

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

2022/HP/0670



BETWEEN:

**ERNEST ERNESTO SINYOLO
AND**

THE ATTORNEY GENERAL

DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE A. MALATA-ONONUJU IN
CHAMBERS ON THIS 20TH DAY OF AUGUST 2024.**

For the Plaintiffs: - Mrs. P. Liatumba - Messrs. Andrew and Partners. Ms.
+V. Simamba - Messrs. Milner and Paul Legal Practitioner

For the Defendant: - Mr. N. Mwiya - Attorney General's Chambers.

RULING

CASES REFERRED TO:

1. *Mukumbuta Mukumbuta & Others Vs Mongu Meat Corporation & Others SCZ Judgment No. 8 of 2003;*
2. *BP Zambia Plc Vs Interland and Motors Limited (2001) Z.R. 37;*
3. *Lewis Vs Daily Telegraph (No.2) (1964) 2 Q.B. 601;*
4. *Bascom Enterprises and Others Vs Bharti Airtel Zambia Holdings BV and Others (2012) Z.M.H.C 23;*
5. *Skinner Vs Shine PYT Limited (2019) N.S.W.S.C. 1709; and*
6. *Payne Vs British Time Recorder [1921] 2 K.B.*

LEGISLATION AND WORKS REFERRED TO:

1. *The High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia;*
2. *The Penal Code Chapter 87 of the Laws of Zambia;*
3. *Prohibition and Prevention of Money Laundering Act No. 14 of 2001;*
4. *The Rules of the Supreme Court, White Book. (1999) Edition; and*
5. *Zambian Civil Law Procedure: Commentary and Cases, Volume 1 (2017).*

1. INTRODUCTION



1.1 This Ruling is at the instance of the Attorney General, the Defendant herein, for Consolidation of Actions being the present cause number 2022/HP/0670 and another, being 2022/HP/1366. The Application was made pursuant to **Order III Rule 5** of the **High Court Rules Chapter 27** of the **Laws of Zambia**, which provides:

“Causes or matters pending in the Court may, by order of the Court or a Judge, be consolidated, and the Court or a Judge shall give any direction that may be necessary as to the conduct of the consolidated actions.”

2. BACKGROUND

2.1 The case as pleaded by the Plaintiff, who was employed as an Accountant by the Council of the University of Zambia, in his Statement of Claim is that the Plaintiff together with his colleague, Charles Inambao Nyambe, were arrested by the Drug Enforcement Commission (DEC) and jointly charged with the offence of Fraudulent False Accounting contrary to **Section 272** and **321(b)** of the **Penal Code, Chapter 87** of the **Laws of Zambia**, and **Section 7** of the **Prohibition and Prevention of Money Laundering Act No. 14 of 2001**.

2.2 The Plaintiff filed Writ of Summons with a Statement of Claim on 5th May, 2022, claimed that at the time of his arrest the DEC seized a Rosa Bus Registration Number ABG 2586 which belonged to the Plaintiff and was vandalized whilst parked at Lusaka Magistrates Court Complex Police Post and a Toyota Chaser Registration Number ABD 3983 which belonged to Mr. Charles Inambao Nyambe. That his arrest was malicious and without

reasonable or probable cause and the Particulars of his claim are as follows:

1. *Loss of freedom for 6 days whilst in detention and restricted movement for 11 years while trial was going on;*
2. *The Plaintiff faced the fear and anxiety of a groundless prosecution against him; and that*
3. *The Plaintiff has suffered severe trauma as a consequence of their detention for 6 days and malicious prosecution,*

2.3 The Plaintiff's claims the following reliefs:

- i. *Damages for malicious prosecution;*
- ii. *Damages for character assassination, trauma, inconvenience and ridicule suffered and caused to his family, loss of professional progression, health hazard risk whilst in detention for six (6) days. Loss of freedom and restricted movement;*
- iii. *Damages for loss of business for Rosa Bus Registration Number ABD 2586;*
- iv. *Damages for damaged Rosa Bus;*
- v. *Costs incurred in the Lower Court;*
- vi. *Costs for and incidental to these proceedings; and*
- vii. *Any other relief the Court deems fit.*

2.4 The Defendant in its Defense denied the claims made by the Plaintiff and to the extent that the charge was made against the Plaintiff falsely and maliciously and without probable cause. The Defendant avowed that it shall aver at trial that there was no

malice in the prosecution of the Plaintiff as the Plaintiff came in conflict with the law by engaging in acts of theft by public servant, false accounting and money laundering and that the Plaintiff was lawfully prosecuted and not entitled to any of the claims above

3 THE APPLICATION BY THE DEFENDANT

3.1 The Defendant filed Summons for Consolidation of Actions pursuant to **Order III Rule 5** of the **High Court Rules** on the 13th December, 2022. The Same was accompanied with an Affidavit in Support and List of Authorities and Skeleton Arguments in Support.

