

SELECT

03/09/07

THE SUPREME COURT OF ZAMBIA
AT LUSAKA

SCZ Appeal No. 8/140/2007

(Civil Jurisdiction)

BETWEEN:

FARMCHEM SEVICES LIMITED

APPELLANT

AND

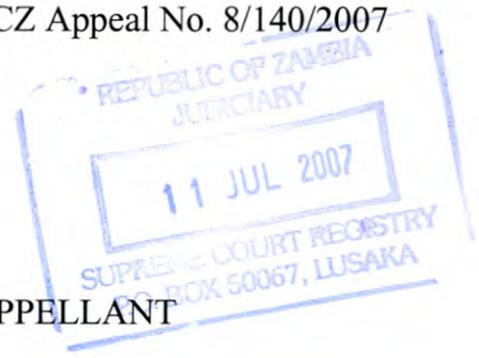
SYNGENTA AGRO AG

RESPONDENT

For the Appellant: Ms. Linda C. Kasonde of Mulenga Mundashi and Company

For the Respondent: No appearance

Coram: Kabalata AJS on the 30th May 2007, 12th June 2007 and
on.....11th July 2007



RULING

This is the appellants application for a stay of execution of saie pending appeal. The application is made pursuant to order 47 rule 1 of the Rules of the Supreme Court, 1999 edition. The application is supported by an affidavit filed herein on 30th May 2007. There is no affidavit in opposition to this application.

On 30th May 2007, I granted the appellant an exparte order staying the execution of sale pending appeal to the Supreme Court. This is so because an application to stay execution was denied by the High Court on 26th April 2007.

Briefly the facts of this case can be stated thus. They are that judgment in default of appearance was entered against the Appellant on 13th April 2007. The said default judgment was only served on the Appellant's Advocates on 24th April 2007. On 26th April 2007, the Respondent sent officers from the office of the Sheriff of Zambia to execute on the Appellants premises where they seized the Appellants' goods and chattels. On the same day of 26th April 2007, the Appellant applied before the lower court for a stay of execution and it was denied. Because of this, the appellant has come to this court asking for a stay of the sale of the execution pending appeal to this court.

Order 42 rule 5 of the High Court rules reads as follows:

5. (1) Except by express leave of the court or a judge, a writ of execution in respect of a final judgment entered in default of appearance pursuant to the provisions of Order XII shall be issued only if, and shall not be issued unless-

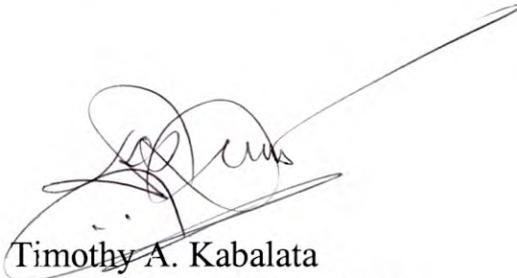
(a) a copy of the default judgment entered has been served on the defendant in accordance with the provisions of Order X; and

(b) a period of seven days has elapsed since the date of service of the default judgment on the defendant.

(2) In every case, the writ of execution shall not be issued, except by express leave of the court or a judge, until three days after the day of the date of the order or judgment, but if the court or a

judge sees it fit, it or he may order immediate execution.

It is quite clear to me from the above provisions that the execution in this case was wrongful and premature as seven days had not elapsed since the service of the default judgment on the Appellants' Advocates. That being the case, this application succeeds. I therefore order that the execution of the sale be stayed pending the appeal of the High Court ruling of 28th May 2007 for non compliance with the Rules of the High Court. There will be no order for costs.

A handwritten signature in black ink, appearing to read 'Timothy A. Kabalata', is written over a horizontal line. The signature is stylized and somewhat cursive.

Timothy A. Kabalata
Acting Supreme Court Judge