

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



APPLICATION NO. 007/2026  
(CAZ/08/616/2025)

IN THE MATTER OF: NG'ANDU CONSULTING LIMITED  
AND  
IN THE MATTER OF: ALD PLANT AND FLEET MANAGEMENT LIMITED  
AND  
IN THE MATTER OF: THE CORPORATE INSOLVENCY ACT NO. 9 OF 2017 OF THE  
LAWS OF ZAMBIA  
AND  
IN THE MATTER OF: SECTION 55 (a), 56 (1), 57 (1)(g), 60 (4) AND 175 OF THE  
CORPORATE INSOLVENCY ACT NO. 9 OF 2017 OF THE  
LAWS OF ZAMBIA

**BETWEEN:**

NG'ANDU CONSULTING LIMITED	1 <sup>ST</sup> APPLICANT
ALD PLANT AND FLEET MANAGEMENT LIMITED	2 <sup>ND</sup> APPLICANT
ABEL NG'ANDU	3 <sup>RD</sup> APPLICANT
AND	
DAVID MWALE	RESPONDENT

Before Lady Justices A.M. Banda-Bobo, A.N. Patel S.C. & Y. Chembe

on 10<sup>th</sup> February & 1<sup>st</sup> April 2026

For 1<sup>st</sup> & 2<sup>nd</sup> Applicants: Mr. I. Siame of Messrs Lynda Mataka & Partners

For the 3<sup>rd</sup> Applicant: Mr. W. Muhanga of Messrs Willis Clement & Partners

For the Respondent: Mr. J. Kayula & Mr. J. Mbewe of Messrs Kayula & Associates

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## RULING

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Patel, JA delivered the Ruling of the Court

**Cases Referred to:**

1. Standard Chartered Bank (Z) Plc v John M.C. Banda (2017) ZMSC 156
2. Ubichinga Investments Limited v Teklemicael Menstab and Semhar Transport & Mechanical Limited (2014) ZMSA 119
3. Zambia Revenue Authority v Professional Insurance Corporation Limited-SCZ Appeal No. 34 of 2017
4. Aristogerasimos Vangelatos and Another v Metro Investments Limited- SCZ Selected Judgment No. 35 of 2016
5. Antonio Ventriglia and Another v Finsbury Investments Limited SCZ- Appeal No. 02/2019
6. JCN Holdings Limited v Development Bank of Zambia (2013) 3 ZR 29
7. Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited 1989 KLR.19
8. Finsbury investments Limited v Antonio Ventriglia and Anr - CAZ/08/126/2018
9. Fred M'membe and Post Newspapers Limited (In Liquidation) v Mboози and others -SCZ Appeal No. 07 of 2021
10. Bank of Zambia v Alshams Building Materials Company Limited and 2 others- CAZ/08/430/2023
11. Access Bank (Zambia) Limited v Wade Adams Piling and Foundations (Zambia) Limited -CAZ/08/151/2022 (*Not CAZ/08/161/2022 as cited*).
12. ZESCO Limited v Ntalasha Mutale – CAZ Appeal No. 52 of 2024

## Legislation & Rules Referred to:

1. The Corporate Insolvency Act No. 9 of 2017
2. The Rules of the Supreme Court of England 1965 (White Book) 1999 Edition (RSC)
3. The Court of Appeal Rules, Statutory Instrument No. 65 of 2016
4. The Companies (Winding-Up) Rules 2004 Statutory Instrument No. 86 of 2004
5. The Court of Appeal Act No. 7 of 2016

### **1.0 Introduction**

- 1.1 This Application No. 007/2026 landed in the Court, no short of theatrics and stunt in typical '*James Bond*' style. Before we proceed to deal with the merits of the application, we seize this opportunity to remind litigants that Cause Numbers once allocated by this Court, (CAZ), do not serve a mere decorative purpose. It is what breathes life into the intended (final) appeal/(interlocutory) application before the Court.
- 1.2 What we have painstakingly, and with the loss of several man hours, noted is that flurried applications have leaped into the Court, with little or no regard to the cause numbers under which they are carelessly filed and or received.

