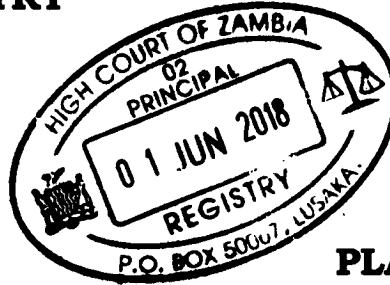


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2018/HP/0732**



**BETWEEN:**

**SAMSON MWANALILA**

**PLAINTIFF**

**AND**

**SARAFINA ZULU**

**1<sup>ST</sup> DEFENDANT**

**JOSEPH MWANZA**

**2<sup>ND</sup> DEFENDANT**

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN  
CHAMBERS ON THE 31<sup>ST</sup> DAY OF MAY, 2018**

*For the Plaintiff: No applicable*

*For the Defendant: Not applicable*

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**REVIEW APPLICATION RULING**

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**Cases referred to:**

- 1. Robert Lawrence Roy v Chitakata Ranching Company Limited  
(1980) ZR 250 (HC.)*
- 2. Jamas Milling Company Limited-Vs-Imex International (PTY)  
Limited SCZ No. 20 of 2002*

**Legislation referred to:**

- 1. High Court Rules, Cap 27 of the Laws of Zambia.*

The Plaintiff filed this application for an Order for Leave to review the Ruling on Injunction delivered on 14<sup>th</sup> May, 2018. The application has been commenced pursuant to **Orders 20 Rule 3** and **Order 39** of the **High Court Rules**. It must be noted that order 20 rule 3 is not applicable to this application.

The application is supported by an Affidavit in which the Plaintiff avers that the Defendants are suspected to have sold the house which was subject of the Injunction Ruling to another person, who is extending the house. He further averred that he had not produced the documents during the hearing during the injunction application as he had not been familiar with the procedure and consequently low exhibited "Contracts of Sale" marked as "**SM2**" to "**SM4**".

The Deponent concluded by stating that based on the above averments, the Court should review its earlier Ruling as he could not stop the works on the property which was already sold to him.

Having perused the application and the Affidavit in Support, and further considering the nature of the application, I decided to render the Ruling based on these documents and the applicable law.

This Court is being moved to review its Ruling pursuant to the provisions of **Order 39 of the High Court Rules**, which state:

- 1. Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have**

**obtained leave to appeal, and such appeal is not withdrawn), and, upon such review, it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision:**

**2. Any application for review of any judgment or decision must be made not later than fourteen days after such judgment or decision. After the expiration of fourteen days, an application for review shall not be admitted, except by special leave of the Judge on such terms as seem just".**

The Ruling in this matter was delivered on 14<sup>th</sup> May, 2018 and this application was filed on 16<sup>th</sup> May, 2017, thus it was filled within the stipulated time and further, there is no allegation that either party has filed a Notice of Appeal, hence the application is properly before this Court.

In relation to the review itself, various authorities have guided as to when a review of a decision of a Court should be undertaken. In the case of ***Roy-Vs-Chitakata Ranching Company Limited<sup>(1)</sup>***, it was held as follows:

**(ii) Setting aside a judgment on fresh evidence will be on the ground of the discovery of material evidence which would have had material effect upon the decision of the Court and has been discovered since the decision but could not with reasonable diligence**

***have been discovered before.***"( underline for emphasis only).

This holding was re-affirmed by the Supreme Court in the case of ***Jamas Milling Co. Ltd.-Vs-Imex International (PTY) Limited*** <sup>(2)</sup>, where the Late Chitengi, J.S. whilst referring to the ***Roy*** <sup>(1)</sup> case stated:

***"For review under Order 39 rule (2) of the High Court rules to be available the party seeking it must show that he has discovered fresh material evidence which would have had material effect upon the decision of the Court and has been discovered since the decision but could not with reasonable diligence have been discovered before."***

In the case in casu, the question is whether the documents exhibited to the Affidavit in Support of this application amount to fresh evidence? The Plaintiff alleges that he had not exhibited the documents to show his legal interest in the property, despite having the documents, as he was not aware of the procedure. This, in my view does not amount to discovery of fresh evidence to warrant this Court to review its Ruling. Further, it must be noted that this Court did specifically ask the Plaintiff about the absence of the documents referred to in the Affidavit but not exhibited, however, the Plaintiff opted to proceed without them.

Further, the exhibited documents do not reveal any evidence which would have had a material effect on the decision of the Court, had it been available at the time of the hearing of the injunction

application and taking into account the principles upon which injunctions are granted.

Order 39 also stipulates that on sufficient grounds being advanced, the Court can review its decision. I have perused the "Agreement Letter" wherein the Parties agree that the 1<sup>st</sup> Defendant *"shall give the house to the Plaintiff upon finishing payment"*. However, there is no indication or description of the said house that was being sold to the Plaintiff, and as alluded to in the Injunction Ruling, this Court cannot grant an Order in relation to a property that has not been clearly identified.

On the totality of the facts, evidence and authorities cited herein, I find that the Plaintiff has not advanced sufficient grounds or fresh evidence, which is material to warrant this Court to review its Ruling delivered on 14<sup>th</sup> May, 2018. Thus, I hold that this application lacks merit and is accordingly dismissed

Leave to appeal is granted.

**Delivered at Lusaka this 31<sup>st</sup> day of May, 2018.**



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S. M. Wanjelani  
**HIGH COURT JUDGE**