

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

2023/HP/1645

BETWEEN:

**WEBSTER CHANDA**

AND

**GRAND CORPORATE BUSINESS CONSULTANTS LIMITED**  
**MARTIN MULENGA**

(Sued as Administrator of the estate  
of the late Charles Mulenga)

**KABWE MULENGA**

(Sued as Administrator of the estate  
of the late Charles Mulenga)

**PLAINTIFF****1<sup>st</sup> DEFENDANT****2<sup>nd</sup> DEFENDANT****3<sup>rd</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THE 13<sup>th</sup> DAY  
OF NOVEMBER, 2024**

For the Plaintiff : Mrs. T.M. Banda Chikuluma & Ms. Grace Phiri, Messrs  
Mulengeshi & Company

For the Defendants : Mr. M Chitundu, Messrs Barnaby Chitundu & Khunga  
Advocates

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## R U L I N G

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### CASES REFERRED TO:

1. *Clement Chuuya and Hilda Chuuya v JJ Hakwenda SCZ Judgment No. 3 of 2002*
2. *JCN Holdings Limited & Two others v Development Bank of Zambia SCZ No 22 of 2013*
3. *Caroline Marsh v LM Kristals Limited 2016/HPC/558*
4. *Molly Pelekamoyo Washington v New Plaza Enterprises Limited CAZ Appeal No 147 of 2021*

### LEGISLATION REFERRED TO:

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

## **2. The Rules of the Supreme Court of England, 1965, 1999 Edition**

### **1. INTRODUCTION**

- 1.1 On 21<sup>st</sup> August 2024, the Plaintiff, Webster Chanda, as a Judgment Creditor, filed summons for leave to issue a Charging Order, pursuant to **Order 50 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition**. The application which was filed ex-parte, was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.2 I directed that the application be heard interpartes, and on 2<sup>nd</sup> October, 2024, an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition were filed by the Judgment Debtors, Grand Corporate Business Consultants Limited, as well as Martin Mulenga and Kabwe Mulenga who were sued in their capacities as Administrators of the estate of the late Charles Mulenga.
- 1.3 An affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 4<sup>th</sup> October, 2024.

### **2. BACKGROUND**

- 2.1 Webster Chanda commenced these proceedings on 19<sup>th</sup> September, 2023, by Writ of Summons which was amended on 29<sup>th</sup> February, 2024, and was accompanied by a statement of claim and the other documents in which he claimed:
  - i. *Payment of the sum of ZMW1, 503, 000.00 being monies owed as a result of an agreement entered into between Webster Chanda and Grand Corporate Business*

*Consultants Limited, as well as the Administrators of the estate of the late Charles Mulenga;*

*ii. Damages for breach of contract;*

*iii. Damages for loss of use of the money;*

*iv. Interest on the amount found due;*

*v. Any other relief that the Court may deem fit;*

*vi. Costs.*

2.2 Interlocutory and final Judgment in default of appearance and defence, was entered on 18<sup>th</sup> April, 2024. Thereafter, the application which is subject of this Ruling was filed.

### **3. SUBMISSIONS AT THE HEARING**

#### **SUBMISSIONS BY COUNSEL FOR WEBSTER CHANDA**

3.1 At the hearing of the application, Counsel for Webster Chanda submitted that they relied on the affidavit which was filed in support of the application, together with the List of Authorities and Skeleton Arguments in support. Further reliance was placed on the affidavit in reply and the List of Authorities and Skeleton Arguments in reply.

#### **RESPONSE BY COUNSEL FOR GRAND CORPORATE BUSINESS CONSULTANTS LIMITED AND THE ADMINISTRATORS OF THE ESTATE OF THE LATE CHARLES MULENGA**

3.2 In response, Counsel stated that they relied on the affidavit in opposition and the List of Authorities and Skeleton Arguments in opposition which were filed on 2<sup>nd</sup> October, 2024. The submission was that this Court had been moved pursuant to ***Order 50 Rule 1 of the Rules of the Supreme***

***Court of England, 1965, 1999 Edition***, in making the application, which Order, Counsel contended is not applicable in this jurisdiction.

- 3.3 In support of the argument, Counsel relied on the case of ***Molly Pelekamoyo Washington v New Plaza Enterprises Limited*** <sup>(4)</sup> stating that the Court of Appeal in that matter, held that the said Order is not applicable in our jurisdiction, as it is based on the ***Charging Order Act 1979***, which had not been extended to Zambia. Therefore, the Court could not be moved pursuant to that Order, and the prayer was that the application be dismissed.

