

**IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT NDOLA**

(Civil Jurisdiction)

APPEAL NO. 53/2017

BETWEEN:

COL. PAUL CHIKUSWE CHILANGA (RTD)

APPELLANT

AND

LT. GEN. I. S. A. CHISUZI (RTD) *(Sued in
his capacity as the Army Commander at the
material time)*

RESPONDENT

**CORAM: Chisanga, JP, Chashi and Mulongoti, JJA
on 1st August and 22nd September, 2017**

For the Appellant: In Person

For the Respondent: N/A

J U D G M E N T

CHASHI, JA delivered the Judgment of the Court.

Cases referred to:

1. *William David Carlisle Wise v E. F. Hervey Limited* (1985) ZR 179
2. *Mpande Nchimunya v Stephen Hibwani Michelo* (1997) – SCZ (Full citation not provided)
3. *Esso Petroleum Co. Limited v Southport Corporation* (1956) AC 218
4. *Farrel v Secretary of State for Defence* (1950) 1 WLR, 172

Legislation referred to:

5. *The High Court Act, Chapter 27 of the Laws of Zambia*

6. ***The Constitution of Zambia (Amendment) Act No. 18 of 1996***
7. ***The Defence Act, Chapter 106 of the Laws of Zambia***
8. ***The Supreme Court Practice (White Book) 1999***

Other works referred to:

9. ***English Law – by K. Smith and D. J. Keenan, 6th edition***
10. ***Blacks’ Law Dictionary, 8th edition by Bryan A. Garner, Thomson West***
11. ***Concise Oxford English Dictionary 11th edition, Oxford University Press***
12. ***Odgers’ Principles of Pleading and Practice, 22nd edition by D. B. Casson and I. H. Dennis, London, Stevens and Sons, 1981.***

The Appellant, who was the Plaintiff in the court below, appeals against the Ruling of the High Court delivered on 1st March, 2017 dismissing the matter for lack of a cause of action and *locus standi*.

The background to the action, in a nutshell, is that the Appellant commenced an action by way of a Writ of Summons with the following endorsement:

“1. The Plaintiff’s claim is for:

(a) Exemplary damages K5,000,000.00

(b) Damages K5,000,000.00

(c) Interest from date of Writ at average bank deposit rate of 15.5 %
per annum to the date of Judgment. After Judgment at 6% per
annum until payment in full

(d) Costs and incidentals.”

The Writ of Summons was accompanied by a Statement of Claim which was couched as follows:

- “1. *The Plaintiff was at the material time a serving member of the General Staff in the Zambian Army at the rank of Colonel.*
2. *The Defendant was at the material time a serving member of the General Staff in the Zambian Army at the rank of Lieutenant General and Army Commander.*
3. **PROOF OF NEGLIGENCE**

The Defendant was negligent in that:

On 29th September, 2004 he produced and distributed an Army Order serial No. 07/2004 dated 29th September, 2004, Order No. 46a-k on purchase of Personal to Holder Vehicles; thereby made Law regulating conditions of service on purchase of personal to holder vehicles by members of the General Staff of the Zambia Army therein usurping powers of Parliament in breach of Article 102(c) of the Constitution CAP 1 of the Laws of Zambia, a Constitution tort, deceitful and fraudulent act. Created conflict of interest with Cabinet Office Circular No. 6 of 2001 dated 1st November, 2001 on condition of service; sale of personal to holder vehicles exacerbated pre-existing injuries and infringed Plaintiffs aforesated rights.

4. *In Appeal Judgment No. 22/2010 between the Attorney General, Public Service Pensions Fund Board and Colonel Joseph Keith Kamanga dated 7th January, 2013, the Supreme Court had the views that Cabinet Circular is clear to the extent that it was not necessary to apply any other rules of interpretation. In this regard, it is clear if one is due for retirement, he is entitled to purchase the personal to holder vehicle regardless of the life span of the vehicle.*

Secondly, on death, the estate of the deceased Officer would be entitled to purchase the personal to holder vehicle and again this is regardless of whether the vehicle has reached its life span or not.

Thirdly, once the vehicle has reached its five years life span, the Officer is entitled to purchase it.

