

BETWEEN:

**ENVIRONMENTAL INVESTIGATION
AGENCY INC.
NEWS DIGGERS MEDIA LIMITED
MUKOSHA FUNGA**

**1ST APPELLANT
2ND APPELLANT
3RD APPELLANT**

AND

**GIVEN LUBINDA
JEAN KAPATA
TASILA LUNGU**



**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

CORAM: KONDOLO SC, CHISHIMBA AND NGULUBE, JJA.
On 16th June, 2021 and 7th October, 2021.

For the 1st Appellant:

Mr. M. Nchito SC appearing with Mrs. M. Chakoleka, both of Messrs. Nchito & Nchito.

For the 2nd and 3rd Appellants:

Mr. E. Kaluba, of Messrs. Mwenye & Mwitwa Advocates.

For the Respondents:

Mr. B. C. Mutale SC appearing with Ms. M. Mukuka, both of Messrs. Ellis & Company, and Mr. K. Kaunda, of Kaunda Kaunda Legal Practitioners.

J U D G M E N T

NGULUBE, JA delivered the judgment of the Court.

Cases referred to:

1. *Muvi TV Limited vs Killian Phiri and Kennedy Musweu*, Appeal No. 13 of 2015.
2. *Knuppfer vs London Express Newspaper Limited (1944)* ALL ER 495.
3. *Antonio Ventriglia Manuela Ventriglia vs Eastern and Southern African Trade and Development Bank*, SCZ Judgment No. 13 of 2010.
4. *Mususu Kalenga Building Limited, Winnie Kalenga and Richmans Money Lenders Enterprises*, SCZ Judgment No. 4 of 1999.
5. *Katamuyeke Mukelebai vs Esther Nalwamba, Commissioner of Lands and the Attorney General (2013)* 2 ZR 312.
6. *Shoprite Holdings Limited, Shoprite Checkers (Pty) Limited vs Lewis Chisanga Mosho & Lewis Nathan Advocates (sued as a firm)*, SCZ Judgment No. 40/2014.
7. *Admark Limited vs Zambia Revenue Authority (2006)* ZR 43.
8. *Given Lubinda vs Edmond Lifwekelo & Daily Nation Newspaper Limited*, Appeal No. 2 of 2018.
9. *African Banking Corporation Zambia vs Mubende Country Lodge Limited*, Appeal No. 116/2016.
10. *Road Transport and Safety Agency vs First National Bank Zambia Limited & Josephine Milambo*, Appeal No. 127/2016.
11. *Hadzel vs De Waldorf (1970)* 16 F.L.R. 174.

Other works referred to:

1. *The Rules of the Supreme Court, 1965 (White Book) RSC, Volume 1, 1999 Edition.*
2. *Gatley on Libel and Slander.*
3. *Odger's Principles of Pleading and Practice, 22nd Edition.*

INTRODUCTION

1. This is an appeal against a ruling of the High Court delivered by Yangailo, J dated 3rd March, 2020, which dismissed the appellants' application to raise preliminary issues on a point of law.

BACKGROUND

2. The background to this appeal is that the respondents commenced a defamation suit against the appellants by writ of summons and statement of claim, seeking damages for libel allegedly contained in newspaper articles and opinions published by the appellants. The respondents further sought an injunction to restrain the appellants from publishing similar libelous and malicious articles and opinions relating to the respondents.
3. The second and third appellants were the first ones to react to the respondents' action after being served with the originating process. They did not file a defence but entered a conditional memorandum of appearance. They later filed an affidavit in opposition to the injunction, in which they deposed that they would plead the defence of justification and fair comment on a matter of public interest, when they would file their defence. The first appellant neither entered a memorandum of appearance nor defence. It filed an affidavit in opposition to the injunction and deposed that it

would plead the defence of justification and fair comment on a matter of public interest, upon filing a defence.

4. When the application for an injunction came up for hearing, State Counsel Nchito on behalf of the first appellant made a viva voce application raising two preliminary issues on a point of law. The first question was whether or not the writ of summons and statement of claim disclosed a cause of action in the manner and form prescribed by the Supreme Court in the case of ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu***¹. The second question was whether or not the matter ought to have been struck out, on account of the failure by the respondents to plead the case as prescribed in that case.
5. State Counsel Nchito argued that the respondents failed to plead the matter in the manner and form prescribed in the case of ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)***. He submitted that pleadings in a defamation case need to be drafted in such a way that the exact words that are allegedly defamatory are particularized out of the body of the writing or footage. He contended that the pleadings did not particularize what was defamatory to anyone and was simply a reproduction of newspaper articles and opinions, without disclosing a cause of action.

