IN THE HIGH COURT OF ZAMBIA **2013/HP/0967**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

JEFF MUREBWA AND 233 OTHERS **PLAINTIFFS**

AND

DANGOTE QUARRIES (ZAMBIA) LIMITED **1st DEFENDANT**

ZAMBIA ENVIRONMENTAL MANAGEMENT AGENCY **2nd DEFENDANT**

MAJALIWA MUWAYA **3rd DEFENDANT**
(*Sued in his capacity as Senior Chief Chiwala)*

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 13th DAY OF JUNE, 2017

For the Plaintiffs : *Mr W. Mubanga SC with Ms V. Mulenga, Chilupe and Permanent Chambers*

For the 1st Defendant : *Ms J. Mutemi, Theotis Mataka and Sampa Legal Practitioners*

For the 2nd Defendant : *Ms K. Banda*

For the 3rd Defendant : *Mr K. Simbao, Mulungushi Chambers*

RULING

CASES REFERRED TO:

1. ***Simbeye Enterprises Limited and Investrust Merchant Bank (Z) Limited V Ibrahim Yousuf SCZ No 36 of 2000***
2. ***Nyampala Safaris Zambia Limited V The Zambia Wildlife Authority SCZ/8/179/2003***

3. ***Finance Bank Zambia Limited V Dimitrios Monokandilos Filandria Kouri 2012 VOL 1 ZR***
4. ***Directory Publishers of Zambia Limited V Access Bank 2012/HPC/073***
5. ***Stanbic Bank Zambia Limited V Savenda Management Services***

LEGISLATION REFERRED TO:

1. ***The High Court Rules, Chapter 27 of the Laws of Zambia***
2. ***The Rules of the Supreme Court, 1999 edition***

This is a ruling on an application made by the 1st Defendant to set aside the ruling and stay execution, as well as an application on the part of the Plaintiffs for an order to amend the writ of summons and statement of claim.

In arguing the application for amendment, Ms V. Mulenga on behalf of the Plaintiffs stated that they relied on the affidavit filed in support of the application on 30th April, 2017. She further stated that the 1st and 3rd Defendants filed an affidavit in opposition to the application on 19th May, 2017. That it is trite law that an application for amendment may be made at any stage of the proceedings, and that in pursuance of the court's ruling dated 7th April, 2017, the Plaintiffs had taken out the application for amendment.

Counsel submitted that the 1st, 2nd and 3rd Defendants had not filed any defence, and therefore the application sought if granted, would not prejudice the parties, but would ensure the proper administration of justice. She also submitted that the Defendants would have an opportunity to respond to the amended writ of summons and the statement of claim by way of filing their defences, and the rights of the parties would accordingly be determined.

It was stated that a perusal of paragraph 5 of the affidavit in opposition to the application shows that it is alleged that prejudice would be occasioned to the 1st Defendant, and deprive them of the defence that has accrued to them. Counsel however noted that the prejudice alleged had not been stated, and neither had been the defence. That it was therefore their submission that it is in the interests of justice that the amendment sought should be granted.

State Counsel Mr W. Mubanga added that if trial in the matter had already started, it would have been certification of the prejudice alleged by the 1st Defendant. That if this court allows the application for amendment, even the other parties will equally be allowed the opportunity to amend, and thus no prejudice will be occasioned by the order.

Counsel for the 2nd Defendant opposed the application, stating that the opposition was only to the extent that the amendment seeks to add the 2nd Defendant as a co-plaintiff, as they did not have instructions to that effect.

Counsel for the 1st Defendant in response to the application opposed the application, and relied on the affidavit in opposition to the said application. She argued that the Plaintiffs in their affidavit had not shown the circumstances necessitating the amendment, as well the circumstances that had necessitated its abandoning of the claim against the 2nd Defendant, and substituting it as a 2nd Plaintiff.

That it was not enough simply to state that the Plaintiffs are desirous of amending their pleadings, and then exhibit the intended amendments. She referred the Court to Odgers Principles of Pleadings and Practice, 22nd Edition by D.Carson 1981 at page 161, where the learned authors

state that certain rules apply where the amendment involves a change of parties.

Further reference was made to Order 15 Rule 6 of the Rules of the Supreme Court, 1999 edition, more particularly Order 15 Rule 6 (3) which states that in an application for substitution or joinder of parties, the application must be supported by an affidavit showing the interest in the matters in dispute or the question or issue to be determined, as between him, and any party to the cause or matter.

