

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

**2008/HP/A40**



BETWEEN:

**FEBBY CHRISTINE KABWE**

**APPELLANT**

AND

**PENGUIN INVESTMENT LIMITED  
NATIONAL HOUSING AUTHORITY  
LAWRENCE NKOSI**  
*(Trustee of Nkosinathi Nkosi)*

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 20<sup>th</sup> DAY OF JULY,  
2020**

*For the Appellant : Messrs H.H. Ndhlovu & Company*

*For the 1<sup>st</sup> Respondent : No appearance*

*For the 2<sup>nd</sup> Respondent : In House Counsel*

*For the 3<sup>rd</sup> Respondent : Mrs Kasongo.M.Chileshe, Sukwana Mweemba &  
Partners*

---

## **R U L I N G**

---

CASES REFERRED TO:

- 1. Sonny Paul Mulenga and others v Investrust Merchant Bank Limited 1999 ZR 101*

LEGISLATION REFERRED TO:

- 1. The Rules of the Supreme Court of England, 1999 edition*

This is a ruling on an application that was filed by the 3<sup>rd</sup> respondent on 23<sup>rd</sup> February, 2020, for an order to stay execution of the ruling dated 27<sup>th</sup> January, 2020. The application was made pursuant to Order 59 Rule 13/1 and Order 59 Rule 13/4 of the Rules of the Supreme Court of England, 1999 edition.

The affidavit filed in support of the application states that the 3<sup>rd</sup> respondent has appealed against the ruling of this court, as shown on exhibit 'LN1' to the affidavit, being the notice of appeal, as well as the memorandum of appeal. It is deposed that the 3<sup>rd</sup> respondent believes that the appeal has prospects of success, and therefore, in the interests of justice, the order staying execution of the appeal should be granted, as not doing so, would render the appeal nugatory.

Initially the matter was adjourned to 27<sup>th</sup> May, 2020, for hearing, but due to the outbreak of the corona virus, on 26<sup>th</sup> May, 2020, I directed the 3<sup>rd</sup> respondent to serve the application on the appellant, and the appellant was to file an affidavit in opposition by 12<sup>th</sup> June, 2020. The 3<sup>rd</sup> respondent was to file an affidavit in reply by 30<sup>th</sup> June, 2020, and I would thereafter deliver my ruling.

No affidavit in opposition has been filed to date. On record is an affidavit of service dated 13<sup>th</sup> May, 2020, which shows that the notice of hearing for hearing of the application to stay execution which was returnable on 27<sup>th</sup> May, 2020 was served on the appellant on 6<sup>th</sup> May, 2020, and the letter was acknowledged.

I have considered the application. It was brought pursuant to Order 59 Rule 13/1 and Order 59 Rule 13/4 of the Rules of the Supreme Court of England, 1999 edition. The said Order provides as follows;



*“(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct -*

*(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;*

*(b) no intermediate act or proceeding shall be invalidated by an appeal”.*

In the case of *Sonny Paul Mulenga and others v Investrust Merchant Bank Limited* <sup>(1)</sup>, it was stated that;

*“In terms of our rules of court, an appeal does not automatically operate as a stay of execution and it is utterly pointless to ask for a stay solely because an appeal has been entered. More is required to be advanced to persuade the court below or this court that it is desirable, necessary and just to stay a judgment pending appeal. The successful party should be denied immediate enjoyment of a judgment only on good and sufficient grounds”.*

It can be seen from the above case, that a stay of execution of judgment may be granted on sufficient grounds being shown. In the affidavit filed in support of the application, the 3<sup>rd</sup> respondent states that the prospects of success of the appeal as shown on the memorandum of appeal, and that if the stay of execution is not granted, it will be rendered an academic exercise.

The sufficient grounds for staying execution of a judgment range from the prospects of success of the appeal being high, and that if execution is not stayed, the appeal will be rendered nugatory, and that if execution is levied, the applicant will suffer ruin that cannot be atoned for by

damages. It is trite that in granting a stay of execution, the court is entitled to preview the prospects of success of the appeal, and it is also trite that a successful party should not be deprived the fruits of their judgment.

On a preview of the memorandum of appeal, my view is that the prospects of success of the appeal are low, and on that basis, I find that insufficient grounds have been advanced, warranting the grant of a stay of execution of the judgment. I accordingly dismiss the application and make no order as to costs. Leave to appeal is granted.

**DATED AT LUSAKA THIS 20<sup>th</sup> DAY OF JULY, 2020**

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**