6. State Counsel Mwenye who appeared on behalf of the second and third appellants adopted the submissions of Mr. Nchito SC.
7. The preliminary application was opposed by State Counsel Mutale and Mr. Kaunda who were representing the respondents. Mr. Mutale SC argued that in terms of the **Rules of the Supreme Court**, an application for dismissal of an action should be made by notice of motion or summons. He cited **Order XXX Rule 1 of the High Court Rules** and argued that an application of this nature could not be made in an informal and cavalier fashion.
8. Mr. Kaunda argued that the newspaper articles and opinions reproduced in the statement of claim and the use of the words “*mukula cartel*” in the articles disclosed a cause of action, because they were clear as to the persons who were being described as the “*mukula cartel*”. He argued that the statement of claim revealed the names of the defamed persons and a cause of action was disclosed.
9. According to Mr. Kaunda, the case of **Muvi TV Limited vs Killian Phiri & Kennedy Muswu (supra)** was distinguishable from this case, as the respondent in that case failed to quote the exact words as was published. He said the appellants in casu were not arguing that the exact words complained of had not been quoted as published.

10. Mr. Nchito SC's response was that **Order 14A (2) of the Rules of the Supreme Court** allowed an applicant to raise a preliminary issue on a point of law, orally, and the first appellant was not out of order in raising a preliminary objection.

DECISION OF THE HIGH COURT

11. The first issue that was considered by the lower court was whether the first appellant's application was properly brought before court, because there was need for strict compliance with **Order 14A of the Rules of the Supreme Court**, before the application could be entertained. The court found that **Order 14A Rule 2(3) of the Rules of the Supreme Court** provides that the requirements for invoking the procedure under **Order 14A**, among others, that the defendant must have given notice of intention to defend. The court referred to the explanatory notes under the said Order, which say that the determination of any question of law or construction under the Order can only be made if the defendant has given notice of intention to defend.
12. On the facts of this case, the lower court dismissed the first appellant's application on the basis that it was not properly before court because the first appellant did not file a notice of intention to defend or any other process bearing its semblance. The court

however found that the application by the second and third appellants, who had adopted the first appellant's application, was properly before court because they had entered a conditional memorandum of appearance.

13. The lower court then considered the merits of the preliminary application. It reasoned 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 or entitlement to a judgment in his favour against the other. The court went on to cite a number of authorities, including the case of ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)***, which state that in a defamation suit the law requires that the actual words complained of must be set out in the statement of claim. It expressed the view that the context in which the words complained of as published is material to how the right-thinking members of the public will gauge the effect of the words.
14. The lower court found that the respondents statement of claim reproduced the eleven articles that they alleged to be libelous and mentioned the persons who were allegedly defamed. They had further also mentioned the effect of the words complained of on the respondents, and what, in the respondents' view, a right-thinking person could construe the words to mean.

15. The court ultimately found that even if one could argue that the statement of claim could have been couched in more happy terms, the difference in style alone did not amount to a legal deficiency. The court held that the respondents' pleadings disclosed a cause of action and dismissed the preliminary objection.

THE APPEAL TO THIS COURT

16. Dissatisfied with the ruling of the court below, the appellants appealed to this Court advancing five grounds of appeal as follows –

1. ***That the court erred in law and in fact by failing to recognize that the statement of claim as drafted by the respondent made it impossible for the appellants to defend in the absence of the respondents' specifying the words that allegedly defamed them;***
2. ***That the court fell into error by holding that failure to particularize the words complained of in a defamation matter such as this one was a matter of style and not a legal deficiency;***
3. ***That the court erred in law and in fact when having found that the statement of claim was unhappily drafted, it failed at the minimum to order an amendment;***
4. ***That the court below erred in law and in fact by ruling that the respondents' statement of claim disclosed a cause of action in accordance with the rule set out in Muvi TV Limited vs Killian Phiri and Kennedy Musweu, Appeal No. 13 of 2015, when the respondents did not clearly set out the exact words complained of in the articles – a fact the Judge conceded***

partly when she held that the respondents had drafted their statement of claim in unhappy terms; and