That sub rule 4 of the said Order 15 Rule 6 states that no party shall be added as a plaintiff without his consent signified in writing, or such other manner as may be authorized. Counsel noted that in this matter the affidavit in support of the application does not show the interest that the intended 2nd Plaintiff has in the matter nor the questions sought to be tried. Further that the consent in writing required of the intended 2nd Plaintiff had not been exhibited, and as the provisions of Order 15 Rule 6 (4) of the Rules of the Supreme Court, 1999 edition are couched in mandatory terms, the intended 2nd Plaintiff cannot be added as such.

It was also submitted that no application to misjoin the 2nd Defendant from the proceedings had been served on them so as to allow the joinder of them as 2nd Plaintiff in this matter. That even assuming that the Plaintiffs could do so by this application, the requirements for misjoinder as set out in Order 15 Rule (6) (2) of the Rules of the Supreme Court which states that such a person should have been improperly joined to the proceedings, or should have ceased to be a proper party to the proceedings, had not been demonstrated.

With regard to the submission by Counsel for the Plaintiffs that none of Defendants had filed their defence, Counsel stated that this assertion was not correct, as the 2nd Defendant had filed its defence on 9th August

2013. That a perusal of that defence shows that the intended amendments by the Plaintiffs contradict what is on record. Counsel referred in particular to paragraphs 4 and 10 of the defence stating that these paragraphs when viewed in relation to paragraphs 7 and 12 of the intended amended statement of claim, are contradictory.

It was stated that while the 1st Defendant was yet to file its defence, granting the application for amendment would prejudice it, as should the Plaintiffs succeed in their claims, the Defendants would be jointly and severally liable, but granting leave to amend by substituting the 2nd Defendant as Plaintiff would result in liability at the instance of the 1st and 3rd Defendants only, when the statement of claim shows that the action by the Plaintiffs arises from actions of all the Defendants.

The case of ***DIRECTORY PUBLISHERS OF ZAMBIA LIMITED V ACCESS BANK 2012/HPC/073*** was referred to, with Counsel arguing that it was stated in that case that an amendment will be refused if it will result in prejudice or injury which cannot properly be compensated for by costs. Thus applying the same principles, Counsel stated that it was their submission that the prejudice to be suffered by the 1st Defendant could not be compensated for in costs, and prayed that the application be dismissed with costs.

Counsel for the 3rd Defendant stated that it is trite that a party cannot be joined as a Plaintiff without their consent. He also stated that a perusal of the proposed amended statement of claim reveals an abandonment of the earlier claims, as none of the earlier claims survived.

In reply Ms Mulenga denied at there was a total abandonment of the earlier claims, stating that the claims were the same in both the statement of claim as well as the proposed amended statement of claim. That the amendments proposed were simply narrations giving rise to the

claims contained in the statement of claim. Thus it was misleading to suggest an abandonment of the claim.

On the issue of prejudice, and that the rights of the parties had not yet been determined, that had been argued in response to the application, Counsel stated and this could not be a basis for disallowing the application for amendment, on the ground that the parties were jointly and severally liable. That it was their strong contention that the court could not be left to speculate the defence intended to be filed by the 1st and 3rd Defendants, and in doing so limit the rights of the Plaintiff in seeking to clarify issues that would be of beneficial interest to the court and the parties at large, in determining this action.

Counsel stated that in so far as the amendments related to the 2nd Defendant, this court has inherent jurisdiction under Order 2 Rule 3 of the High Court Rules to allow such an application or make any order it deems fit. It was further stated that the proposed amendment intends to include the 2nd Defendant as 2nd Plaintiff, but the documents on the court record show that the claims in the writ if summons and the statement of claim are maintained. That if the court were of the view that the 2nd Defendant intended to be joined as 2nd Plaintiff would be improperly joined, then they implored the court to exercise its inherent jurisdiction to allow the amendment sought by the Plaintiffs with the exclusion of the intended 2nd Plaintiff, so as to allow a fair determination of the issues before court.

As regards the argument by Counsel for the 1st Defendant that the intended amendments in the statement of claim contradicted the 2nd Defendant's defence, it was stated that the court would note that pleadings are made from facts within the knowledge of the litigants, and a resolution of the said contradictions is left for the court's

determination. Counsel submitted that it is trite that where triable issues are revealed, matters should be allowed to proceed to trial, despite the default of any party.

