

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2019/HP/1210



BETWEEN:

MALALA MUTINTA HAMASUMA (*Suing as
Administrator of the Estate of late Jericho Hamasuma*)

1ST PLAINTIFF

AUGUSTINE MWEENDA

2ND PLAINTIFF

AND

JEFFREY KAZUBA NYENDWA (*Suing as
as Administrator of the Estate of late Nicolas Nyendwa*)

1ST DEFENDANT

ROBERT SELEMANI KAMOTO CHILUWE

2ND DEFENDANT

BEFORE HON. JUSTICE ELITA PHIRI MWIKISA

**FOR THE PLAINTIFFS: MR. M. KASAJI OF MESSRS C. L. MUNDIA &
COMPANY**

**FOR THE 1ST AND 3RD DEFENDANTS: MS. S. MVULA OF MESSRS J&M
ADVOCATES**

RULING

This is an interlocutory application made by the 1st and 3rd defendants who mid trial stated that with regard to the plaintiff's further bundle of documents dated 28th June, 2023, which bundle

was filed after the close of pleadings, they were making an application to recall PW1 and PW3 to be cross examined on the said bundle of documents.

The learned Counsel for the plaintiffs however objected to the said application and submitted that the defendants have always been aware of this matter and that even after PW1 and PW3 testified, the defendants were aware of this evidence, and that it would be unfair to examine witnesses on documents they did not speak to.

In reply, the learned Counsel for the defendants submitted that the court will note from the record that PW1 and PW3 did testify relating to the contract of sale on page 20 of the plaintiff's bundle of documents dated 17th December, 2019. That it is PW3's testimony that she was aware of the said contract of sale at page 20 of the plaintiff's initial bundle of documents. That as Counsel has stated that the two witnesses did not speak to the said contract of sale dated 6th July, 2012, which is contained at page 9 of the plaintiff's further bundle of documents, the two (2) witnesses be recalled to testify to the said contract of sale.

I have carefully considered the submissions from both Counsel and also considered the evidence contained in the said bundle of documents. I note that it is not in dispute that the two witnesses, namely PW1 and PW3 testified earlier, but what is in issue is the fact that they did not speak or testify to the documents or contract of sale which the plaintiffs have produced in their further bundle of documents dated 17th December, 2019, contained at page 20 of the plaintiff's bundle of documents.


I am further of the considered view that the plaintiffs have conceded that the two witnesses did not speak to or testify on the said document or contract of sale dated 6th July, 2012. It is therefore only right and in furtherance of the interest of justice that the defendants be allowed to cross examine PW1 and PW3 on the said contract of sale, otherwise there will be a miscarriage of justice. I further note from the record that in paragraph 9 of the consent order for directions of 23rd May, 2023, it was agreed therein that when the matter comes up for continued hearing or trial, the plaintiffs shall re-open their case, meaning that the defendants are in order to apply to recall the 2 witnesses, PW1 and PW2. It is for these reasons that I will grant

the defendant's application to recall the said witnesses so that they can be cross examined accordingly.

I will accordingly adjourn this case to 22nd January, 2025, at 09:00 hours for continued trial.

I award no costs.

Dated at Lusaka the13th..... day of January....., 2025



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ELITA PHIRI MWIKISA
JUDGE