

IN THE COURT OF APPEAL OF ZAMBIA

APP NO. 52/2022

HOLDEN AT LUSAKA

(Civil Jurisdiction)

**BETWEEN:**

**WILLIAM SAUNDERS  
PAN AFRICAN BUILDING SOCIETY**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT**

**AND**

**PEMBA LAPIDARIES LIMITED  
LAPEMBA TRADING LIMITED**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**CORAM: KONDOLO SC, NGULUBE AND BANDA-BOBO, JJA.  
On 9<sup>th</sup> March, 2023 and 20<sup>th</sup> October, 2023**

**For the Applicants:** ✓ Mr. Y. Yosa and Mr. M. Ndalameta – Messrs. Musa  
Dudhia & Associates

**For the Respondents:** Mr. M. Mando and Ms. R. Phiri – Messrs. Mando  
& Pasi Advocates

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## **R U L I N G**

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**NGULUBE JA**, delivered the Ruling of the Court.

**Cases referred to:**

1. *Bidvest Foods Zambia Limited vs CAA Imports and Exports Limited – SCZ Appeal No. 56 of 2017*
2. *Madison Investment, Property and Advisory Company Limited vs Peter Kanyinji – Selected Judgment No. 48 of 2018*

3. *Richard Kalinda & 4 Others (all sued as Administrator or beneficiary of Estates of various Individuals) vs Makuku Farms Limited SP/2/2021*
4. *Sata vs Chanda Chimba & Others (2011) Vol. 1 Z.R. 519*
5. *Mulenga & Others vs Investrust Merchant Bank Limited (1999) Z.R. 101*
6. *Chang-Tave vs Chang-Tave (2003) SLR 74*
7. *Linotype-Hell Finance Limited vs Baker [1992] 4 All ER 887*
8. *Orion Property Trust Limited vs Du Can Court Limited [1962] 3 All ER 466*
9. *Wilson vs Church [1878] Ch. D 454*
10. *Watson Nkandu Bowa (Suing as Administrator of the estate of the late Ruth Bowa) vs Fred Mubiana (2012) Vo. 3 Z.R. 165 (S.C.)*
11. *Natasha Nawa vs The People – SCZ/9/2/2019*
12. *The Attorney General & Commissioner of Lands v Metro Investments Limited & Others- App No. SCZ/8.01/2021*
13. *Richard M. Chizyuka & Another vs Credit Africa Bank Limited – SCZ Appeal No. 8/113/99*
14. *Anuj Kumar Rathi Krishna vs The People (2011) Vol. 3 Z.R. 1*
15. *Abdul Ebrahim Dudhia & Gulam Farid Patel (Trading as Musa Dudhia & Co., a Law Firm) vs Sanmukh Ramanlal Patel – SCZ/8/15/2022*
16. *Stanbic Bank vs Micoquip Zambia Limited – Selected Judgment No. 22 of 2018*
17. *Glocom Marketing Limited vs Contract Haulage Limited (2010) Z.R. 482*
18. *NFC Africa Mining Plc vs Techro Zambia Limited SCZ Judgment No. 22 of 2009*
19. *Twampane Mining Cooperative Society Limited vs E & M Storti Mining Limited – SCZ Judgment No. 20 of 2011*
20. *First Merchant Bank Zambia Limited & Another vs Al Shams Building Materials Limited & Another [2016] ZMSC 247*
21. *Burton Construction Limited vs Zaminco Limited [1983] Z.R. 20*
22. *Standard Chartered Bank Zambia Plc vs John MC Banda – Appeal No. 94 of 2015*
23. *Sun Country Limited vs Kearney & Another [2017] ZMSC 230*
24. *Kekelwa Samuel Kongwa vs Meamui Georgina Kongwa – SCZ/8/05/2019*

**Legislation referred to:**

1. *The Court of Appeal Rules, Statutory Instrument No. 65 of 2016*
2. *The Rules of the Supreme Court of England, 1999 Edition (White Book)*
3. *The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia.*

**Other works referred to:**

1. *Black's Law Dictionary at page 1400*

**1.0 INTRODUCTION**

1.1 This is a composite ruling on the following applications: 1<sup>st</sup> applicant's application for leave to appeal to the Supreme Court; 1<sup>st</sup> applicant's application for stay of execution; and the respondents' notice of motion to raise preliminary issues.

