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

2024/HP/0030

BETWEEN:

CHEN CAIPING **PLAINTIFF**

AND

SOLOMON CHEMICALS ENTERPRISES LIMITED **1ST DEFENDANT**

SOLOMON NG'AMBI **2ND DEFENDANT**

Before: Honourable Lady Justice C. Chinyanwa Zulu in Chambers on 27th February 2024

For the Plaintiff:	***Mr T.S Milimo & Mr C. Menshi – A Chola Kafwabulula Legal Practitioners***
For the Defendants:	***Mr Robert Chipeta & Mr Andrew Nkunika – Nkunika & Chipeta Legal Practitioner***

RULING

Delivered *Ex-Tempore* on Application for an Order to Set Aside Default Judgment of 6th February 2024 and Stay Execution

CASES REFERRED TO:

1. **John W.K Clayton V Hybrid Poultry Farm Limited (2006) ZR 70;**
2. **Edson Chenda V Satkaam Limited (1979) ZR 119;**
3. **Stanley Mwambazi V Morester Farms Limited (1977) ZR 108;**
4. **Govindbhai Baghibhai & Vallabhai Bagabhai Patel V Monile Holding Company Limited (1993-1994) ZR 20;**

LEGISLATION AND OTHER WORK REFERRED TO:

1. **Zambian Civil Procedure, Commentary & Cases, Volume 1 Page 409.**

I have LISTENED ATTENTIVELY to the arguments and **SERIOUSLY CONSIDERED** the Affidavit evidence, List of Authorities and Skeleton

Arguments filed by the Parties. After **CAREFUL COSNIDERATION**, my decision is as follows.

2.0 THE LAW ON SETTING ASIDE OF A DEFAULT JUDGMENT

2.1 The jurisdiction to set aside a default judgment is a discretionary one. As with any discretionary power, it ought to be exercised judiciously. The following authorities are instructive on the requirements that an applicant must satisfy for such discretion to be exercised in their favour.

2.2 The following guidance was given in the case **Edson Chenda v Satkaan Limited (1979) ZR 119**: -

> **Before disposing of this matter, I would briefly refer to the merits of the application to set aside judgment and grant unconditional leave to defend. It is quite clear that it is open to the defendant in an action to apply to the High Court to set aside judgment in default of appearance and to be granted leave to defend the action. Any such application must be bona fide. If the applicant satisfied the court that there was good reason for judgment to be set aside and leave given to defend, the court will no doubt grant the application. In obtaining leave to defend the defendant need no more than establish a triable issue namely, he should satisfy the court that he has a defence on the merits.**

2.3 In the case **Stanley Mwambazi v Morester Farms Limited (1977) ZR 108** the Supreme Court guided as follows: -

> **At this stage it is the practice in dealing with bona fide interlocutory applications for courts to allow triable issues to come to trial despite the default of the parties. The situation is different from that which obtains when there has been a trial and there is default in connection with a proposed appeal because then it cannot be said that the parties have been denied the right to a trial. Where a party is in default he may be ordered to pay costs, but it is not in the interests of justice to deny him the right to have his case heard. I would emphasise that**

for this favourable treatment to be afforded to the applicant there must be no unreasonable delay, no male fides and no improper conduct of the action on the part of the applicant."

2.4 The above decision was upheld by the Supreme Court in the case **Govindbhai Baghibhai and Vallabhai Bagabhai Patel v Monile Holding Company Limited (1993-1994) ZR 20** wherein the Supreme Court went a step further and guided that it is of prime importance to consider whether there is a triable issue. The learned author of **Zambian Civil Procedure: Commentary and Cases, Volume 1 at page 409** aptly summarises the authorities in this respect as follows: -

The Court has discretion to set aside or vary a default judgment if the defendant has raised a defence on the merits, or if the applicant has given a reasonable explanation of his failure to enter an appearance and file a defence within the stipulated period. (See *Patel v Rephidim Institute Limited (2011) Vol. 1 ZR 134*) However, the proper disposal of an application to set aside judgment does not require the court conducting a mini-trial. In *Royal Brompton Hospital NHS Trust v Hammond*, it was held that when deciding whether a defence has a real prospect of success, the court should not apply the same standard as would be applicable at trial, namely, the balance of probabilities on the evidence presented. Instead, the Court should also consider the evidence that could reasonably be expected to be available at the trial.

Another seminal case on the subject under discussion is the case *Water Wells Limited v Wilson Samuel Jackson (1984) ZR 98 (SC).* This was an appeal against the refusal by the High Court to set aside judgment in default of defence. In a judgment delivered by the then Deputy Chief Justice Ngulube, it was pointed out that the Court of Appeal in England had held in *Ladup v Siu*, that, although it is usual on an application to set aside a default judgment (not only to show a defence on the merits, but also to give an explanation of the default), it is the defence on the merits which is the more important to consider. It is therefore

3.4 The Defendants must file the Defence and enter appearance within the next 14 days.

Delivered at Lusaka this 27th day of February, 2024

C. Chinyanwa Zulu
JUDGE

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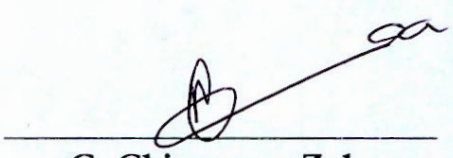

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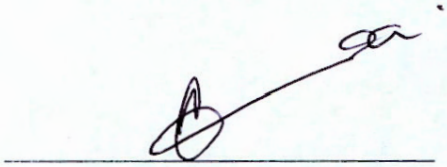

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