

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

**APPLICATION 18/2020
CAZ/8/407/2019**

B E T W E E N:

MAKUKU FARMS LIIMITED

DANIEL CHAMPWA KALINDA

AND

RICHARD KALINDA (Sued as beneficiary

of the Estate of Isaiah Champwa Kalinda and

Administrator of the Estate of Esther Kalinda)

PHANWELL KANINI (Sued as Administartor of

the Estate of Isaiah Champwa Kalinda and

Administrator of the Estate of Esther Kalinda)

MANENGA JARTON (Sued as Administrator of

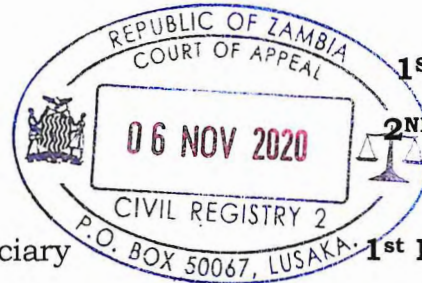
Isaiah Champwa Kalinda)

MILDRED MUCHAWA (Sued as Administrator and

Beneficiary of the Estate of Leonard Kalinda)

MATILDAH KALINDA (Suing as an Administrator

and Beneficiary of the Estate of Leonard Kalinda)



1ST APPELLANT

2ND APPELLANT

1ST RESPONDENT

2ND REPSONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

CORAM: CHISANGA JP, MCHENGA DJP, CHASHI JJA

On 28th April 2020 and 6th November 2020

For the Appellants: Mr. M. Ndalameta and Ms. D. Nalishiwa of Messrs Musa Dudhia & Company

For the Respondents: Mr. C. Sianondo and Mr. E. K. Phiri of Messrs Malambo & Company

RULING

CHISANGA JP, delivered the Ruling of the Court

Cases Referred to:

- 1. Mirriam Mbolela v. Adam Bota-SCZ Selected Judgment No.26 of 2017**
- 2. Basic Property Development Limited v. Maggie Nachilima- SCZ Appeal No. 211 of 2011**

The application before the Court relates to reversal of the decisions of the single Judge of this Court. The Judge refused to stay execution of the decision of the Court below after considering the prospects of success of the appeal against the decision of the learned Judge in the High Court (Chanda J).

The learned Judge considered the fact that the Appellants did not obtain any Court authorization to sale and purchase the land in question as required by the law. In addition to this, she took into account the fact that the respondents had been denied the use of the land for almost eight years. These factors decisively impelled the single Judge to refuse the application for stay of execution. The renewed application is a composite one, seeking reversal of the ruling of the single Judge, refusing to stay execution. A stay of execution is craved in the event extension of time is granted. The applicant also seeks leave to amend the memorandum of appeal.

The reason advanced for approaching the Court late is that the appellants became aware of the ruling of the single Judge which was dated 25th March, 2020 after that date, as its advocates had been working from home due to the Corona virus pandemic, attending Court only intermittently to follow up on notices, judgments and rulings.

Moreover, the 1st Appellant changed advocates and was not able to instruct the new advocates within the time the appellants should have taken steps to reverse the ruling of the single Judge. Also, the Appellants wished to include heads of appeal that would enable issues in controversy from the decision of the High Court.

The affidavit in support narrates the background to the appeal, as well as the application. The deponent Nick George Paterson, has also explained the reason for the delay, as stated in the Notice of Motion. He has complained that the ruling of the learned Judge in the Court below has not addressed all the issues that should have been determined with finality, left the door open to further litigation, by stating that the 1st Appellant should seek redress for the unresolved issue, but purporting to be final. This exposes the 1st Appellant to execution in relation to matters that still require resolution.

The Appellants have filed Heads of Argument in the appeal, in a bid to demonstrate prospects of success. This element largely informs an application to stay execution of a judgment. The Respondents have equally filed their Heads of Argument, in which they argue that, the reasons proffered for extension of time is insufficient. In addition to this, the stay is unwarranted, as no special reason exists, for the Court to exercise its discretion to deny the Respondents enjoyment of the fruits of the judgment.

The Court's attention has been drawn to **Mirriam Mbolela v. Adam Bota**¹, Selected Judgment No.26 of 2017 and **Basic Property Development Limited**

v. Maggie Nachilima² (as an administratrix of the state of the late Michael Derek Chileshe) and two Others, Appeal No. 211/2015, where the Supreme Court considered the import of Section 19(2) of the Intestate Succession Act.

It is further contended that the Court was entitled to proceed as it did, as it could give directions as to how a matter could proceed in the judgment. The Respondents' alternative argument is that should the application succeed, the sum of US \$ 1,270,015.52 should be held in an escrow account.

We have considered the application for extension of time, stay of execution and amendment of the memorandum of appeal. We take judicial notice of the fact that the Covid 19 pandemic brought operational challenges for business houses. Some offices closed to avoid exposure to the virus, which if contracted could be fatal. The explanation that the Appellants' advocates got the ruling several days later is plausible. We thus confirm extension of time within which to re-launch the application for stay of execution of the ruling of the Court below.

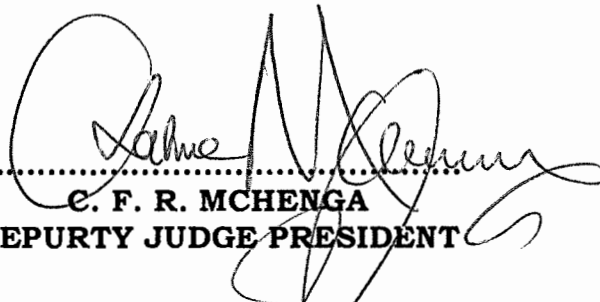
We turn to consider the question whether the stay of execution is justifiable. We have perused the defence filed in opposition to the Respondents' averments in the statement of claim. The view we have taken is that an arguable case has been made out from the issues that arise from the defence at this preliminary stage. We guardedly say so as we do not wish to preempt matters. Suffice it to state that the status quo should be maintained pending the hearing and determination of the appeal. We thus confirm the order staying execution. We

however perceive no basis on which to order the appellant to make a payment into Court, there being no order that the said amount is due to the Respondents.

Nothing stops, at this stage, the Appellants from amending the memorandum of appeal. We thus allow the application to amend the memorandum of appeal as prayed. The amended memorandum of appeal will be filed into Court within 7 days from the date of this ruling. The costs of this application will abide the outcome of the Appeal.



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F. M. CHISANGA
JUDGE PRESIDENT



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C. F. R. MCHENGA
DEPUTY JUDGE PRESIDENT



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J. CHASHI
COURT OF APPEAL JUDGE