3.2 The Affidavit in Support was sworn by **NAMBOO MWIYA**, an Assistant Senior State Advocate in the Defendant's employ and this competent to swear the Affidavit.

3.3 The Deponent averred that on 6th September, 2022, another matter arising from similar facts had been commenced by Writ of Summons and Statement of Claim by Mr. Charles Inambao Nyambe, under cause number 2022/HP/1366 claiming the following reliefs:

a) For the sum of ZMW263,173.68 being outstanding amount for owner occupier allowance accrued to the Plaintiff during his tenure of employment with the 1st Defendant up until the payment of his retirement benefits;

b) For the sum of ZMW136,952.64 being the outstanding amount for the transport allowance accrued to the Plaintiff during his tenure of employment with the 1st

- Defendant up until the payment of his retirement benefits;*
- c) For the sum of ZMW8,800.00 being the outstanding amount on leave passages and night allowance accrued to the Plaintiff during his tenure of employment with the 1st Defendant;*
 - d) Interest on half salaries that were withheld from 2007 up until 2019;*
 - e) For the sum of ZMW200,000.00 being compensation for the vandalized Rosa Bus and ZMW486,580.00 for the vandalized Chaser motor vehicle, taxi and bus fares;*
 - f) Damages for malicious prosecution;*
 - g) Reimbursement of all legal fees paid to Friday Besa and Associates and Messrs. Milner and Paul Legal Practitioners during the prosecution of the Plaintiff by the Defendants;*
 - h) Damages for loss of career progression;*
 - i) Damages for loss of freedom of movement whilst in detention and on bond;*
 - j) Damages for mental distress, anguish and inconvenience;*
 - k) And any other relief the court may deem fit.*
 - l) Interest.*
 - m) Cost.*

3.4 A copy of the Statement of Claim for cause number 2022/HP/1366 was exhibited and marked “**NM2**”.

- 3.5 It was avowed that the Plaintiff in this matter, Mr. Ernest Ernesto Sinyolo, together with the Plaintiff under cause number 2022/HP/1366, Mr. Charles Inambao Nyambe, were arrested in 2007 and jointly charged with Fraudulent False Accounting, Theft by Public Servant and Money Laundering whilst working as employees of the University of Zambia.
- 3.6 It was avowed that the two accused were subsequently acquitted and have since separately filed lawsuits against the State based on the same facts.
- 3.7 In the Skeleton Arguments filed Counsel for the Defendant begun by gave a background to the matter as summarized above.
- 3.8 In restating this Court's jurisdiction to hear this matter as per **Order III Rule 5** of the **High Court Rules**, Counsel submitted that the Plaintiff under this cause commenced an action by way of Writ of Summons and Statement of Claim on 5th May, 2022 and listed the reliefs sought therein as above.
- 3.9 That in another matter before Honourable Lady Justice Mapani-Kawimbe under cause number 2022/HP/1366 the Plaintiff Mr. Charles Inambao therein has sued the University of Zambia and the Attorney General seeking the reliefs as listed above.
- 3.10 Counsel contended that it is clear that the reliefs sought under the two causes are similar and referred this Court to the Supreme Court case of **Mukumbuta Mukumbuta & Others Vs Mongu Meat Corporation & Others** ⁽¹⁾ wherein it was held as follows:

“The principle governing consolidation of actions is that common questions of law or facts and rights or relief arising out of the same transaction should be

consolidated in one action. The rationale for consolidation is to save costs and avoidance of multiplicity of actions.”

3.11 It was therefore, Counsel’s submission that the question of law and fact on both causes before this Court arise out of the same transaction and thus it is necessary and in the interest of justice that the two causes be consolidated.