**2.0 BACKGROUND**

2.1 The applications were heard *inter parte* and the parties filed respective affidavits in support of the respective applications. The application for leave to appeal to the Supreme Court is accompanied by an affidavit in support deposed to by William Paul Saunders, the 1<sup>st</sup> applicant. He deposed that by a judgment dated 28<sup>th</sup> October, 2022, this Court ordered that the corporate veil of the Industrial Credit Company (1<sup>st</sup> respondent in the appeal) be lifted and that he should be

found personally liable for its liability. He deposed that he now wishes to appeal to the Supreme Court against this Court's judgment hence the application.

- 2.2 He deposed further that the issues he wishes to raise on appeal are of particular importance so that the Supreme Court can determine the following: whether Directors can be held personally liable for activities done in the ordinary course of business without any proof of fraud or concealment or attempt to evade liability; and where the burden of proof lies in an application seeking to pierce the corporate veil.
- 2.3 It was deposed that it is necessary for the Court to grant the stay of execution pending determination of the application for leave and pending the appeal in order to maintain the status quo and not render the appeal an academic exercise.
- 2.4 Counsel for the 1<sup>st</sup> applicant also filed Skeleton Arguments in support of the application for stay of execution of judgment on 1<sup>st</sup> November 2022. He submitted that the 1<sup>st</sup> applicant has satisfied the conditions to consider in granting leave to appeal to the Supreme Court as stipulated in **Section 13(3) of the Court of Appeal Act No. 7 of 2016**, which are that the intended appeal must raise a point of law of public

importance and should have reasonable prospects of success or that there must also be compelling reasons for the appeal to be heard.

2.5 We were referred to the case of ***Bidvest Foods Zambia Limited v CAA Import and Export Limited***<sup>1</sup> to buttress the argument that the 1<sup>st</sup> applicant's intended appeal has raised a point of law of public importance because it is not merely private in nature but aimed at having the Supreme Court rule on the cardinal principals of law pertaining to piercing the corporate veil. That this Court's decision was in conflict with the Supreme Court's decision in ***Madison Investment, Property and Advisory Company Limited v Peter Kanyinji***.<sup>2</sup>

2.6 We were further referred to the case of ***Richard Kalinda and 4 Others (all sued either as Administrator or Beneficiary of Estates of various individuals) v Makuku Farms Limited***<sup>3</sup> where we granted leave to appeal to the Supreme Court because a judgment of this Court and that of Supreme Court were in conflict. Counsel argued that we should grant leave to appeal on this basis.

2.7 It was submitted that an order of stay of execution of this Court's judgment is necessary because the 1<sup>st</sup> applicant has shown that the appeal has prospects of success, and that he has good and compelling reasons and sufficient grounds that warrant the grant of a stay. We were referred to a plethora of authorities which discuss the principles to consider in granting a stay of execution such as ***Sata vs Chanda Chimba & Others***,<sup>4</sup> ***Mulenga & Others vs Investrust Merchant Bank Limited***,<sup>5</sup> ***Chang-Tave vs Chang-Tave***,<sup>6</sup> ***Linotype-Hell Finance Limited vs Baker***,<sup>7</sup> ***Orion Property Trust Limited vs Du Cane Court Limited***,<sup>8</sup> ***Wilson v Church***<sup>9</sup> and ***Watson Nkandu Bowa (Suing as Administrator of the estate of the late Ruth Bowa) vs Fred Mubiana***.<sup>10</sup>

### **3.0 RESPONDENTS' ARGUMENTS**

3.1 The respondents filed an affidavit in opposition deposed by Musonda Mulenga, the respondents' Administration Manager. He deposed that at the time the application to pierce the corporate veil and join the 1<sup>st</sup> applicant to the proceedings was made, the applicants raised preliminary

issues and a ruling was delivered by the Deputy Registrar on the preliminary issues and the substantive application. That the applicants appealed to the judge in chambers where the learned judge also ruled on the preliminary issues and the substantive issues relating to piercing of the corporate veil.