**REPLY BY COUNSEL FOR WEBSTER CHANDA**

- 3.4 The submission in reply, was that ***Order 48 Rule (6) of the High Court Rules***, in making provision for execution of Judgments, states that a Charging Order is one such mode, which application shall be taken to the District Registry. Further submission was made, that under ***Rule 7*** of the said Order, and application shall be made in the same manner in which applications in Chambers are made.
- 3.5 Reliance was placed on the case of ***Caroline Marsh v Kristals Limited*** <sup>(3)</sup>, with Counsel stating that Judge Mwenda in that matter, stated that a Charging Order is a remedy that is awarded to a Judgment Creditor, as a means of executing a money Judgment.
- 3.6 Further authority was sought from the case of ***Clement Chuuya and Hilda Chuuya v JJ Hakwenda*** <sup>(1)</sup>, the argument being that the Court in that matter, noted that

**Order 48 Rule 6 of the High Court Rules** mentions a Charging Order, but it does not provide for the procedure, hence the reliance of **Order 50 of the Rules of the Supreme Court of England**.

- 3.7 Counsel's further submission was that **Section 10 of the High Court Act** provides that where there is default in our procedure, reliance can be placed on the **Rules of the Supreme Court of England, 1965, 1999 Edition**. It was also stated that by virtue of **British Acts Extension Act** and **the English Law (Extent of Application) Act, Chapters 10 and 11 of the Laws of Zambia**, external provisions such as those contained in the **Rules of the Supreme Court of England**, could be resorted to, when the **High Court Rules** make no provision.
- 3.8 Premised on the above, Counsel's contention was that this Court has jurisdiction to grant the Charging Order nisi, and Order a time frame within which to make it absolute, as it was the right of the Judgment Creditor to be given opportunity to recover his money by way of a Charging Order. The prayer was that the application be granted with costs against the Judgment Debtors.

#### **4. DECISION OF THIS COURT**

- 4.1 I have considered the application. It was made pursuant to **Order 50 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition**. That Order provides that:

**“(1) The power to make a charging order under section 1 of the Charging Orders Act 1979 (referred**

***to in this Order as "the Act") shall be exercisable by the Court."***

- 4.2 The gist of the application, as can be seen from the affidavit which was filed in support of the application, and which was sworn by Webster Chanda, was that after he commenced these proceedings which were exhibited as 'WC1', he obtained interlocutory and final Judgment in default of appearance and defence, which was exhibited as 'WC2'.
- 4.3 Further averment was made, that Webster Chanda conducted a search at the Ministry of Lands, which revealed that the late Charles Mulenga, who traded under the name Grand Corporate Business Consultants Limited owned a property. The results of the search were exhibited as 'WC3'.
- 4.4 In the List of Authorities and Skeleton Arguments in support, the law in ***Order 42 Rule 1 of the High Court Rules Chapter 27 of the Laws of Zambia*** was cited, stating that it provides for attachment of debts to recover Judgment sums.
- 4.5 The contention was that the said provision allows a party to make an application to attach a Judgment Debtor's property to the proceedings, so as not to limit the Judgment Creditor in terms of executing options. Further argument was made, that the application to attach debts may be made in different ways, with a Charging Order being one of them.
- 4.6 The provisions of ***Order 50 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition*** were also cited.

- 4.7 The cases of ***Clement Chuuya and Hilda Chuuya v JJ Hakwenda*** <sup>(1)</sup> and ***Caroline Marsh v LM Kristals Limited*** <sup>(3)</sup> were relied on, as having held that Charging Orders are one of the many ways of enforcing a money Judgment.
- 4.8 Thus, the prayer was that a Charging Order be granted on the property, Flat 12 of Plot 6959 Long Acres, Lusaka which belonged to the late Charles Mulenga, who traded as Grand Corporate Business Consultants Limited.
- 4.9 In opposing the application, Mwamba Chitundu, Counsel seized with conduct of the matter on behalf of Grand Corporate Business Consultants Limited and Martin Mulenga and Kabwe Mulenga, the Administrators of the estate of the late Charles Mulenga, noted the averments that had been made relating to the proceedings having been commenced, and interlocutory and final Judgment being entered in this matter.
- 4.10 It was stated that the contents of paragraph 9 of the affidavit which was filed in support of the application, to the effect that there is a property that is registered under the estate of the late Charles Mulenga, who was trading under the name Grand Corporate Business Consultants Limited, were at variance with the Lands Register which was exhibited as 'WC3' to the affidavit which was filed in support of the application.
- 4.11 The averment was also that the last paragraph of the affidavit which was filed in support of the application was not numbered.

