

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

2017/HP/0712



B E T W E E N :

MAUREEN CHIRWA
DUNCAN CHIRWA

**1ST PLAINTIFF
2ND PLAINTIFF**

AND

ELIAS TEMBO
THE ATTORNEY GENERAL
LUSAKA CITY COUNCIL
PEGGY KANDESHA

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
3RD PARTY**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
29th day of November, 2017**

For the Plaintiffs : *Mr. K. Kaunda, Ellis & Company*
For the 1st Defendant : *Mr. R. Mainza, Mainza & Company*

R U L I N G

Case Authorities Referred To:

1. *Nyampala Safiris and 4 Others v Wildlife Authority and 6 Others (2004)*
Z.R. 49 (S.C)
2. *Sonny Paul Mulenga, Vismar Mulenga, Chainama Hotels Limited and
Elephants Head Hotel v Investment Merchant Bank Limited (1999) Z.R 101*
(S.C)
3. *Shelter for All, Evans Mukula Chomba v Kingfred Ramsey and Precious
Ramsey SCZ/8/192/2009*

Legislation Referred To:

1. *High Court Act, Chapter 27*

This is the 1st Defendant's application to stay execution of judgment pending determination of an appeal by the Court of Appeal. It is made pursuant to Order 3 Rule 2 of the High Court Rules and is supported by an Affidavit.

The background facts are that sometime in August, 2005, the Plaintiffs sued the 1st Defendant for encroachment, trespass and damages on Stand No. 24594, Lusaka. Judgment was delivered by this Court on 16th November, 2017, wherein the Plaintiffs succeeded against the 1st Defendant.

At the hearing, Learned Counsel for the 1st Defendant relied on the Affidavit filed in Support. The gist of which is that the 1st Defendant being dissatisfied with this Court's Judgment has lodged an appeal to the Court of Appeal. The 1st Defendant believes that his appeal is meritorious and has a high prospects of succeeding.

Learned Counsel for the Plaintiffs filed an Affidavit in Opposition, which he wholly relied on. The gamut of his Affidavit is that the appeal has no prospects of succeeding. He contends that

