

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

2015/HP/1706

BETWEEN:

PATRICIA BANJI

AND

THIERERA MUAMBA



APPLICANT

RESPONDENT

BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE

For the Applicant:

Mrs. L. Mushota - Messrs. Mushota and Associates.

For the Respondent:

Mr. T. Kasweshi & Ms. S. Musengu- Messrs Ellis & Co.

R U L I N G

Cases referred to:

1. **Ndongo v. Moses Mulyango and Banda (2011) Z.R 187.**
2. **GF Construction Limited v. Rudnap Zambia Limited (1999) Z.R 134.**
3. **Attorney General v. Steven Luguru (SCZ No. 20/2001).**
4. **Attorney General, Ministry of Works and Supply, Rose Makano v. Joseph Emmanuel Frazer and Peggy Frazer (2001) Z.R 87.**
5. **John Sangwa v. Sunday Bwalya Nkonde SC (Appeal No.2 of 2021).**
6. **Bank of Zambia v. Jonas Tembo and Others (2002) Z.R 103.**
7. **J.K. Rambai Patel v. Mukesh Kumar Patel (1985) Z.R. 220 (S.C).**
8. **Teklemicael Mengstab and Sema Transport v. Ubuchinga Investment (Appeal No. 20).**

9. **Indeni Petroleum Refinery Co. Ltd and Kafco Oil Limited v. Andrew Bungoni and 2 Others (Selected Judgment No.29 of 2017).**
10. **Kufamuyeke Mukelabai v. Esther Nalwamba, Commissioner of Lands and Attorney General (2013) 2 Z.R 312.**
11. **African Banking Corporation v. Mubende Country Lodge Limited (Appeal No.116 of 2016).**
12. **Maila Rodger Chilele v. Patson Mbao [2022] ZMCA 15.**
13. **Dr. Natalya Yakovlyeva v. Isabel Baog (Appeal No. 163/2023).**
14. **Attorney General, Mabariz Hussein v. Irene Muhongi Lemba (Appeal No. 19 of 2008).**

Legislation and other material referred to: -

1. **The Rules of the Supreme Court of England, 1999 Edition.**
2. **The Limitation Act, 1939.**
3. **Halsbury's Laws of England, 4th Edition, Vol 16**

1. INTRODUCTION

1.1 This is a Ruling on the Plaintiff's Notice of Motion to raise preliminary issue for the determination of the following points of law:

1) Whether this matter can be heard and determined by this Honourable Court when the issues of grievance by the Respondent occurred in 1999 when the parties divorced and whether the matter is not statute barred as per section 2 (1)(a) of the Limitation Act. If the court determines this matter is statute barred and cannot be

heard, the Applicant prays that the matter be dismissed with costs.

2) Whether the Respondent is entitled to have any property in Zambia when, at the time of acquisition, he was not a Zambian and did not qualify to own land property in Zambia per the Land Act, Chapter 184 of the Laws of Zambia and decision of the Supreme Court of Zambia. If the court determines that the respondent did not qualify to own land in Zambia and having confessed in court that he used money to buy the house in Kitwe, the Applicant prays that the Respondent be disqualified from owning land as he did not qualify when the properties were acquired.

3) Whether the Respondent should not bear the costs of this application having solely benefited from the properties acquired by the Applicant, though with some contribution from the Respondent, but the Respondent has lived in the Chamba Valley house alone with his wives since 1999 and also solely benefited from rentals of the Kitwe house on 32 Banda Crescent, whose rentals in 1999 stood at K2000.00 per month and has obviously gone up from that amount.

- 1.2 The application is made pursuant to Order 14A rule 1 and 33(3) and (7) of the Rules of the Supreme Court Rules of England 1999 and supported by an affidavit deposed to by **PATRICIA BANJI**, the Applicant herein.

2. APPLICANT'S AFFIDAVIT EVIDENCE

- 2.1 The Applicant deposed that she had been kept out of her properties from 1999 to date and the Respondent had done nothing to prosecute his appeal until counsel pushed for a date.
- 2.2 She deposed that the issue of property settlement arose upon the divorce being granted according to Tonga customary law in 1999 and was therefore statute barred.

3. RESPONDENT'S AFFIDAVIT IN OPPOSITION

- 3.1 The Respondent filed an affidavit in opposition, which he deposed to.
- 3.2 He asserted that the Applicant did not own Plot No. 32 Banda Crescent, Chimwemwe, Kitwe nor did she have any interest in the said plot as he bought the same in 1978 before he and the Applicant were married on 16th December, 1980.
- 3.3 That the Applicant could not claim absolute or sole interest in Plot No. S/D 609/E/15/A/5, Chamba Valley, Lusaka as

he bought the same save that he and his wives including the Applicant resolved that the certificate of title be in the name of the Applicant who was then the only one qualified to own land in trust of him and the family.

