advanced or shown in order to persuade a trial Court, or an appellate Court for that matter, that it is desirable, necessary or just to stay a judgment or a ruling pending an appeal. Be that as it may, when a party is appealing, exercising his undoubted right of appeal, a Court ought to see to it that if there is a real likelihood that the appeal might succeed, it should not be rendered nugatory.

It must also be further shown either that special circumstances exist to warrant the grant of stay, or that without a stay a defendant stands to be ruined, or suffer irreparable injury. Whatever the case, some special ground, or reason should be shown to exist. It is impossible to enumerate in advance all the matters that might be considered to constitute special circumstances. But it may nonetheless be said that the allegations that there has been a misdirection; that the judgment was against the weight of the evidence; or that there was no evidence to support it; are not special circumstances on which the Court will grant a stay of execution.

It must also be noticed that in exercising the discretion whether or not to grant a stay, a Court is entitled to preview the prospects of the proposed appeal. The rationale for these stringent conditions, or criteria in exercising the discretion to grant a stay, is that a successful party should not be denied immediate enjoyment of the fruits of the judgment or ruling, unless good and sufficient grounds are advanced or shown.”

It must be stated, however, that in analyzing whether to grant a Stay or not the Court must guard against making a final determination of the appeal before it is heard. Where it is manifestly clear from the grounds of the appeal that the prospects of success are dim the Court must pronounce itself on the issue giving its reasons.

In this application the issue is whether or not the High Court has jurisdiction to grant a stay of a judgment of the Supreme Court pending the assessment of interest on the Judgment sum. A distinction must be drawn between execution and assessment. When a matter comes up for assessment the parties are basically asking the Court to determine for them the amount that ought to be paid as they have failed to agree between themselves. Therefore, at this point it is not execution. The amount for assessment belongs to the Court that rendered it. Bringing it into context the assessment in this case is being done on behalf of the Supreme Court. In the case of **Trinity Engineering (PVT) Limited v Zambia National Commercial Bank Limited (1997) S.J. 12 (S.C.)**⁽³⁾ it was held that :

“There can be no stay of execution of a final judgment of the Supreme Court”.

On the other hand where a Fifa has been issued and a party has issue with the Fifa, the Fifa being a matter of execution it ought to be dealt with by the Registry out of which it issues, in this case the High Court. At this point Order 47 of the Rules of the Supreme Court of England and Wales kick in. The High Court would have jurisdiction to hear and determine an application which questions the condition of the Fifa as per the decision in the **Caltex Oil case.**

In view of the foregoing, I find that the application for stay before me lacks merit on grounds that the likelihood of success of the Applicant on Appeal is dim. The application for stay is dismissed forthwith.

Delivered at Lusaka this 3rd day of February, 2020.



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C. LOMBE PHIRI
JUDGE