- 1.3 To the extent that the Registry is culpable, the same is being dealt with. But primarily, Counsel bears the responsibility of filing the correct application under the allocated CAZ number. In this matter, we have noted that the Court has been moved twice under two separate CAZ numbers. Namely, **CAZ/08/520/2025** by Notice and Memorandum of Appeal dated 20<sup>th</sup> October 2025 and **CAZ Number CAZ/08/616/2025** being the second application, on a substantively different issue, though similar Parties, on 4<sup>th</sup> December 2025.
- 1.4 What has ensued thereafter is not to be taken lightly. Counsel have used the CAZ numbers interchangeably, causing confusion and misfiling such that the Application by Notice of Motion before this Panel to set aside, reverse or vary the decision of the single Judge of this Court, is also cited under the wrong CAZ number.
- 1.5 The Ruling of the single Judge itself, the subject of this Motion, is equally issued under a wrong CAZ number. (**see page 209**).
- 1.6 The voluminous Record of the Notice of Motion itself, being in excess of 390 pages, comprises pages that are so illegible and faint that even with the aid of a magnifying glass, the Court has struggled to read certain content.
- 1.7 Several pages on the reverse side, used in the Record, contain what may be considered as privileged and or confidential pages of information passing between other clients and the Firm. See **pages 260 to 275** as an illustration. This is careless and may bring in other issues.
- 1.9 With the timelines we have noted, we may understand that the applications before Court were and are probably filed, having *burned the midnight oil*, but

we take this opportunity to counsel litigants that in future, conduct such as this, whose result is a waste of judicial time and resources, may warrant a costs order against Counsel.

## **2.0 Background**

- 2.1 The subject matter of the dispute(s) before the Court, emanates from at least, three different causes of action before three different lower Courts. At the heart of the dispute, lie shareholder wrangles and an apparent power tussle over two corporate entities known as '*Ng'andu Consulting Limited*' and '*Ald Plant and Fleet Management Limited.*' (the Two Companies).
- 2.2 For obvious reasons, as these are ongoing appeals, we will refrain from any other pronouncements save that we have noted through the bulky affidavit filed in support of the Notice of Motion, deposed by one **Abel Ng'andu** and filed in this Court on 22<sup>nd</sup> January 2026, the very obvious potential of abuse by the multiplicity of actions scattered over the Courts in the Country.
- 2.3 The first action commenced on 15<sup>th</sup> September 2025, and which is the subject of appeal under CAZ No. CAZ/08/520/2025 emanates from a Judgment of the lower Court under Cause Number 2025/HPC/813.
- 2.4 It would appear that a second action was filed in the lower Court (before a different Judge), under Cause Number 2025/HPC/0803 filed on 8<sup>th</sup> November 2025. This matter is before J. L. Mwanabo, which according to the deponent, **Abel Ng'andu**, was heard on 24<sup>th</sup> November 2025 and a Ruling awaited. Its status is currently unknown. (see paragraph 14 on **page 13**).

- 2.5 On 19<sup>th</sup> November 2025, an action was commenced, this time at the High Court at Ndola, by way of a Petition for the winding up of the two Companies named above, in accordance with the cited provisions of the **Corporate Insolvency Act**<sup>1</sup> No. 9 of 2017. A copy of the Winding Up Petition is seen on **page 200** of the Record.
- 2.6 The very next day, on 20<sup>th</sup> November 2025, the learned Judge in the lower Court (J. G. Malumani) granted an *ex parte* Order appointing a provisional liquidator with powers as endorsed on the said *ex Parte* Order of appointment. This is seen on **page 194** and elsewhere in the Record. It is also critical to note that the said *ex Parte* Order did not provide an *inter partes* date.
- 2.7 By 27<sup>th</sup> November 2025, the Provisional Liquidator had already filed an *ex parte* application by Summons for leave to issue committal proceedings for contempt of court, citing the named Officers of the Banks on whom he had served the Order appointing him as the Provisional Liquidator.
- 2.8 By 28<sup>th</sup> November 2025, the lower Court at Ndola, granted an Order granting leave to apply for contempt of court against the alleged contemnors. A copy of this Order is seen on **page 199** of the Record.

