

**IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA**

Appeal No. 347/2023

*(Civil Jurisdiction)*

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

**THOMAS NYIRONGO**

*(Suing in his capacity as representative of 59 others)*

**APPELLANT**

**AND**

**KASHEMU INVESTMENT LIMITED**

**1<sup>ST</sup> RESPONDENT**

**CHEERS REAL ESTATE COMPANY LTD**

**2<sup>ND</sup> RESPONDENT**

***Coram: Kondolo SC, Majula and Banda-Bobo, JJA  
On 26<sup>th</sup> April, 2024 and 13<sup>th</sup> June, 2024***

*For the Appellant : In Person  
For the Respondents : No Appearance*

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

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MAJULA JA, delivered the Judgment of the Court.

**Cases referred to:**

- 1. London Ngoma and Others vs LCM Company Limited and Another - SCZ Judgment No 22 of 1999.*
- 2. Miles Sampa, Geoffrey Bwalya Mwamba, Captain Seleman Banda Phangaula vs Inonge Wina - SCZ/8/294/2014.*
- 3. Fred M'membe & The Post Newspapers (In Liquidation) vs Abel Moozi & Others - SCZ Appeal No 175/2019.*
- 4. Attorney General vs Aboubacar Tall & Another - SCZ Appeal No. 77/1994.*

5. *Sachar Narendra Kumar vs Joseph Brown Mutale - SCZ Judgment No. 8/2013.*
6. *Barclays Bank vs ERZ Holdings Limited - SCZ Appeal No. 71/2007.*
7. *Rae Zambia Limited vs The Attorney General & Tullow Zambia BV - CAZ Appeal No.112/2018.*

## **1.0 Introduction**

- 1.1 This appeal emanates from a ruling by Honourable Lady Justice E. P. Mwikisa who refused to grant an application for joinder dated 28<sup>th</sup> August, 2023.

## **2.0 Background**

- 2.1 The background to this matter as can be gleaned from the record of appeal, is that the appellants purchased property from the 2<sup>nd</sup> respondent between the periods 2018 to 2023. The appellants subsequently received a letter of notice to yield possession of the subject land being Lot No. 24430/M Kabangwe, Lusaka. This was accompanied by a Consent Order dated 18<sup>th</sup> June, 2020 which had been entered into by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
- 2.2 Prior to the Consent Order being executed, the 1<sup>st</sup> respondent had sued the 2<sup>nd</sup> respondent by way of writ of summons and statement of claim, seeking payment of the sum of ZMW1,695,000.00 as well as damages for breach of contract. Following this suit, the two parties entered into a Consent Order on 18<sup>th</sup> June, 2020 for vacant possession of the property in issue. The appellants were unaware of this state of affairs until the 14<sup>th</sup> of August, 2023 when they were served

with court documents. They immediately proceeded to apply for joinder.

### **3.0 Decision of the lower Court**

3.1 The court below, on 28<sup>th</sup> August, 2023 proceeded to render a ruling declining the application for joinder. The learned Judge was of the considered view that the application for joinder had come too late in the day when the matter had already been concluded by way of a Consent Order 3 years prior to the appellants' application. She opined that the appellants were at liberty to commence a fresh action if they felt strongly about the case.

### **4.0 Grounds of Appeal**

4.1 The preceding decision of the court below is what has triggered the present appeal before us. The appellant has fronted seven (7) grounds of appeal couched as follows:

- “1. The Court erred in law and fact when it refused to grant the appellant the order for joinder without considering the evidence exhibited in the application.*
- 2. The Court misdirected itself in law and fact when it did not consider the fact that the Appellants were only notified of the court process on 14<sup>th</sup> August, 2023.*
- 3. The trial court erred in law and fact by its refusal to grant an order for joinder of Applicants to the matter in casu, contrary to the well-established principle of law that joinder*

*applications may be granted even after judgment has been delivered.*

4. *The Court misdirected itself when it ordered that the Appellants were at liberty to start a fresh matter in the High Court if he feels strongly about this case without considering the reasons for the application.*
5. *The trial Court erred in law and fact by its failure to recognize that a Writ of Possession has been re-issued by the 1<sup>st</sup> Respondent and Ordering the Appellants to commence a fresh action as the commencement of a fresh action would not stay execution of the re-issued Writ of Possession relating to the subject property.*
6. *The trial Court erred by its failure to pronounce itself on the “acclaimed locus standi” of the Appellants in the matter and the subject property.*
7. *The trial Court erred in law and fact by its failure to recognise and apply “the principle of the relationship of Principal and Agent” that existed between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent at the material time the 2<sup>nd</sup> Respondent effected the sale of various subdivision parcels of land to the Appellants herein.”*

## **5.0 Appellants Arguments**

- 5.1 In the arguments the appellant elected to argue grounds 1 and 2 together and grounds 3, 4, 5, 6 and 7 together.

