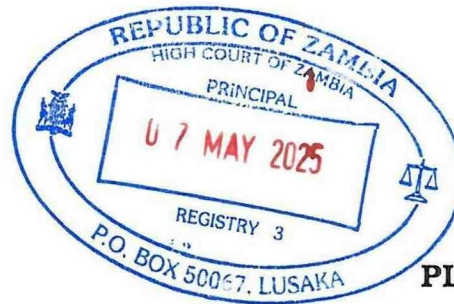


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
(CIVIL JURISDICTION)**

2022/HP/1468

BETWEEN:

MALCOM M. KAMUTUMWA
T/A Malstone Media Production



PLAINTIFF

AND

DERRICK IMATAA NYAMBE
DIN-MEDIA LIMITED
T/A Din Media Creative & Advertising

1ST DEFENDANT
2ND DEFENDANT

Before the Hon. Mrs. Justice R. Chibbabbuka on the 7th day of May, 2025.

For the Plaintiff: Mr. C. Mpani, Messrs Lungwebungu Legal Practitioners
Practitioners
For the 1st Defendant: Ms. R Kasuba, Messrs Issac & Partners

RULING

Cases referred to:

1. *Associated Chemicals Limited vs Hills and Delamin Zambia Limited & Ellis and Company (1998) S.J 7*
2. *Salomon vs Salomon Limited (1897) AC 22*
3. *Hotelier Limited vs Ody's Works Limited and Finsbury Investments Limited (2012) ZMHC 80*
4. *Mpande Limestone Limited vs Wadi Farida Poultry Limited and Idris Motala Appeal No. 002/2020*
5. *Wilson Masauso Zulu vs Avondale Housing Project Limited (1982) ZR 172 SC*
6. *Chitalu Chilufya vs The Anti-Corruption Commission and Rosemary Khuzwayo 2021/HP/1476*

Legislation referred to:

The Rules of the Supreme Court of England, 1999 Edition
The High Court Act, Chapter 27 of the Laws of Zambia

1.0 Introduction

The plaintiff commenced this action on 21st September, 2022, claiming, among others, the following:

- i. The agreed sum of K80,300.00
- ii. The sum of K195, 750.00
- iii. Special damages
- iv. Damages for breach of the agreement, and damages for loss of use of funds.

On 2nd December, 2022, the 1st defendant filed summons for an order of misjoinder pursuant to *Order 14 Rule 5 (2)* of the *High Court Rules, High Court Act, Chapter 27* of the *Laws of Zambia*. This is the ruling for that application.

2.0 The 1st Defendant's Affidavit in Support

The 1st defendant filed an affidavit of even date as the summons wherein he deposes that he is the Managing Director of the 2nd defendant. That he was improperly joined to these proceedings as he has no interest whatsoever in the dispute under this cause of action and will not be affected by the outcome of these proceedings. The contract purported to by the 2nd defendant was exclusively entered into by the plaintiff and the 2nd defendant and hence he is not privy to it. The 2nd defendant is a person at law with its own separate legal personality.

The plaintiff has not established any connection between him and the 2nd defendant. His continued joinder to this action will prejudice and embarrass any defence to this action, and that his misjoinder will not in any manner defeat this action or prevent this court from dealing with the issues in controversy between the plaintiff and the 2nd defendant but it will save costs. It will be unjust and inconvenient to put himself to expense by continuing to be a party to these proceedings.

2.1 The 1st Defendant's Supporting Arguments.

Counsel for the 1st defendant filed skeleton arguments wherein *Order 14 rule 5 (2)* of the *High Court Rules*, and *Order 15 rule 6 (2)* of the *Rules of the Supreme Court of England, 1999, Edition (Whitebook)* were cited as laws that vests this court with the authority to remove a party improperly joined to court proceedings. Counsel relied on the cases of **Associated Chemicals Limited vs Hills and Delamin Zambia Limited & Ellis and Company**¹ and **Salomon vs Salomon Limited**² for the argument that a limited liability company is a person at law with distinct persona from its members. That the 2nd defendant is a limited liability company in which the 1st defendant is merely an agent.

Counsel also referred to the case of **Hotelier Limited vs Ody's Works Limited and Finsbury Investments Limited**³ for the argument that in order to be a party to court proceedings, a person ought to be likely affected by the outcome of the proceedings. That the 1st defendant is least likely to be affected by the outcome of this matter as he was merely acting for and on behalf of the company. In conclusion, counsel prayed that the 1st defendant be misjoined from these proceedings on the basis that no cause of action has been established against him.