5. *IN ADMISSION*

(a) On 19th December, 2016, DW1 Lieutenant Colonel Masiye Tembo responded that Parliament regulates the terms and conditions of service of members of the Defence Forces.

(b) In his response letter dated 19th January, 2017, the Secretary to Cabinet ignored to advise whether there was Parliament Authority permitting the Defendant herein to produce the stated Army Order. Refused to furnish with details of all personal to holder vehicles permitted by his office and sold to the Defendant and the authority on which the vehicles were sold to him, information meant for internal administrative purpose and not for public consumption.

6. *Because of the Defendant's arbitrariness, deceitful and fraudulent act, the Plaintiff's claim is for:*

(a)	<i>Exemplary Damages</i>	<i>K5,000,000.00</i>
(b)	<i>Damages</i>	<i>K5,000,000.00</i>
	<i>TOTAL</i>	<i>K10,000,000.00</i>

(c) *Interest from date of Writ at average bank deposit rate of 15.5 % per annum to the date of Judgment. After Judgment at 6 %per annum until payment in full*

(d) *Costs and incidentals."*

Upon perusal of the Writ of Summons and Statement of Claim, the Judge in the Court below dismissed the action for lack of a cause of action, on her own motion, by which she rendered the Ruling appealed against. According to the Judge the Plaintiff had not even

disclosed in what capacity he had brought the case to prove that he has *locus standi* and had been affected by whatever decision is being complained against.

The Judge was of the view that what the Appellant termed as a Statement of Claim was unintelligible matter which she deemed a waste of Court's time. She observed that the Plaintiff had not disclosed against the defendant a cause clear enough to attach liability to or against the Defendant. The Judge relied on the cases of **William David Carlisle Wise v E. F. Hervey Limited**¹ and **Mpande Nchimunya v Stephen Hibwani Michelo**². In the latter case the Supreme Court held that:

"....where a Statement of Claim discloses no cause of action, then the Plaintiff is not entitled to Judgment even where the defendant does not apply to strike out the Statement of Claim or renders a Defence.... because there is nothing to try or prove"

Dissatisfied with the Ruling of the learned Judge, the Appellant has appealed to this Court advancing two grounds of appeal as follows:

1. The Honourable Judge misdirected herself in law and fact when she stated that the Plaintiff has not disclosed any claim against the Defendant which is clear enough to attach liability to or against the Defendant.
2. The Honourable Judge misdirected herself in law and in fact when she stated that he has not even shown in what capacity

he has brought the case to prove that he has *locus standi* and has been affected by whatever decision is being complained about.

At the hearing of the appeal, the Appellant relied on the Appellant's heads of argument.

In arguing the first ground of appeal, he simply drew the attention of the Court to Order 15/2 of ***the High Court Rules (HCR)***⁵ and to the learned authors of ***English Law***⁹.

Order 15/2 ***HCR*** states as follows:

"The Court or a Judge may on the application of the defendant, order further or better particulars"

The learned authors of ***English Law***⁹ at page 63 states as follows:

"Striking out: *if a Statement of claim is too vague or so full of irrelevant matter, as to prejudice a proper defence at the trial, the defendant can apply to a Master to have it struck out. If the application is successful the plaintiff must deliver a new Statement of claim.*

Further and better particulars:

A Statement of claim which merely fails to give sufficient detail will not be struck out but the defence may ask for further and better particulars and the Plaintiff must then supply the details required of the allegation he has made."

Order 15/2 ***HCR*** is set in motion where a Defendant has applied for further and better particulars in relation to the Plaintiff's claim,

where the statement of claim merely fails to give sufficient detail, which is not the case in casu.

The same applies to striking out of the Statement of claim where it is too vague or so full of irrelevant matter as to prejudice a proper defence at trial, the application must be by the Defendant.

From the onset, it should be noted that the learned Judge in the Court below as earlier alluded to dismissed the matter for lack of a cause of action and *locus standi* as opposed to the Statement of claim being too vague or so full of irrelevant matter or it failing to give sufficient detail.

On the second ground of appeal, the Appellant drew our attention to Article 102 (c) of ***the Constitution of Zambia***⁶ and Section 165 (2) of ***the Defence Act***⁷ whose relevance we fail to appreciate.

