

SUPREME COURT OF QUEENSLAND

CITATION: *Mbuzi v Hall & Ors* [2010] QCA 23

PARTIES: **JOSIYAS ZIFANANA MBUZI**
(applicant)
v
ELIZABETH HALL
(first respondent/not a party to the application)
AUSTRALIAN ASSOCIATED MOTOR INSURERS LIMITED
(second respondent)
CLIFFORD ROE CHUTTER
(third respondent)
CHERREL HIRST
(fourth respondent)
MARTIN DOUGLAS EBERLAIN KRIEWALDT
(fifth respondent)
CHRISTOPHER SKILTON
(sixth respondent)

FILE NO/S: Appeal No 8519 of 2009
SC No 6243 of 2009

DIVISION: Court of Appeal

PROCEEDING: Application for Stay of Execution – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 February 2010

DELIVERED AT: Brisbane

HEARING DATE: 4 February 2010

JUDGES: Chesterman JA

FURTHER ORDER: **Applicant to pay the second to sixth respondents' costs of and incidental to the application filed on 6 January 2010 to be assessed on the indemnity basis.**

CATCHWORDS: PROCEDURE – COSTS – the applicant's application for a stay of execution of a Court of Appeal order was dismissed on 4 February 2010 – whether costs should be awarded to the respondents on an indemnity basis

COUNSEL: The applicant appeared on his own behalf
D J Kelly for the respondents

SOLICITORS: The applicant appeared on his own behalf
Rodgers Barnes & Green for the respondents

- [1] **CHESTERMAN JA:** On 4 February 2010 I dismissed Mr Mbuzi's application for a stay of the order made by the Court of Appeal (2009 QCA 405) on 24 December 2009. The application was brought pursuant to *UCP* rule 668(1)(b). I dismissed the application because it seemed to me a judge of appeal had no power under the rule to make the order sought and because, in any event, the precondition for the power conferred by the rule had not been satisfied. Mr Mbuzi had not discovered any facts after the judgment of the Court of Appeal was pronounced on Christmas Eve which, had he known them earlier, would have entitled him to a different order.
- [2] The second consideration gave rise to the auxiliary concern that the application was based upon a serious misstatement of the relevant facts and a misrepresentation of what occurred during the hearing of the appeal and during the subsequent exchange of written submissions delivered pursuant to the direction of the court.
- [3] For these two reasons, the fact that the application was misconceived and because it was predicated upon facts which the applicant must have known were wrong, makes it appropriate to order indemnity costs, the order sought by the respondents.
- [4] I order that the applicant pay the second to sixth respondents' costs of and incidental to the application filed on 6 January 2010 to be assessed on the indemnity basis.