### **3.0 The 3<sup>rd</sup> Applicant's applications in the lower Court**

- 3.1 The 3<sup>rd</sup> Applicant **Abel Ng'andu**, on 28<sup>th</sup> November 2025, filed two applications before the lower Court. One by summons for non-joinder and the other, an urgent *ex parte* application for stay of the *ex parte* Order of

appointment of provisional liquidator pending hearing and determination of the Summons to set aside winding up Petition for irregularity and multiplicity of actions and abuse of Court process. (The two applications in the High Court).

3.2 On 28<sup>th</sup> November 2025, the lower Court issued an *ex Tempore* Ruling deferring the hearing of these two applications to be heard inter partes, guiding himself that Courts ought not to routinely grant applications made *ex parte*. The learned Judge adjourned the hearing of the two applications to the 3<sup>rd</sup> day of December 2025 and declined the *ex parte* application. This is seen on **page 208** of the Record.

3.3 On the said return date, and from the record of proceedings, we note that though the Court indicated that it was sitting to hear the two applications referred to above, Counsel for the Petitioner was allowed to argue its application to raise preliminary issues, filed that morning and without service to the other party. The lower Court then issued directions (on the said application to raise preliminary issues) and concluded by noting as follows:

*“Regarding the status quo of the matters before court, the record will undoubtedly demonstrate that there is an ex parte order of appointment of a provisional liquidator which is set to be determined. It remains a decision of a court until further order.”* This is seen from **pages 273 to 279**.

#### **4.0 The intended 3<sup>rd</sup> Applicant's Application before this Court**

4.1 The application was moved in this Court by the intended 3<sup>rd</sup> Applicant dated 4<sup>th</sup> December 2025. The application was entitled:

*Ex Parte Summons For An Order To Stay Execution Of Ex-Parte Order Of Appointment Of Provisional Liquidator Pending Hearing And Summons To Set Aside Winding Up Petition For Irregularity And Multiplicity Of Actions And Abuse Of Court Process And To Set Aside Ex Parte Order Appointing Provisional Liquidator For Irregularity Pursuant To Order VII Rule 1 And 2, Order X Rule 5 Of The Court Of Appeal Rules, S.I. No. 65 Of 2016 And Order 59 (13) Of The White Book 1999 Edition.*

4.2 This application was filed together with the Notice, Skeleton Arguments Certificate of Urgency and the *Ex Parte* Order on the said date. The said process is seen on **pages 240 to 256**. (hereinafter referred to as the Application before a single Judge of the Court). We note that a new CAZ number was allocated namely **CAZ/08/616/2025** for this application.

4.3 The Honorable single Judge of the Court, did on 5<sup>th</sup> December 2025, grant the *Ex Parte* Order of Stay, (staying the Order of Appointment of the Provisional Liquidator), which Order was returnable on 11<sup>th</sup> December 2025.

4.4 In what had now become procedural tug of war applications between the parties, the Respondent immediately and on 9<sup>th</sup> December 2025, caused to be filed yet another *ex parte* application as follows:

*"Ex Parte Summons For Discharge Of The Ex Parte Order Dated 4<sup>th</sup> December 2025 Staying The Order Appointing Provisional Liquidator Dated 20<sup>th</sup>*

*November 2025 Pursuant To Order 32 Rule 6 Of The Rules Of The Supreme Court Of England (Whitebook) 1999 Edition.*