3.12 Counsel argued that if the two causes are not consolidated, there is a likelihood that two conflicting judgments relating to the same subject matter will be rendered and that it is thus in the interest of justice that the two causes are consolidated.

3.13 Counsel referred the Court to the Supreme Court case of **BP Zambia Plc Vs Interland and Motors Limited** ⁽²⁾ at page 42 wherein it was stated as follows:

“The administration of justice would be brought into disrepute if a party managed to get conflicting decisions or decisions which undermined each other...”

3.14 It was Counsel’s prayer that this Court consolidates this cause with cause number 2022/HP/1366 to avoid contradicting judgments over the same subject matter.

4 THE RESPONSE BY THE PLAINTIFF

4.1 In response the Plaintiff filed Affidavit in Opposition with accompanying List of Authorities and Skeleton Arguments on 1st August, 2023.

4.2 The Affidavit in Opposition was deposed to by **CHARLES INAMBAO NYAMBE**, the Plaintiff under cause number 2022/HP/1366 who avowed that the Plaintiff in this matter and

him were jointly accused by the University of Zambia and the DEC of Theft by Public Servant and Money Laundering and were acquitted of these allegations by the Subordinate Court.

- 4.3 The Deponent avowed that he reasonably believed that the action he commenced under cause number 2022/HP/1366 was against both the University of Zambia and the Attorney General and that the reliefs are different but that the Plaintiff in this matter only brought an action against the 2nd Defendant, being the Attorney General.
- 4.4 That he is reliably informed that the University of Zambia has recently brought new allegations of Theft by Public Servant against the Plaintiff in this matter and the said matter is still active in Court pending trial.
- 4.5 It was avowed that further to the above, the Plaintiff in this matter is accused of having stolen money from the University of Zambia Printing Department where he worked as an Accountant after his acquittal of the criminal case they were jointly charged with.
- 4.6 It was the Deponent's averments that he reasonably believes that the Plaintiff in this matter, having been accused of Theft by Public Servant for the second time by the same Institution, the University of Zambia and appearing in a court of law, will highly prejudice his case in the event that the same were consolidated by this Court.
- 4.7 That it is not in his best interest that his action be consolidated with this matter if the Plaintiff in this matter is found guilty in the criminal matter that is pending before court.

4.8 It was deposed that further to the above, if the said Plaintiff is found guilty of stealing public funds by the court, he reasonably believes that it is likely that this Court will find it unjustifiable to award damages to the Plaintiff in this matter which would consequently be prejudicial to him.

4.9 It was deposed that this application is prejudicial to the Deponent's interests and is more likely to delay the expeditious disposal of the two actions.

4.10 In the Skeleton Arguments filed, Counsel submitted that **Order 4 Rule 9(2)** of the **Rules of the Supreme Court White Book 1999 Edition** (RSC) provides that:

“Moreover, as one firm of solicitors will usually be given the conduct of the consolidation action on behalf of all plaintiffs, it is generally impossible to consolidate actions in which different solicitors have been instructed unless all plaintiffs agree that one firm of solicitors shall act on their behalf, or unless there can be a partial consolidation.”

4.11 Counsel submitted that the authority cited above was affirmed by the Court in the case of **Lewis Vs Daily Telegraph** ⁽³⁾ where the court stated that:

“Note that if the effect of an order for consolidation is the joinder of a number of parties as plaintiffs, they must all act by one solicitor, in accordance with the general rule that the plaintiffs must always be represented by the same solicitor.”

4.12 Counsel submitted that based on the above authorities the ill fate of this Application is compounded by the fact that the Plaintiffs in the two actions are represented by different Advocates. Further that the two Plaintiffs have not agreed or indicated that one firm of Advocates will act on their behalf if the consolidation order is made. That as such, this case is in line with the provisions of the above cited law which militates against consolidation in such circumstances.

4.13 Counsel, in referring this Court to the holding in the case of **Bascom Enterprises and Others Vs Bharti Airtel Zambia Holdings BV and Others** ⁽⁴⁾ submitted that in line with the said holding, the fact that the Plaintiffs in the two actions have instructed different Advocates and Firms clearly shows that the consolidation would be impossible. That this is so because the Defendant herein has not shown any evidence before Court to demonstrate the Plaintiffs have agreed that one firm of advocates will act for them in the event that the matters are consolidated. As such, Counsel contended that consolidation does not apply to the given situation.

