

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

2022/HP/0278

BETWEEN:

MAJORIE MUNYATI

*Suing as Administratrix of
the estate of the late Betty Nameembo Mwami*

PLAINTIFF

AND

ATTORNEY GENERAL

DEFENDANT

Before the Hon. Mrs. Justice R. Chibbabbuka on the 18th July, 2024.

**For the Plaintiff: Mr M.M Manyika, Messrs Victor Kachaka & Co. Legal
Practitioners**

For the Defendant: N/A

RULING

Case referred to:

1. *John Mumba and 2 Others vs Zambia Red Cross Society*
2. *Lackson Mwabi vs Kangwa Simpasa and Another (2012) Vol. 1 ZR 144 for*

Legislation referred to:

The High Court Act, Chapter 27 of the Laws of Zambia.

1.0 Introduction

This matter was dismissed for want of prosecution on 7th December, 2023 for failure to comply with the court's order for directions re-issued on 21st March, 2023. The plaintiff on 14th December, 2023 filed an application for review of this court's order of dismissal. The application was filed by summons pursuant

to *Order 39 Rule 1* of the *High Court Rules, Chapter 27 of the Laws of Zambia*, and supported by an affidavit of even date.

2.0 The Plaintiffs' Affidavit in Support.

The affidavit in support of the application was deposed to by one Masulika Manyepa, an Advocate in the employee of Messrs Victor Kachaka & Company Legal Practitioners. He averred that on 17th March, 2023, he informed this court at a hearing that the plaintiffs had fully complied with the order for directions and that it was in fact counsel for the defendant who applied for an extension of time within which to comply. On 16th March, 2023, the plaintiff filed into court the following documents:

- a) Plaintiff's Bundle of Pleadings
- b) Plaintiff's Bundle of Documents
- c) Plaintiff's Scheduling Conference Briefs
- d) Plaintiff's Witness Statements

On 1st November, 2023, he attended to a hearing but was informed that the court was unavailable and that a fresh notice would be issued. He engaged the Marshal to follow up on the new date but was informed on 12th December, 2023 that the matter had been dismissed for want of prosecution. The plaintiff desires that this matter be decided on its merits.

2.1 The Plaintiffs' Supporting Arguments

In support of the application, the plaintiff filed skeleton arguments wherein counsel argued that the court has discretionary power to review its own judgments and decisions. Counsel relied on the provisions of *Order 39 Rules 1* of the *High Court Rules* to buttress his argument. That the affidavit in support of the application clearly shows that the plaintiff had complied with the court's orders for directions. Counsel referred this court to the cases of **John Mumba**

and 2 Others vs Zambia Red Cross Society¹ and Lackson Mwabi vs Kangwa Simpasa and Another² for the argument that the court may review its decision where evidence existed at the time of the hearing which was not made available to the court. That when this matter came up before the court, it appeared to it that none of the parties had complied with the orders that the court had issued prompting this court to dismiss the matter for want of prosecution. That the plaintiff cannot however be faulted for the internal inefficiencies of registry staff who neglected to place the filed documents on the court's record. That this is a proper case for this court to review its decision of 7th December, 2023.

3.0 At the Hearing

At the hearing, counsel argued that the application is for the court to reconsider its decision on the basis that the plaintiff complied with the orders for directions by filing the necessary documents on 16th March, 2023. That there appears to have been a miscommunication between the registry and the court. Counsel prayed that the matter be returned to active cause list so that it can be heard on merits.

4.0 Decision of the Court

I am indebted to counsel for the arguments. I have carefully considered the same.

The application herein is made pursuant to *Order 39 Rules 1* of the *High Court Rules*, of the *High Court Act, Chapter 27* of the *Laws of Zambia*, which provides that:

“(1)Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn), and, upon such review, it shall be lawful

for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision. [underling for court's emphasis]

The law clearly affords the court the discretion to review its own judgments and decisions. This matter was dismissed on the basis that the plaintiff had not complied with the pre-trial directions issued by this court as there was nothing on the record indicating that she had. However, the plaintiff having demonstrated that she complied with the pre-trial directions by availing this court with copies of the bundles of pleadings and documents filed on 16th March, 2023, I find that her compliance is sufficient reason to review my decision so that this matter may be determined on its merits. I accordingly set aside my order of 17th December, 2023. A notice of hearing for a trial date will ensue.

The costs of this application are in the cause.

Dated at Lusaka this.....18th.....day of July.....2024