3.2 It was deposed that there is sufficient evidence to show that the 1<sup>st</sup> applicant has interest in all the companies that were involved in the wrongful sale and purchase of the assets in issue but no purchase price was received. That further, there is no evidence to support the assertion that the 1<sup>st</sup> applicant was a non-executive Director and that the manner in which he disposed of the assets of Industrial Credit Company was aimed at circumventing company obligations. That the 1<sup>st</sup> applicant was the recipient of the proceeds of the said sale.

3.3 It was deposed further that the intended appeal has no prospects of success because it reveals issues that have already been justly and sufficiently dealt with by this Court in its judgment. That if the stay is granted, the respondents will suffer injustice as they will fail to access what rightfully belongs to them.



- 3.4 Counsel for the respondents filed Skeleton Arguments in support of the affidavit in opposition. In relying on the cases of ***Bidvest Food Zambia Limited (supra)*** and ***Natasha Nawa v The People***<sup>11</sup> it was submitted that the applicants' proposed appeal has not met the conditions stipulated in Section 13 of the Court of Appeal Act. That the proposed grounds of appeal are a mixture of points of law and fact contrary to the said section.
- 3.5 We were referred to the ***Black's Law Dictionary at page 1400*** where a point of law is defined as a discrete legal position at issue in a case. It was submitted that to constitute a point of law, there must be an issue as to what the law on a specific issue is and it should be extraordinary. That the applicants' intended appeal has not called the Supreme Court to pronounce itself on any specific point of law.
- 3.6 It was submitted further that the intended appeal does not reveal points of law of public importance or which are of widespread concern as enunciated in the ***Bidvest*** case cited above. Counsel made reference to the case of ***Attorney-***



***General & Commissioner of Lands v Metro Investments Limited & Others***<sup>12</sup> where the Supreme Court granted leave to appeal because the issues raised in the intended appeal were of public importance.

3.7 Counsel drew our attention to the eight proposed grounds of appeal and argued that they have no reasonable prospects of success.

3.8 With regard to the stay of execution, it was submitted that it ought not to be granted because the appeal has no prospects of success. To buttress this argument, we were referred to the cases of ***Mulenga & Others vs Investrust Merchant Bank Limited (supra)*** and ***Richard M. Chizyuka & Another vs Credit Africa Bank Limited***.<sup>13</sup>

#### **4.0 1<sup>ST</sup> APPLICANT'S ARGUMENTS IN REPLY**

4.1 The 1<sup>st</sup> applicant filed heads of argument in reply to the respondents' Skeleton Arguments which mainly related to matters which are subject of the intended appeal, save that the intended appeal raises questions of public importance, especially that the piercing of the corporate veil and separate legal personality are at the heart of commerce. In making

reference to the ***Bidvest Food Zambia*** case, counsel submitted that a matter of general public importance would be one warranting the exercise of appellate jurisdiction on a matter of law and fact. He argued that a point of law cannot be extinguished merely because it is mixed with facts.

