

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

SCZ/8/37/2019

B E T W E E N

FINANCE BANK ZAMBIA LIMITED

APPLICANT

AND

THE OFFICIAL RECEIVER

1<sup>ST</sup> RESPONDENT

(As Interim Receiver of the  
Estate of Dimitrios Mono-Kandilos  
(in Bankruptcy))

AND

FILANDRIA KOURI

2<sup>ND</sup> RESPONDENT

BEFORE THE HON. THE DEPUTY CHIEF JUSTICE MR. JUSTICE M.  
MUSONDA, SC IN CHAMBERS THIS ..... **29<sup>TH</sup>** DAY OF MARCH, 2022

For The Applicant : Mr. M. Nchito SC appearing with Mr. C  
Hamwela and Miss N. Chibuye all of Messrs  
Nchito & Nchito Advocates

For the 1<sup>st</sup> Respondent : Mrs. P.C Hampungani – Administrator General

For the 2<sup>nd</sup> Respondent : Mr. S. Mambwe of Mambwe, Siwila and Lisimba  
Advocates appearing with Mr. Yeta of Central  
Chambers

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## R U L I N G

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MUSONDA DCJ, delivered the ruling of the court.

### **AUTHORITIES**

#### **Statutes referred to:**

1. *The Constitution of Zambia as amended by the Constitution (Amendment) Act No. 2 of 2016 (Article 126(2))*
2. *The Supreme Court Act, CAP. 25 (Section 4, Rules 7 and 18)*



**Cases Referred to:**

1. *Kelvin Hang'andu & Co. (A Firm) -v- Webby Mulubisha: (2008) ZR Vol. 2*
2. *Antonio Ventriglia -v- Finsbury Investments Limited: SCZ Appeal No. 02/2019*
3. *Ministry of Foreign Affairs, Trade and Industry -v- Vehicles and supplies Limited: [1991] 4 ALL. E.R 65 (P.C)*

**Other Reference Works referred to:**

1. *The White Book (1999 Edn.)*
2. *Atkins Court Forms, 2<sup>nd</sup> Edn, vol. 37, 1997 issue*
3. *Zuckerman, Adrian (2013) Zukerman on Civil procedure: Principles and practice (Sweet & Maxwell: London)*

**1.0. INTRODUCTION**

- 1.1. On 23<sup>rd</sup> November, 2021 the Applicant filed an *ex-parte* application in terms of which it sought to have me, sitting as a single judge of the Supreme Court of Zambia, stay legal proceedings which have been pending before the Supreme Court of Zambia (as a full court).
- 1.2. The proceedings alluded to in the preceding paragraph were of the nature of a Notice of Motion in terms of which the Applicant was renewing its earlier application seeking the leave of the Supreme Court of Zambia to appeal to this court against the earlier decision of a single member of this court declining to grant the leave.
- 1.3. The Notice of Motion referred to in 2.2 above had earlier come up for hearing before the full court of the Supreme Court on 1<sup>st</sup> December, 2020 and, again, on 13<sup>th</sup> July,



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2021 when the same was adjourned to the court's December, 2021 session.

- 1.4. I should pause here to point out that, at the hearing of the Applicant's Motion on 1<sup>st</sup> December, 2020, the Court was informed that the legal circumstances of Mr. Dimitrios Monokondilos, then 1<sup>st</sup> Respondent, had fundamentally changed and that the change in question had necessitated the said Mr. Monokandilo's substitution as a party to this application.
- 1.5. I should also add here that, following the adjournment of 1<sup>st</sup> December, 2020, the full court granted the Applicant leave to prosecute its application before a single judge of this court.
- 1.6. Accordingly, on 18<sup>th</sup> February, 2021 the parties, via their respective legal representatives, appeared before me. On that day, Mr. F. Lungu, the Principal Legal Officer in the Office of the Administrator – General and Official Receiver (now 1<sup>st</sup> Respondent) successfully applied to have Mr. Dimitrios Monokandilo, substituted with the present 1<sup>st</sup> Respondent.



1.7. As noted in 1.1, the Applicant filed the instant application on 23<sup>rd</sup> November 2021. In point of fact, and, as borne at by the filed court documents, the Applicant had wished to have me determine its application on an *ex-parte* basis. I declined to proceed with the application on an *ex-parte* basis and, instead, directed that the same be heard before me *inter-partes*.