She further argued that where the injury caused is minor, applications for amendment should be allowed, and that such injury could be compensated by way of awarding costs. Counsel reiterated that the application be granted.

State Counsel Mr Mubanga submitted that the 1st Defendant did not want the matter to proceed to trial. He asked the court, in the interests of justice, to allow the amendment stating that in any event, the 1st and 3rd Defendants would be allowed to file their defences, hence there would be no injustice. In conclusion he stated that the court has inherent jurisdiction after analysis of the facts to say whether a party should be joined or not.

In relation to the application by Counsel for the 1st Defendant, it was stated that they applied to set aside the ruling dated 7th April, 2017, as well as to stay execution of that ruling. That the application had been made pursuant to Order 35 Rule 5, Order 30 Rule 5, as well as Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia, as read together with Order 32 Rule 5 (3) and Order 32 Rule 6 of the Rules of the Supreme Court, 1999 edition.

That by virtue of Order 35 Rule 5 of the High Court rules as well as Order 32 Rule 6 of the Rules of the Supreme Court, 1999 edition, this court has jurisdiction to set aside a judgment, order or ruling obtained in the absence of another party provided that sufficient cause has been shown. Further that Order 32 Rule 5 (3) of the Rules of the Supreme Court clothes this court with jurisdiction to order the re-hearing of summons that were heard in the absence of the other party.

Counsel's argument was that the 1st Defendant in its affidavit in support of the application had shown sufficient cause warranting the setting aside of the ruling, and re-hearing of the 1st Defendant's application to dismiss the Plaintiff's application for want of prosecution. This was on the basis that the court delivered its ruling without considering the affidavit in opposition which had been filed, and exhibited as 'RJM1' on the affidavit in opposition. That in that affidavit a meritorious defence had been exhibited, as the 1st Defendant had shown that there had been delay in prosecuting the matter.

Secondly that the effect of the said ruling delivered by this court on 7th April, 2017 which gave orders for directions to the 1st Defendant to file its defence within fourteen days varied an earlier ruling of the court dated 15th May, 2014, which clearly states that the Plaintiffs writ was defective, and leave to amend the same was granted. However the amendment had never been done, by the time this court rendered its ruling.

Counsel further submitted that the affidavit in support of the application shows that the failure by Counsel for the 1st Defendant to attend court on the scheduled date was not deliberate or intentional, but due to inadvertence in diarising the matter. Thus this was a case that was fit for this court to exercise its jurisdiction to set aside the ruling of 7th April, 2017, as the same had not been perfected, adding that it is the duty of the court to consider all applications before it, so that it deals with all the issues raised by the parties. That the court in ignorance of the affidavit in opposition filed, did not consider the issues raised by the 1st Defendant.

On the stay of execution of the ruling, Counsel stated that it was made pursuant to Order 36 Rule 10, and Order 3 Rule 2 of the High Court Rules. Counsel relied on the affidavit filed in support of the application,

and the case of ***NYAMPALA SAFARIS ZAMBIA LIMITED V THE ZAMBIA WILDLIFE AUTHORITY SCZ/8/179/2003.*** She argued that a stay of execution is granted on good and convincing reasons. That this is premised on the rationale that a successful litigant should not be deprived the fruits of their judgment. That in order for an application to succeed, the applicant must demonstrate the basis upon which the stay should be granted. It was stated that the 1st Defendant had advanced good and sufficient reasons for the grant of the stay of execution, which is that the application to set aside the ruling of the court dated 7th April, 2017, and upon which the application to stay execution was anchored, had prospects of success as already argued.

That the 1st Defendant had filed an affidavit in opposition to the Plaintiff's application to dismiss its application, and the absence of the said affidavit from the court record could not be attributed to itself, as it had discharged its duty by filing the same. Counsel noted that there was no imminent risk of execution in view of the Plaintiff's application to amend the pleadings, but that in the event that the said application to amend was not granted, the risk of execution would be imminent, hence their application to stay the said ruling.

In response, State Counsel Mr Mubanga relied on the skeleton arguments filed in opposition. Mrs Mulenga added that the ruling dated 7th April, 2017 was perfected by filing of the application to amend. That Order 32 Rule 6 of the Rules of the Supreme Court, 1999 edition provides that a perfected judgment, order or ruling obtained in the absence of the other party cannot be set aside.

