

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

2015/HP/A040

**BETWEEN:**

**TEDDY MOONGA**



**APPELLANT**

**AND**

**INONGE MUHAU**

**RESPONDENT**

*Before the Hon. Mr. Justice E. M. Sikazwe in Chambers*

*For the Appellant : Mr H. M. Mulonda – Messrs L. M. Chambers*

*For the Respondent : Ms. N. Chilambwe – Zimba National Legal Aid for Women*

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**R U L I N G**

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The Appellant after being dissatisfied with the Ruling of 1<sup>st</sup> September, 2015 by the Lower Court came before their Court for an Appeal and to set aside Warrant of Distress.

Briefly the matter was set for hearing for 21<sup>st</sup> October, 2015 and on this date the Appellant and his Advocates were not present. Counsel for the Respondent informed the Court that they had received a Notice of Hearing, an Affidavit and Certificate of Urgency minus the Ex-parte Summons. The letter

came from the Appellant's Advocates. The matter was adjourned to 26<sup>th</sup> November, 2015. The matter was again adjourned to 1<sup>st</sup> March, 2016 as the Court had other engagement in November 2015. On 1<sup>st</sup> March, 2016 the Respondents' Advocates filled in a Notice to adjourn and matter was once again adjourned to 6<sup>th</sup> April, 2016. The matter was again adjourned to 9<sup>th</sup> May, 2016. Again it coincided with the Courts other programme and adjourned to 7<sup>th</sup> June, 2017. On this date the Appellants and his Advocate never appeared. At this instant the Respondent's Advocates applied to the Court to dismiss the matter for want of prosecution as it seemed the Appellant because of this Appeal was deliberately denying the Respondent her fruit of Judgment of the Lower Court. The matter was dismissed for Want of Prosecution as the Court discovered that this matter was adjudged by the Lower Court on 23<sup>rd</sup> August, 2013. It had taken him again a considerable time for him to Appeal for the entire Judgment to be stayed by the same Lower Court, which result was a decline for the good reasons put up by the Lower Court. On 1<sup>st</sup> July, 2016 the Advocate for the Appellant filed into Court Summons for special leave and or Review of Ruling Dismissing the Appeal for Want of Prosecution and the matter was heard on 2<sup>nd</sup> August, 2016 and the Ruling is now delivered.

In arguing the Appeal the Appellant was referring to the Lower Courts Judgment of 23<sup>rd</sup> August, 2013. This Judgement being appealed against was not presented to the Court to pursue what the Lower Court adjudged upon. This Court will not assume that there was a Judgement of 23<sup>rd</sup> August, 2013 which is being appealed against when it is not on record in the proceedings of the Lower Court.

As a result even the Respondent is referring to this Judgement of 23<sup>rd</sup> August, 2013. What the Court has on file is the Ruling of the Lower Court of 1<sup>st</sup> September, 2015 for the Stay of the entire Judgment pending determination of Appeal and to set and a Warrant of Distress issued and relied in the Affidavit filed on 4<sup>th</sup> August, 2015 and affidavit in reply filed on 26<sup>th</sup> August, 2015 and Counsel for the Respondent also relied on the affidavit in opposition filed on 20<sup>th</sup> August 2015. The end result was that this Appeal was found to be furious and vexatious and it was dismissed with costs and leave to Appeal granted. It was also noted by the Lower Court that this Appeal was found to be furious and vexatious as it came to Lower Court after two (2) years had elapsed. This is not the Appeal before this Court, but the Appeal is for the Judgement of 23<sup>rd</sup> August 2013, which has now be availed to this Court to consider it before going its Ruling. To that effect the Appeal is before this Court based on the wrong Ruling which was dismissed by the Lower Court and not the main Judgment being alleged is the bonus of this Appeal to this Court.

Thus the Appeal is a none starter and taking into account that it was adjourned in August 2013 the Ruling of the Lower Court of 1<sup>st</sup> September ,2015 cannot be faulted and still stands as it has not been Appealed against.

Delivered in chambers this .....day of ..... 2020.



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**E. M. SIKAZWE**  
**JUDGE**