4.2 It was submitted that in addressing whether the applicants' intended appeal has merit, the respondents delved into the merits of each ground of appeal which they are not supposed to do. It was submitted further that this Court should not delve into the merits of the appeal but merely consider them generally to determine whether the appeal has raised issues of public importance. To support this argument, we were referred to the cases of ***Anuj Kumar Rathi Krishna vs The People***,<sup>14</sup> ***Richard Kalinda & 4 Others (supra)*** and ***Abdul Ebrahim Dudhia and Gulam Farid Patel (Trading as Musa Dudhia & Co, a Law Firm vs Sanmukh Ramanlal Patel***.<sup>15</sup>

4.3 In relying on the case of ***Stanbic Bank vs Micoquip Zambia Limited***,<sup>16</sup> Counsel argued that the appeal has prospects of success because the 1<sup>st</sup> applicant was not accorded an opportunity to be heard.

## 5.0 PRELIMINARY ISSUES

5.1 The respondent filed a notice of motion to raise preliminary issues. The issues to be determined by the Court were couched in the following terms:

- i. Whether the 1<sup>st</sup> applicant's affidavit in support of the motion ought not to be struck out for irregularity.*
- ii. Whether the 1<sup>st</sup> applicant ought not to be ordered to provide security for costs for the satisfaction of orders of the Court in the judgment or subsequent orders thereof for concealing his residential address.*

5.2 The notice of motion was accompanied by an affidavit in support deposed by Musonda Mulenga, the respondents' Administration Manager. He deposed that the address provided by the 1<sup>st</sup> applicant in the affidavit in support of the application for leave is an office address that belongs to BDO Zambia where the 1<sup>st</sup> applicant is a Non-Executive Chairman. He deposed that the 1<sup>st</sup> applicant does not reside at this address as it is an office building. That the 1<sup>st</sup> applicant by giving a false address, intends to conceal his real address so as to defeat the execution of the Court's judgment or a possible enforcement of the order for costs. He

deposed that the 1<sup>st</sup> applicant's failure to disclose his address is prejudicial to the respondents because it will be impossible to enforce any order of the Court.

5.3 The 1<sup>st</sup> applicant filed List of Authorities and Skeleton Arguments in support of the preliminary issues. It was submitted that the affidavit deposed by the 1<sup>st</sup> applicant should be expunged from the record for irregularity because the address given is not his residential address and that this is contrary to Order 41 of the Rules of the Supreme Court. It was submitted further that the 1<sup>st</sup> applicant is party to these proceedings not in his professional capacity as an employee of BDO but in his personal capacity and so he ought to have indicated his residential address.

5.4 It was argued that the irregularity of the affidavit undermines the authority of this Court because it is misleading and meant to defeat enforcement of its orders.

5.5 On the second preliminary issue raised as to whether the 1<sup>st</sup> applicant should be ordered to pay security for costs, Counsel submitted that in the absence of an address, he should be ordered to pay sufficient security for costs equivalent to the judgment sum as assessed by the Deputy

Registrar. It was submitted that the 1<sup>st</sup> applicant has been making maneuvers to evade the Court's orders, such as signing contracts transferring the assets of the 2<sup>nd</sup> applicant, thereby rendering the judgment of the Court academic. That therefore, this is a proper case in which to order security for costs and costs for the judgment as a condition precedent to entertain the appeal in accordance with Order **X Rule 8(1) of the Court of Appeal Rules**. We were referred to the case of **Glocom Marketing Limited vs Contract Haulage Limited**<sup>17</sup> where it was held that the cardinal principle in awarding security for costs is whether there is a significant risk of the Defendant suffering injustice of having to defend proceedings with no real prospect of being able to recover costs if they are successful.

5.6 In relying on the cases of **NFC Africa Mining Plc vs Techro Zambia Limited**<sup>18</sup> and **Twampane Mining Cooperative Society Limited vs E & M Storti Mining Limited**,<sup>19</sup> it was submitted that the affidavit should be struck out from these proceedings for failure to obey rules of the Court.

5.7 The 1<sup>st</sup> applicant deposed an affidavit in opposition to the preliminary issues raised by the respondents. He deposed

that his use of the disputed address was not meant to defeat execution as the respondents know his address because they attempted to levy execution of the High Court judgment at his residential address.

