

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

2019/HP/A044

BETWEEN

**In the matter of: The Banking and Financial Services
Act No. 7 of 2017**

**In the matter of: The Corporate insolvency Act No. 9 of
2017.**

**In the matter of: Section 61 of the Corporate Insolvency
Act No. 9 of 2017.**

**In the Matter of: An Application for stay of the
execution of the Liquidation process
by the liquidation process by the
liquidation of Zampost Micro Finance
Limited (In Liquidation)**

BETWEEN:

**KAPOLWA JAMES KUNDA
EDWIN NKONDE
MASOZI NDHLOVU
MATTHEWS NDHLOVU
FLORENCE ZYAMBO
EDDIE MWILA**

**1ST APPELLANT
2ND APPELLANT
3RD APPELLANT
4TH APPELLANT
5TH APPELLANT
6TH APPELLANT**



AND

BANK OF ZAMBIA

RESPONDENT

**BEFORE THE HON. MR. JUSTICE W.G.K MUMA IN CHAMBERS ON THE 13th
DAY OF MARCH , 2020.**

For the Appellants: Mr. Mumba , Messrs. Ferd Jere and Company

For the Respondent: Mr. C. K Sikazwe, Bank of Zambia

RULING

Cases Referred To:

1. **Ndola City Council v Charles Mwansa (1994) ZR 78**
2. **Stephen Mukena Kongwa and Bank Of Zambia Appeal No. 52/2016**

Legislation Referred To:

1. **Section 127 (2) and Section 130 (e) of the Banking and Financial Services Act No. 7/2017**
2. **Section 61 of the Corporate Insolvency Act No. 9 of 2017,**
3. **Order 47 Rule 5 of the High Court Rules**
4. **Section 132 of the Act No. 7 of 2017**

The Appellants herein being dissatisfied with the decision of the Bank of Zambia to place **ZAMPOST MICRO-FINANCE LIMITED** on compulsory liquidation appealed to this Court against the said decision, based on the following grounds.

1. That the Appellants investment in the sum of **K 4,531,601.96** had already matured and therefore accrued to them and cannot be subjected to the liquidation process.
2. That the Bank of Zambia has not complied with **Section 127 (2) and Section 130 (e) of the Banking and Financial Services Act No. 7/2017**

The Appellants caused to be filed in Court the summons for stay of execution of liquidation process pursuant to **Section 61 of the**

Corporate Insolvency Act No. 9 of 2017, the same was accompanied with an affidavit in support thereof and on 21st November, 2019 granted an ex-parte order staying the liquidation process commenced via the decision of the Bank of Zambia, pending the hearing of the appeal.

Counsel for the Appellants relied on the affidavit in support and the skeleton arguments.

The gist of the application is that the Appellants herein are all pensioners who invested their pension monies into Zampost Micro-finance Limited in Liquidation.

That the total sum due to the Appellants is **K 4,531,601.86**.

That their investment matured on diverse dates prior to the placing of the company in liquidation.

That the liquidator has indicated that he would proceed with liquidation before attending to Appellants needs, thereby prioritizing the interests of the Central Bank.

That there is a great risk that Appellant's pension monies which is their last pay in life may not all be released as the liquidator will first pay the expense of the Bank and this will prejudice the appellants. That the appeal will serve only an academic purpose of the liquidator was left to proceed.

To buttress the application Counsel relied on **Order 47 Rule 5 of the High Court Rules** which enacts;

“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 may order,

and no intermediate act or proceeding shall be invalidated except so far as the Court below may direct.”

Counsel argued the position by citing a plethora of authorities, among the same is

NDOLA CITY COUNCIL V CHARLES MWANSA (1994) ZR 78

Wherein the Supreme Court held;

“An appeal does not operate as stay of execution, it must be applied for and the decision is discretionary.”

Counsel for the Respondent relied on the combined Affidavit filed on 26th November, 2019, sworn by one Kapaso Mumbi. With regards to this application the Respondent contended in their affidavit that the application for stay is misconceived as the Banking and Financial Services Act specifically excludes the application of **Corporate Insolvency Act No. 9 of 2017**.

That the Banking and Financial Services Act does not give power to the Court to give any interim measures to a party who appeals against the decision of the Bank of Zambia.

That the stay obtained is inimical to the liquidation process and the depositors and other creditors of Zampost Micro-finance Limited as the institution currently remains without a Board or Liquidator to oversee its activities.

Counsel cited the case of;

STEPHEN MUKENA KONGWA AND BANK OF ZAMBIA APPEAL No. 52/2016

This matter appears to be in pari-materia with the case at hand.

I have applied my mind to the arguments by both Counsel.

The common ground herein is that Zampost Micro-finance Limited was placed under compulsory liquidation by the Bank of Zambia which has the legitimate mandate under the **Banking and Financial Services Act No. 7 of 2017**.

There are numerous steps that are supposed to be observed by an appointed liquidator in an effort to consummate the liquidation process.

Counsel for the Respondent ably highlighted the process and procedure as contained in Part X of the Banking and Financial Services Act, which deals with Insolvency Dissolution and Liquidation of Financial Service providers.

Section 132 of the Act No. 7 of 2017 clearly sets out the priority as follows; it enacts

“Despite the Corporate Insolvency Act, 2017, or any other written law, in any compulsory winding up for dissolution of a financial service provider the following shall be paid in priority to all other debts in the order set;

- (a) expenses incurred in the process of compulsory winding up or dissolution;**
- (b) depositors;**
- (c) taxes and rates due;**
- (d) wages and salaries of employees of financial services provider for a period of three months.**
- (e) charges and assessments due to the Bank or other claims against;**

(f) **the financial service provider in such of priority as the Court may determine on application by the bank.”**

It is my considered position that the stay of the liquidation process has placed all other interests including that of the Appellants in serious jeopardy because the entire process of liquidation is on halt.

I must hasten to indicate here that even if the Appellants herein are desirous of what I deem as specific performance relating to their investment in the company under liquidation, this Court shall invariably evoke the same chorus of the law under Part X of the Act.

The stay of the liquidation process herein is therefore premature and for all intents and purposes inimical and prejudicial in its entirety.

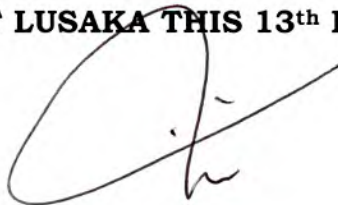
Counsel for the Appellants did not fully apply his mind to the legal ramification of making this application under this branch of law.

It is upon this basis that I therefore vacate the order of stay.

I shall not traverse other arguments canvassed by Counsel as the same shall have no effect on this, my finding.

I make no order as to costs.

DELIVERED AT LUSAKA THIS 13th DAY OF MARCH, 2020.



**W.G.K MUMA
HIGH COURT JUDGE**