## **2.0. THE APPLICATION**

2.1. As I have intimated in 1.1, the instant application, as filed, was founded on Rules 7 and 18 of the Supreme Court Act, Chapter 25 of the Laws of Zambia as read with Order 59 Rule 13 (1) of the Rules of the Supreme Court (White Book) (1999 Edition) and the inherent jurisdiction of the court.

2.2. The application was supported by an Affidavit and Skeleton Arguments.

2.3. In her Affidavit in support of the Application, the deponent, Sandra Malupande, deposed, in effect, that, following the institution of bankruptcy proceedings pursuant to the Bankruptcy Act CAP. 82 of the Laws of Zambia against Mr. Dimitrios Monokandilos, the



erstwhile 1<sup>st</sup> Respondent in these proceedings, and the consequential appointment of an interim Receiver in relation to his affairs and his estate, it had become necessary to have the said Mr. Dimitrios Monokondilos substituted as a party to these proceedings as adverted to in 1.6 above.

- 2.4. Sandra Malupande further deposed in her Affidavit that, as the substitution of Mr. Monokandilos with the 1<sup>st</sup> respondent, as earlier highlighted, would impact the instant proceedings, it was necessary to stay the present proceedings pending the final determination of the bankruptcy proceedings in question.
- 2.5. Aside from Sandra Malupande's supporting Affidavit, the Applicant filed skeleton Arguments to buttress its application.
- 2.6. Although, as I have indicated later in this Ruling, the 1<sup>st</sup> Respondent sought and was granted leave to contest the Applicant's application on points of law, he did not file any opposing Affidavit.



- 2.7. For her part, the 2<sup>nd</sup> Respondent did file an Affidavit and skeleton Arguments contesting the Applicant's application.
- 2.8. For reasons which will become evident shortly, I find it both unprofitable and wholly unnecessary to delve into the contents of the Affidavit and Arguments which I adverted to a short while ago suffice it to indicate that I consider the same to have no material bearing or effect on the critical conclusion which I have reached in this Ruling.
- 2.9. On 2<sup>nd</sup> December, 2021, I sat to hear the Applicant's application. It was at this hearing that Mrs. P.C. Hampungani, from the Office of the 1<sup>st</sup> Respondent, sought and was granted leave to oppose the Applicant's application *viva voce* and on points of law.
- 2.10. In mounting the Applicant's application, Mr. M. Nchito, S.C laid out, rather poignantly, the legal issue which, in State Counsel's view, fell to be resolved by myself, namely, whether, having regard to the factual and legal issues which had arisen around Mr. Dimistrios Monokandilos, it was tenable for the Supreme Court of



Zambia to proceed with the motion for leave which remains pending before that court.

2.11. As earlier intimated, the conclusion which I have reached in this Ruling and the basis therefor impels me against rehashing, in any detail, the substance of the Arguments which learned counsel for the Applicant canvassed before me in the initial and primary part of the Applicant's application.

2.12. In the view which I have taken, the critical issue which properly falls for my immediate determination is a jurisdictional one. It is, indeed, this jurisdictional issue which prompted me to sit on 15<sup>th</sup> December 2021, for the purpose of having counsel for all the parties involved address me on whether, as a single member of the Supreme Court, I could properly and competently stay proceedings which were pending before the full court in circumstances where the full court had not itself deferred the task to me as a single judge.

2.13. Reacting to the issue which I had laid before counsel on 15<sup>th</sup> December 2021, Mr. M. Nchito, SC posited that the answer to the issue resided in Rules 7 and 18 of the



Supreme Court Rules CAP. 25. Learned counsel then went on to read the provisions of those Rules before indicating that he would fully address the subject in the written submissions which he was to file later.

2.14. For the avoidance doubt, in the course of introducing the business for which I had directed the parties to appear before me on 15<sup>th</sup> December 2021, I indicated that I desired to have counsel fully address me, preferably via written submissions, upon the issue of my jurisdictional competence to entertain the subject application.

2.15. In her brief response, Mrs. Hampungani, for the 1<sup>st</sup> Respondent, indicated to me that she proposed to address the jurisdictional issue in question in her written submissions.