Further that it was not enough to advance the reason of inadvertence to appear before court, as when the matter was adjourned, this was in the presence of both parties. Counsel also argued that re-hearing the 1st

Defendants application would also entail re-hearing of the Plaintiffs application, and this would be unjust, as it would entail the Plaintiff's application to dismiss the 1st Defendant's application would be expunged from the record.

It was further argued that inadvertence was not sufficient ground to ask the court to exercise its discretion to set aside its ruling, as such inadvertence entails negligence on the part of the party failing to attend court. Counsel prayed that the application to set aside the ruling be dismissed with costs.

As regards the stay of execution, Counsel's submission was that there was nothing to stay, as it was based on the said ruling that the Plaintiffs had taken out the application to amend the pleadings, in pursuance of the orders for directions contained in the said ruling. It was prayed that the application be dismissed for want of merit, and the matter proceeds to trial.

Counsel for the 1st Defendant in reply maintained that the ruling of 7th April, 2017 had not been perfected, as it did not direct the Plaintiffs to amend their pleadings. That the ruling directed the 1st Defendant to file its defence within fourteen days of the said ruling, and that other directions related to the filing of bundles and pleadings, and liberty to apply in respect of the orders given. Therefore liberty to amend the pleadings was reading into the ruling.

Counsel also submitted that they had not only advanced inadvertence as the reason for the application to set aside the ruling, and stay execution, but that three reasons had been advanced. It was stated that on the strength of the case of ***STANBIC BANK ZAMBIA LIMITED V SAVENDA MANAGEMENT SERVICES,*** where the Court of Appeal in its ruling on an application for leave to appeal out of time had held that inadvertence by

Counsel was a ground on which the court could exercise its discretion to grant leave to appeal out of time, this court should follow the said reasoning, and allow the application on the ground of inadvertence.

That contrary to the assertions by Counsel for the Plaintiff, what the 1st Defendant wanted to be re-heard was the Plaintiffs application to dismiss the 1st Defendant's application to dismiss the action for want of prosecution, and not the 1st Defendant's application to dismiss the Plaintiffs application. Counsel reiterated the prayer that the application be granted.

I have considered the applications. I will start with the applications to set aside the ruling dated 7th April, 2017, as well as the application to stay execution of that ruling. The application to set aside the ruling was made pursuant to Order 35 Rule 5, Order 30 Rule 5 and Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia, as well as Order 32 Rule 5 (3) and Order 32 Rule 6 of the Rules of the Supreme Court, 1999 edition.

Order 35 Rule 5 of the High Court Rules states that;

> ***"any judgment obtained against any party in the absence of such party may, on sufficient cause shown, be set aside by the Court, upon such terms as may seem fit".***

Order 30 Rule 5 of the said High Court Rules provides that,

> ***"where the Judge has proceeded ex parte, such proceedings shall not in any manner be reconsidered in the Judge's chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same***

at the time, and direct them to be paid by the party or his advocate before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just".

On the other hand Order 3 Rule 2 of the High Court Rules states that;

"subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not".

The provisions of Order 32 Rule 5 (3) of the Rules of the Supreme Court, 1999 edition are that;

"where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons".

Order 32 Rule 6 of the Rules of the Supreme Court provides that;

"the Court may set aside an order made ex parte".

Apart from Order 35 Rule 5 of the High Court Rules, which deals with the setting aside of a judgment obtained in the absence of a party, the other provisions cited are relevant to this application, as they deal with the powers of the court when setting aside interlocutory applications. A reading of Order 30 Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia shows that I have power to set aside any order made by myself in the absence of a party, where the party failing to attend is not guilty of wilful delay or negligence.

Thus the question in this application is whether wilful delay or negligence on the 1st Defendant's part have been established? Counsel for the 1st Defendant submitted that she had mis-diarised the matter when I had adjourned it in the presence of both Counsel on 15th February, 2017. This reason is possible. Therefore I find that Counsel for the 1st Defendant was not guilty of any delay or negligence in failing to attend court on 15th March, 2017 when the matter came up for hearing of the application.

The next question that needs to be answered is whether I should set aside the ruling dated 7th April, 2017, as Counsel for the 1st Defendant argued that it was delivered without considering the affidavit that they had filed in opposition to the said application, and that the effect of the ruling was to vary an earlier ruling of the court that had conduct of the matter previously which had directed that the Plaintiffs writ of summons was defective and should be amended, and which amendment had not been done to date.

