

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

2015/HPC/0560

BETWEEN:

GLENCORE INTERNATIONAL AG
KATANGA MINING LIMITED
MUTANDA YA MUKONTOKA MINING SARL
KAMOTO COPPER COMPANY SA



1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF
4TH PLAINTIFF

AND

DIMITRIOS MONOKANDILOS
INTERNATIONAL INVESTMENT & FINANCING LIMITED

1ST DEFENDANT
2ND DEFENDANT

Before Lady Justice B.G. Shonga this 6th day of April, 2020

For the Plaintiff, Mr. M Chibiliti, Messrs. J & M Advocates

For the Defendant, Messrs. Willa Mutofwe & Associates

RULING

Cases referred to

1. *Darryl John Hammond & Tasha Sandra Hammond v Joyce Zulu, 2012/HP/094 (Unreported).*

Legislation and Other Material Referred To:

1. *Order XLVIII, Rule 2 of the High Court Rules, Vol. 3 Chapter 27 of the Laws of Zambia.*

2. *G.C. Thornton, Legislative Drafting, 4th Edition, Bloomsbury Professional (1996).*
3. *Order X, Court of Appeals Rules, 2016, Statutory Instrument No. 65 of 2016.*
4. *Section 22 and 23 of the Court of Appeal Act, 2016.*
5. *Section 2 of the Court of Appeal Act.*
6. *Section 30 (1), Court of Appeal, Act.*

1.0 Application

This Ruling speaks to an application made by the defendants seeking an order that the plaintiffs' application for leave to appeal be dismissed on the ground that the Court lacks jurisdiction. Further, that the plaintiff's application is not properly before Court. The application is supported by an affidavit in support and skeleton arguments filed on 28th January, 2020. The application was heard on 17th February, 2020.

The application attracted opposition from the plaintiffs who in turn filed skeleton arguments in response.

2.0 Background

On 14th December, 2015 the plaintiffs took out a writ of summons against the defendants.

By Ruling dated 5th December, 2019 this Court dismissed the action for want of jurisdiction upon hearing the defendants' application to dismiss the action for abuse of process.

On 3rd January, 2020 the plaintiff applied for leave to appeal and to stay execution of the Ruling dated 5th December, 2019 pending appeal.

3.0 Legal Arguments

3.1 Arguments presented by the defendants

In their skeleton arguments, the defendants relied on **Order XLVIII, Rule 2 of the High Court Rules, Vol. 3 Chapter 27 of the Laws of Zambia, which reads as follows:**

“After fourteen days from the date of any interlocutory decision, application for leave to appeal shall not be entertained”

Standing on the shoulder of **Order XLVIII, Rule 2**, the defendants argue that an application for leave to appeal the decision of 5th December, 2019 ought to have been made by 19th of December, 2019 in order to be properly before Court.

The defendants fortified their submission by drawing my attention to the erudition of **G.C. Thornton, in his book Legislative Drafting, 4th Edition, Bloomsbury Professional (1996)**, where he opined that the word “shall” denotes an obligation. To drive their submission further, the defendants cited the case of **Darryl John Hammond & Tasha Sandra Hammond v Joyce Zulu, 2012/HP/094** where the Court refused to entertain an application that was made 18 days after the interlocutory decision was made.

3.2 *Arguments presented by the plaintiffs*

In response, the plaintiffs submitted that **Order XLVIII, Rule 2** did not apply to civil appeals from the High Court to the Court of Appeal. The plaintiffs contend that such appeals are governed by **Order X of the Court of Appeals Rules, 2016, Statutory Instrument No. 65 of 2016**. Reference was made to **Order X, rule 1** and **Order X, rule 3 (5) thereof**.

Rule 1 of Order X reads as follows:

“This Order applies to appeals from the High Court or a quasi-judicial body that are not under the exclusive jurisdiction (of the Constitutional Court.

Rule 3 (5), of Order X, reads:

“An application to the High Court ... to appeal to the Court shall be by motion or summons and state the grounds of the application and shall, if necessary, be supported by an affidavit.”

5.0 **Determination**

I have carefully read and scrutinized all the affidavit evidence, legal arguments and submissions of both parties.

The question that falls to be resolved in this application is, in my opinion, a very narrow one. Namely, does this Court have the jurisdiction to grant the plaintiff leave to appeal to the Court of Appeal. If so, is the applicant required to make its application within a prescribed time period. The answer to primary question can be discerned from considering **section 22 and 23 of the Court of Appeal Act, 2016**.

Section 22 of the Court of Appeal Act provides that subject to section 23, an appeal in a civil matter lies to the Court of Appeal from a judgment of the High Court. Section 23 prescribes restrictions on civil appeals. The restriction which I consider relevant to this application is **section 23 (1) (e) of the Court of Appeal Act**. It reads, in part, as follows:

“An appeal shall not lie from ... an interlocutory judgment made or given by a judge of the High Court, without the leave of that judge ...”

I also draw attention to the definition of the term judgment contained in **section 2 of the Court of Appeal Act**, which reads as follows:

‘In this Act, unless the context otherwise requires “judgment” includes decree, ruling, order, conviction, sentence and decision’

Given the definition of the word judgment above, I have no difficulty in substituting the word judgment with the word ruling in section 23(1) (e) to give the section efficacy in its application to rulings.

My steadfast understanding of section 23 (1) (e) is that a party who seeks to appeal an interlocutory ruling made by a judge of the High Court is restricted from so doing unless that party seeks leave from that judge. In other words, it is the High Court that is given the original jurisdiction to grant leave to appeal to a party who seeks to appeal an interlocutory ruling

given by a judge of the High Court. The section in issue does not prescribe any timeframes.

In view of my analysis of section 23 of the Court of Appeal Act, 2016 my answer to the primary question posed is simply that this Court not only has jurisdiction to grant the plaintiff leave to appeal to the Court of Appeal, but that this is the appropriate Court before which the application should first be made.

Considering my answer, I agree with the plaintiffs that issues relating to appeals from decisions of the High Court are governed by the Court of Appeal Act, 2016 as read with the Court of Appeal Rules, 2016 made pursuant to section 30 of the Court of Appeals Act, 2016.

In reinforcing my analysis, I draw attention to section 30 (1) of the Court of Appeal Act, 2016, which reads as follows:

“The Chief Justice may, by statutory instrument, make rules for regulating generally the practice and procedure of the Court and with respect to appeals to the Court.”

It is clear to me that Rules passed pursuant to section 30 (1), Such as the Court of Appeals Rules, 2016, are for the purpose of regulating the practice and procedure with respect to appeals to the Court of Appeal. Hence, **Order X of the Court of Appeal Rules, 2016** regulates the practice and procedure

relating to civil appeals from the High Court that are not under the exclusive jurisdiction of the Constitutional Court.

Considering all the above, I find that the defendants' application lacks merit and is therefore dismissed with costs.

Costs are to be taxed in default of agreement.

Dated this 6th day of April, 2020

A handwritten signature in black ink, appearing to be 'G. B. Shonga', written in a cursive style.

G. B. Shonga
JUDGE