2.16. For his part, Mr. S. Mambwe, learned counsel for the 2<sup>nd</sup> Respondent, indicated to me that he too proposed to address the issue at hand via written submissions.

2.17. Notwithstanding the position which Mr. Mambwe, learned counsel for the 2<sup>nd</sup> Respondent took as adverted to in 2.16, he took the liberty to contend that the issue of whether or not the proceedings in the main matter



could proceed had actually arisen before the full court but that the full court did not resolve or pronounce itself on the issue. According to counsel, the issue was still active before the full court.

2.18. Mr. Mambwe went on to say that the Rules of the Supreme Court, namely, Rules 7 and 18, upon which the Applicant had founded its application, could not properly be invoked for the purpose of anchoring the Application in question adding that the full court did not even refer the issue to a single judge for resolution.

2.19. In his brief reply, Mr. Nchito, SC argued that the application to stay proceedings had never arisen before and that the same was arising formally for the first time.

2.20. Following the brief proceedings of 15<sup>th</sup> December, 2021, I directed counsel for the parties to file their respective written arguments relative to the jurisdictional question as earlier identified.

### **3.0. THE APPLICANT'S ARGUMENTS**

3.1. In the Arguments filed on its behalf, the Applicant has submitted, by way of its point of departure, that a single judge of the Supreme Court has power to either deal with



any interlocutory matter that is brought before them or to have the same referred to the full court for determination. To support this contention, the Applicant's counsel has referred me to section 4 and Rules 7 and 18 of the Supreme Court Act, CAP. 25.

3.2. In the context of the application before me, the Applicant's counsel has submitted that there is, presently, an application which is pending before the full court and in terms of which the Applicant is seeking the leave of the full court to appeal to this court from a decision of the Court of Appeal. I have recounted how this situation is arising early on in this Ruling.

3.3. The Applicant's counsel has further submitted that the application which is pending before the full court might be impacted by the bankruptcy proceedings which are also pending in the High Court.

3.4. In the estimation of counsel for the Applicant, the bankruptcy proceedings will, in the event of leave to appeal being granted by the full court, also affect the main appeal against the judgment of the Court of Appeal



dismissing the Applicant's appeal against the trial court's initial judgment.

- 3.5. I pause here again to observe that the bulk of the primary argument which were filed on behalf of the Applicant address matters which I have deemed to be substantive in character and go way beyond the scope of the narrow task at hand. In the premises, I find it unnecessary to review them for the purpose of this Ruling.

#### **4.0. 2<sup>ND</sup> RESPONDENT'S ARGUMENTS**

- 4.1. The Arguments which have been filed on behalf of the 2<sup>nd</sup> Respondent proceed from the unequivocal premise that a single judge of the Supreme Court cannot stay court proceedings which may be pending before the full court.
- 4.2. According to Mr. Mambwe, learned counsel for the 2<sup>nd</sup> Respondent, the full court before which the motion for leave is pending is the only appropriate forum which can determine the application to stay.



- 4.3. Drawing upon a passage from *Atkin's Court Forms* (2<sup>nd</sup> ed. Vol. 37, 197 issue), the 2<sup>nd</sup> respondent's counsel further posited that:

**"[A] stay of proceedings is always a very serious and grave step, for its consequences may be of far-reaching importance to the parties. The general rule of procedural law is that a litigant is entitled to have his claim to the relief or remedy which he seeks tried on the substantive merits of the case and therefore a stay of proceedings is a discretionary jurisdiction which ought to be very sparingly exercised and only in exceptional cases". (at p. 171)**

- 4.4 Citing section 4 of the Supreme Court Act, CAP. 25, learned counsel for the 2<sup>nd</sup> respondent has further contended that the wording of this provision clearly suggests that a single judge of the Supreme Court does not have as much power as those which are invested in the full court. Counsel went on to contend that, being, in fact, an inferior court relative to the full court, a single judge cannot stay proceeding which may be pending before such single judge's superior, namely, the full court.



- 4.5. Mr. Mambwe then turned to the ‘public interest’ aspect or dimension of litigation by referring me to the case of **KELVIN HANG’ANDU & CO., (a Firm) -V- WEBBY MULUBISHA**<sup>1</sup> where the Supreme Court of Zambia held as follows:

“Once a matter is before court in whatever place, if that process is properly before it, the court should be the sole court to adjudicate [upon] all issues involved; all interested parties have an obligation to bring all issues in that matter before that particular court”.