5.8 He deposed further that he has been using the disputed address from the time the respondents made the application to pierce the corporate veil and join him to the proceedings in the High Court. That the use of the address is not in any way prejudicial to the respondents because he was sued for acts done in his professional capacity as a Director.

5.9 It was deposed that the 1<sup>st</sup> applicant has filed a total of eight affidavits in the High Court and this Court between 2018 and 2022 and there has never been any objection to the use of the address.

5.10 Counsel for the 1<sup>st</sup> applicant filed Skeleton Arguments in support of the affidavit in opposition. Counsel raised an objection that the respondents' preliminary issues should not be entertained because the preliminary issues should have been brought within 14 days. To support this proposition, we were referred to **Order XIII Rule 5 of the Court of Appeal Rules**. It was submitted that the

respondents' preliminary issues amounted to a fresh step as provided for in Order 2 Rule 2 of the Rules of the Supreme Court, and should have been raised promptly. To buttress this argument, we were referred to the case of ***First Merchant Bank Zambia Limited & Another vs Al Shams Building Materials Limited & Another.***<sup>20</sup>

5.11 With regard to the preliminary issues raised by the respondent, Counsel submitted that the 1<sup>st</sup> applicant was joined to the proceedings in his professional capacity and is therefore not precluded from using his office address. It was submitted that the respondents' conduct shows acquiescence on their part because they did not all along object to the 1<sup>st</sup> applicant's address when they had the opportunity to do so. We were referred to the case of ***Burton Construction Limited vs Zaminco Limited***<sup>21</sup> to buttress this argument.

5.12 It was submitted that this Court must exercise its discretion in favour of the 1<sup>st</sup> applicant because there is no prejudice occasioned to the respondents. To support this proposition, we were referred to the case of ***Standard Chartered Bank Zambia Plc vs John MC Banda.***<sup>22</sup>



5.13 We were further referred to the case of ***Sun Country Limited v Kearney & Another***<sup>23</sup> where the Supreme Court in interpreting the provisions of Section 47 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia, stated that an error or defect in a document or instrument which is curable and does not go to the root or substance of the document can be entertained by the Court.

5.14 With regard to the issue that the 1<sup>st</sup> applicant should be ordered to provide security for costs, we were referred to the case of ***Glocom Marketing Limited vs Contract Haulage (supra)*** to argue that the respondents have not shown that the 1<sup>st</sup> applicant intends to avoid payment of costs.

5.15 The respondent filed an affidavit in reply to the 1<sup>st</sup> applicant's affidavit in opposition. He deposed that the 1<sup>st</sup> applicant previously swore an affidavit where his residential address was shown as Sub D4, Farm No. 407a Beresford Estates Lilayi Lusaka. That a search at the Ministry of Lands showed that the property does not belong to the 1<sup>st</sup> applicant but to Shirvington Memorial Trust. He also deposed that at the time of levying execution at this address, it was clear that there

were no signs of occupation at the property. That the properties found at the address were not worth seizing.

5.16 He deposed further that he has engaged a private investigator who is in process of investigating the 1<sup>st</sup> applicant's address and will make an appropriate application to the Court. It was deposed that the 1<sup>st</sup> applicant ought to have sworn the affidavit in his personal capacity and shown his residential address.

5.17 The respondent also filed Skeleton Arguments in support of the affidavit in reply which are substantially not different from the earlier Skeleton Arguments filed in support of the preliminary issue. Save to submit with regard to the objection raised by the 1<sup>st</sup> applicant. It was argued that Order XIII Rule 5 only applies to appeals which are yet to be heard as it refers to records of appeal.

5.18 With regard to the respondents' supposed acquiescence to the 1<sup>st</sup> applicant's address, it was submitted that it cannot be substituted for a legal requirement. In making reference to Section 47 of the Interpretation and General Provisions Act and the **Sun Country** case, it was submitted that the defect in the affidavit cannot be overlooked because the

defect is not in form but in substance which is calculated to mislead the Court.