4.12 In the List of Authorities and Skeleton Arguments in opposition, it was argued that Webster Chanda had made the application pursuant to **Order 50 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition**. The decision by the Court of Appeal in the case of **Molly Pelekamoyo Washington v New Plaza Enterprises Limited** <sup>(4)</sup> was stated as having been as follows:

*“Our attention was also drawn to the case of Clement Chuuya. We note that in that case, the Supreme Court discussed at length the effect of Order 50 RSC and the effect of its non-compliance. We however note that the issue of its applicability in our jurisdiction was not an issue before them.....*

*Therefore, Order 50 RSC is entirely grounded on the Charging Orders Act 1979. In the High Court case of Abdul Kadir Asafa v Greenwell Shimukonga (being sued as the current Chairman General of the Cross Border Traders Association) Honourable Mrs. Justice F.M Chisanga, High Court Judge as she then was, exhaustively dealt with the issue of whether a Charging Order on land, issued pursuant to Order 50 RSC is available in our jurisdiction as a mode of enforcement of Judgments. The learned Judge considered The English Law (extent of Application) Act and the history of Charging Orders obtainable in England*

***and most of the authorities which have been cited in this appeal and concluded that, the Charging Orders Act 1979 is not one of those Acts extended to Zambia. Chisanga J, further held that, The Charging Orders Act 1979 falls outside the remit of the High Court's Jurisdiction and is therefore unavailable. We are highly persuaded by the Abdul Kadir Asaya case and we accordingly adopt it."***

- 4.13 The case of ***JCN Holdings Limited & Two others v Development Bank of Zambia*** <sup>(2)</sup> was argued as having held that if a Court has no jurisdiction to hear and determine a matter, it cannot make any lawful Orders or grant any remedies that are sought by a party. Based on that, it was contended that this Court has no jurisdiction to grant a Charging Order, and that the application ought to be dismissed.
- 4.14 The argument was further that the application ought not to be granted, as the affidavit which was filed in support of the application was misleading, as the property did not belong to the estate of the late Charles Mulenga, but to Kayumba Eunice Shindano, as shown by the Lands Register which was exhibited as 'WC3'.
- 4.15 In the affidavit in reply, Webster Chanda deposed that as shown by exhibits 'WC1' and 'WC3' being the Mediation Order, and the Order from the High Court which allowed the

late Charles Mulenga to register the Mediation Order, the property belonged to the late Charles Mulenga.

- 4.16 Averment was made, that a Charging Order is enforceable in this jurisdiction, and it was stated that paragraph 9 of the affidavit which was filed in support of the application stood independently from the rest of the paragraphs.
- 4.17 The List of Authorities and Skeleton Arguments in reply reiterated the provisions of **Order 48 Rule 6 of the High Court Rules** and the decision in the case of **Caroline Marsh v LM Kristals Limited** <sup>(3)</sup>. It was also argued that **Section 10 of the High Court Act** together with **British Acts Extension Act** and **English Law (Extent of Application) Act** allow this Court to rely on the provisions of the **Rules of the Supreme Court of England, 1965, 1999 Edition**.
- 4.18 Further argument was made, that while the Judgment Debtors had alleged that the last paragraph of the affidavit which was filed in support of the application was independent and unnumbered, **Order 5 Rule 20 of the High Court Rules** does not provide that the absence of the same invalidates an affidavit.
- 4.19 It was stated that in line with **Order 5 Rule 13 of the High Court Rules**, this Court is empowered to admit defective affidavits, and that in fact, the defect alleged was curable.

#### **DECISION**

- 4.20 A perusal of the affidavit which was filed in support of the application, shows that indeed the last paragraph of the said affidavit is not numbered.

4.21 **Order 5 Rule 20 of the High Court Rules** provides in part that:

**“20. The following rules shall be observed by Commissioners and others before whom affidavits are taken:**

**(a) Every affidavit taken in a cause or matter shall be headed in the Court and in the cause or matter.**

**(b) It shall state the full name, trade or profession, residence and nationality of the witness.**

**(c) It shall be in the first person and divided into convenient paragraphs, numbered consecutively.....”**

4.22 Therefore, by the last paragraph of the affidavit which was filed in support of the application not being numbered, it is irregular. However, as argued by Webster Chanda, this Court has power to admit defective affidavits. To that effect **Order 5 Rule 13 of the High Court Rules** states that:

**“13. The Court or a Judge may permit an affidavit to be used notwithstanding it is defective in form according to these Rules, if the Court or a Judge is satisfied that it has been sworn before a person duly authorised.”**

4.23 The defective in failing to number the last paragraph of the affidavit which was filed in support of the application, being a defective as to the form and not to substance of the

affidavit, and there being no contention that it was not sworn before a duly authorised Commissioner for Oaths, I exercise my discretion to admit the said affidavit despite the defect.