- 4.6. Arising from the holding in ***Hang’andu***<sup>1</sup>, Mr. Mambwe accordingly submitted that, as the application which is the subject of the application to stay is not before me, I have neither the discretion nor, indeed, the jurisdiction to stay it.
- 4.7. In concluding his Arguments, Mr. Mambwe pointed to (what I hazard to admit), is the rather untidy and awkward situation of having a single Supreme Court judge staying pending proceedings before the full court only to have the single judge’s decision set aside by the full court pursuant to the powers available to the latter under section 4 of the Supreme Court Act, CAP 25.



- 4.8. Accordingly, I was invited to dismiss the Applicant's application with costs for want of jurisdiction.

**5.0. 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS JOINT/FURTHER SUBMISSIONS**

- 5.1. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also filed what they styled as their *Joint/Further Submissions*. Upon examining these submissions, I came to the conclusion, with all due respect to counsel involved, that the same do not get anywhere close to addressing the narrow issue which is the subject of this Ruling. Accordingly, I have refrained from reviewing those submissions.

**6.0. APPLICANT'S ARGUMENTS IN REPLY**

- 6.1. Following the filing of the Respondents' Arguments, the Applicant proceeded to file its *Skeleton Arguments in Reply*.
- 6.2. In the view which I have taken, the only point which the Applicant makes in its Arguments in Reply which, albeit remotely, is relevant to the present inquiry is that an interlocutory application such as the one in question should, in the first instance, be heard by a single judge and can only be referred to the full court if the single



judge takes the view that he/she does not possess the requisite jurisdiction.

- 6.3. For the removal of any doubt, I do not consider that the bulk of the Applicant's Arguments in Reply can aid my determination of the narrow issue at hand. In the premises, and, with great respect to counsel involved, I have resolved against engaging in the rather unproductive adventure of reviewing those Arguments.

#### **7.0. MY CONSIDERATION OF THE JURISDICTIONAL QUESTION**

- 7.1. I have given due consideration to the Arguments which were canvassed before me around the very narrow jurisdictional question which I am required to resolve in this Ruling. I must immediately express my indebtedness to counsel for the two sides of the debate around the issue at hand for their undoubted industry.
- 7.2. As I begin my reflections, I remind myself that, for any court sitting in judgment, having or being imbued with jurisdiction is everything. As the Supreme Court of Zambia said in its Ruling in **Antonio Ventriglia -v- Finsbury Investment Limited**<sup>2</sup> (quoting the Kenyan



Court of Appeal judgment **Owners of the motor vessel**

**“Lillians” -v- Caltex Oil [1985] KLR 19):**

**“Jurisdiction is everything ... without it, a court has no power to make one more step ... Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing (at p.R62).**

7.3. As all counsel involved readily acknowledged in their respective submissions, the jurisdiction and powers of a single judge of the Supreme Court are prescribed in both the Republican Constitution and the Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia.

7.4. The Constitution of the Republic of Zambia, as amended by the Constitution of Zambia (amendment) Act No. 2 of 2016 provides, in Article 126(2), as follows:

**“(2) The Supreme Court shall be constituted by one judge when hearing an interlocutory matter.”**

7.5. On the other hand, section 4 of the Supreme Court Act, CAP 25 (so far as is relevant to the present application) enacts as follows:



**"4 A single judge of the court may exercise any powers vested in the court not involving the decision of an appeal but**

**a) .....**

**b) in civil matters, any order direction or decision made or given in pursuance of the powers conferred by this section may be varied discharged or reviewed by the court".**

7.6. The Supreme Court Act further provides, via Rules 7 and 18, of the Supreme Court Rules, as follows:

**"7. Interlocutory applications may be heard and determined by a single judge, provided that no direction or order made on an interlocutory application shall operate so as to prejudice the court from giving such decision upon the case as may be just".**

**...**

**"18. (1) An application to the court not involving the decision of an appeal shall, unless made informally in the course of the hearing of an appeal, be made in the first place to a single judge".**

7.7. The single issue which has confronted me in this application is whether, in the light of the law which regulates the powers and jurisdiction of a single judge as I have highlighted above, I can properly and



competently stay proceedings which are pending before the full court.