- 4.5 The said application was filed together with the attendant skeleton arguments and affidavit sworn by one **David Mwale**, which affidavit contained exhibits that the Court has already noted and marked '**DM1 to DM4**'. These are seen on **pages 257 to 283**. We must not lose sight of the fact that the Respondent's opposing process was erroneously entitled under the wrong cause number and accepted under **CAZ/08/520/2025** when it was moved under **CAZ/08/616/2025**.
- 4.6 We also note that the Respondent purported to file the above application on 9<sup>th</sup> December 2025 as a fresh application under **Order 32 rule 6<sup>2</sup>** of the RSC and did not oppose the two applications filed by the Applicants. This was noted in the 3<sup>rd</sup> Applicant's skeleton arguments filed on 18<sup>th</sup> December 2025, where it was canvassed that there essentially was no opposition to its applications and the Applicants also drew the attention of the single Judge of the error by Counsel for the Respondent and the Registry in the misciting of the CAZ numbers. **Pages 327 to 332** refer. We have equally referenced this above.
- 4.7 The learned single Judge heard the applications collectively without referencing who was opposing which application and who was the mover of the initial application before the Court and rendered her now assailed Ruling on 21<sup>st</sup> January 2026. A copy of the said Ruling is seen on **pages 209 to 239** of the Record.

4.8 The issue for consideration before the Honorable single Judge of the Court rested on the determination of whether the intended 3<sup>rd</sup> Applicant's application was prematurely before the Court of Appeal, there being no decision of the lower Court.

#### **5.0 The Ruling of the Single Judge**

5.1 In her considered opinion, while noting the contested issues at hand, the single Judge of the Court placed premium on the issue that the existence of pending applications before the lower Court, rendered the Applicants' recourse to this Court, premature and incompetent as there was no substantive decision by the lower Court.

5.2 The Respondent urged the single Judge to discharge the Order of Stay pursuant to **Order 32 rule 6<sup>2</sup>** of the RSC. Reliance was also placed on **Order X rule 2 (1)<sup>3</sup>** of the Court of Appeal Rules.

5.3 The single Judge noted that the Applicants' grievance lay in the manner the lower Court had treated the Parties affording them unequal access to the Court. The affidavits relied upon canvassed detailed timelines of the various applications before the lower Court, who attended to every application filed by the Petitioner (in the lower Court) such as applications for committal proceedings, preliminary issues raised and continued to sideline and delay the hearing of the application for stay of the appointment of the provisional liquidator which was duly filed with a certificate of urgency.

5.4 By her final reasoned Ruling, the single Judge was of the considered view that as the substantive application had not been determined by the lower Court, and absent any special circumstances to justify the Court's intervention at first instance, the single Judge discharged the *ex Parte* Order of stay of appointment of the provisional liquidator and referred the matter back to the High Court for determination of the Applicants application for Stay of the Order of the appointment of the Provisional Liquidator. As a consequence of the Ruling, the *ex parte* Order appointing the Provisional Liquidator was reinstated.

## **6.0 The Notice of Motion (Motion)**

6.1 As noted above the Motion was filed together with a certificate of urgency the following day, on 22<sup>nd</sup> January 2026 and reliance was placed on the voluminous supporting affidavit and skeleton arguments. The Court was also implored to grant an *ex parte* Order of Stay, staying execution of the Order appointing the provisional liquidator dated 20<sup>th</sup> November 2025.

6.2 We granted the said Order on 28<sup>th</sup> January 2026 and endorsed 10<sup>th</sup> February 2026 as the return date for the *inter partes* hearing pending hearing and determination of Summons to set aside the petitioners Petition for multiplicity of actions, abuse of Court process and Forum shopping before the High Court returnable on 24<sup>th</sup> February 2026 before the Ndola High Court.

- 6.3 Aggrieved by the Ruling of the single Judge, the Applicants have escalated this Motion to the Full Court dated 22<sup>nd</sup> January 2026 whereby they seek to set aside, reverse or vary the decision of the single Judge.
- 6.4 To the extent that the Respondent has filed its affidavit in opposition sworn by the Respondent **David Mwale**, and placed reliance on its skeleton arguments both of 5<sup>th</sup> February 2026, we shall not catalog the series of procedural missteps of both Counsel as that would simply be a waste of judicial time and resources.
- 6.5 The contents of the Motion and the opposition have been duly considered, the affidavits examined and the skeleton arguments appreciated. We will not attempt to re-cast or summarize these but will deal with them in the analysis section of our Ruling.

