

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2019/HP/1976

(Civil Jurisdiction)

BETWEEN:



CHARLES CHAHINGA

PLAINTIFF

AND

**NEW FUTURE FINANCIAL COMPANY
LIMITED**

DEFENDANT

***BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 5TH MARCH, 2020.***

*For the Plaintiff: Mr. M. Banda & Mr. P. Chulu – Messrs. Kalokoni
& Company.*

For the Defendant: Mr. M. Bah – Messrs. Nkulukusa & Company

RULING

LEGISLATION REFERRED TO:

1. *The Constitution of Zambia (Amendment) Act No. 2 of 2016; and*
2. *The Constitutional Court Act No. 8 of 2016.*

1 INTRODUCTION

1.1 The Court has been moved to determine whether or not the proceedings should be stayed and the matter referred to the Constitution Court for interpretation of what the

Plaintiff alleges to be a question relating to the Constitution.

2 BACKGROUND

2.1 On 6th December, 2019, the Plaintiff issued a Writ of Summons and Statement of Claim seeking the following reliefs: -

1. *A declaration that the Defendant's claim for US \$60,000 which they did not advance to the Plaintiff is illegal, null and void;*
2. *A declaratory Order that the charging of interest of 100% on the advanced US \$30,000 over a period of six (6) months is unenforceable for breach of the Money Lenders Act which caps interest at 48% per annum;*
3. *A declaration that the charging of penalties by the Defendant on the Plaintiff is illegal for contravening the Banking and Financial Services Act No. 7 of 2017 and the common law on penalties;*
4. *A declaration that the signed contract of sale in so far as it does not contain the right of redemption is a sham intended to deprive the Plaintiff of their common law rights to redeem the property;*
5. *An order of interim injunction restraining the Defendant, their employees, servants, agents or whosoever from transferring their Plot No. 5818, Lunsemfwa Road, Kalundu into their names, trespassing on, interfering with, nor evicting the Plaintiff from the subject property until the conclusion of the matter;*
6. *An Order for the reconciliation of the account upon removal of unconscionable interest and penalties; and*
7. *Costs of this action.*

2.2 On 11th December, 2019, the Plaintiff was granted an *Ex Parte* Injunction, which was discharged on 17th February, 2020, following an *Inter Parte* hearing.

3 THE APPLICATION TO STAY PROCEEDINGS

3.1 On the return date for a scheduling conference on 2nd March, 2020, the Plaintiff's Learned Counsel, Mr. Banda, applied to stay the proceedings pursuant to **Articles 15, 8 and 128 (a) of *The Constitution***¹, on the basis that the Plaintiff requires an interpretation of national values, in particular morality and ethics with relation to lenders reserving their right to sell a borrower's property upon default, without recourse to the Court. It was submitted that the Defendant herein has not acted in accordance with national values, the rule of law, morality and ethics, hence this application for stay of proceedings, to enable the Plaintiff to seek the Constitutional Court's interpretation.

3.2 The application was opposed by Learned Counsel for the Defendant, Mr. Bah, who argued that the question for determination at trial before this Court is whether or not there was a relationship between the parties outside the contract of sale, which is a question of facts and does not raise any constitutional issues. It was further argued that the application to stay the proceedings and refer a question of interpretation to the Constitutional Court is merely an attempt by the Plaintiff to get around the

Ruling of this Court which discharged the injunction. It was also argued that the question that the Plaintiff requires to interpretation by the Constitutional Court is unrelated to these proceedings. He prayed that the application be dismissed.

4 THE LAW

4.1 The Plaintiff's application to stay the proceedings was made pursuant to **The Constitution**¹, whose relevant **Articles 8** and **128 (1) (a)** provide as follows:

"8 The national values and principles are—

- (a) morality and ethics;**
- (b) patriotism and national unity;**
- (c) democracy and constitutionalism;**
- (d) human dignity, equity, social justice, equality and non-discrimination;**
- (e) good governance and integrity; and**
- (f) sustainable development.**

128 (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear—

- (a) a matter relating to the interpretation of this Constitution..."**

4.2 **Section 8 (2)** of **The Constitutional Court Act**² provides as follows: -

"Subject to Article 28 (2) of the Constitution, where a question relating to the Constitution arises in a court, the person presiding in that court shall refer the question to the Court."

5 **ANALYSIS AND FINDINGS**

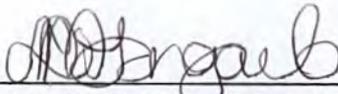
- 5.1 I have considered the submissions by the parties. I find that the key issue I must determine is whether this action raises a question that warrants interpretation by the Constitutional Court.
- 5.2 The Plaintiff has argued that in the interest of justice, the Court must stay the proceedings so that he can refer the matter to the Constitutional Court for interpretation of national values, particularly morals and ethics, as relates to whether or not a lender can reserve the right to sell a borrower's property upon default without recourse to the Court.
- 5.3 On the other hand, the Defendant has argued that this matter does not raise any question for interpretation by the Constitutional Court as it relates to a contract of sale executed by the parties herein and raises a question for interrogation at trial as to whether there was a relationship outside this contract of sale.
- 5.4 It is trite that every matter relating to the interpretation or to a violation or contravention of **The Constitution**¹ shall be heard by the Constitutional Court. **Article 128 (3) (c)** of **The Constitution**¹ provides that "*a person who alleges that an act, omission, measure or decision by a person contravenes the Constitution, may petition the Constitutional Court for redress*".

5.5 Looking at the reliefs sought by the Plaintiff, which are outlined in paragraph 2.1 above, it is my considered view that no question has arisen, at this stage, that warrants interpretation by the Constitutional Court. I have had an opportunity to peruse the Statement of Claim and Defence and Counter-Claim. It is clear from the pleadings that the questions that require interrogation herein are as an incident of a contract of sale. Premised on this, there is no constitutional issue arising out of this action, which requires interpretation by the Constitutional Court, as alleged by the Plaintiff. The reliefs sought by the Plaintiff are all determinable by this Court which is vested with jurisdiction to hear such matters.

6 CONCLUSION

- 6.1 For the foregoing reasons, the application to stay the proceedings herein is dismissed for lack of merit.
- 6.2 Costs are for the Defendant to be taxed in default of agreement.
- 6.3 Leave to appeal is granted.

Delivered on the 5th day of March, 2020.



**P. K. YANGAILO
HIGH COURT JUDGE**