4.14 Counsel submitted that furthermore, **Order 4 Rule 9(2)** of the **RSC** provides that:

“Apart from these difficulties an order for consolidation may be refused where it would be likely to cause embarrassment at the trial. For example, where the actions are by different plaintiffs, based on the same libel, and the defenses are different, it would

often be likely to embarrass the jury to consolidate them.”

4.15 Counsel argued that the Affidavit in Opposition has shown that consolidating the two actions will cause damage to the Deponent’s reputation, who is the Plaintiff under cause number 2022/HP/1366, in that new allegations were brought by the University of Zambia against the Plaintiff herein of Theft by Public Servant after the first allegations of the same offence of which he was jointly charged with Mr. Charles Inambao Nyambe were proved false by the court and consequently, they were acquitted but that the current criminal matter against the Plaintiff herein is still active in Court pending trial.

4.16 Furthermore, that the said Plaintiff herein having been accused of Theft by Public Servant and appearing in the court of law for the second time, Mr. Charles Inambao Nyambe’s case against the University of Zambia and the Attorney General would be prejudiced.

4.17 Counsel submitted that it is for these reasons, that it is not in the interest of the Plaintiff under cause number 2022/HP/1366, for the said action to be consolidated with the case before this Court.

4.18 Counsel referred this Court to page 326 of the book authored by Dr. Patrick Matibini, **Zambian Civil Law Procedure: Commentary and Cases**, wherein it states as follows:

“The test the court follows is whether the balance of convenience favours consolidation. Convenience is defined as expediency or appropriateness in the sense that such consolidation appears to be fitting and fair

to all the parties involved. One of the crucial factors taken into account in this regard, is whether the consolidation will cause substantial prejudice to the other parties. Thus, a court will not order a consolidation of actions unless it is satisfied that such a course of action is favoured by the balance of convenience, and there is no possibility of prejudice being suffered by any party. Consolidation will be refused where it will result in substantial prejudice to a party, even though the balance of convenience would favour it. (Their Emphasis)

4.19 Counsel further submitted that in the case of **Skinner Vs Shine PYT LTD** ⁽⁵⁾ it was held thus:

“This court ought not to permit a situation where defendants will be, in effect, held hostage in proceedings in a substantial part of which they have little to no interest, merely because it might be more convenient for the Plaintiff to have them assembled for the purpose of increasing the prospects of a settlement.”

4.20 Counsel submitted that from the above authorities cited, it is clear that an Order for consolidation is discretionary and will not be exercised if a party can show that the convenience of consolidation will cause Mr. Charles Inambao Nyambe substantial prejudice as the Plaintiff under cause number 2022/HP/0670 is facing new allegations of Theft by Public Servant by the State and in addition, the matter is active in court and is pending trial.

4.21 That other than causing delay in the disposal of this Matter, if the said Plaintiff is found guilty of stealing public funds by the Subordinate Court, it is likely that this Court will find it unjustifiable to award damages to the said Plaintiff which would prejudice the Plaintiff under cause number 2022/HP/1366.

4.22 It was Counsel's contention that the test for consolidation has not been met in this case, and Counsel beseeched this Court to dismiss the Application and allow this action to proceed to trial and that this Application be dismissed with costs to the Plaintiff under cause number 2022/HP/1366.

5 HEARING

5.1 Following the re-allocation of the Record to this Court on 7th May, 2024, a Status Conference Hearing was held on 20th June, 2024 with the Plaintiffs' Counsel, Mrs. P Liatumba and Ms. V. Simamba appearing, whilst there was no appearance by the Defendant.

5.2 Ms. V. Simamba submitted that they have opposed the Application for Consolidation of Actions filed by the Defendant and the same had been awaiting a Ruling prior to the matter being re-allocated to this Court.

5.3 This Court Ordered that it would deliver the said Ruling based on the submissions on Record and adjourned the matter accordingly.

6 ANALYSIS AND DECISION OF THE COURT

6.1 I am grateful to the written submission given by Counsel for all Parties as well as the documents filed into Court in Support and in Opposition to the Defendant's Summons for Consolidation of Actions.

6.2 There is no doubt as to the jurisdiction of this Court to hear the Defendant's Application as provided for under **Order III Rule 5** of the **High Court Rules**.