## **7.0 The Hearing of the Motion**

- 7.1 At the hearing of this application, Counsel Siame brought to our attention two pending applications which had been filed and needed to be heard. He referred the Court to the application filed on 3<sup>rd</sup> February 2026, seeking an *ex parte* Order of leave to file an additional further Affidavit and Supplementary Heads of Argument pursuant to **Order 59 Rule 10(2)** as read with explanatory note **59/10/11** of the RSC<sup>2</sup>.
- 7.2 Needless to say, this application having been filed under the wrong CAZ number (CAZ/08/520/2025), was placed in the wrong file. In any event, the

learned single Judge of the Court declined to handle the same and referred it to the Court now seized with conduct.

- 7.3 We declined this application and did not grant leave to file additional documents in support of the Application the subject of this Ruling.
- 7.4 Counsel Siame also referred to the Appellant's second application filed on 9<sup>th</sup> February 2026 to raise a preliminary issue pursuant to **Order 33 Rule 3** of the RSC<sup>2</sup> as read with **order X rule 2(8)** of the Court of Appeal Rules<sup>3</sup> on a point of law and applied to have the Respondent's affidavit in opposition expunged for containing material that was not placed before the Court at the time of the impugned Ruling of the single Judge.
- 7.5 Timelines being as they are, the application to raise preliminary issue, having been filed a day before this hearing, was not served on the Respondent who nonetheless opposed it *viva voce* on a point of law. Counsel Kayula's singular opposition rested on the fact that the Court, not being vested with jurisdiction, had no authority to expunge or otherwise deal with this application and indeed the main Motion in any way or form.
- 7.6 This was a very brazen submission by the Respondent, considering that it had filed opposing process to the main Motion.
- 7.7 We guided that we would deal with the preliminary issue within our composite Ruling.
- 7.8 On the main matter before the Court, Counsel submitted in support of their respective positions and placed reliance on the process filed into Court and referred to extensively.

7.9 We will not restate or summarize the arguments of the Parties save to note that we have reflected deeply on the Record, the arguments and submissions of Counsel in our determination.

## 8.0 Our Consideration and Decision

8.1 The Affidavit in support of the Motion offers a detailed narrative of the events leading to the various actions before the different Courts as noted in the introductory part of this Ruling. Without commenting on the propriety of such vast and somewhat misplaced information, which we have now noted, it is obvious that the shareholders of the two named Companies, are at loggerheads with each other and attempting to use or abuse the Court machinery, as arsenal to achieve their respective goals.

8.2 We will not be drawn into the 'he said she said narrative' choosing instead to focus our attention on the assailed Ruling of the single Judge.

Two questions burn at the center of our consideration:

*Is this a re-happening of the Post Newspapers saga?*

*Should the Court sit by as a mere bystander, watch the proceedings unravel and bemoan its inability to take conduct on account of procedural reasons?*

8.3 In the clearly unjust situation that the Applicants found themselves in, we are of the settled view that the Court may exercise and does retain discretion as aptly stated by the Supreme Court in the case of **Standard Chartered Bank (Z) Plc v John M.C. Banda**<sup>1</sup>. This principle was also echoed by the Supreme Court in the case of **Ubichinga Investments Limited v Teklemicael Menstab**

and **Semhar Transport & Mechanical Limited**<sup>2</sup> where the Court noted as follows:

*"...these wide discretionary powers are exercised in the fairest and most reasonable manner and at the same time to achieve the ends of justice."*

8.4 However, what is fundamental before we even begin to exercise our discretion, is for us to satisfy ourselves that the Court has the requisite jurisdiction to proceed in this matter.

