



IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction) **2023/HP/1326**

BETWEEN:

JAROSLAW ZBIGNIEW KAPANGILA
(Suing as an agent/ attorney for Alame Ali Salim)

PLAINTIFF

AND

HASSAN IBRAHIM NASSOUR

DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 05TH JUNE, 2024 - IN CHAMBERS

For the Plaintiff : *No appearance*
For the Defendant: *Mr. M. Malambo from Messers. Howard Marietta and Peterson Legal Practitioners*

RULING

CASES REFERRED TO:

- 1. Gregory v Turner (2003)1WLR 1149*
- 2. Finance Bank Zambia Limited v Monokandilos and Another (2012) ZR 484*
- 3. Killian Mwiinga (Suing as attorney for Grefory Mainza) v Emmanuel Chama and others 2023/HP/0505*
- 4. Killian Mwiinga (suing as Attorney for Anthony Mutika) v Mohammed Mulenga 2020/HP/1181*

LEGISLATION AND OTHER WORKS REFERRED TO:

- 1. The High Court Rules Chapter 27 of the Laws of Zambia*
- 2. Legal Practitioners Act Chapter 30 of the Laws of Zambia*
- 3. Rules of the Supreme Court of England (1999) edition*

1.0 INTRODUCTION

1.1 This is a Ruling on an application by the Defendant fashioned as **“summons to strike out writ of summons and statement of claim and to dismiss action for abuse of court process pursuant to Order 3 Rule 2 of the High Court Rules and Order 18 Rule 19(1)(d) of the rules of the Supreme Court”**. The ground upon which the application is anchored on was couched as follows:

1. ***The Plaintiff, Mr. Jaroslaw Zbigniew Kapangila, who is suing in his capacity as an attorney for Alame Ali Salim has no legal capacity to represent the named Alame Ali Salim through the power of Attorney when he is not a qualified person.***
2. ***The Plaintiff, Mr. Jaroslaw Zbigniew Kapangila has no locus standi to commence or continue this action in his representative capacity as agent/attorney.***

2.0 AFFIDAVIT EVIDENCE

2.1 That on the 3rd August, 2023 the Plaintiff commenced this action against the Defendant by way of writ of summons and statement of claim. That a perusal of the writ of summons and statement of claim revealed that those documents were issued by Jaroslaw Zbigniew Kapangila. It was averred that upon reviewing the pleadings and consulting the Defendant, it became apparent to counsel that the Plaintiff was not suing

in his personal capacity but rather as a donee of a power of attorney as granted by the donor, Mr. Alame Ali Salim.

2.2 It was further deposed that under cover of letter dated 24th August 2023 the Plaintiff's advocates delivered to the Defendant's advocates a copy of the power of attorney between Mr. Alame Ali Salim and the Plaintiff. That the Plaintiff, Mr. Jaroslaw Zbigniew Kapangila is not a qualified legal practitioner/advocate of the High Court for Zambia. That the Plaintiff does not appear to represent his donor in any other capacity than that which appears on the Pleadings. That the Plaintiff derives his authority to represent his donor only by virtual of the power of attorney granted to him. Further that the donor, Mr. Alem Ali Salim is a natural person and is in a capacity to represent himself.

4.0 SKELETON ARGUMENT

4.1 In the skeleton arguments, the Defendant submitted that this action highlights a crucial legal principle, the prohibition against non-qualified individuals representing others in Court even with a power of attorney. That the law is exhaustive in the manner and form in which individuals who wish to be represented in a representative capacity ought to act and appear as parties in any litigation proceedings. The case of *Gregory v Turner*¹ was cited where the court held that "**a person cannot delegate the right to conduct litigation by a power of attorney**" and also the case of *Finance Bank Zambia Limited v*

*Monokandilos and Another*² where Matibini J as he then was observed that he was not aware of any rule of procedure that permits the conduct of litigations through a power of attorney.

- 4.2 It was submitted that the Plaintiff's initiation this action in his own name and in the capacity as attorney for Alem Ali Salim under a power of attorney, a right reserved for qualified legal practitioners contravenes the sanctity of legal representation, constituting an abuse of court process and has totally disregarded the provisions of the law. Counsel referred this Court to **section 42(1) of the Legal Practitioners Act** which provides that:

“No unqualified person shall act or practice, directly or indirectly, as an advocate or as such issue out any summons or other process or commence, carry on or defend any action, suit or other proceeding in the name of any action suit or other proceeding in the name of any other person in any court of civil or criminal jurisdiction or act as an advocate in any cause or matter, civil or criminal or act as a Notary Public”.

It was then argued that the Plaintiff not being a duly qualified advocate nor being personally aggrieved party by the alleged infringement perpetrated by the Defendant, it is needless to state that the Plaintiff has no locus standi in this matter. That the donor, Mr. Alame Ali Salim being a natural and competent person enjoys the right to sue and be sued in his own name. Counsel then cited the case of ***Killian Mwiinga (Suing as***

*attorney for Gregory Mainza) v Emmanuel Chama and others*³, where my brother Justice Zulu citing **section 42 (1) of the Legal Practitioners Act** opined that the act of suing or representing another party in Court is intrinsically linked to the practice of law, a privilege reserved for individuals who meet the stringent qualifications and are duly registered as legal practitioners within the jurisdiction.

4.3 The Plaintiff did not file any opposition to the Defendant's application.

5.0 HEARING IN COURT

5.1 At the hearing of this matter, learned counsel for the defendant Mr. Malambo relied on the affidavit in support and skeleton arguments filed into court. In augmenting, counsel merely repeated the written submissions filed. For the avoidance of repetitions in this Ruling, I will not reproduce the oral submissions. There was no appearance nor representation from the Plaintiff as the Plaintiffs advocates filed a notice of withdrawal of representation.

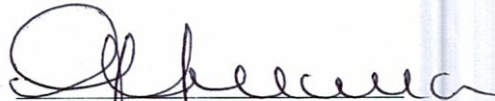
6.0 ANALYSIS AND THE DECISION OF THIS COURT

6.1 I have considered the application before me. I have also critically considered the affidavit in support, skeleton arguments filed. The application is merely premised on the

commences matters by way of a power of attorney. Therefore, in exercise of my inherent powers under Order 3 rule 2 of the High Court Rules this matter is hereby stayed.

6.3 Leave to appeal to the Court of Appeal is hereby granted.

DELIVERED AT LUSAKA THIS 05TH DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to read 'G.C. Chawatama', written over a horizontal line.

**G.C. CHAWATAMA
HIGH COURT JUDGE**