5.19 With regard to providing security for costs, it was argued that Order X Rule 8(1) does not stipulate a time frame within which an order for security for costs can be made. It was argued further that the 1<sup>st</sup> applicant's address is important to these and subsequent proceedings for successful enforcement of any Court order.

5.20 Lastly, Counsel submitted that the affidavit should be struck out from these proceedings for ignoring the court rules. To support this argument, we were referred to the case of ***Twampane Mining Cooperative Society Limited (supra)***.

## **6.0 DECISION**

6.1 We have considered the affidavits and Skeleton Arguments filed in respect of the application for leave to appeal to the Supreme Court and the stay of execution and the affidavits and Skeleton Arguments filed in relation to the respondents' preliminary issues raised. We will first address the objection raised by the 1<sup>st</sup> applicant that the respondents ought to have brought the preliminary issues within 14 days. ***Order XIII***

**Rule 5 of the Rules of the Court of Appeal** has been relied on for this objection. It provides as follows:

**“5. (1) A respondent who intends to make any preliminary objection in relation to an appeal shall give notice of such preliminary objection to the Court and to the other parties within fourteen days from the date of receipt of the record of appeal.**

**(2) An appellant who intends to make any preliminary objection in relation to an appeal shall give notice of such preliminary objection to the Court and to the other parties to the appeal, within fourteen days from the date of receipt of the heads of argument or supplementary record of appeal if any.”**

6.2 The above provision allows for a preliminary objection in relation to the appeal to be raised within 14 days of receipt of the record of appeal or supplementary record of appeal if any. The reference to the appeal and the record of appeal suggests that a preliminary objection raised under Order XIII Rule 5 can only be raised in relation to an appeal. In the present case, the appeal was already determined by this Court. It is our considered view that the above provision does not apply to the circumstances under which the 1<sup>st</sup> applicant has raised

the preliminary objection. The preliminary objection is accordingly dismissed.

6.3 Reverting to the preliminary issues raised by the respondents, they relate to the fact that the 1<sup>st</sup> applicant stated his office address in the affidavit in support of the application for leave as opposed to the residential address. The other issue related to whether the 1<sup>st</sup> applicant should be ordered to provide security for costs.

6.4 With regard to the first issue, it is not disputed that the 1<sup>st</sup> applicant has not stated his residential address but has provided an office address of BDO a company which is not party to the proceedings, but where the 1<sup>st</sup> applicant is a Non-Executive Chairman. As provided for in **Order 41 Rule 1 of the Rules of the Supreme Court**, a deponent giving evidence in a professional capacity may instead of stating his residential address, state the address at which he works and the position he holds.

6.5 In the present case, it has been argued that the 1<sup>st</sup> applicant was joined to the proceedings in his personal capacity and not in his professional capacity. The record shows that the 1<sup>st</sup> applicant was joined to the proceedings for the role he played

in the sale of the business and assets as Non-Executive Director of Industrial Credit Company which was the 1<sup>st</sup> respondent in the main appeal. It is our considered view that the 1<sup>st</sup> applicant was joined to this proceedings in his professional or business capacity. Since he opted to use an office address, it was irregular for him to have used the address of BDO Company which was not party to these proceedings. This is contrary to Order 41 of the Rules of the Supreme Court which suggests that the work address stated should be related to his professional, business or occupational capacity in the matters being sworn in the affidavit.

- 6.6 However, under Order 41 of the Rules of the Supreme Court, we are not precluded from allowing a defective or irregular affidavit to be used in evidence. In any event, we are guided by **Section 47 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia** which provides that a prescribed instrument or document which purports to be in such form shall not be void by reason of any deviation which does not affect the substance.