5. *That the court below erred in law and fact by stating that the application as it related to the first appellant was wrongly before it on the ground that it did not comply with the rule in Order 14A of the Rules of the Supreme Court despite the appellant having filed an affidavit stating that it would be pleading the defences of justification and fair comment on a matter of public interest when it files its defence which at law is sufficient.*

17. When this appeal came up for hearing, Mr. Nchito SC informed us that the appellants' counsel had filed joint heads of argument which they relied on and augmented with oral submissions. On behalf of the respondents, State Counsel Mutale called upon Mr. Kaunda to address us, who relied on the respondent's heads of argument which he equally augmented with oral submissions.

THE APPELLANTS' CONTENTIONS

18. The appellants' counsel argued all the grounds of appeal together. State Counsel Nchito submitted that the lower court concluded that reproducing articles in full is an acceptable way of pleading a defamation case. He referred to the explanatory notes under **Order 18/7 (19) of the Rules of the Supreme Court**, which say that the general rule is that only the gist is to be pleaded; however, if the precise words of a document or conversation are themselves

material, they must be set out in full in the pleading. The explanatory notes further state that in an action for libel, the precise words of the offending document are always material.

19. Mr. Nchito SC further cited **Order 18/12/24 of the Rules of the Supreme Court** which states that in a libel action arising out of a long article or “feature” in a newspaper, the plaintiff must set forth in his statement of claim the particular passages referring to him of which he complains and he must set out the respects in which such passages are alleged to be defamatory, otherwise the pleading will be struck out. State Counsel emphasized that a plaintiff in a defamation must clearly set out in the statement of claim the exact words which he or she alleges to be defamatory.
20. He referred to **Paragraph 983 of Gatley on Libel and Slander at pages 441-443**, which says that in libel, words complained of are material and must therefore be set out in the statement of claim. It is not enough to describe their substance, purport or effect. The law requires the words of libel to be set out in order that the court may judge whether they constitute a ground of action and whether they are libel or not. On the same principle, State Counsel cited the case of **Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)** where the court held that the statement of claim filed by the respondent in that case did not quote the words complained of

exactly as published and therefore, it did not disclose a cause of action.

21. Mr. Nchito SC argued that the respondents in their statement of claim failed to set out which words of the publications were allegedly defamatory of each plaintiff. Therefore, the finding of the lower court was wrong at law as it was contrary to the authorities.
22. State Counsel further submitted that the learned authors of ***Gatley on Libel and Slander, 10th Edition, at Page 764*** state that each publication of a defamatory statement gives rise to a separate cause of action. This meant that each plaintiff must plead his or her own cause of action for each alleged defamatory publication although consolidated in one action. They cannot plead the case as though they were defamed as a 'class'. He submitted that each plaintiff that is alleging defamation must show the exact words referring to that plaintiff and what the alleged meaning of those words are in reference to the said plaintiff.
23. According to Mr. Nchito SC, the respondents drafted their pleadings as though they were defamed as a class. He submitted that it is an established principle of law that members of a class cannot sue for defamation. He cited the case of ***Knuppfer vs London Express Newspaper Limited²***, where Lord Porter said at page 498:

“... this case raises once again the question which is commonly expressed in the form: “Can an individual sue in respect of words which are defamatory of a body or class of persons generally?” The answer as a rule must be No. But the inquiry is really a wider one and is governed by no rule of thumb. The true question always is: was the individual or were the individuals bringing the action personally pointed to by the words complained of?”.

24. State Counsel contended that unless the respondents could allege that they were defamed as a group, which cannot give rise to a cause of action, such unhappy drafting of pleadings is not allowed by **Order 18/12/24 of the Rules of the Supreme Court**. He argued that in setting out the words complained of, each of the respondents must specifically plead their case to enable the appellants defend the claims and the court to make a determination whether the appellants are liable. It was State Counsel’s argument that failure to set out the exact words complained of amounts to failure to disclose a cause of action. Therefore, the pleadings must be struck out and the action ought to be dismissed.

