

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

**2022/HP/1903**



**BETWEEN:**

**ANSLEM SILWAMBA**

*Suing as Administrator of  
the estate of the late Kenani Silwamba Silverius)*

**PLAINTIFF**

**AND**

**KALAHARI TRANS ZAMBIA LIMITED  
TIMOTHY SHAWA**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**Before the Hon. Mrs. Justice R. Chibbabbuka on the 30<sup>th</sup> May, 2024.**

**For the Plaintiffs: Messrs Zambezi Chambers  
For the Defendants: Messrs Mukoloba Mwansa Advocates**

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## **RULING**

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**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 by this court's order of 29<sup>th</sup> June, 2023 for failure to comply with the court's order for directions issued on 23<sup>rd</sup> March, 2023. The plaintiff on 13<sup>th</sup> July, 2023 filed an application to review this court's order of 29<sup>th</sup> June, 2023. The application was filed by summons pursuant to *Order 39 Rule 1* of the *High Court Rules, Chapter 27 of the Laws of Zambia*.

## **2.0 The Plaintiff's Affidavit in Support.**

The application is supported by an affidavit deposed to by Ignituous Tindi who deposes that: following the court's order for directions issued on 28<sup>th</sup> March, 2023, the plaintiff complied with the court's order except for the filing of the witness statement. That the plaintiff on 16<sup>th</sup> May, 2023, filed an application for variation and extension of time fixed for filing witness statements but that before that application could be heard, Justice P. Yangailo who presided over the matter was transferred to the Economic Crimes Division. That he was shocked to receive the order of 29<sup>th</sup> June, 2023, dismissing this matter for want of prosecution.

## **2.1 The Plaintiff's Supporting Arguments**

In support of the application, the plaintiff filed skeleton arguments wherein counsel argued that *Order 39 Rule 1* of the *High Court Rules* vests this court with the power to review its own decisions where there are sufficient grounds to do so. That the court dismissed the matter on the basis that the plaintiff had failed to comply with the order for directions when in fact he had. Counsel prayed that this court reviews and sets aside its order of 29<sup>th</sup> June, 2023.

## **3.0 At the Hearing**

At the hearing, counsel restated the arguments contained in the skeleton arguments. He prayed that the order of 29<sup>th</sup> June, 2023 be reviewed.

## **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:

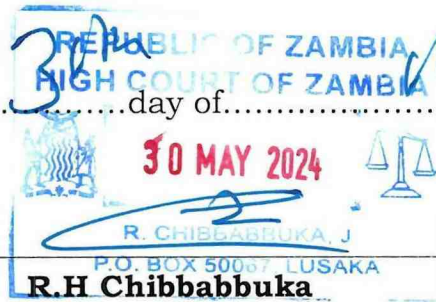
*“(1)Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn), and, upon such review, it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision.*

This matter was dismissed on the basis that the plaintiff had not complied with the pre-trial directions issued on 28<sup>th</sup> March, 2023 as there was nothing on the record indicating that he had. However, the plaintiff having demonstrated that he partially complied with the pre-trial directions by availing this court with copies of the bundles of pleadings and documents filed on 12<sup>th</sup> May, 2023, I find that his partial compliance is sufficient reason to review my decision of 29<sup>th</sup> June, 2023, so that this matter may be determined on its merits. I accordingly set aside my order of 29<sup>th</sup> June, 2023. A varied order for directions on the time within which the witness statements should be filed will ensue.

The costs of this application are in the cause.

Leave to appeal is granted.

Dated at Lusaka this..... day of.....2024



**R.H Chibbabbuka**  
**HIGH COURT JUDGE**