8.5 We are fully alive to the need for 'Jurisdiction' which was aptly described by the Supreme Court in the case of **Zambia Revenue Authority v Professional Insurance Corporation Limited**<sup>3</sup> *"as the gateway to the temple of justice, and without it there would be no basis for continuing with the proceedings."* The decisions of the Supreme Court in the cases of **Aristogerasiomos Vangelatos and Another v Metro Investments Limited**<sup>4</sup>, **Antonio Ventriglia and Another v Finsbury Investments Limited**<sup>5</sup>, **JCN Holdings Limited v Development Bank of Zambia**<sup>6</sup> and **Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited**<sup>7</sup> are cited to name but a few instructive cases on jurisdiction and the consequences in proceeding without it.

8.6 In considering the skeleton arguments of both Parties, at the center of the dispute and hence the jurisdictional question before the single Judge and us, having narrated in detail the events that transpired in the lower Court, is the following:

*was there a decision of the lower Court to warrant renewing the Applicants application before us?*

*If there was no decision, were the Applicants entitled to move this Court citing special circumstances as guided by **Order 59 RSC**?*

- 8.7 The timelines of the different actions as stated in paragraphs **2.3**, **2.4** and **2.5** need to be appreciated. Of relevance to us is the Action in the High Court at Ndola, commenced by Petition for Winding Up on 19<sup>th</sup> November 2025. An *ex parte* Order for the appointment of a provisional liquidator was granted on 20<sup>th</sup> November 2025. This Appointment was stayed by a single Judge of this Court on 5<sup>th</sup> December 2025 and reinstated pursuant to her Ruling and stayed again by the *Ex Parte* Order of the Full Court on 28<sup>th</sup> January 2026.
- 8.8 The current status is that the Order appointing the provisional liquidator has been stayed. The single Judge was of the considered view that the matter not having been determined by the lower Court, and there being no special circumstances, the Court had no jurisdiction to entertain the Applicants' application.
- 8.9 **Rule 8 (3)** of the Companies Winding Up Rules 2004<sup>4</sup> is a mandatory statutory requirement and provides that where a provisional liquidator is appointed *ex parte* by a Court, the Court **shall not later than three days** after the Order, appoint a return date for the *inter partes* hearing. This is a mandatory provision of the Rules, and its obvious effect is to *inter alia*, safeguard the interests of the company, the shareholders and other creditors. (emphasis added).
- 8.10 In response to questions from the Court, Counsel Kayula confirmed that his Firm drew the *ex parte* Order of appointment without a return date in clear violation of **Rule 8 (3)** the Companies Winding Up Rules 2004,<sup>4</sup> but remained

stout that it was an Order of the Court. On other submissions, Counsel Kayula forcefully argued that the spirit of the law and Rules must be honored. More specifically his argument on the Court not having jurisdiction rested on his understanding of **Order XIII rule 12<sup>3</sup>** of the Court of Appeal Rules.

8.11 It was the Respondent's hallowed argument that this Court was divested of jurisdiction and placed reliance on a decision of the Court rendered in the case of **Finsbury Investments limited v Ventriglia<sup>8</sup>**. Counsel cited the following extract from the Judgment of the Court when it stated as follows:

*"what we find in our statutes and rules are provisions that vest jurisdiction to hear an application in both the High Court and the Court of Appeal but with the condition if it has first been made before the High Court and the condition is stated in mandatory terms."*

8.12 However, a basic tenet of *stare decisis*, guides that a Ruling or Judgment of a Superior Court must not be cited out of context without a fuller appreciation of the issues therein considered. In that case, (**Finsbury Investments**), we went on to state that matters which are not provided for in the Rules of this Court will lead to the inevitable recourse to the Rules of the Supreme Court of England. We referred specifically to **section 8 (1) (2) (a)<sup>5</sup>** of the Court of Appeal Act. We also echoed that this provision is also contained in **Order I<sup>3</sup>** of the Court of Appeal Rules.