6.7 The pertinent question that arises is whether the deviation of the 1<sup>st</sup> applicant's affidavit was in form or substance. Our considered view is that the form of an affidavit refers to the legal or technical manner in which the affidavit should be presented to the Court. The substance of the affidavit is the material or essential part of it, which in this case refers to the matters which affect the application before this Court. Our considered view is that the 1<sup>st</sup> applicant's affidavit is defective in form and not in its substance. The fact that the 1<sup>st</sup> applicant provided his office address cannot in these circumstances be the reason that his affidavit be expunged from the record. The first preliminary issue raised by the respondents therefore fails.

6.8 The second preliminary issue relates to whether we should order the 1<sup>st</sup> applicant to provide security for costs for the satisfaction of orders of the Court in the judgment or subsequent orders. It is our considered view that the respondents should have made a separate application for security for costs as opposed to raising it as preliminary issue. This is because there are a various factors which the Court should consider before granting the order for security



for costs. This can only be done after considering the full facts in the affidavit in support of the application for security for costs. This preliminary issue is therefore also dismissed.

6.9 Reverting to the application for leave to appeal to the Supreme Court, we have carefully considered the application. The crucial question is whether the applicants have met the threshold in **Section 13 (3) of the Court of Appeal Act No. 7 of 2016** which provides for the circumstances under which leave to appeal to the Supreme Court may be granted. It provides as follows-

***“(3) The Court may grant leave to appeal where it considers that—***

***(a) the appeal raises a point of law of public importance;***

***(b) it is desirable and in the public interest that an appeal by the person convicted should be determined by the Supreme Court;***

***(c) the appeal would have a reasonable prospect of success; or***

***(d) there is some other compelling reason for the appeal to be heard.”***

6.10 In terms of the above provision, the applicants must satisfy this Court that they have met any of the conditions stipulated above. In order to grant leave to appeal to the Supreme Court, we must be satisfied that: the intended appeal raises a point of law of public importance; the appeal has reasonable prospects of success; and there is some compelling reason as to why the appeal should be heard.

6.11 In terms of the first requirement as to whether the intended appeal raises a point of law of public importance, it entails that the Court must be satisfied that the adjudication of the point is for the public good or so novel that it engages the wider public interest. This was the guidance given by the Supreme Court of Zambia in the case of ***Bidvest Food Zambia Limited (supra)***. We are also guided by the Supreme Court's reasoning in the case of ***Kekelwa Samuel Kongwa v Meamui Georgina Kongwa***<sup>24</sup> that-

***“...for a legal question to be treated as a point of law of public importance, it must have a public or general character rather than one that merely affects the private rights or interests of the parties to a particular dispute. The legal point in issue should relate to a widespread concern in the body***

***politic the determination of which should naturally have effect beyond the private interests of the parties to the appeal.”***

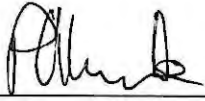
6.12 In view of the guidance of the Supreme Court, we take the view that the issues raised by the 1<sup>st</sup> applicant do not amount to a legal question to be treated as points of law of public importance. The issues raised by the 1<sup>st</sup> applicant do not have a public or general character, but merely affect the private interests of the parties herein.

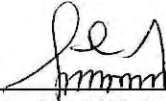
6.13 We have also perused the intended grounds of appeal and apart from not raising any issues of law of public importance, we do not find any compelling reason for the intended appeal to be heard or that the appeal has reasonable prospects of success. This is because a perusal of our judgment shows that we addressed our minds to all the issues raised by the 1<sup>st</sup> applicant.

6.14 We find no merit in the application for leave to appeal to the Supreme Court and we accordingly dismiss it. It follows that the ex-parte order for stay of execution that was granted by this court is accordingly discharged as it is founded on the application for leave to appeal.

6.15 The application for leave to appeal is accordingly dismissed with costs to the respondents.

  
M. M. KONDOLO, SC  
COURT OF APPEAL JUDGE

  
P. C. M. NGULUBE  
COURT OF APPEAL JUDGE

  
A. M. BANDA-BOBO  
COURT OF APPEAL JUDGE