

IN THE CAPITAL MARKETS TRIBUNAL

HELD AT LUSAKA

2021/CMT/A/005



BETWEEN:

STANDARD CHARTERED BANK

1ST APPELLANT

ZAMBIA PLC

STANDARD CHARTERED ZAMBIA

2ND APPELLANT

SECURITIES NOMINEES LIMITED

AND

SECURITIES AND EXCHANGE COMMISSION

RESPONDENT

CORAM:

Mrs. C. N. Tembo - Chairperson

Mr. B. Kashinga - Member

Mr. M. Muyawala - Member

For the Intended Appellant: Mrs. D. Sichone appearing with Ms. D. Mulondiwa and Mr. K. Sakala, In-House Counsel, Securities and Exchange Commission

For the Intended Respondent: Mr. P. Chomba Appearing with Ms. C. Bwalya, Messrs Mulenga Mundashi Legal Practitioners

EX-TEMPORE ORDER

1. In this Order, we shall refer to the Securities and Exchange Commission as “Intended Appellant before the Court of Appeal” and Standard Chartered Bank Zambia Plc and Standard Chartered Zambia Securities Nominees Limited as “Intended Respondents before the Court of Appeal” respectively because there is currently no Appeal that has been launched before the Court of Appeal against a decision or order of the Tribunal in this matter. That being said, the Intended Appellant before the Court of Appeal filed an application for leave to Appeal to the Court of Appeal on 23rd November 2021. The application was made pursuant to Rule 39 of the Securities (Capital Markets Tribunal) Rules, Statutory Instrument No. 32 of 2021 (“the Capital Markets Tribunal Rules”) by way of Summons for Leave to Appeal to the Court of Appeal accompanied by an Affidavit in support of Summons for Leave to Appeal to the Court of Appeal and Skeleton Arguments. The application for leave to Appeal to the Court of Appeal was against the Ruling of the Tribunal dated 2nd November 2021. The Intended Respondents before the Court of Appeal opposed the application by filing an Affidavit in Opposition to the Intended Appellant’s Affidavit in support of Summons for leave to Appeal to the Court of Appeal and accompanying Skeleton Arguments on 8th December 2021.
2. The application for leave to Appeal to the Court of Appeal was returnable today, the 9th of December 2021 at 10:00 hours. During the hearing, Counsel for the Intended Appellant before the Court of Appeal made an oral and additional application for stay of proceedings.
3. Counsel for the Intended Respondents before the Court of Appeal objected to the oral application for stay of proceedings. The gist of the arguments by Counsel for the Intended Respondents before the Court of Appeal was that the application was not properly before the Tribunal. Counsel for the Intended Respondents before the Court of Appeal argued that Rule 24 of the Capital Markets Tribunal Rules provides a procedure for making such an application and lists the documents that must be filed. Counsel for the Intended

Respondents before the Court of Appeal argued that the implication of Rule 24 of the Capital Markets Tribunal Rules is that an application for stay cannot be made orally.

4. Furthermore, Counsel for the Intended Respondents before the Court of Appeal argued that the application for stay was an ambush to the Intended Respondents because they were not served with the said application and as such, did not have the opportunity to respond. Additionally, Counsel for the intended Respondents before the Court of Appeal contended that the application that was scheduled for hearing was the application for leave to Appeal to the Court of Appeal as opposed to the application for stay. In that regard, Counsel for the Intended Respondents before the Court of Appeal prayed that the said oral application for stay should not grace the Tribunal's Record.
5. In response to the objection, Counsel for the Intended Appellant before the Court of Appeal argued that Rule 24(5) of the Capital Markets Tribunal Rules permits a party, without notice to the other party, to apply for a stay. Counsel for the Intended Appellant before the Court of Appeal further argued that the Tribunal has authority under the Capital Markets Tribunal Rules to make an order that is appropriate for the purpose of expediting proceedings.
6. The Tribunal decided to proceed by making an *Ex-Tempore* Order regarding the oral application for stay of proceedings separate to the Order regarding the application for leave to Appeal to the Court of Appeal. Parties were also informed that the *Ex-Tempore* Order would be reduced in writing and served on the parties in due course.
7. Accordingly, this is our *Ex-Tempore* Order in writing.
8. **WE HEREBY ORDER** as follows:
 - I. Having heard both Parties on the oral application for leave to stay proceedings. We hold that the oral application for stay of proceedings will not be heard as the application is irregular contrary to Section 184(2) of the Securities Act No. 41 of 2016 and Rule 24 of the Capital Markets Tribunal Rules. Section 184(2) of the

Securities Act establishes this Tribunal as a superior court of record. Furthermore, Rule 24 the Capital Markets Tribunal Rules clearly provides for the practice and procedure that Parties must adhere to when making interlocutory applications such as those relating to a stay. In fact, Rule 24 (3) of the Capital Markets Tribunal Rules lists the nature of documents that must be filed formally when making an interlocutory application and these include: Summons, an Affidavit in support, and Skeleton Arguments. It follows then that if a Party desires to invoke Rule 24(5) of the Capital Markets Tribunal Rules, the Summons filed shall take the form of *Ex-Parte* Summons. Therefore, should the Intended Appellant before the Court of Appeal decide to proceed with the application for stay, the said Intended Appellant must make a formal application before the Tribunal as prescribed.

- II. We wish to further state that it is our considered view that Rule 24(5) is not intended for purposes of ambushing other Parties already present before a Tribunal of record but relates to an *Ex-Parte* application for a stay.
- III. As regards costs, costs shall be in the cause.

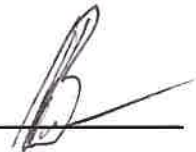
Dated at Lusaka this 10th day of December 2021



Chairperson



Member



Member