- 7.8. In the English case of **Ministry of Foreign Affairs, Trade and Industry -v- Vehicles and Supplies Limited**<sup>3</sup> Lord Oliver described a stay of proceedings in the following terms (at p. 71):

**“A stay of proceedings is an order which puts a stop to the further conduct of proceedings in court before a tribunal at the stage which they have reached, the object being to avoid the hearing or trial taking place. It simply means that the relevant court or tribunal cannot, whilst the stay endures, effectively entertain any further proceedings except for the purpose of lifting the stay”.**

- 7.9. In his leading text titled **Zuckerman on Civil Procedure: Principles of practice** (2013), 3<sup>rd</sup> edition, Professor Adrian Zuckerman has made the following observations in relation to staying of court proceedings (at p. 716):

**“Where, in the course of proceedings, it becomes known that issues of law arising in the proceedings have arisen in [another case] and are presently subject to proceedings in another court, the court may stay the**



**proceedings pending the outcome of the other case”.**

7.10. Professor Zuckerman has further observed that:

**“Where a stay has been imposed, an application would normally be made to court to lift the stay and allow the proceedings to continue ... “(at p. 716)**

7.11. It is fairly elementary, in my estimation, that, both under the Constitutional scheme of the Republic of Zambia and the Statutory Scheme which the Supreme Court Act, CAP 25 creates, a single judge of the Supreme Court of Zambia can duly constitute himself or herself as “the Supreme Court” for the purpose of: -

- (a) hearing and determining any interlocutory application or matter;*
- or*
- (b) exercising any power vested in the court not involving the decision of an appeal.*

7.12. Undoubtedly, the application which the Applicant launched before me is interlocutory in nature or character and does not involve the decision of an appeal

7.13. At first blush, the conclusion which I have reached in 7.12 above should incline me to accept that I do, infact,



possess the requisite power, authority or, indeed, the jurisdiction to entertain the application.

7.14. Upon further reflection, however, the inclination which I momentarily alluded to above is discounted or negated by the reality of the circumstances under which I should pronounce myself upon the jurisdictional question with which I am presently confronted. This reality is owed to the factual context within which I must resolve the jurisdictional question.

7.15. It is not in dispute that the proceedings which I have been invited to stay are pending before the full court. The question which sharply confronts me at this stage is this: *can I, as a single judge, stay or arrest those proceedings which are before the full court?*

7.16. I entertain no doubt in my mind that I can not stay or arrest the active proceedings which are currently pending before the full court, not least because, even though I do, as a single judge, constitute myself as the Supreme Court for the purpose which I adumbrated in paragraph 7.11 above, the full court is, hierarchically, superior to me as a single judge. Indeed, even the



jurisdiction, power or authority which a single judge, like myself, exercises is subject to control by the full court. This is evident from section 4(b) and Rule 48(4) of the Supreme Court Act, CAP 25 of the Laws of Zambia.

7.17. Leaving aside the foregoing and, as Mr. Mambwe, learned counsel for the 2<sup>nd</sup> Respondent implicitly suggested in his Arguments, adjudication is a disciplined and orderly undertaking. Those who find themselves involved in this undertaking are expected, nay, required to observe the discipline of bringing all issues relating or connected to a matter that is properly before a particular court before that court and that court alone. It is, indeed, in the public interest that this should be the case. Undoubtedly, the Supreme Court had the foregoing in mind when it handed down its decision in *Hang'andu*<sup>1</sup>, which learned counsel for the 2<sup>nd</sup> Respondent, most fittingly, cited and relied upon in fending off the present application.

## 8.0. CONCLUSION

8.1. Having regard to what I have canvassed above, I have reached the unavoidable conclusion that I have no



jurisdiction to stay or arrest the proceedings which are presently pending before the full court. As I noted early on, jurisdiction is everything, without it a court has no power to take the next step.

8.2. In the light of my determination that I have no jurisdiction to stay the application which is before the full Court, I refrain from taking the next step and dismiss this application.

8.3. As regards the issue of costs, I decline to award them either way because the jurisdictional issue upon which the fate of this application has turned was raised by the court itself.

.....  
Michael Musonda, SC  
**DEPUTY CHIEF JUSTICE**