

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

SCZ/8/137/2014

BETWEEN:

TALENT MUCHIMBA

1st Appellant

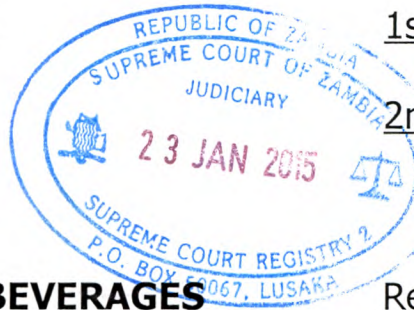
FINE NAMUKOWA

2nd Appellant

AND

**ACACIA FOOD AND BEVERAGES
LIMITED**

Respondent



Coram: Hon Lady Justice F. M. Lengalenga this 23rd day of January, 2015.

For the Appellants: In person

For the Respondent: Mr. Agrippa Tembo – Administrative Officer

R U L I N G

Legislation referred to:

- 1. THE SUPREME COURT RULES (SCR), CHAPTER 25 OF THE LAWS OF ZAMBIA – Rule 56**

The respondent herein has applied for an order for security for costs pursuant to Rule 56 of the Supreme Court Rules requiring the appellants to

deposit into court the sum of K10 000.00. Further that the costs hereof and incidental hereto be for the respondent in any event. The respondent's application is supported by an affidavit filed into court on 30th June, 2014 and which affidavit was sworn by one Idris Essa, Director of the respondent company.

The gist of the respondent's application is that the appellants, former employees of the respondent commenced an action in the Industrial Relations Court against them which was dismissed on 22nd May, 2014 and that even though they seek to appeal against that court's decision, the appeal has no merit. It is on that basis that they seek the order.

The appellants filed an affidavit in opposition to the respondent's affidavit in support of summons. According to the 1st appellant's deposition in paragraph 6 thereof, the court's dismissal of the complaint without ordering costs indicated that no costs should be paid.

After I clarified that the security for costs relate to the appeal, the appellants still opposed the application.

This application was filed pursuant to Rule 56 of the Supreme Court Rules (SCR) Chapter 25 of the Laws of Zambia which states:

"The Court or a Judge thereof may at any time, in any case

where it or he thinks fit, upon application or of its or his own motion, order security or further security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal, and may make compliance with any such order or a condition precedent to the entertainment of any appeal."

The respondent requested that security for costs be made before the appeal can be heard. From the brief affidavit evidence from both parties, the appellants were casual workers who were employed on daily and weekly basis. It was not disputed that they were not given contracts as they were not permanent workers.

Although the deponents of the respondent's affidavits were not articulate in their application, from the evidence of the appellants' circumstances I am of the considered view that they may not be able to pay costs since they lost their jobs with the respondent. The question that arises is whether it would be fair and just to order that security for costs be paid into Court before the appeal is heard in the circumstances.

Having considered the aforestated circumstances, I am of the view that there is nothing unfair or unjust in the appellants paying security for costs. Whilst the appellants may consider the amount of K10 000.00 requested to be too high, they have to understand that litigation is not cheap.

It must be emphasized that the application for security for costs is not a ploy by the respondents to prevent the appellants from appealing. The intention is to provide security for the respondent's costs in the event that the appeal is unsuccessful.

In the circumstances, I consider the sum of K10 000.00 to be reasonable as security for costs. I, therefore, accordingly order that the appeal be stayed pending payment of the sum of K10 000.00 into Court by the appellants as security for costs relating to the appeal.

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F. M. Lengalenga
ACTING SUPREME COURT JUDGE