

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**2017/HP/0477**

04 AUG 2017

IN THE MATTER OF:

**ARTICLE 11 OF THE CONSTITUTION OF  
ZAMBIA, CHAPTER 1 VOLUME 1 OF THE  
LAWS OF ZAMBIA**

IN THE MATTER OF:

**ARTICLE 20 (1), (3) OF THE  
CONSTITUTION OF ZAMBIA, CHAPTER 1  
VOLUME 1 OF THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**ARTICLE 23 OF THE CONSTITUTION OF  
ZAMBIA, CHAPTER 1 VOLUME 1 OF THE  
LAWS OF ZAMBIA**

IN THE MATTER OF:

**ARTICLE 28 (1) OF THE CONSTITUTION  
OF ZAMBIA, CHAPTER 1 VOLUME 1 OF  
THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**THE PROTECTION OF FUNDAMENTAL  
RIGHTS RULES, STATUTORY  
INSTRUMENT NO. 156 OF 1969**

AND IN THE MATTER OF:

**THE LEGAL PRACTITIONERS ACT,  
CHAPTER 30 VOLUME 4 OF THE LAWS  
OF ZAMBIA**

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

MAKEBI ZULU  
HOBDAK KABWE  
ANNA MWITWA MWEWA

**1<sup>ST</sup> PETITIONER  
2<sup>ND</sup> PETITIONER  
3<sup>RD</sup> PETITIONER**

**AND**

LAW ASSOCIATION OF ZAMBIA

**RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 4<sup>th</sup>  
day of August, 2017**

*For the Petitioners* : Mr. M. Lungu, Messrs Lungu Simwanza & Co.,  
Mr. M. Kanga, Messrs Makebi Zulu and Associates  
*For the Respondent* : Mr. C.L. Mundia, Messrs C.L. Mundia & Co.

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## **EX TEMPORE RULING**

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### **Cases Referred To:**

1. *Finsbury Investments Limited v Antonio Vetrigilla, Manuel Vetrigilla, Ital Terrazo Limited (in receivership) SCZ/8/95/2016*

### **Legislation Referred To:**

1. *High Court Act, Chapter 27*

The Respondent filed a notice of motion for an adjournment on 28<sup>th</sup> July, 2017, pursuant to Order 30 Rule 1 of the High Court Rules. It was supported by an Affidavit which was sworn by **Christopher Lubasi Mundia**. He deposes that the parties are attempting to settle the matter ex-curia following instructions from his client. He states that his client is undertaking internal consultations with its Council and members. He prays to the Court to grant the application.

The matter came up for hearing on 3<sup>rd</sup> August, 2017, whereat Learned Counsel for the Respondent sought an adjournment placing

reliance on the Affidavit. Learned Counsel for the Petitioners opposed the application and argued that an ex-curia settlement could be pursued, whilst the matter remained active in Court. Counsel submitted that the Respondent should have attempted to settle the matter well before the hearing date, given that judicial resource was precious, and was not to be wasted.

Counsel stated that the Respondent had not entered appearance nor filed an Answer or Affidavit in Opposition. In short, the Respondent had failed to comply with the Order for Directions. Its failure attracted consequences, which were inevitable. Counsel further stated that opposing Counsel served him the notice of motion to adjourn outside Court and did not afford him sufficient opportunity to obtain instructions from his clients. He prayed to the Court to dismiss the application.

In response, Counsel for the Respondent submitted that an application for an adjournment ordinarily attracted another date of hearing, which could be given by the Court. Counsel stated that in as much as judicial resource was precious, the Court had an obligation



to encourage ex-curia settlements. In casu, the Respondent was proposing to do and had communicated the position to the Petitioners.

I have seriously considered the Affidavit filed herein and the arguments advanced by Counsel. Order 33 rule of the High Court Rules provides that:

**“1. The Court may postpone the hearing of any civil cause or matter, on being satisfied that the postponement is likely to have the effect of better ensurity of the hearing and determination of the question between the parties on the merits, and is not made for the purpose of mere delay. The postponement may be made on such terms as to the Court seems just.”**

When considering whether to allow an adjournment, a Court must be satisfied that the adjournment is useful in the determination of a dispute. An adjournment must not be granted for the purpose of mere delay.

This Petition was filed into Court on 24<sup>th</sup> March, 2017 and it should have been disposed of within three months from the date of filing. The three months period elapsed on 24<sup>th</sup> May, 2017. A notice of status conference dated 21<sup>st</sup> April, 2017 was served on the parties

on 29<sup>th</sup> March, 2017. On 20<sup>th</sup> April, 2017, the Respondent's Advocates filed a Notice of Appointment and a notice of motion to adjourn. On 21<sup>st</sup> April, 2017, I granted them an adjournment and ordered the Respondent to file an Affidavit in Opposition by 10<sup>th</sup> May, 2017.

I further issued an Order for Directions on 26<sup>th</sup> May, 2017, which the Respondent did not comply with. The Respondent has neither entered an appearance, filed an Answer nor Affidavit in Opposition. This clearly shows that the Respondent has no desire to defend itself even after being afforded more than sufficient time.

In the case of **Finsbury Investments Limited and Antonio Vetrigilia, Manuel Vetrigilia, Ital Terrazo Limited (in receivership)**<sup>1</sup>, the Supreme Court held *inter alia* that:

**"The High Court Rules are couched in a manner that all actions before Court are Judge driven, which entails that a Judge of that Court has the responsibility of ensuring that all actions before it are stirred to their logical conclusion promptly. In doing so, the High Court has a responsibility of ensuring that it adopts the quickest method of disposing of a matter before it, justly and having afforded the parties an opportunity to be heard. To achieve this, there is built in the practice and procedure of the High Court and indeed the appellate Courts, a system whereby an obviously hopeless, frivolous or vexatious matter may be dealt with at an interlocutory stage without having to await a full hearing... In its unlimited jurisdiction, the High Court is**

also vested with.... The power to grant either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies, or reliefs whatsoever, interlocutory or final to which any of the parties thereto, may appear to be entitled.”

It is clear from the authority that I am responsible for ensuring that all actions before me are promptly stirred to their logical conclusion. I am not satisfied that an adjournment is necessary granted that the Respondent has not entered an appearance, filed an Answer nor deposed an Affidavit in Opposition. It has no leg to stand on and it cannot be entertained.

Accordingly, I dismiss this application and grant the Petitioners costs to be taxed in default of agreement.

Dated this 4<sup>th</sup> day of August, 2017.

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