## **6.0 Grounds 1 & 2**

6.1 The grievance in these two grounds is essentially the refusal by the trial Court to grant the order of joinder notwithstanding the fact that the appellants only became alive to this matter on 14<sup>th</sup> August, 2023. That the Court did not consider the evidence before it which was that the Consent Order was never lodged with the Lands and Deeds Registry to indicate that there was a Court Order on the property in issue and the appellants only became cognizant of the case when they were served on 14<sup>th</sup> August, 2023. That the appellants were never made parties to the proceedings which affected them as they had an interest as occupiers.

## **7.0 Grounds 3, 4, 5, 6 & 7**

7.1 In these grounds, the dissatisfaction again emanates from the refusal by the court below to grant joinder, the gist of the argument is that this refusal to join the appellants to the matter was contrary to well established principles of law that joinder applications may be granted even after judgment has been delivered. In addition, that the court misdirected itself when it ordered that the appellants were at liberty to start a fresh action without considering the reasons for the application.

7.2 The appellant has drawn our attention to the fact that a Writ of Possession had been re-issued by the 1<sup>st</sup> respondent and ordering the appellant to commence a fresh action would not

stay execution of the re-issued writ of possession relating to the subject property.

7.3 In terms of the law relating to when a party can be joined to proceedings, the appellant has placed reliance on **Order 15 Rule 6(2) (b) of the Rules of the Supreme Court**. He has further called in aid the cases of *London Ngoma and Others vs LCM Company Limited and Another*<sup>1</sup> and *Miles Sampa, Geoffrey Bwalya Mwamba, Capt. Seleman Banda Phangaula vs Inonge Wina*<sup>2</sup> which articulate the principle that a party can be joined to proceedings even after a consent judgment.

7.4 We were also referred to the case of *Fred M'membe & The Post Newspapers (In Liquidation) vs Abel Moozi & Others*<sup>3</sup> which guided that a party who was not party to the proceedings and a consent judgment, can apply to be joined to the proceedings as a party. That commencing a new action was a wrong suit to challenge a consent order in this regard. It has been strongly argued that the above authorities clothe this Court with power to hear this appeal and that the appellant has demonstrated sufficient interest to be joined to the suit.

7.5 Based on the foregoing, we have been implored to uphold the appeal.

## **8.0 Respondent's Arguments**

8.1 There were no heads of arguments filed on behalf of the respondent.

## **9.0 Hearing of the Appeal**

- 9.1 The appeal came up for hearing on 7<sup>th</sup> May, 2024, and only the appellant was in attendance. There was proof of service that the respondents were served with the record of appeal and the notice of hearing for the appeal.
- 9.2 Be that as it may, the appellant wholly relied on the heads of argument that he had filed in support of the appeal.

## **10.0 Analysis & Decision of this Court**

- 10.1 We have meticulously considered the record of appeal, heads of arguments and the authorities cited in arriving at our decision. Although the appellant has canvassed 7 grounds of appeal, we consider that what is at the core of the appeal is the refusal by the Judge to grant joinder. We are therefore being called upon, in our view, to interrogate what the principles are governing applications for joinder. And secondly, whether a party can be joined after the matter has been concluded by way of Consent.
- 10.2 A brief recap of the background is that the appellants had bought from the 2<sup>nd</sup> respondent various parcels of land on the subject property between 2018 and 2023. According to the record, there was a consent which only came to the attention of the appellant on 14<sup>th</sup> August, 2023. It is on this basis that the appellant graced the doors of the court seeking joinder. The question that arises is whether they indeed had *locus standi* in the matter they sought to be joined to.