- 3.4 He further asserted that the issues raised by the Applicant were for determination in the main hearing and also that they were *res judicata* as they were already determined by the Registrar in her Ruling dated 15th October, 2019.
- 3.5 Further, that the Applicant could not raise preliminary issues before responding or filing a defence to the Appeal.

4. HEARING

- 4.1 At the hearing of the application, learned Counsel for the Applicant, Mrs. Mushota relied on the affidavit, list of authorities and the skeleton arguments in support of the application.
- 4.2 In the skeleton arguments, Mrs. Mushota referred the Court to Order 14A and Order 33 rule 3 and 7 of the Rules of the Supreme Court 1999 Edition and submitted that this Court could hear an application made at any stage of the matter and determine an issue of law and fact without a full trial of the action.

4.3 Counsel submitted that this matter was statute barred by virtue of the fact that the divorce was granted more than six years ago. That the grievance pertaining to this property settlement should have been commenced within six years from the date of the divorce and that in this case, the properties were no longer available for sharing.

4.4 Mrs. Mushota referred to section 2 (1) of the Limitation Act which provides that:

“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued. That is to say: actions founded on simple contract or on tort.”

4.5 Mrs. Mushota submitted that it was clear that a person could not commence an action founded in the law of contract or tort more than six years after the material facts arose. The Applicant’s pleadings were unambiguous and alluded to the fact that the marriage between them ended in 1999 according to Tonga custom. That upon assessing expert evidence from a senior Tonga man on how marriages ended, the court made a finding that the marriage ended in 1999 and gave them the right to appeal.

4.6 It was submitted that the court’s decision was never appealed and therefore remained a fact that the marriage ended in

1999. It was argued that the commencement of the matter in 2015 rendered the Court *functus officio* and unable to grant the Respondent the reliefs prayed for.

- 4.7 On the second preliminary issue, Counsel referred the Court to the case of **Ndongo v. Moses Mulyango and Banda** ⁽¹⁾; **GF Construction Limited v. Rudnap** ⁽²⁾, **Attorney General v. Steven Luguru** ⁽³⁾, **Attorney General, Ministry of Works and Supply, Rose Makano v. Joseph Emmanuel Frazer and Peggy Frazer** ⁽⁴⁾ where the capacity of a foreigner to purchase land in Zambia was discussed.
- 4.8 It was submitted that in the latter case, a non-Zambian was disqualified from buying a property because he had not obtained consent. The Court was therefore implored to take judicial notice of the fact that the law at the time did not allow sale of houses or properties to non-Zambians.
- 4.9 Mrs. Mushota argued that the Respondent produced a dubious contract of sale purportedly by Ellis and Co which was smacked of fraud and illegality. That he had openly admitted that he used money to buy the property in response to a question in cross examination on how he bought the property when the law did not allow him to buy, being a

Senegalese/Congolese who did not qualify to buy land in Zambia at all material times.

4.10 It was submitted that a non-Zambian who acquired property without complying with the legal requirements under the Lands Act was liable to be dispossessed of the land as in the ***Ndongo case***.

4.11 Mrs. Mushota further submitted that the Respondent never produced any consent as required by section 5 of the Lands Act which required obtaining of consent of the President before the transfer or assignment of any land. That section 3(3)(a) of the Lands Act gave the President of Zambia authority to alienate land to non-Zambian who were permanent residents without requirement of a consent. That the Respondent did not adhere to statutory requirements such as payment of property transfer tax, including lodgement requirements at the Lands and Deeds Registry.

4.12 It was also argued that there was no residence permit tendered and no consent under the President's hand and thus, he could not have been a bona fide purchaser for value.

4.13 It was counsel's further argument that the court below misdirected itself when it insisted that the High Court

referred the issue of property settlement to the Deputy Registrar.

4.14 It was submitted that pursuant to Order 14 A and Order 33 rule 3 and 7 of the Rules of the Supreme Court of England, the Court could separately deal with any question or issue arising in a cause if the issue could substantially dispose of the cause or matter and that it could dismiss the cause or matter or make such other order or give such judgment as may be just.