25. The respondents' counsel opposed the argument that the respondents drafted their pleadings as though they were defamed as a class and not as distinct individuals. Mr. Mutale SC submitted that this argument should not be entertained, as it was not raised in the court below and no such ground of appeal was disclosed in the memorandum of appeal. In support of his argument, State Counsel relied on the cases of **Antonio Ventriglia Manuela Ventriglia vs Eastern and Southern African Trade and Development Bank**³, and **Mususu Kalenga Building Limited, Winnie Kalenga and Richmans Money Lenders Enterprises**⁴. He submitted that the said argument should be expunged from the heads of argument and the record.
26. State Counsel Mutale further disputed that the statement of claim made it impossible for the appellants to defend themselves. This was because the appellants were on record as having said that they would rely on the defence of justification and fair comment. He submitted that a defendant can only choose a defence after understanding the cause of action and has, or is aware of, the evidence the defendant intends to rely on. He cited **Odgers's Principles of Pleading and Practice, 22nd Edition, at page 193**, which says that the defence of justification in libel and slander is the most dangerous plea, and should never be placed on the record

without careful consideration of the sufficiency of the evidence by which it is to be supported. It further says, like a charge of fraud, counsel must not put a plea of justification on the record unless he had clear and sufficient evidence to support it. Mr. Mutale SC argued that the appellants understood the cause of action and identified the evidence to support a plea of justification.

27. State Counsel further argued that the rules do not specify the manner in which the parts of articles complained of must be set out or set forth and that was what the lower court meant by “*difference in style*”. He submitted that the pleadings demonstrated that the respondents took issue with the publications in their entirety because one has to read them in full, to appreciate their effect on the respondents’ characters and reputations. He submitted that this is what is envisaged by **Order 18 Rule 7(19) of the Rules of the Supreme Court** and was the basis of the decision in ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)***.
28. He submitted that **Order 18 Rule 7 (19) of the Rules of the Supreme Court** requires that the words of an offending documents must be set out or reproduced in full. He argued that the case of ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)*** would have been beneficial to the appellants if only certain or summed up parts of the publications had been set out in the statement of claim, if

the statements had been paraphrased, or the statement of claim did not reflect what was in fact published.

29. State Counsel referred to **Order 18/12/24 of the Rules of the Supreme Court** and submitted that once the publication is identified, the precise or exact words published must be presented in full, as they are always material. He submitted that failure to do so would amount to a 'summed up' statement of claim as was the case in **Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)**.
30. On ground five, State Counsel Mutale submitted that the first appellant did not comply with the requirements of **Order 14A of the Rules of the Supreme Court**. According to him, **Order 14A/2/3 of the Rules of the Supreme Court** sets out the requirements that ought to be satisfied when invoking the provisions of **Order 14A** and one of them is that the defendant must have given a notice of intention to defend.
31. State Counsel cited the case of **Katamuyeke Mukelebai vs Esther Nalwamba, Commissioner of Lands and the Attorney General⁵**, where the court held that notice of intention to defend an action commenced by writ of summons is filed by memorandum of appearance in the prescribed form which ought to be accompanied by a defence. He submitted that the first appellant neither filed a memorandum of appearance nor defence. They only filed an

affidavit in opposition which did not amount to a notice of intention to defend. Therefore the first appellant did not meet the requirements of **Order 14 (2) (3) of the Rules of the Supreme Court** for purposes of invoking the provisions of **Order 14A**. We were therefore urged to dismiss this appeal with costs.

32. At the hearing of the appeal, Mr. Nchito SC in his oral submissions countered the argument that the issue of pleadings having been drafted as though the respondents were defamed as a class could not be raised on appeal as it was not raised in the lower court. He relied on the case of **Shoprite Holdings Limited, Shoprite Checkers (Pty) Limited vs Lewis Chisanga Mosho & Lewis Nathan Advocates (sued as a firm)**⁶ and the case of **Admark Limited vs Zambia Revenue Authority**⁷, where the Supreme Court held that a party may at the trial raise a point of law open to him even though it was not pleaded in his defence.

33. State Counsel went on to submit that the Supreme Court in **Given Lubinda vs Edmond Lifwekelo & Daily Nation Newspaper Limited**⁸, dealt with exactly the same issue which this court is confronted with. The endorsement in the originating process was bereft of particulars of the specific words or paragraphs in the publication which the appellant considered defamatory. The appellant had argued that the publication as a whole was defamatory. The Court

held that the action should not have progressed to trial because the originating process was wanting in particulars and the pleadings should have been struck out. He argued that the pleadings in this case should have been struck out.

