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**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT NDOLA**

**BETWEEN:**

**EMMANUEL MULENGA**

**AND**

**VARLOSTYLE (Z) LTD**

**IRD/ND/102/2017**

**COMPLAINANT**

**RESPONDENT**

**BEFORE: Hon. Mr. Justice E.L. Musona**

**For the Complainant: Ms N. Mulenga of Messrs Isaac and Partners  
as agents for Messrs Nganga Yelenga and  
Associates**

**For the Respondents: Ms R.M. Mwamba of Messrs Dougous and  
Partners**

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**R U L I N G**

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**Date: 14<sup>th</sup> December, 2017**

**Cases referred to:**

- 1. Maureen Simpamba v Abraham Kamalamba and Chibuye Malipenga (2013) 2 ZR 279**
- 2. Standard Chartered Bank Plc v Chansa Kabwe Andre Mwalimu (2013) 1 ZR 13**
- 3. Michael Sata v Chanda Chimba and others 2010/HP/1282**

Other works referred to:

1. Order 59/13/2 Rules of the Supreme Court, 1999 edition
2. Order 18 R.8(12) of the Rules of the Supreme Court 1999 edition

This is a Ruling following an inter parte hearing for an order to stay execution of consent order dated 25<sup>th</sup> September, 2017.

This application is not without history. The history of this application is that the Complainant filed a Notice of Complaint on 20<sup>th</sup> September, 2017 claiming the following:

- i. Redundancy pay
- ii. Notice pay
- iii. Five months' salary arrears
- iv. Leave pay
- v. Costs
- vi. Interest.

On the same date the Complainant filed ex parte summons for an order of attachment of property namely, a motor vehicle Registration Number FR 70 NJ GP. That motor vehicle was attached on the 21<sup>st</sup> day of September, 2017 and matter was scheduled for inter parte hearing on 26<sup>th</sup> of September, 2017 at 09.00 hrs.

On 25<sup>th</sup> September, 2017, which was on the eve of the day which was scheduled for inter parte hearing, the parties executed a consent order in the following terms:

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“By consent of the parties it is hereby agreed and ordered that Judgment BE and is HEREBY ENTERED K99,490 and that the same be settled in instalments as follows:

K9,490 to be paid on signing of consent order.

K20,000.00 to be paid on 10<sup>th</sup> October, 2017.

Balance to be paid in instalments of K10,000.00 from 10<sup>th</sup> December, 2017 until full settlement of K99,490.

IT IS FUTHER ORDERED and AGREED that motor vehicle registration No. FR 70 NY GP BE RELEASED FORTHWITH.

Dated the..... day of..... 2017

.....  
HONOURABLE JUSTICE MUSONA

Consented to this ..... day of ..... 2017

Emmanuel Mulenga  
House No. 1 of Twateka Street,  
Chambishi

THE COMPLAINANT

Consented to this ..... day of ..... 2017

Varlosity (Z) Ltd  
Plot 7330 Mukatasha Road,  
Lusaka

THE RESPONDENT”

Interestingly, soon after obtaining the consent order, the Respondents drove the motor vehicle out of Jurisdiction to South Africa.

After taking the motor vehicle to South Africa, the Respondents have come back and commenced another action in the General List Division of the High Court at Lusaka and now want the consent order stayed pending determination of the matter in the General List Division of Lusaka High Court.

I am baffled by this application. I say so because Am alive to the law. I have also looked at a plethora of authorities and Am well guided.

In the case of **Maureen Simpamba v Abraham Kamalamba and Chibuye Malipenga (1)**, the court held that:

**“where parties withdraw themselves from the jurisdiction and do not seek to obtain Judgment according to the law, but substitute for it a Judgment by their own consent, the court has no power to alter that consent.”**

When a consent order is entered into it reflects the intention of the parties. It also reflects the agreed terms of the parties and it is only prudent that parties thereto perform their obligations in the consent order.

In the case of **Standard Chartered Bank Plc v Chansa Kabwe Andre Mwalimu (2)**, the court held that two (2) factors must be satisfied in order for the court to grant a stay of execution, these factors are (1) have the Applicants for the stay made a strong showing that they are likely to succeed on merit, and, (2) whether the issuance of the stay will substantially injure the other parties interested in the proceedings.

I have seen no merit in this application save for the desire by the Applicants herein to buffoon the law.

Paragraph 9 of the Applicant's Affidavit in support of ex parte summons for an order to stay execution of the consent order shows that:

**"The said consent order was agreed to under duress..."**

I do not agree with this assertion because the Respondents have not demonstrated any duress or the extent of any such duress.

Order 18 Rule 8 (12) of the Rules of the Supreme Court 1999 edition shows that:

**"Duress - A claim or defence raising duress must be specifically and carefully pleaded. It should contain full particulars of the facts and circumstances relied upon as to the where, when by whom and over whom and in what way such duress was exercised."**

The Applicants have not proved their claim of duress in terms of order 18 R8 (12) RSC 1999 edition aforesaid and I, therefore, dismiss it.

The affidavit in support of ex parte summons for an order of stay of execution of consent order shows that:

Paragraph 6: "That the Respondent was of the view that the said Scania bus was the property of the Respondent ... when in fact not."

I do not agree with this assertion because the Respondent should have known which property belongs to them before executing the consent order.

The circumstances of this consent order did not show any dispute as to the ownership of that motor vehicle. It is inconceivable that a lay person acting with a fellow lay person as was in the case in casu can be duped into entering a consent order regarding a motor vehicle he truly knows is not his. The procedure is clear. What should have happened in this case was to commence inter pleader proceedings if the ownership of that motor vehicle is truly an issue.

What I have seen is the art by Respondent of duping the Complainant in signing the consent order in order to secure the release of the motor vehicle, which they quickly drove out of jurisdiction to South Africa.

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It is not proper that the Respondent should commence another action in the same High Court and pray that the earlier proceedings in another division of the same High Court be stayed pending the outcome of that fresh matter. I have seen no bearing of that fresh matter on the case in casu. What I have seen is an art for procrastination. Courts shall not allow acts of procrastination.

A consent order as in the manner of the case in casu cannot be challenged by either party to it.

I have looked at order 59/13/2, of the Rules of the Supreme Court, 1999 edition which states that:

**“Neither the court below nor the Supreme Court will grant stay unless satisfied that there are good reasons for doing so.”**

I have seen no good reasons for doing so.

Men of full age and competent understanding shall be bound by the consent orders which they execute.

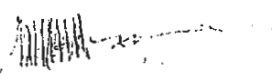
The application lacks merit, it is vexatious and frivolous. I accordingly dismiss it on that account. I order costs of this application to the Complainant.

Leave to appeal within 30 days from today is granted subject to first paying the cost of this application to the Complainant and also

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security for costs on appeal in the sum of fifteen thousand Kwacha (15,000.00) being deposited into court.

Delivered and signed at Ndola this the 14<sup>th</sup> December, 2017.

  
Hon. Mr. Justice E.L. Musona

**HIGH COURT JUDGE**