4.15 Regarding the third preliminary issue, it was submitted that even though the Court was required to apply law and equity concurrently, the Respondent solely benefited from the use of the both properties since 1999 to the exclusion of the real owner, the Applicant. That the Respondent seemingly having entered a marriage of convenience with the Applicant especially as he insisted that she was the only Zambian amongst his wives hence the Chamba Valley Property No. 609/E/15/B/1/A/5 was put in her names.

4.16 That the Respondent failed to obtain title for all the years to the Kitwe property No. 32 Banda Crescent for lack of necessary documentation. It was submitted that this was why

he was challenging the court's order that he paid for valuation report in spite of him benefiting from both properties.

4.17 That even though costs were in the discretion of the court, the discretion ought to be exercised judiciously and the circumstances of this case demanded that the expenses be allowed in favour of the Applicant.

4.18 In opposing the application, learned counsel for the Respondent, Mr. Kasweshi relied on the affidavit and skeleton arguments in opposition.

4.19 In the skeleton arguments, Counsel referred the Court to Order 14A of the Rules of the Supreme Court of England already referred to by the Applicant.

4.20 The gist of the Respondent's argument was that from the onset the Applicant had not complied with the requirements of Order 14A of the Rules of the Supreme Court in order to raise a preliminary issue. It was argued that the Applicant had not filed a notice of intention to defend the appeal and could not therefore invoke the provisions of Order 14A. He relied on the case of **John Sangwa v. Sunday Bwalya Nkonde**⁽⁵⁾ where the Court held that:

“In the not too distant past, we stated in the case of African Banking Corporation Limited v

Mubende Country Lodge Limited that an application under Order 14A of the White Book can only be made after the defence had been filed.”

4.21 It was submitted that the preliminary issue raised by the Applicant was *res judicata* as the issue was already determined by the Registrar in the Ruling dated 15th October, 2019.

4.22 Counsel argued that the issue of the matter being statute barred was thus already determined by the Registrar and could not be raised again as it was *res judicata*.

4.23 The case of **Bank of Zambia v. Jonas Tembo and Others** ⁽⁶⁾ was also referred to where it was held that:

“A plea of *res judicata* must show either an actual merger or that the same point had been actually decided between the same parties.”

4.24 On the issue of the Respondent not being qualified to own land or buy property in Zambia, it was argued that the same could be determined in the main hearing and that it was also *res judicata* as the Applicant had an opportunity to raise it before the court below. For this proposition, learned Counsel for the Applicant referred to the learned authors of

Halsbury's Laws of England, 4th Edition, Vol 16 at paragraph 1528 where it was stated that:

“In order that a defence of res judicata may succeed, it is necessary to show that not only the cause of action was the same, but also that the plaintiff has had an opportunity of recovering, and but for his own fault, might have recovered in the first action that which he seeks to recover in the second.”

4.25 Regarding the third preliminary issue raised, Counsel submitted that costs were in the discretion of the court and were not claimed as a matter of right as espoused in the case of **J.K. Rambai Patel v. Mukesh Kumar Patel** (7).

4.26 In his oral submissions, Mr. Kasweshi added that in the case of **Teklemicael Mengstab and Sema Transport v. Ubuchinga Investment** (8) the Court guided on how applications on Order 14A were made. That the application adopted in this case was made by way of notice.

4.27 In reply, Mrs Mushota submitted that the preliminary issue was raised by way of Notice of motion mentioned in Order 14A and that they had therefore complied with the case referred to by Counsel for the Respondent.

5. DECISION OF THE COURT

5.1 I have carefully considered the submissions by the parties and the affidavit evidence. By this application, I have been called upon to determine the following questions of law:

- 1) *Whether this matter can be heard and determined by this Court when the issues of grievance by the Respondent occurred in 1999 when the parties divorced and whether the matter is not statute barred as per section 2 (1)(a) of the Limitation Act. If the court determines this matter is statute barred and cannot be heard, the Applicant prays that the matter be dismissed with costs.*
- 2) *Whether the Respondent is entitled to have any property in Zambia when, at the time of acquisition, he was not a Zambian and did not qualify to own land property in Zambia per the Land Act, Chapter 184 of the Laws of Zambia and decision of the Supreme Court of Zambia. If the court determines that the respondent did not qualify to own land in Zambia and having confessed in court that he used money to buy the house in Kitwe, the Applicant prays that the Respondent be disqualified from owning land as he did not qualify when the properties were acquired.*

3) *Whether the Respondent should not bear the costs of this application having solely benefited from the properties acquired by the Applicant, though with some contribution from the Respondent, but the Respondent has lived in the Chamba Valley house alone with his wife of wives since 1999 and also solely benefited from rentals of the Kitwe house on 32 Banda Crescent, whose rentals in 1999 stood at K2000.00 per month and has obviously gone up from that amount.*

5.1 The application is made pursuant to Orders 14A, rule 1 and Order 33, rule 3 and 7 of the Rules of the Supreme Court of England.