34. On behalf of the respondents, Mr. Kaunda in his oral submissions argued that the lower court had no jurisdiction to determine the application to raise preliminary issues because the appellants did not enter a notice of intention defend which is a condition for raising a preliminary issue as set out in **Order 14A/2/3 of the Rules of the Supreme Court**. He cited the case of **African Banking Corporation Zambia vs Mubende Country Lodge Limited**⁹ where the Supreme Court held that what constitutes a notice of intention to defend in the context of our rules, is the filing of a memorandum of appearance which is accompanied by a defence. He contended that none of the appellants filed a memorandum of appearance and defence and this went to the jurisdiction of the lower court to hear the application.

35. Mr. Kaunda submitted that his contention was a jurisdictional issue which the respondents were entitled to raise even though it was not raised in the lower court and this court could not ignore it. He relied on the case of **Road Transport and Safety Agency vs First National Bank Zambia Limited & Josephine Milambo**¹⁰, where the

Supreme Court held that even if the question of jurisdiction has not been raised in the court below, the court is at liberty to consider it on appeal because of the consequences that flow from a court acting while wanting in jurisdiction. He argued that this appeal should be dismissed with costs.

36. Mr. Nchito SC's response was that the issue of giving notice of intention to defend was considered and determined by the lower court. He submitted that the fact that the respondents was raising the issue of jurisdiction instead of responding to the merits of the appeal, showed that they conceded that the pleadings should be struck out. He urged us to allow this appeal.

CONSIDERATION OF THE MATTER BY THIS COURT AND VERDICT

37. We have considered the evidence on record, the heads of argument filed by Counsel for the parties and the authorities to which we were referred. We shall address grounds one, two, three and four together, as they are interrelated. They all revolve around the issue of whether the respondent's pleadings disclosed a cause of action.
38. This is a defamation suit, in which the respondents prepared a statement of claim in which they reproduced eleven newspaper articles and opinions which they alleged to be libelous. This appeal is before us on account of the manner in which the respondents

crafted their pleadings. A preliminary issue was raised before the court below by the appellants who had argued that the pleadings did not disclose a cause of action. The lower court was of the view that a cause of action was disclosed. It held that even if one could argue that they could have been couched in more happy terms, the difference in the style of crafting the pleadings did not amount to a legal deficiency.

39. The position of the law as confirmed by the many authorities cited by State Counsel is that in an action of libel or slander, the precise words complained of are material, and they must be set out in the statement of claim. This principle was reaffirmed in the case of ***Muvi TV Limited vs Killian Phiri & Kennedy Musweu (supra)*** where the Supreme Court held that:

“...in an action for defamation, the law requires that the actual words complained of be set out in the statement of claim.”

40. The learned authors of ***Gatley on Libel and Slander, 11th Edition, at Page 967***, in ***Paragraph 28.11*** state that the words used are material facts and they must therefore be set out verbatim in the particulars of claim, preferably in the form of a quotation and it is not enough to describe their substance, purport or effect. Further guidance is found in the explanatory notes under ***Order 18/7/19 of***

the Rules of the Supreme Court, which say that only the gist should be pleaded. In other words, only the particular passages complained of should be clearly identified and set out.

41. We must however state that there are exceptions to this rule. The learned authors of ***Gatley on Libel and Slander, 11th Edition, Paragraph 28.12 at Page 968-969***, state that a claimant cannot confine the material of which he complains to an extract from a single publication in circumstances where it is obvious that no reasonable reader would have read that extract in isolation and any reader inquiring beyond that material could not possibly have drawn an inference defamatory of the claimant. Where the claimant intends to allege that the meaning of words is affected by the context in which they were written or spoken, he should include this contextual material in particulars of claim.
42. However, surrounding material which is genuinely irrelevant to the claimant's complaint should be omitted. This is particularly important where the claimant is suing in respect of words contained in a book or a long "feature" article in a newspaper. Save in exceptional circumstances where the sting of the matter can properly be said to derive from the publication read as a whole, it will not be appropriate to set out the article or book in its entirety.