3.0 The Plaintiff's Affidavit in Opposition

In opposing the application, the plaintiff deposed to an affidavit in opposition which was filed on 17th February, 2023. He deposes that the statement of claim, particularly paragraphs 3,4,5,7,9 and 10, have raised allegations against the 1st defendant in relation to this suit. That the 1st defendant is answerable for his acts in relations to the suit and should be a party to ensure that all matters alleged against him are resolved once and for all.

3.1 The Plaintiff's Supporting Evidence

In support of the affidavit in opposition, counsel filed skeleton arguments of even date as the affidavit, wherein counsel relied on the case of **Mpande Limestone Limited vs Wadi Farida Poultry Limited and Idris Motala**⁴ wherein the Court of Appeal held that the 2nd respondent therein had demonstrated sufficient interest in the subject matter of the dispute and was likely to be affected by the

outcome of the proceedings. Counsel further relied on the case of **Wilson Masauso Zulu vs Avondale Housing Project Limited**⁵ for the argument that trial courts have the duty to adjudicate upon every aspect of a suit between the parties so that every matter in controversy is determined in finality.

This court was further referred to the case of **Chitalu Chilufya vs The Anti-Corruption Commission and Rosemary Khuzwayo**⁶ and argued that the court in that matter declined to remove the 2nd defendant therein on the basis that the statement of claim contained allegations that she took actions against the plaintiff in bad faith and hence she needed to answer to those allegations. That in *casu*, paragraphs 3,4,5,7,8,9 and 10 of the statement of claim raises allegations against the 1st defendant in his personal capacity that he needs to answer to. That it is improper for the 1st defendant to apply to be disjoined from these proceedings. Counsel prayed for the dismissal of the application with costs.

4.0 The Hearing

4.1 The 1st defendant's counsel relied on the affidavit and arguments filed in support of the application which she restated. She prayed for the misjoinder of the 1st defendant from these proceedings.

4.2 Counsel for the plaintiff equally relied on the affidavit and arguments filed in opposing the application which he reiterated.

5.0 The Decision of the Court

I am indebted to counsel for the arguments which I have taken into consideration.

The 1st defendant seeks to be removed from these proceedings on the basis that he was not a party to the agreement between the plaintiff and the 2nd defendant and hence will not in his capacity as agent of the 2nd defendant be affected by the outcome in this matter. He further seeks to be removed from this matter on the basis that the 2nd defendant is a separate person at law with separate legal personality from its agents. That he is thus not the right party to be sued.

Order 14 Rule 5 sub-rule 2 of the High Court Rules gives the court discretion to order the misjoinder of a party who was improperly joined to a suit. The person may be removed from a suit if it is shown that such a person has no interest in the matter and will not be affected by the outcome of the case. It is well settled law that a properly registered company is a separate legal entity from its shareholders and has distinct rights and liabilities as an autonomous legal person. I have carefully examined the plaintiff's statement of claim, particularly paragraphs 3 and 7 which I have reproduced hereunder.

Paragraph 3

"The plaintiff was engaged by the 1st defendant verbally sometime in 2020 to produce on behalf of the 2nd defendant audio and video content for the Ministry of Commerce and Trade (the Ministry) for a consideration in that behalf." [Underling for this court's emphasis]

Paragraph 7

"Sometime in 2022, the 1st defendant for the second time, for a consideration, retained and engaged the Plaintiff to proceed on the 2nd defendant's behalf several promotional videos for the Ministry (Dubai Expo 2022 National Day) and to duly deliver the video contents to the 1st defendant therefore." [Underling for this court's emphasis]



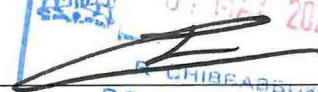
The above paragraphs clearly illustrate that the 1st defendant was acting on behalf of the 2nd defendant when he engaged the plaintiff. It follows therefore that the 2nd defendant being an autonomous legal person, the 1st defendant must be removed from these proceedings. In any case, the 1st defendant, being the Managing Director of the 2nd defendant and the person who acted on its behalf in contracting the plaintiff, will mostly likely be a witness in this matter and hence the plaintiff can cross examine him as to the extent of his involvement. Should the 2nd defendant not call the 1st defendant as a witness, there are other legal means by which the plaintiff can secure the 1st defendant's testimony in

this matter. In the premises, the 1st defendant is accordingly removed from these proceedings.

The 1st defendant is awarded costs to be taxed in default of agreement.

Leave to appeal is hereby granted

Dated at Lusaka this..... day of..... 2025



REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
07 MAY 2025

CHIBBABBUKA, J
P.O. BOX 6002 LUSAKA
R.H Chibbabbuka
HIGH COURT JUDGE