## 11.0 Principles of Joinder

11.1 The starting point in our view is what is the law in relation to joinder i.e. when can a party apply for joinder. The provisions of **Order 15 rule 6(2) (b)** of the **Rules of the Supreme Court** are instructive which provide:

*“2. Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application -*

*(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*

*(b) order any of the following persons to be added as a party, namely -*

*(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or*

*(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to*



*determine as between him and that party as well as between the parties to the cause or matter.”*

- 11.2 Further, the leading case on joinder is that of ***Ngoma and Others vs LCM Company Limited***<sup>1</sup> (*supra*) called in support by the appellant. The holding in that case was to the effect that the appellants who had an interest in the matter ought to have been joined to the action notwithstanding that consent judgment had been entered into as they had never been parties and were not aware of the hearing. The apex Court went further to opine that “the learned District Registrar erred in dismissing the application on the ground that they cannot be joined since a consent judgment had been obtained.” This was in line with their decision in the ***Attorney General vs Aboubacar Tall***<sup>4</sup> case where the court held that Courts have inherent jurisdiction to exercise their discretion to join parties to an action.
- 11.3 Similar sentiments were expressed in ***Sachar Narendra Kumar vs Joseph Brown Mutale***<sup>5</sup> where they stated that joinder may be granted even after judgment has been delivered. The court of last resort did not depart from their reasoning in the case of ***Miles Sampa***<sup>2</sup> in which they cited the ***London Ngoma and Others***<sup>1</sup> case as well as the ***Barclays Bank vs ERZ Holdings Limited & Others***<sup>6</sup>.
- 11.4 We maintained the same position in the ***Rae Zambia Limited vs The Attorney General & Tullow Zambia BV***<sup>7</sup> case, where we summed up the requirements for an applicant to be joined as follows:

*“The threshold under Order 14/5(1) HCR is that, for a party to be joined to the proceedings it must either;*

*(1) Be a person who may be entitled to, or claim some share or interest in the subject matter of the suit or*

*(2) Who may likely to be affected by the result or outcome of the suit.*

*The import of the aforestated is that, for an application for joinder to be granted, one does not necessarily have to satisfy both requirements, but either of the two, would suffice...In casu, as earlier stated, the 2<sup>nd</sup> Respondent has sufficient interest in the matter and is likely to be affected by the outcome of the appeal in the court below”.*

11.5 It is therefore crystal clear from the foregoing that a party who shows sufficient interest in the matter or is likely to be affected by the outcome of any decision of the Court can be joined to an action even after consent judgment has been granted.

11.6 Joinder applications in court are typically governed by principles of fairness, efficiency and judicial discretion. Courts aim to join parties or claimants where there is a common question of law or fact or promoting fairness by resolving related issues together. Efficiency is key as joining related matters reduces duplication of efforts and conserves judicial resources.

11.7 In *casu*, the appellants were not a party to the proceedings and were not even aware of the hearing. The consent which was executed on 18<sup>th</sup> June 2020 was not made known to them until 14<sup>th</sup> August, 2023. From our perspective, they therefore had *locus standi* and satisfied the conditions to be joined. The interest shown was their claim that they had purchased land on the proposed subdivisions of Lot 24430/M which was the subject of the consent agreement.

## **12.0 Joinder vs Commencement of fresh action**

12.1 Flowing from above, it behoves us to state that case law supports the argument by the appellants that a person can be joined to proceedings notwithstanding that there is a consent judgment. We are fortified in so stating by the ***London Ngoma***<sup>1</sup> and ***Miles Sampa***<sup>2</sup> cases.

12.2 Turning to the lower court's ruling that the appellants were at liberty to start a fresh matter, we are in disagreement with this position. Commencing a fresh or new action would not be appropriate in the circumstances and in actual fact would be a wrong suit because the appellant was not a party to the proceedings and the consent judgment. We stand guided by the case of ***Fred M'membe & The Post Newspapers (In Liquidation) vs Moozi & Others***<sup>3</sup>.

## **12.0 Conclusion**

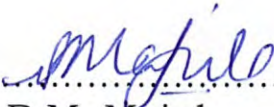
12.1 In a nutshell, we find merit in all the grounds of appeal and accordingly uphold them. We order that the appellants be

joined and the record is remitted back to the High Court before another Judge.

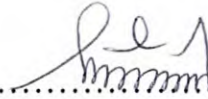
12.2 Costs shall abide the outcome of the decision of the Court below.



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M.M. Kondolo, SC  
**COURT OF APPEAL JUDGE**



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B.M. Majula  
**COURT OF APPEAL JUDGE**



.....  
A.M. Banda-Bobo  
**COURT OF APPEAL JUDGE**