8.13 At page J7/8 of the **Finsbury Judgment**, we guided as follows:

*"Order 59 Rule 14 (4) provides as follows:*

*Wherever under these rules an application may be made either to the court below or to the Court of appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impractical to apply to the Court below.'*

*It is clear that order 13 Rule 12 of the Rules of this Court is similar to the above cited rule of the Supreme Court Practice except ours does not provide for special circumstances. We can therefore only turn to Order 59 Rule 10 to fill the lacuna in our Rules as regards the granting of an injunction....''*

- 8.14 We are alive with the fact that the issues in the **Finsbury** case, related to the issues of injunctive relief. However, we remain of the considered view that the Respondent's argument that this Court has no jurisdiction based on **Order XIII rule 12<sup>3</sup>** is misconceived. It has also been noted at **paragraph 3.1** above, that the two applications had been made and filed in the lower Court on 28<sup>th</sup> November 2025.
- 8.15 We have considered the circumstances and noted the conduct of the litigants in the lower Court. We have also noted that on the face of the *ex parte* Order of appointment of provisional liquidator, the said Order does not provide for a return date. A copy of the *Ex parte* Order appointing Provisional Liquidator clothing him with wide unfettered powers, is seen on **page 309** of the Record. What has also been noted is that any and all attempts by the Applicants to protest and to secure an early date from the lower Court, to hear its application to set aside the appointment of the provisional liquidator, was resisted and or defeated.

- 8.16 The fact of being allowed to argue an application to raise a preliminary issue, on the morning of it being filed and on the date on which the Court was meant to hear the application to set aside and fundamentally without service to the other side, is but one clear example of conduct oppressive to the Applicants. A necessary consequence of which was that the Court did not hear the urgent application and instead deferred it to a date after the Ruling to be delivered on the preliminary issues raised.
- 8.17 We note from the Ruling, which has since been delivered and marked “DM4” to the Respondent’s opposing affidavit of 5<sup>th</sup> February 2026, that the lower Court has still not given a date for the hearing of that pending albeit urgent application.
- 8.18 Further, we have viewed the bizarre actions of the ‘*trigger-happy*’ provisional liquidator, upon attempting to take control (pursuant to the said *ex parte* Order of appointment), including the subsequent applications and in fact obtaining an Order for leave to commence contempt proceedings against the named Banks. The lower Court moved post-haste, to grant leave to file committal actions in circumstances of events taking place over a mere few days. The committal proceedings were in fact given a hearing date of 9<sup>th</sup> December 2025. See **page 307** of the Record.
- 8.19 In procedure alien to the Court, the Provisional liquidator continues to copy the Marshal to the Hon Judge in the lower Court, in his correspondence with the Banks, from whom he is attempting to take over the Company accounts. He even cites the name of the Company as being **(In Liquidation)** when far

from there being an Order for winding up, the Petition is yet to be heard. See **page 308 and 358 to 360** of the Record.

- 8.20 We are of the considered view that the Applicants' concern about not receiving fair treatment is justified in the circumstances. The Supreme Court in the case of **Fred M'membe and Post Newspapers Limited (In Liquidation) v Mboosi and others**<sup>9</sup> strongly condemned conduct that manipulates the liquidation framework to achieve ulterior purposes.
- 8.21 From the *special circumstances* outlined above, there is the real intoxicating possibility of irreversible and irreparable harm being occasioned, while the lower Court played procedural ping pong with the Applicants' urgent application seeking to stay the *ex parte* Order of appointment of the provisional liquidator, which Order itself had no return date and violates a mandatory statutory requirement.
- 8.22 We have in the past noted that an Order of Court must be obeyed, whether perceived to be a nullity, illegal void, irregular or for other similar reason until it has been set aside, so as to prevent self-help measures by litigants. See the case of **Bank of Zambia v Alshams Building Materials Company Limited and 2 others**<sup>10</sup>.
- 8.23 However, where we have been moved in circumstances such as the ones in *casu*, must we pander to the Rules or take conduct in situations where it is crystal clear that the lower Court would not deal with matters with the urgency demanded both under the mandatory provisions of the law as well as the facts obtaining on the ground. If this does not reveal *special*

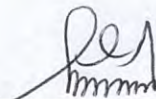
*circumstances* envisaged by **Order 59 rule 14 (4)**<sup>2</sup> of the RSC, we do not know what will.

