

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2015/HP/1931**



**BETWEEN:**

**TRYWELL KATUKULA KASHAWA**

**PLAINTIFF**

**AND**

**THE ATTORNEY GENERAL**

**DEFENDANT**

***BEFORE HONORABLE MR JUSTICE MR. MWILA CHITABO, SC***

*For the Plaintiff:*

*Mr. Trywell Katukula – In person*

*For the Defendants:*

*Ms. K. Akapelwa – Assistant Senior State  
Advocate*

---

**R U L I N G**

---

**Cases referred to:**

- 1. Afri Operations Ltd v. Amanita (Z) Limited 2005/HPC/0199  
(unreported)*
- 2. Senior v. Holdsworth 1975 2 All ER, 1009*

**Legislation referred**

- 1. The Defence Act, Chapter 106 of the Laws of Zambia*

These are applications by the Plaintiff

- (1) Notice to produce a summary of evidence taken on 16<sup>th</sup> April, 2012 at Zambia Army Headquarters.
- (2) Productions of a CD which was electronically recorded by the Plaintiff.
- (3) Order to direct the Posts and Telecommunication Company Ltd to produce the record of activity exchanges in respect of the Plaintiffs case.

On the part of the Defendant, they sought leave to file supplementary bundle of documents in respect of documents which had been brought to the Defendants Advocates.

I will now deal with the application one by one.

(i) **Notice to produce a summary of evidence taken on 16<sup>th</sup> April, 2012 at Army Head Quarters**

The Plaintiff anchored his application on Regulations 9 of the Defence (Procedure) Rules of Chapter 106 of the Defence Act of the Laws of Zambia<sup>1</sup>. There was no objection to this application. I will therefore grant leave to the Plaintiff to produce the said evidence which of course he should serve on the Defendants Advocates before the return date of 8<sup>th</sup> August, 2017 at 09:30 hours.

(ii) **Production of CD which was electronically recorded**

The Defendant opposes the application on the ground that after hearing the recordings, they were of the view that contents are irrelevant. The Plaintiff contends they are critically essential to his

case. I have not had occasion to view or listen to the recording it is trite as that it is a common precedent that certain conditions should be met before a document is produced. These conditions are akin to laying which invariably leads to the authentication. The case of ***Afri Operations Ltd v. Amanita (Z) Ltd 2005/HPC/0199<sup>1</sup>*** is a case in point.

As regards whether a film or recording is a document, the same was settled in the case of ***Senior v. Holdsworth 1975 2 All ER 1009<sup>2</sup>***.

The issue of relevance and admissibility will be interrogated either at time of submitting the electronic presentation or at the conclusion of trial as to its admissibility or what evidential or probative value to attach the electronic evidence.

I will therefore allow the Plaintiff to present his evidence.

(iii) **Directing posts and telecommunication limited to produce the recorded activity/activities relating to this case**

I decline to issue such an order on the grounds that one, the Plaintiff has not specified the telephone numbers on which the said communications were made. Secondly, the Plaintiff has not specified the period or specific times when such communications took place.

In my view, a blanket order cannot be made to compel the Communications Authority to haul its records and bring it under microscopic scrutiny. The exercise is utterly unproductive and I

will take judicial notice that certain records may touch on the security of the State. The application under this limb is declined

(iv) In respect of the Defendants application for leave to file in supplementary bundle of documents which have just been brought to the attention of the plaintiff's Counsel, I will grant the application.

The Plaintiff will be afforded an opportunity to place his objections if any after viewing the supplementary documents intended to be produced.

I will make no Order as to costs.

Delivered this .....  Day of June, 2017

  
\_\_\_\_\_  
**Mwila Chitabo, SC**  
**Judge**