5.2 **Order 14A** provides as follows:

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.”

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.”

5.3 Order 33 rule 3 of the Rules of the Supreme Court provides that:

“3) The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.”

5.4 Order 14A and Order 33 rule 3 above allows the Court to determine a question of law or construction of any document arising in a cause or matter at any stage of the proceedings where it appears that the question is suitable for determination without a full trial of the action and such determination will finally determine the entire cause. Upon

such determination, the Court may dismiss the cause or matter or make an order or judgment as the court may think just.

5.5 The Supreme Court in the case of **Indeni Petroleum Refinery Co. Ltd and Kafco Oil Limited v. Andrew Bungoni and 2 Others** ⁽⁹⁾ held regarding Order 14A that:

“Order 14A rule 1 of the White Book permits a judge of the High Court to raise an issue on his own motion and to dismiss the substantive matter if the determination of the issue substantially disposes of the matter.”

5.6 The crux of the Applicant’s argument is that this matter is statute barred as the divorce was granted more than six years ago and any grievance pertaining to this property settlement should have been commenced within six years from the date of divorce.

5.7 The Applicant further contends that the Respondent was not entitled to own property in Zambia as he was a non-Zambian as per Lands Act. That the Respondent did not tender any residence permit or consent under the President’s hand could

not therefore be a bonafide purchaser for value of property no.32 Banda Crescent, Kitwe.

5.8 The Respondent on the other hand argues that the Applicant has not filed a notice of intention to defend the appeal and could not invoke the provisions of Order 14A of the Rules of the Supreme Court.

5.9 It is the Respondent's further argument that the issue of the matter being statute barred was already determined by the Registrar and was thus *res judicata*.

5.10 I will first deal with the Respondent's contention that the Applicant cannot invoke the provisions of Order 14A of the Rules of the Supreme Court on account of failure to file a notice of intention to defend.

5.11 For the avoidance of doubt, **Order 14A/1-2/2** provides for the requirements for employing the procedure under this Order as follows:

“The requirements for employing the procedure under this Order are the following:

(a) the defendant must have given notice of intention to defend;

(b) **the question of law or construction is suitable for determination without a full trial of the action (para. 1(i)(a));**

(c) **such determination will be final as to the entire cause or matter or any claim or issue therein (para. 1(i)(h)); and**

(d).....” (*underlined for emphasis*)

5.12 The rule further provides that:

“The wording of para. 1(3) makes it clear that the determination of any question of law or construction under this Order can only be made if the defendant has given notice of intention to defend.”

5.13 It is clear from the above rule that one of the prerequisites for employing the procedure under Order 14A is for the defendant to give a notice of intention to defend and that such determination will be final as to the entire cause or matter therein.

5.14 In the case of **Kufamuyeke Mukelabai v. Esther Nalwamba, Commissioner of Lands and Attorney General** ⁽¹⁰⁾ at page 312, a High Court ruling by Justice Chali (J) as he then was, held *inter alia* that:

“The giving of a notice to defend is a prerequisite to making an application under Order 14A whether by summons or orally at the hearing of the cause or matter or of the interlocutory application... no appearance was entered or defence filed on behalf of the 2nd and 3rd Defendants up to the time the preliminary issue was raised as a result, in terms of the requirements for a party to qualify to raise an issue of the law for determination by the court under Order 14A, the 2nd and 3rd Defendants are precluded from making any application of the nature they did.”

5.15 Furthermore, in the case of **African Banking Corporation v. Mubende** ⁽¹¹⁾ the Supreme Court stated that:

“There are certain requirements which must be satisfied before a matter can be disposed of on a point of law. One such requirement, according to Order 14A/1-2/2 of the White Book is the giving of notice of intention to defend. What constitutes a notice of intention to defend, in the context of the High Court 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 pre-requisite to launching an application under Order 14A of the White Book.

Contrary to Order 11 rule 1 of the High Court rules, the Appellant did not file a memorandum of appearance and a defence before invoking Order 14A of the White Book.”