In my ruling dated 7th April, 2017, I upheld the Plaintiffs application to dismiss the 1st Defendant's application for want of prosecution on the basis that there had been inordinate delay in prosecuting the same from 1st April 2015 when it was filed. I noted that no affidavit in opposition had been filed. This was premised on the fact that there was none on the court record. Counsel for the 1st Defendant in the affidavit in support of the current application has exhibited the said affidavit in opposition that they had filed in opposition to the application to dismiss their application for want of prosecution. It is exhibited as 'JM2' on the affidavit in opposition.

I wish to state right at the outset that it is trite that matters must be heard on their merits, and not dismissed on technicalities, as this

defeats the cause of justice. This matter was filed in 2013 and from 2015 to 7th April, 2017 when I dismissed the 1st Defendant's application to dismiss the action for want of prosecution, a period of two years had elapsed from the time the application was filed. This is a very long time to dispose of an application that would have if successful, determined the matter without the merits of the case having been established.

In the case of ***FINANCE BANK ZAMBIA LIMITED V DIMITRIOS MONOKANDILOS FILANDRIA KOURI 2012 VOL 1 ZR*** it was held that;

> ***1. In terms of Order 3/5/12 of the Rules of the Supreme Court, a defendant may apply for an order to dismiss an action for want of prosecution.***
>
> ***2. The power to dismiss an action for want of prosecution is a draconian power which must be resorted to sparingly. This is so because it deprives a party of his or her right to trial and also denies a party the opportunity to remedy procedural defects or irregularities.***
>
> ***3. Dismissal of actions should be limited to plain and obvious cases where there is really no point in having a trial".***

The case further held that;

> ***"Where there has been inordinate and inexcusable delay in bringing or defending an action, this in itself can constitute an abuse of Court process, and therefore warrant the dismissal of the action.***
>
> ***When the delay in the conduct of an action is inordinate, inexcusable, and there is a substantial risk by reason of the delay that a fair trial of the issue will no longer be possible, or be done to one party, or to both parties, the Court may in***

its discretion dismiss the action straight away, without giving the plaintiff opportunity to remedy the default.

It is highly undesirable, and indeed impossible to lay down a tariff as what constitutes inordinate delay. What is or it not inordinate, is a question of fact to be resolved on the facts of each particular case".

I have noted that this matter was commenced in 2013, to be precise on 13th July, 2013, a period of almost four years ago. There are a number of applications that were filed, but of concern is the delay to prosecute the 1st Defendant's application to dismiss the matter, which stalled the action. Taking into account the fact that matters must be heard on their merits, except in plain and obvious cases where there is no point in having a trial, my view is that re-hearing the Plaintiffs application to dismiss the 1st Defendant's application to dismiss the action for want of prosecution would not change my earlier decision.

It would therefore be pointless to set aside the ruling dated 7th April, 2017, as it is my position that matters must be heard on the merits. That being said regardless of whether the ruling has been perfected or not, my position will not change.

Further any arguments regarding steps having been taken by way of the application for the amendment of pleadings as having perfecting the order, are without merit, as the orders for directions in the matter relate to the 1st Defendant filing its defence, a reply if any being filed, and thereafter discovery and inspection being conducted, and the parties filing their respective bundle of documents and bundles of pleadings. The liberty to apply was in relation to the orders given, and not to the amendment of the pleadings.

I would also like to comment on the argument by Counsel for the 1st Defendant that my ruling of 7th April, 2017 varied the ruling of Hon Mrs Justice M. Mulenga who had conduct of the matter previously, which is dated 15th May, 2014. The said ruling was delivered on applications to set aside the writ of summons and statement of claim for irregularity, as well as for an order for security for costs.

The gist of the application to set aside the writ of summons and statement of claim for irregularity was that there are 224 Plaintiffs in this matter, but they had stated their address as Chief Chiwala's area in Masaiti district. The Hon Judge while agreeing that the Plaintiff's had not complied with the rules of the court in indicating their addresses, stated that the irregularity was curable. The court granted leave to the Plaintiffs to amend the writ of summons by including the particulars as provided in exhibit 'JM1'. The ruling did not give a time frame for the Plaintiffs to effect the amendment, suffice to state that the failure to do so to date did not come with any consequence that was spelt out in the ruling granting leave to amend, and therefore the amendment can even be effected today.