- 4.24 Coming to the substance of the application, it is for the grant of a Charging Order pursuant to **Order 50 Rule 1 of the Rules of the Supreme Court of England, 1965, 1999 Edition**. The opposition is that the said Order is premised on **The Charging Orders Act 1979 of England** which has not been extended to this jurisdiction. Therefore, it is inapplicable.
- 4.25 The opposition was further premised on the argument that contrary to the averments that had been made in paragraph 9 of the affidavit which was filed in support of the application, the property does not belong to the estate of the late Charles Mulenga, as shown on the Lands Register which was exhibited as 'WC3' to the said affidavit.
- 4.26 The reply was that as shown on exhibits 'WC1' and 'WC2' to the affidavit in reply, by virtue of the Mediation Order and the Order of the High Court which granted Charles Mulenga leave to register the Mediation Order, the property does belong to the estate of the late Charles Mulenga.
- 4.27 In the case of **Molly Pelekamoyo Washington v New Plaza Enterprises Limited** <sup>(4)</sup> one of the issues that was before the Court of Appeal, was the refusal by learned Judge to set aside his Order of 21st September 2020, in which he granted the Respondent an Order for enforcement of a Charging

Order, which according to the Appellant, is not applicable in our jurisdiction.

4.28 The Court of Appeal noted that the Judge in the Court below, was moved pursuant to **Order 50/9A of the Rules of the Supreme Court of England**. They stated that the manner in which the Court is moved is important, as it determines whether the Court has jurisdiction or not. Further observation was made, that the issue that had arisen was whether **Order 50/9A of the Rules of the Supreme Court of England** could be invoked in our jurisdiction.

4.29 The Court of Appeal in deciding on the issue stated that:

***“In arguing the applicability of a Charging Order, Counsel drew our attention to Order 48/6 HCR. We note that Order 48 HCR deals with proceedings in the District Registry. Order 48/6 HCR provides as follows:-***

***“6. Where a cause or matter is proceeding in a District Registry, proceedings relating to the following matters:***

***(a) Leave to issue or renew writs of execution***

***(b) Examination of Judgment debtors for garnishee purposes or under Order 42/16***

***(c) Garnishee Orders***

***(d) charging orders nisi and***

***(e) Interpleader Orders***

*shall, unless the Court or Judge shall otherwise order be taken in the District Registry”*

*Order 48/6 HCR, in our view, merely directs where an application for a Charging Order nisi must be made, in that it must be made in the District Registry, where a cause or matter is proceeding in the District Registry. This in our view does not aid the Respondent in its argument on the applicability of Order 50/9A RSC.*

*Our attention was also drawn to the case of Clement Chuuya. We note that in that case, the Supreme Court - discussed at length the effect of Order 50 RSC and the effect of its non-compliance. We however note that the issue of its applicability in our jurisdiction was not an issue before them.*

*Reference was also made to the text by the learned author Dr Matibini wherein he posed the issue of whether it was legally tenable to invoke Order 50 RSC granted that it is premised on the Charging Order Act 1979, which he answered in the affirmative. We agree with Counsel for the Appellant that, that is the learned author’s opinion which is not binding on this Court.*

*As earlier alluded to, the Order of 21st September 2020 was predicated on Order 50/9A RSC. The*

*editorial note under Order 50/0/2 RSC as earlier alluded to states that:*

*“This Order contains rules in support of the Charging Orders Act 1979”*

*Therefore, Order 50 RSC is entirely grounded on the Charging Orders Act 1979....*

*In view of the aforesaid, the learned Judge in the court below having been moved under Order 50 RSC, had no jurisdiction to hear the matter. The proceedings were therefore a nullity and the Order of 21st September 2021 with its attendant Orders are accordingly set aside.”*

4.30 From the above decision that has been reproduced, it can be seen that the Court of Appeal considered the decision in the case of **Clement Chuuya and Hilda Chuuya v JJ Hakwenda** <sup>(1)</sup> which was relied on by Webster Chanda, and found that it did not address the applicability of **Order 50 of the Rules of the Supreme Court of England**.

4.31 The Court of Appeal noted that as the editorial notes in **Order 50 of the Rules of the Supreme Court of England**, state that they are Rules in support of the **Charging Orders Act 1979**, they are inapplicable to our jurisdiction, as the said Act has not been extended to apply to this jurisdiction.

## **5. CONCLUSION**

5.1 That being the position, and as I was moved to consider the application pursuant to **Order 50 Rule 1 of the Rules of the Supreme Court of England**, I have no jurisdiction to

hear the application. I accordingly decline to grant a Charging Order nisi, and see no need to address the issue of ownership of the property, and dismiss it with costs to the Judgment Debtors, which shall be taxed in default of agreement. Leave to appeal is granted.

**DATED AT LUSAKA THE 13<sup>th</sup> DAY OF NOVEMBER, 2024**

*Saunds*  
**S. KAUNDA NEWA  
HIGH COURT JUDGE**