5.15 Similarly, the Court of Appeal in the most recent case of **Maila Rodger Chilele v. Patson Mbao** ⁽¹²⁾ stated that:

“It is plain and simple that the Appellant did not satisfy the requirements of Order 14A which require the filing of an intention to defend. That, instead the Appellant opted to file a conditional memorandum of appearance which according to the above authorities does not constitute an intention to defend. Therefore, in the absence of an intention to defend, the Appellant could not rely on Order 14A RSC to contest the proceedings.”

5.17 It is clear from the above authorities that the giving of notice of intention to defend is a requirement to be fulfilled before invoking the procedure under Order 14A.

5.18 However, it is also important to consider the guidance recently given by the Court of Appeal in August 2024 in the case of **Dr. Natalya Yakovlyeva v. Isabel Baog** ⁽¹³⁾ which was an appeal emanating from a matter commenced by way of

originating notice of motion in which a preliminary issue was raised pursuant to Order 14A.

5.19 The Court in that case stated as follows:

“Going by the guidance in the *Mubende* case, it would appear that this was not an appropriate case to be dealt with under the procedure of Order 14A RSC where *inter alia* the requirement of a notice of intention to defend is mandatory. It appears that Order 14A RSC presupposes a procedural stage where the pleadings have been exchanged and parties have each laid out their cases in detail. Typically, this would entail that a matter is contentious and was commenced by way of writ and statement of claim. For matters commenced by way of originating notice of motion, however, they are inherently designed to be resolved summarily or expeditiously often based on legal arguments presented in the motion itself. In other words, issues in an originating notice of motion are supposed to be non-contentious or clear cut not requiring extensive fact finding...Applying the summary procedure under Order 14A RSC to a matter commenced by way of originating notice of motion which in itself is somewhat summary would be redundant...Order 14A RSC cannot be invoked in a matter commenced by originating notice of motion as it would be impossible to satisfy certain

requirements such as the filing of the intention to defend which was clarified by the Supreme Court in the *Mubende* case. ”

5.20 What is clear from the above is that Order 14A RSC cannot be invoked in a matter commenced by originating notice of motion as it would be impossible to satisfy certain requirements such as the filing of the intention to defend.

5.21 Applying this principle to the present case which is an appeal, I find that the procedure under Order 14A of the Rules of the Supreme Court of filing a notice of intention to defend is not applicable as there cannot be an intention to defend the appeal which is resolved summarily by filing legal arguments.

5.22 In view of the foregoing, I find no merit in the objection raised by the Respondent and I shall therefore proceed to consider whether the questions of law can be determined without a full hearing pursuant to Order 14A.

5.23 I will first start by considering the first two questions of law.

5.24 As I have already alluded to, the Applicant contends that this matter is statute barred as the divorce was granted more than six years ago and any grievance by the Respondent pertaining to this property settlement should have been commenced within six years from the date of divorce.

5.25 The Respondent has argued that the issue that the Applicant has raised is *res judicata* as the issue was considered and determined by the learned Deputy Registrar in her ruling dated 15th October, 2019 and that there is no appeal against that ruling.

5.26 The Applicant herein in her submissions before the Deputy Registrar argued that the matter in so far as the claims by the Respondent were concerned was time barred in accordance with the Statute of Limitations Act since the Respondent divorced the Applicant in 1999.

5.27 In addressing these submissions, the Deputy Registrar stated as follows:

“I note that it was the Applicant who filed the application before Court following the guidance of the Honourable High Court Judge that the matter or property adjustment was to be determined by the Deputy Registrar of the High Court. A court when determining matters of property adjustment is required to hear both parties and make a decision based on the evidence before it. The Applicant having made the application, this Court was obligated to hear both parties.”

It is the view of this Court that the Applicant's arguments concerning the Respondent's claims as being statute barred has no basis in law. Further, the issue concerning the Statute of Limitations was never raised during the hearing of the application before Court."

5.28 The above extract from the ruling is very clear and explicit that the Deputy Registrar dismissed the issue that the grievance by the Respondent was statute barred. In point of fact, the Deputy Registrar made reference to the finding by the Subordinate Court regarding the issue when the Applicant was divorced wherein the lower court found that the year when the Applicant got divorced had no bearing on the issue of property adjustment.

5.29 The second issue is whether the Respondent is entitled to have any property in Zambia when, at the time of acquisition, he was not a Zambian and did not qualify to own land property in Zambia per the Land Act, Chapter 184 of the Laws of Zambia. It is contended by the Applicant that the properties in issue were therefore not available for sharing with the Respondent.

5.30 The Respondent contends that this issue is also *res judicata* as the Applicant had an opportunity to raise it in the main application. It is further contended that it is an issue that can be determined in the main hearing.

