

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

2017/HP/0036

**B E T W E E N:**

FRANK MASANTA

**PLAINTIFF****AND**

SAMSON MWALE

**DEFENDANT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
7<sup>th</sup> day of November, 2017**

For the Plaintiff : In Person  
For the Defendant : No Appearance

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## **J U D G M E N T**

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**Legislation Referred To:**

1. *Subordinate Courts Act, Chapter 28*

This is an appeal against the Learned Magistrate's Ruling, in which the Plaintiff was declined leave to amend his Writ of summons. In that Ruling, the Learned Deputy Registrar stated that:

**"Having heard the application by the Plaintiff for amending the Writ of Summons and the reasons stated above I therefore decline to grant the application and further dismiss the interim injunction granted and ultimately dismiss the matter for lack of merit. I find that the submissions in support of the application were not in tandem with it. That the parties were going on back and forth on issues raised in the inter-parte hearing and also issues raised in the bid to settle the matter ex-curia. I therefore find that the parties**

**are abusing Court process and do not seem to be clear on the issues to direct their minds on this suit. I have heard this matter back and forth and I would be prejudiced to allow the application by the Plaintiff to amend the claims of his Writ of Summons."**

Dissatisfied with the lower Court's Ruling, the Appellant brings this appeal to this Court.

I have earnestly considered the Ruling, which dismissed the application to amend both originating process and the entire action. Order XV of the Subordinate Court Rules, allows a party to amend any pleadings in Court before final judgment is delivered. It reads:

**"The Court may at any stage of the proceedings, either of its own motion or on the application of either party, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not, and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purposes of determining, in the existing suit, the real question or questions in controversy between the parties shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just."**

It can be discerned from Order XV that the rationale for amendments possibly lies in the fact that all issues in controversy between parties must be presented with utmost clarity to a Court for determination. The facts of this appeal reveal that the Plaintiff was not granted leave to amend originating process because the

lower Court held the view that the parties had unreasonably peddled their positions and prejudiced her opinion. She did not disclose the nature of the prejudice.

It is trite that pleadings in civil proceedings are done with full disclosure and it is therefore perplexing that the lower Court would be prejudiced when neither side had led evidence. I find that the lower Court misapprehended the provisions of Order XV of the Subordinate Court Rules and fell into grave error when she decided to dismiss the originating process and the matter on merit, when she did not conduct a trial.

This appeal has merit and the Ruling of the lower Court is accordingly set aside. Since the Learned Magistrate has already taken a position in this case, I order that it be retried by another Magistrate.

I make no order as to costs.

J4

Dated this 7<sup>th</sup> day of November, 2017.

  
M. Mapani-Kawimbe  
**HIGH COURT JUDGE**