

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

2007/HP/1001



BETWEEN:

UNITED QUARRIES LIMITED

PLAINTIFF

AND

CHONGWE DISTRICT COUNCIL

DEFENDANT

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN
CHAMBERS ON THE 23RD DAY OF FEBRUARY, 2018**

For the Applicant: Mr. K. Shepande, Messrs Shepande & Company

For the Respondent: N/A

RULING

Case referred to:

1. *Sonny Paul Mulenga and Others v Investrust Merchant Bank Limited (1999) ZR 101*

Legislation referred to:

1. *High Court Rules, Chapter 27 of the Laws of Zambia.*
2. *Rules of the Supreme Court, 1999 Edition*

This is the Ruling on the Defendant's application for a Stay of Execution of the Court's Judgment delivered on 1st February, 2017, in favour of the Plaintiff. The Application was filed on 15th

September, 2017, pursuant to **Order 45 Rule 11 of the Rules of the Supreme Court.**

The Application is supported by an Affidavit sworn by **YU WANG PING**, a Director of the Defendant Company, in which he averred that on 3rd March, 2017, his Advocates filed an Ex-parte Summons to Stay Execution of the Judgement Pending Appeal together with an Affidavit in Support as well as the NOTICE and GROUNDS of APPEAL, exhibited and marked "**YWP1**". The Deponent contended that the file was wrongly allocated to Hon. Justice Chashi, who instructed his Marshal to call the Defendant's Advocates, who were not called and the Honourable Judge then dismissed the application stating that it was wrongly before him.

He added that the Defendant seek that the application be heard by the appropriate Court as the Defendant was desirous to pursue the application for stay of Execution of Judgement dated 1st February, 2017 because if execution was done the Appeal would be rendered nugatory and an academic exercise.

The Plaintiff did not file an Affidavit in Opposition or attending the hearing. The Affidavit in Opposition to the Defendant's application for an Adjournment shows that the Plaintiff is aware of the proceedings and opted to stay away and thus I allowed the Defendant to proceed. Counsel for the Defendant submitted that the Notice of Appeal was filed on 10th March, 2017 and the Court of Appeal heard the matter on 6th September, 2017 and therefore the

Stay of Execution should be granted pending the delivery of the Court of Appeal Judgment.

I have considered the Defendant's application, the Affidavit in Support and Counsel's submissions.

Order 45 Rule 11 of the Rules of the Supreme Court pursuant to which this application is brought states:

"Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just".

The ground upon which the Defendant seeks to Stay Execution as revealed by the Affidavit in Support is that it has appealed to the Court of Appeal and is awaiting Judgment and that not granting the Stay would render the appeal nugatory and academic exercise.

In view of the ground advanced, I have also taken into account the provisions of **Order XXXV1 Rule 10** of the High Court Rules which state:

"Except as provided for under rule 9, the Court or Judge may, on sufficient grounds, order stay of execution of judgment."

Further **Order 59/13** of the **Rules of the Supreme Court**, also provides some guidance in the matter of granting Stay of execution and states inter alia, that:

"Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not "make a practice of depriving a successful litigant of the fruits of his litigation.....But the Court is likely to grant a stay where the appeal would otherwise be rendered nugatory, or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of the Court and the Court will grant it where the special circumstances of the case so require..."

Based on the forgoing authorities, it is my considered view that Defendant has not advanced any other reason apart from having filed an Appeal as the basis of the application. There is no indication of prospects of the Appeal succeeding or that the Defendant will suffer irreparable damage if the Stay is not granted. I am further fortified by the Supreme Court holding in the case of **Sonny Paul Mulenga and Others v Investrust Merchant Bank Limited**, where it was stated as follows:

"In terms of our rules of court, an appeal does not automatically operate as a stay of execution and it is utterly pointless to ask for a stay solely because an

appeal has been entered. More is required to be advanced to persuade the court below or this court that it is desirable, necessary and just to stay a judgment pending appeal. The successful party should be denied immediate enjoyment of a judgment only on good and sufficient grounds.

Thus on the totality of the evidence before me and the cited authorities, I do not find that the Defendant has provided sufficient grounds for this Court to grant the application to Stay Execution of the Judgment and it is consequently dismissed, with each Party to bear its own with costs.

Leave to appeal is granted.

Delivered at Lusaka the 23rd day of February, 2018



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S.M WANJELANI
HIGH COURT JUDGE