5.31 I have read the affidavit in reply to the supplementary affidavit in opposition filed by the Applicant on 2nd February, 2018 and the submissions filed by the Applicant on 5th February, 2019 before the Deputy Registrar. What is clear from the affidavit evidence and submissions is that the Applicant raised the issue that the Respondent had no capacity to own land at the material time and referred the Court to the case of **Attorney General, Mabariz Hussein v. Irene Muhongi Lemba** ⁽¹⁴⁾.

5.33 In that case, it was held that a person wishing to acquire land in Zambia had to be a Zambian at the time of the application for land. That at the time the Respondent had no legal capacity because he was a foreigner.

5.34 In the ruling by the Deputy Registrar at page 25, when considering the subject property Plot No. 32 Banda Crescent Chimwemwe Kitwe, she stated that the Applicant could not prove that she purchased the subject property as the

documents were prepared by Mr. Bula the vendor who had since passed away. The Respondent on the other hand provided a contract of sale between him and two vendors whose authenticity was attacked by the Applicant.

5.35 The Deputy Registrar stated that she could not fault the Applicant for the suspicions over the authenticity of the documents because the Respondent had no capacity to own land as a foreigner at the time. Her position was fortified by the fact that the Respondent in his own admission regarding the Chamba Valley property stated that he could not purchase it in his name because he was a foreigner and that was why he purchased it in the Applicant's name.

5.36 Since the Respondent claimed outright ownership on the basis that he bought the property when he had not married the Applicant, the Deputy Registrar found that the property was purchased during the subsistence of the marriage of the parties and the Respondent's argument automatically fell away.

5.37 She further stated that the Applicant by acknowledging a contribution by the Respondent to the purchase of the subject property was an acknowledgment that the Respondent played

a role in the purchase of the property although he had no capacity to own land.

5.38 The Deputy Registrar therefore made an order that the subject property be sold after a valuation report and the proceeds shared between the Applicant and the Respondent in the ratio 60% for the Applicant and 40% for the Respondent.

5.39 I have considered the two issues carefully. What is clear is that the Deputy Registrar proceeded to consider these issues raised by the Applicant and made findings of fact after trial of the matter and not as points of law. The Applicant therefore cannot raise the same issues as points of law before me when she has not appealed against the Ruling of the Deputy Registrar. In my view, it is a circuitous way of attacking the findings of the Deputy Registrar without filing an appeal.

5.40 I should point out at this stage that there is an appeal procedure provided for under the High Court Rules aimed at reviewing whether a decision by the Deputy Registrar should be overturned or quashed. The Respondent being dissatisfied with the Ruling of the Deputy Registrar exercised his right and appealed to the Judge at Chambers. The Applicant has

the liberty to respond to the four grounds of appeal raised by the Respondent and not raise preliminary issues on a point of law pursuant to Order 14A on issues which have been determined by the Deputy Registrar.

5.41 Given the foregoing, I find that the two questions of law are not suitable for determination pursuant to Order 14A and Order 33 rule 3 of the Rules of the Supreme Court.

5.42 The last issue relates to costs. It is contended that the court did not exercise its discretion relating to costs judiciously as pleaded as the circumstances of the case demanded that the expenses of the litigation be borne by the Respondent.

5.43 What I discern from the foregoing is that the Applicant is again attacking the Deputy Registrar's order that each party should bear its own costs. Although the question of costs is a point of law which can be determined without trial, I am puzzled that the Applicant has chosen to have the issue determined pursuant to Order 14A and not by way of appeal against the decision of the Deputy Registrar.

5.44 In the view that I hold, the questions of law for determination under Order 14A and 33 rule 3 are supposed to arise from the pleadings and not the decision or judgment of the Court.

It follows therefore and I find that the Applicant cannot move this Court (appellate Court) pursuant to Order 14A and seek a determination of issues on a point of law on findings made by the Deputy Registrar in her ruling.

5.45 For the reasons I have highlighted above, I find that the application by the Applicant lacks merit as the questions are not suitable for determination as points of law pursuant to Order 14A and 33 rule 3 of the Rules of the Supreme Court. Accordingly, the application is dismissed.

5.46 Considering the circumstances of the case, I make no order as to costs. The appeal by the Respondent shall be heard on 14th May, 2025 at 09:00 hours in the forenoon.

DELIVERED AT LUSAKA THIS 14TH DAY OF NOVEMBER, 2024



.....
M. C. KOMBE
JUDGE

14 NOV 2024