

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2017/HP/A41

(Civil Jurisdiction)

BETWEEN:

ZSIC LIFE LIMITED



APPELLANT

AND

WALUBITA NAWA

RESPONDENT

CORAM: HONOURABLE JUSTICE MR. MWILA CHITABO, SC

For the Appellant: Mr. M. Nsama (In House Counsel)

For the Respondent: N/A

R U L I N G

Legislation referred to:

- 1. Subordinate Court Act Chapter 28 of the Laws of Zambia*
- 2. High Court Act Chapter 27 of the Laws of Zambia*

The proper precedence to have been adopted by the Appellant was to (1) apply for leave to appeal against the Ruling of the Learned trial Magistrate dated 15th December, 2018 denying leave to appeal out of time; (2) Apply for stay of execution of the said Ruling pending appeal to the High Court.

The Court disapproves of failure to have made attempts before the lower Court before launching the appeal in the High Court.

There being no such applications in the Court below, ordinarily the Appellants application before the Court would be incompetent.

I will however invoke the provisions of Order 44 Rule 4 of the Subordinate Court Act, Chapter 27 of the Laws of Zambia. It provides as follows:

“The entering of an appeal shall not operate as a stay of execution, or of proceedings under the Judgment or decisions appealed from, except so far as the Court below or appellate Court may order, and no intermediate Act or proceeding shall be invalidated except so far as the Court below may direct”

Similar provisions appear in the High Court Act Chapter 27 of the Laws of Zambia. Order 47 rule 5 provides as follows:-

“An appeal shall not operate as a stay of execution or of proceedings under the Judgment or decision appealed from except so far as the Court below or the Court may order, and no intermediate Act or proceeding shall be invalidated except so far as the Court below may direct”

I will rely on the said provisos and also invoke the provisions of Order 3 Rule 2 of the High Court Act which provides as follows:-

“Subject to any particular rules, the Court or a Judge may in all causes or matters make any interlocutory order which it or he considers necessary for doing justice whether such order has been expressly asked by the Court entitled to the benefit of the order or not”

The High Court’s discretion in interlocutory applications is also provided for under section 32 of the Subordinate Court Act which provides that

“Notwithstanding anything herein before entered, the High Court may entertain any appeal from the Subordinate Court on any terms it thinks fit”


I will therefore make the following orders:-

- (1)The Ruling of the lower Court dated 15th December, 2017 is hereby stayed pending the determination of the Appeal herein which was filed into this Court on 29th December, 2018.
- (2)The Learned trial Magistrate is directed to make an order to security for costs within 30 days from the date hereof.
- (3)The Clerk of Court to ensure that the record of appeal is prepared within 30 days from the date of the order for security of costs to be made by the learned trial Magistrate.
- (4)That the Appellant is to forthwith comply with the Order for security for costs pursuant to Order 47 (1) of the High Court

Rules as to be directed by the Court below before the Clerk of Court embarks on preparation of the case record.

(5)I will make no order as to costs.

Delivered under my hand and seal this 15th days of March, 2018



Mwila Chitabo, SC
Judge