6.3 I am equally guided by **Order 4 Rule 9** of the **RSC** which is significantly instructive as follows:

“1. Where two or more causes or matters are pending in the same Division and it appears to the Court -
(a) that some common question of law or fact arises in both or all of them, or
(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
(c) that for some other reason it is desirable to make an order under this paragraph
the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.”

6.4 Other than the cases cited by the Defendant above in support of their Application, the case of **Payne Vs British Time Recorder** ⁽⁶⁾ equally provides the rationale for consolidation of actions wherein the House of Lords stated as follows:

“The main purpose of consolidation is to serve costs and time and therefore it will not usually be ordered unless there is some common question of law or fact

bearing sufficient importance in proportion to the rest of the subject matter of the action to render it desirable that the whole matter should be disposed of at the same time.”

- 6.5 This principle was further affirmed by our Supreme Court in the case of **Mukumbuta Mukumbuta & Others Vs Mongu Meat Corporation & Others** ⁽¹⁾ cited by the Defendant above.
- 6.6 However, every application for consolidation of actions must be taken on a case by case basis. The question for determination is whether an Order for Consolidation is proper and fitting under the present circumstances.
- 6.7 The reliefs sought by each Party in cause number 2022/HP/0670 in *casu*, and 2022/HP/1366 have been listed above.
- 6.8 Counsel for the Defendant has submitted that both the Plaintiffs were jointly charged in 2007 for the offences of Fraudulent False Accounting, Theft by Public Servant and Money Laundering whilst working as employees of the University of Zambia. That they were both subsequently acquitted and have filed law suits against the State on the same facts. That Mr. Charles Inambao Nyambe sued the University of Zambia and the Attorney General under cause number 2022/HP/1366.
- 6.9 They argue that the reliefs sought are similar as the question of law and fact on both causes before Court arise out of the same transaction and that in the interest of justice, the two causes be consolidated to avoid two conflicting judgments.
- 6.10 In opposition, Counsel argued that the action commenced under cause number 2022/HP/1366 was against the University of

Zambia and the Attorney General and that the reliefs are different. That with information that the Plaintiff in *casu* is now freshly accused of Theft by Public Servant and is appearing in the Subordinate Court will prejudice the Mr. Charles Inambao Nyambe's case in the event that the Plaintiff is found guilty and the causes are consolidated.

- 6.11 It was argued that these new allegations against the Plaintiff in *casu* will cause damage to the Deponent's reputation and prejudice his case and further cause delay in the disposal of this Matter.
- 6.12 It was further argued that the Plaintiff and Mr. Charles Inambao Nyambe have different Advocates in their respective matters and they have not agreed or indicated that one firm of Advocates will act on their behalf if the consolidation is Ordered; that this militates against consolidation in such circumstances.
- 6.13 It was argued therefore, that the test for consolidation has not been met.
- 6.14 The legal ramifications of a consolidation order have the effect of making the consolidated matters to be one action, thus: one set of pleadings, one set of discoveries, one judgment and one bill of costs. Notably, one of the principles that militate against an order of consolidation, stated in **Order 4 Rule 9(2)** of the **RSC**, are to the effect that:

“There may, however, be further circumstances which will militate against an order being made...it is generally impossible to consolidate actions in which different solicitors have been instructed.”

6.15 The Plaintiffs have different Advocates representing them with no undertaking from them, or their clients to co-jointly represent the two parties if consolidated, or co-jointly prosecute their interests. No such evidence was tendered by the Defendant in their Application.

6.16 Further, it is my considered view that an Order for Consolidation may bring embarrassment at trial as the Plaintiffs and their circumstances are different, and the damages sought by each Plaintiff may be viewed differently.

7 CONCLUSION

7.1 For the avoidance of doubt, the Defendant's Summons for Consolidation of Actions fails and is hereby dismissed.

7.2 Costs for this Application are for Mr. Charles Inambao Nyambe, the Plaintiff in cause number 2022/HP/1366 to be taxed in default of agreement.

7.3 Trial for cause number 2022/HP/0670 will commence on Thursday, 21st November, 2024 at 09:00 hours.

**DELIVERED AT LUSAKA THIS 20TH DAY OF AUGUST,
2024**



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**A. MALATA-ONONUJU
HIGH COURT JUDGE**