

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



Between:

FRANCIS DUMISANI HARA **1ST PLAINTIFF**
SEAL SHINE CAR WASH GENERAL DEALERS LIMITED **2ND PLAINTIFF**

AND

MASHIBA ALFRED KALABA **DEFENDANT**

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 11TH MARCH, 2024 - IN CHAMBERS

For the Applicant : *Messrs. Ferd Jere & Company*
For the Respondent : *Messrs. Malisa & Partners Legal Practitioners*

RULING

CASES REFERRED TO:

1. *High Court Rules of the High Court Act Chapter 27 of the Laws of Zambia.*

AUTHORITIES & OTHER WORKS REFERRED TO:

1. *Godfrey Miyanda v The High Court (1984) Z.R. 62 (S.C)*

On the 4th August, 2023 the plaintiff commenced this action against the defendants seeking various reliefs.

All the documents as required by the rules were filed. On the 11th October, 2023 the defendant filed a memorandum of appearance as well as their defence.

Filed on the same day was the defendant's list of witnesses and list of documents. On the 17th November, 2023 an affidavit of service as proof that the plaintiff's Advocates, Messrs. Ferd Jere and Company did receive the process on the 2nd day of November, 2023 was filed. A copy of a signed return copy of the letter of service was produced.

A search was conducted on 15th January, 2024 in order for the defendants to establish whether or not there was any progress made after defence was filed. What followed was the filing of summons for an Order to dismiss action for want of prosecution pursuant to **Order XIX Rule 8 of the High Court Rules Chapter 27 of the Laws of Zambia**. Filed on the same day was an affidavit in support deposed to by Alfred Kalaba Mashiba that:

- 1. That he is the defendant in this matter and by reason whereof, he is duly competent and authorized to swear this his affidavit from facts within his personal knowledge, information and belief.*
- 2. That as the record of the Court will show, on the 4th day of August, 2023, the plaintiffs, represented by their Advocates in the Firm of Messrs. Ferd Jere and Company, located at Plot 29, Manda Hill Road, Olympia Park, Lusaka, caused to be issued originating process herein by way of a Writ of Summons, statement of claim, list of description of documents*

and list of witnesses out of the principal Registry of the High Court to judicature for Zambia at Lusaka.

3. That the documents stated in paragraph 4 above, were served upon him (the defendant) through his Advocates in the Firm of Messrs. Muyatwa Legal Practitioners situated at Plot 8B Kawama Road, off Mosi-o-Tunya road, Woodlands Lusaka on the 9th day of August, 2023. There is now produced and shown to me marked **"AKM1"** a true copy of the said letter of service, as evidence the preceding statement.
4. That accordingly, after being served with the said documents, the defendant filed into court a Memorandum of Appearance, Defence, List and Description of documents and list of witnesses on the 31st day of October, 2023.
5. That it is within his knowledge that the documents mentioned in paragraph 6 above, were duly served on the plaintiffs' Advocates on the 2nd day of November, 2023 and an affidavit of service was filed into court on the 17th November, 2023. That the said affidavit of service is on the Court's record.
6. That it has been more than sixty (60) days since the plaintiffs took any step towards prosecuting this matter.
7. That he was advised by his Advocates in the Firm of Messrs. Malisa and Partners Legal Practitioners of the office at Plot 8A Kawama Road, off Mosi-o-tunya road Woodlands, Lusaka and verily believes the same to be true that this Honourable Court has the jurisdiction to dismiss an action if sixty (60) days have elapsed and there is no progress on the matter.

8. That in the premises he verily believes that this is a fit and proper case for this Honourable Court to dismiss the action for want of prosecution on the ground that sixty (60) days have elapsed after filing of this action and the plaintiffs have not taken any further steps to prosecute this matter.

I have noted the of exhibits filed as well as the list of authorities and skeleton arguments in support of summons for an order to dismiss action for want of prosecution.

The court's attention was drawn to **Order XIX Rule 8 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia.**

In particular it was pointed out that this Court has the jurisdiction to hear and determine this application, I agree entirely that I do.

I was referred to the case **Godfrey Miyanda v The High Court** where the Supreme Court provided guidance by stating that:

“The term ‘jurisdiction’ should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognizance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the appropriate legislation.”

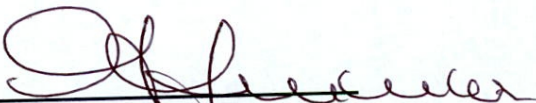
My attention was drawn to the wording of **Order XIX Rule 8 of the High Court** which provides as follows:

8. "A Judge may dismiss an action if sixty days after the filing of an action there is no progress."

I agree that the use of the word 'may' means that the court's powers in this regard are discretionary. I agree that the discretionary powers of the court ought to be exercised judiciously; taking into account all the circumstances of the case at hand.

I agree that sixty days have elapsed since the filing of this action and the plaintiffs have not taken any further steps to prosecute this matter. In light of the foregoing arguments and in accordance with **Order XIX Rule 8 of the High Court Rules** the defendant's prayer for the dismissal of this matter for want of prosecution is hereby granted. The plaintiffs are condemned in costs for this application.

DELIVERED AT LUSAKA THIS 11TH DAY OF MARCH, 2024.


G.C. CHAWATAMA
HIGH COURT JUDGE