- 8.24 We also rely on a Ruling of a single Judge rendered in the case of **Access Bank (Zambia) Limited v Wade Adams Piling and Foundations (Zambia) Limited**<sup>11</sup> where the single Judge distinguished the provisions of Order XIII rule 12 of the Court of Appeal Rules, and exercised jurisdiction under **Order 59 rule 14(4)** of the RSC<sup>2</sup> and granted an Order of Stay of execution on account of special circumstances in that case.
- 8.25 We will consciously refrain from making any pronouncements on the propriety of the Petition for Winding Up, the alleged multiplicity and abuse of actions, and the recently issued Ruling ordering the recusal of Counsel, on account of the fact that these have not been heard nor escalated on appeal.
- 8.26 However, we would be failing in our duty by turning a casual blind eye to the attempts to wrestle a takeover of the companies in questionable circumstances. The Supreme Court in the cited case of **The Post Newspapers** emphasized that principles of fairness and justice, particularly the rights of persons whose property rights are affected be heard **before** adverse decisions are taken.
- 8.27 The threat to company property is imminent, the fear of assets being depleted or dissipated is glaring and all this empowered by the Court through a defective *ex parte* Order of appointment of a provisional liquidator with wide unbridled powers, without a return date. The Court is vested with powers to treat parties equally in the fair and consistent administration of justice.

- 8.28 In *casu* similarly and based on the facts of this particular case, *special circumstances* having been established, thereby our jurisdiction firmly supported. We dismiss the Respondent's argument that this application comes to us without jurisdiction. We rely on the enabling provisions of **Order 59 rule 14 (4)<sup>2</sup>** of the RSC.
- 8.29 We are also of the considered view that had the learned single Judge considered the totality of the facts before her, she would have arrived at a different decision. We respectfully set aside the Ruling of the single Judge. We also confirm the Order staying the appointment of the provisional liquidator, until the Petition is heard and determined by the lower Court.
- 8.30 Before we conclude this Ruling, we reiterate what we have stated before and express our displeasure at the growing practice of *ex parte* litigation that appears to have mushroomed in the Courts. We frown on the practice of conducting litigation in our adversarial system of law, primarily by way of *ex parte* applications. In *casu*, we have noted a mountain of *ex parte* applications.
- 8.31 In the case of **ZESCO Limited v Ntalasha Mutale<sup>12</sup>**, we reiterated that as a general rule, an *ex parte* application must show that there is an emergency such that there will be irreparable harm and or that the other party is not known. Litigants and trial Courts must be mindful of the instances where *ex parte* applications are suitable and where they are not.
- 8.32 In view of the decision we have taken, any pronouncement on the application to raise a preliminary issue to expunge offending material, becomes otiose and is simply rendered moot.

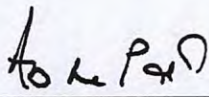
**9.0 Conclusion**

- 9.1 These are the Orders of the Court as a consequence of the Ruling:
- 9.2 The Order of Stay of the appointment of the provisional liquidator is hereby confirmed pending the hearing and determination of the application for setting aside the appointment of the Provisional liquidator by the lower Court.
- 9.3 We also direct that the Honourable Judge in Charge, do re-allocate the matter for hearing before another Court.
- 9.4 On the issue of costs, we order that the same will abide the outcome in the lower Court.



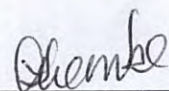
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**A. M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**



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**A. N. PATEL S.C.**  
**COURT OF APPEAL JUDGE**



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**Y. CHEMBE**  
**COURT OF APPEAL JUDGE**