43. The respondents' complaint in the statement of claim is that the newspaper articles and opinions in issue were alleging that they were part of a 'Mukula Cartel', which was engaged in the illegal harvesting and trade of *Mukula logs*. They also make it clear that the said newspaper articles and opinions are related. In the circumstances, we think that this case typifies an exceptional situation in which the sting of the matter can properly be said to derive from the publications when read as a whole. Therefore, it was not wrong for the respondents in this case to set out the articles and opinions in their entirety. We are fortified by the case of *Hadzel vs De Waldorf*¹¹, where Fox J. held as follows at page 176:

“A plaintiff in defamation may set out the whole of some lengthy written or spoken matter, notwithstanding that there are parts which are not defamatory, either because it is desired to rely upon an imputation to be derived from the whole or because the meanings of separate defamatory parts can only be ascertained by reference to the whole context. In the latter case the pleader is obliged to set out or incorporate the necessary context in his statement of claim.... if unnecessary matter is pleaded, it may be ordered to be struck out.”

44. We agree with the lower court that the difference in the style of crafting of pleadings did not amount to a legal deficiency. It is our

considered view that the respondents' pleadings disclose a cause of action because the statement of claims does not only reproduce the articles and opinions, it mentions the persons who are were allegedly defamed. The statement of claim also states the effect of the words contained in the articles and opinions on the respondents and what, in the respondents' view, a right-thinking person might construe the words to mean.

45. The circumstances of this case are fundamentally different from the case of ***Given Lubinda vs Edmond Lifwekelo & Daily Nation Newspaper Limited (supra)***, which State Counsel Nchito has relied on, where the court held that the pleadings should have been struck out and the action should not have progressed to trial because the originating process was wanting in particulars. In that case, the endorsement in the originating process filed by the appellants was bereft of particulars of the specific words or paragraphs in the publication which the appellant considered defamatory and the appellants had argued that the publication as a whole was defamatory. Therefore, it does not apply to this case.
46. The argument raised by the appellants that the respondents drafted their pleadings as though they were defamed as a class, is indeed a question of law which they were at liberty to raise on appeal before this court, even if it was not pleaded in the court

below. We however think that it has no merit as we have alluded to the fact that the statement of claim says that the articles and opinions complained of are related and could not have been pleaded separately. We, therefore, find no merit in grounds one, two, three and four of this appeal.

47. Coming to ground five, the appellant contends that the lower court was wrong to have held that the first appellant did not enter a notice of intention to defend, despite having filed an affidavit in which they said they would plead the defence of justification and fair comment on a matter of interest, when they file their defence. It is trite law that the giving of notice of intention to defend is a pre-requisite to making an application under **Order 14A of the Rules of the Supreme Court**, pursuant to which the appellants made their preliminary application before the court below.

48. This case was begun by writ of summons and the notice of intention to defend must have been entered by a memorandum of appearance accompanied by a defence. An affidavit in opposition to an injunction did not amount to entering a notice of intention to defend, even if the affidavit said the first appellants would plead the defence of justification and fair comment on a matter of interest upon filing a defence. We are guided by the case of **African Banking**

Corporation Zambia vs Mubende Country Lodge Limited (supra)

where the Supreme Court held that:

“In the view that we take what constitutes a notice of intention to defend, in the context of our rules, is the filing of a memorandum of appearance which is accompanied by a defence. It, therefore, follows that the filing of a memorandum of appearance with a defence is a prerequisite to launching an application under Order 14A, RSC...


The filing of a conditional memorandum of appearance without a defence is only applicable in circumstances where the defendant wishes to contest the validity of proceedings with a view to applying to set aside the writ... a conditional memorandum of appearance can never be extended or over stretched to constitute a notice of intention to defend in the context of an application under Order 14A, RSC which is intended to finally determine a matter without a full trial of the action.”

49. The ramifications of the principle espoused in the cited case is that the lower court should not even have entertained the preliminary application by the second and third appellants, because they only filed a conditional memorandum of appearance, without a defence. We therefore agree with Mr. Kaunda that the lower court had no jurisdiction to hear the preliminary application. We, therefore, find no merit in ground five and we hereby dismiss it.

50. For the foregoing reasons, we hereby dismiss this appeal for lack of merit. We, accordingly, uphold the ruling of the lower court and order that this matter be remitted back to the High Court for continued hearing. We award costs to the respondents, to be taxed in default of agreement.


M. M. KONDOLO, SC
COURT OF APPEAL JUDGE


F. M. CHISHIMBA
COURT OF APPEAL JUDGE


P.C.M. NGULUBE
COURT OF APPEAL JUDGE