

IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

CAZ/08/167/2023

BETWEEN:

STONE COAT SURFACING ZAMBIA LIMITED

Appellant

AND

JMZ PROPERTIES LIMITED

Respondent

Coram: Hon. Lady Justice N.A Sharpe-Phiri on the 26th June 2023

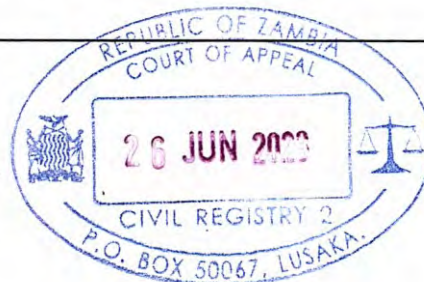
For the Appellant: Mrs S. Phiri-Hinji of Messrs Chifumu Banda and Associates

For the Respondent: Mr N. Ng'andu of Messrs Shamwana and Company

R U L I N G

Legislation referred to:

1. *Court of Appeal Rules, Act No. 65 of 2016*



Cases referred to:

1. *Aristogerasimos Vangelatos and Vasiliki Vangelatos V Metro Investments Limited and King Quality Meat Products Limited Mulenga and Others v Investrust Merchant Bank Limited, SCZ, Selected Judgment No. 35 of 2016*

This is a Ruling on the application to stay execution of judgment on assessment pending appeal. The judgment on Assessment was delivered by the learned District Registrar, I. T. Wishimanga, on the 23 March 2023.

Following delivery of the said judgment on assessment, the Appellant filed a notice of appeal and memorandum of appeal against the said judgment on 30 March 2023. The Appellant also filed an application to stay execution of judgment before the High Court, which application was supported by an affidavit dated 3 April 2023. The lower Court declined the application to stay execution of judgment on 1 June 2023 thereby prompting the Appellant to renew this application me on 20 June 2023.

Before I delve further into the substance of the application before me, it is important to assess the propriety of the application in terms of my jurisdiction. **Order X Rule 2(1) of the Court of Appeal Rules** provides as follows:

“An application to a single judge shall be made by notice of motion or summons within fourteen days from the date of the decision complained of.”

It is clear from the foregoing provision that it is a mandatory requirement that an application of this nature ought to have been brought before a single Judge of this Court no later than 14 days from date of the decision complained of. The decision of the District Registrar declining the application for stay of execution of the judgment on assessment having been rendered on 1 June 2023, the Appellant ought to have brought this application on or before the 15 June 2023. However, as aforementioned, the application was brought on 20 June 2023.

The implication of bringing an application outside the stipulated timeframe without leave of Court is that the Court is rendered toothless for want of jurisdiction. In the case of **Aristogerasimos Vangelatos and Vasiliki Vangelatos V Metro Investments Limited and King Quality Meat Products Limited**, the Supreme Court reaffirmed its position on the question of jurisdiction in the following terms:

“...where a Court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. ..It can be discerned from the foregoing position of the law, that the absence of jurisdiction nullifies whatever decision follows from such proceedings.”

Given the foregoing, it is clear that I have no jurisdiction to determine an application that has been brought before me outside the time allowable by the Rules of this Court. The application before me is dismissed accordingly. Costs for the Respondent, to be agreed and in default to be taxed.

Dated at Lusaka this 26th June 2023


N.A. Sharpe-Phiri
COURT OF APPEAL JUDGE