

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA**

APPEAL NO. 57/2013

(Civil Jurisdiction)

**IN THE MATTER OF: THE LANDLORD AND TENANT (BUSINESS
PREMISES ACT**

**IN THE MATTER OF: SECTIONS 4, 5 AND 23. LANDLORD AND
TENANT (BUSINESS PREMISES ACT)**

IN THE MATTER OF: A LEASE AGREEMENT

BETWEEN:

MUVI TELEVISION LIMITED

APPELLANT

AND

NATIONAL PENSION SCHEME AUTHORITY

1ST RESPONDENT

LIBERTY PROPERTIES LIMITED

2ND RESPONDENT

Coram: Chibomba, Phiri and Malila, JJS

on 19th August, 2015 and 29th September, 2020

For the Appellant:

Mr. M. J. Katolo of Messrs Milner Katolo and
Associates

For the 1st Respondent:

No Appearance

For the 2nd Respondent:

Mr. S. Chisenga of Messrs Corpus Legal
Practitioners

JUDGMENT

PHIRI, JS, delivered the Judgment of the Court.

Cases referred to:

1. *Zana Enterprises Limited and 20 Others v. National Pension Scheme Authority and Liberty Properties Ltd (Appeal No. 122/2013), Selected Judgment No. 34 of 2015).*

We regret the administrative oversight in delivering this judgment earlier.

The motion to which this judgment relates, was filed at the instance of the second respondent for an order for costs on the ground that the appellant had filed an application to withdraw the appeal without the consent of all the parties. The motion was supported by an affidavit sworn by Mr. Sidney Chisenga, learned counsel for the second respondent. He set out the chronology of events leading to the motion.

The short of it was that the main appeal had been scheduled to be heard on 8th October, 2014. However, on the 12th September, 2014, the appellant, through its advocates, Messrs Milner Katolo and Associates, wrote to the respondent's advocates intimating their intention to withdraw the appeal. The second respondent's advocates responded, agreeing to have the

appeal withdrawn by consent order subject to the appellant bearing all costs of proceedings.

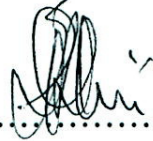
The appellants then decided to file a Notice of Withdrawal of Appeal without the consent of the parties as suggested by the second respondent's counsel. The present motion was thus filed for purposes of getting an order by the court on the issue of costs.

Coincidentally, on the same day that this matter was heard, we had earlier heard another appeal namely, **Zana Enterprises Limited and 20 Others v. National Pension Scheme Authority and Liberty Properties Ltd¹**. The issues in that cause were identical to those in this motion. They arose from similar circumstances. The lawyers for the parties were also the same.

Having had the benefit of hearing from counsel for the parties in that other similar motion we were thus satisfied that whatever decision we would come to in Appeal No. 122/2013 would govern the position of the parties in this matter.

We delivered our judgment in Appeal No. 122/2013 on the 7th October, 2015. We allowed the motion and ordered that the appellant was liable to pay costs for the discontinued appeal. We

also awarded costs in the case to the second respondent. The motion too, must succeed. The movant is entitled to the costs of the discontinued appeal and to the costs of hearing the motion.



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G. S. PHIRI
SUPREME COURT JUDGE



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M. MALILA
SUPREME COURT JUDGE