Despite there being proof of service of the originating process, the record of appeal and the notice of hearing, the Respondent was not in attendance at the hearing of the appeal.

We have considered the appeal together with the arguments and the Ruling of the learned Judge in the court below.

Before we address the two grounds of appeal, we wish to emphasize the role and function of pleadings in civil matters like this one. As was aptly put by Lord Radcliffe in the English case of **Esso Petroleum**

Co. Limited v Southport Corporation³ at page 241, the function of pleadings is to ascertain with precision the matters on which the parties differ and the points on which they agree and thus arrive at certain issues on which both parties desire a judicial decision. This was reaffirmed by the remarks of Lord Edmund – Davis in the case of **Farrel v Secretary of State for Defence**⁴ in which it was stated that:

“The primary purpose of pleadings, which is to define issues and thereby to inform the parties in advance of the case that they have to meet and enable them to take steps to deal with it still remains and can still prove of vital importance”

It can be deduced from the aforestated authorities that the purpose of pleadings is to give sufficient outline of one’s case in order for the opponent to know what case he has to meet and not to make vague allegations and avoid embarking on a fishing expedition.

Secondly, although the Court below did not state under what provision of the law it moved on its own motion to dismiss the cause, Order 3/2 **HCR** subject to any particular rules empowers the Court in all causes and matters to make any interlocutory Order which it 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 first ground of appeal solely raises the issue whether the Statement of Claim raises a cause of action. In **William David Carlisle Wise**¹, which the court below relied on, the Supreme Court held *inter alia* that:

“A cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right to entitlement of a Judgment in his favour against the other”

Furthermore, Order 18/19 (10) **RSC** defines reasonable cause as:

“...a cause of action with some chances of success when only the allegations in the pleadings are considered”

A careful perusal of the Statement of Claim does not contain facts upon which the Appellant can attach liability to the Respondent and neither does it establish some chance of success for the Appellant.

The Statement of Claim which appears on pages 11 – 12 of the record of appeal defeats the whole purpose and function of pleadings.

In our view, the learned Judge in the Court below was on firm ground in dismissing the matter for lack of a cause of action and cannot be faulted in that respect.

The first ground of appeal is therefore dismissed as it lacks merit.

The second ground of appeal raises the issue of whether the cause discloses the Appellant's *locus standi*.

Blacks' Law Dictionary¹⁰ at page 960 defines *locus standi* as the right to bring action or to be heard in a given forum. Equally, the **Concise Oxford English Dictionary**¹¹ at page 837 defines *locus standi* as the right or capacity to bring an action or to appear in court.

Locus standi is intertwined with the issue of disclosing a reasonable cause of action.

Therefore, for one to bring an action before court, he must demonstrate that he has a reasonable cause of action. Before the court is asked to decide any question which is in controversy between litigants, it is in all cases desirable and necessary that the matter submitted to the court is clearly ascertained in order to enable the parties know what it is they are exactly contending about.

In addition to what has been alluded to under the first ground of appeal, the learned authors of ***Odgers' Principles of Pleadings and Practice***¹² on page 148 define a reasonable cause of action as a cause of action with some chance of success.

They go on further as follows:

"Only the allegation in the pleadings are considered. If when those allegations are examined, it is found that the alleged cause of action is certain to fail, the Statement of Claim should be struck out."

It follows from the aforestated that if a party is able in the Statement of Claim to disclose a reasonable cause of action with some chance of success, he has *locus standi*.

We have already acceded to the fact that the Appellant has no reasonable cause of action and therefore, has no *locus standi*.

Furthermore, the Appellant has not shown in any way how he has been affected or prejudiced by the Defendant's action and no question has been raised fit to be tried or decided by the court.

The second ground of appeal equally fails.

The net result is that the appeal fails and it is accordingly dismissed for lack of merit.

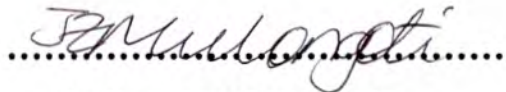
We shall make no order for costs.



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F. M. CHISANGA
JUDGE PRESIDENT
COURT OF APPEAL



.....
J. CHASHI
COURT OF APPEAL JUDGE



.....
J. Z. MULONGOTI
COURT OF APPEAL JUDGE