Thus I do not see how the my directive to the 1st Defendant to file its defence varied the ruling of Hon Mrs Justice Mulenga, as her directive to amend did not go to the root of the claim, but rather her order directed the plaintiffs to specify their residential addresses. I therefore find the argument baseless, and meant to justify the failure by the 1st Defendant to file its defence, for even without the particulars of the Plaintiffs residential address being attached to the writ, a defence could still have been filed.

The net result of the application to set aside my ruling that dismissed the 1st Defendant's application to dismiss the action for want of prosecution fails, as even if I was to take into account the affidavit in opposition filed

in relation to the application as well as the failure by Counsel for the 1st Defendant to attend the hearing of the application, I would not reverse my order, on the basis that matters must be heard on their merits. The application therefore fails, and it is dismissed. Consequently the application to stay execution of the ruling has no limbs to stand on, and it also fails.

Next is the application to amend the pleadings. The gist of this application is that the 2nd Defendant will now be the 2nd Plaintiff, but the claims are substantially the same contrary to the assertions by Counsel for the 3rd Defendant. There was also an argument that was advanced by Counsel for the 1st Defendant that the proposed amended statement of claim will contradict the 2nd Defendant's defence, and will prejudice its defence. Counsel for the 2nd Defendant objected to the 2nd Defendant being joined as 2nd Plaintiff stating that there were no instructions to that effect.

It is trite as argued by Counsel for the 1st and 3rd Defendants that no person can be joined as a Plaintiff without their consent in writing or in any other authorised manner. The case of ***SIMBEYE ENTERPRISES LIMITED AND INVESTRUST MERCHANT BANK (Z) LIMITED V IBRAHIM YOUSUF SCZ No 36 of 2000*** is instructive. As Counsel for the 2nd Defendant objected to such joinder, and also in view of the fact that no consent in writing has been exhibited by the Plaintiffs evidencing such consent for joinder, amendment on that basis cannot succeed. Counsel for the Plaintiffs argued that I can exercise my inherent jurisdiction to so join the 2nd Defendant as 2nd Plaintiff in this matter, if the facts justify.

In my view the catch words are the "*facts so justifying*". No basis for the alleged joinder has been given to me, and I therefore have no facts upon which to work with to determine that indeed the 2nd Defendant in this

matter ought to be a plaintiff and not a defendant. Thus taking this into account, as well as the fact that the 2nd Defendant has not given its consent in writing or in any other authorised manner, the amendment in relation to that aspect fails, and it is dismissed.

As regards the amendment being objected to by the 1st Defendant on the basis that their defence will be prejudiced, what I can decipher from the arguments advanced in support of that view that is that the Defendants as they are right now are jointly and severally liable, and for the 2nd Defendant to become a Plaintiff will prejudice the liability. I have declined the order for joinder of the 2nd Defendant as 2nd Plaintiff, so this argument cannot stand. With regard to the proposed amendment of the statement of claim contradicting the 2nd Defendant's defence if it will not be amended, will be resolved by evidence tendered by the Plaintiffs and the 2nd Defendant, and weighed by the court to see which side is to be believed. It is therefore not prejudicial.

I accordingly grant leave to the Plaintiffs to file their amended writ of summons and statement of claim within fourteen days from day, failure to which the leave will be deemed not to have been granted, and the matter shall proceed on the basis of the writ of summons and statement of claim on record. It will consequently mean that the orders for directions issued on 7th April, 2017 will stand, but will only begin to run fourteen days after the date of this ruling, and the times directed therein will be accordingly extended.

The amended writ and statement of claim shall take into account the ruling of Hon Mrs Justice M.S. Mulenga delivered on 15th May, 2014 requiring the particulars of the Plaintiffs addresses to be included, and shall not join the 2nd Defendant as 2nd Plaintiff. Once the amended writ and statement of claim is filed, the Defendants shall have the liberty

within fourteen days thereafter to file their defences, and the Plaintiffs shall file their reply if any within fourteen days thereafter.

Discovery of documents shall take place within fourteen days of filing of the reply, and inspection shall be done within fourteen days of the discovery. That the parties shall file their respective bundle of documents and bundles of pleadings within fourteen days of the inspection and the matter shall come up for status conference on 31st August, 2017 at 08:30 hours. Costs shall be in the cause.

DATED THE 13th DAY OF JUNE, 2017

Kaunda

S. KAUNDA NEWA
HIGH COURT JUDGE