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

**2023/HP/504**

BETWEEN:

**AUGUSTINE MUKOKA**

AND

**FOOTBALL ASSOCIATION OF ZAMBIA**



**PLAINTIFF**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THE 16<sup>th</sup>  
DAY OF AUGUST, 2023**

*For the Plaintiff* : Mr. V. Mulunda, Messrs Apton & Partners

*For the Defendant* : Mr. M. Mwango and Mr. F. Chipompela, Messrs Joseph  
Chirwa & Company

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## **R U L I N G**

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CASES REFERRED TO:

1. *Sir Lindsay Parkinson and Company Limited v Triplan Limited 1973 QB 609*
2. *Procon (Great Britain) Ltd v Provincial Building Limited 1984 1 WLR 557*
3. *Glocom Marketing Limited v Contract Haulage 1998/HP/787*
4. *Rosemol General Suppliers Ltd & Rosemary Bwalya v West Star Properties Limited, Lamasat International Ltd & Kobil Zambia Limited SCZ/8/282/2015*

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1999 Edition*

OTHER WORKS REFERRED TO:

1. *Zambian Civil Procedure: Commentary and Cases, Vol 1 Lexis Nexis*

## 1. INTRODUCTION

- 1.1 In an application that was filed on 2<sup>nd</sup> June, 2023 pursuant to **Order XL Rule 7 of the High Court Rules, Chapter 27 of the Laws of Zambia** as read with **Order XXIII Rule 1 of the Rules of the Supreme Court of England, 1999 Edition**, the Defendant who is the Football Association of Zambia, seeks an Order of this Court to stay the proceedings pending the payment of security for costs.
- 1.2 The application is supported by an affidavit and a List of Authorities and Skeleton Arguments. In opposing the application, the Plaintiff, Augustine Mukoka filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition.

## 2. BACKGROUND

- 2.1 Augustine Mukoka commenced this action against the Football Association of Zambia on 27<sup>th</sup> March, 2023, by Writ of Summons accompanied by a statement of claim and the other requisite documents seeking:
- i. *Damages for libel defamation;*
  - ii. *A mandatory injunction that the Defendant renders an apology to the Plaintiff herein for the allegations levelled against him and the ground upon which the Plaintiff was allegedly banned by the Defendant herein on 13<sup>th</sup> March, 2019, through a print media of wide circulation and the Defendant's online platform;*
  - iii. *Aggravated damages;*
  - iv. *Interest;*

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

*vi. Costs.*

2.2 Then on 15<sup>th</sup> May, 2023, Augustine Mukoka, applied ex-parte, for an Order of interim injunction, which I directed would be heard inter partes. The Football Association of Zambia on 1<sup>st</sup> June, 2023, entered appearance and filed its' defence. Then on 2<sup>nd</sup> June, 2023, it filed the application that is subject of this Ruling.

### **3. AFFIDAVIT IN SUPPORT**

3.1 The affidavit filed in support of the application, is deposed to by Reuben Kamanga, the General Secretary for the Football Association of Zambia. He avers that as shown by the Writ of Summons, which is exhibited as 'RK1', Augustine Mukoka commenced these proceedings against it. The contention is that in the statement of claim, which is exhibited as 'RK2', Augustine Mukoka avers that he is a freelance journalist who is based in the United States of America.

3.2 Reuben Kamanga states that he has been advised by his advocates, which advise he verily believes to be true, that this Court has jurisdiction to grant an Order for the payment of security for costs on the ground that Augustine Mukoka is domiciled outside the jurisdiction of the Court.

3.3 It is also his averment, that he has further been advised by his advocates, which advise he verily believes to be true, that if an Order for security for costs is not granted, the rights of the Football Association of Zambia may be a mere

academic exercise, who may not enjoy the benefits of the Judgment, if it is granted in its' favour, as execution outside the country may prove impracticable.

#### **4. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT**

4.1 The Football Association of Zambia, cites the law that has been relied upon in making the application. Further reliance is placed on the case of ***Glocom Marketing Limited v Contract Haulage***<sup>(3)</sup> stating that the Court in that matter held that:

***“An Order for the payment of security for costs is not one that is made freely, and will not be made simply because the Plaintiff appears impecunious. Before exercising the discretion to Order any Plaintiff to give security for costs, the Court will have regard to all the circumstances of the case, and will grant the Order if it thinks just to do so.”***

4.2 The case of ***Rosemol General Suppliers Ltd & Rosemary Bwalya v West Star Properties Limited, Lamasat International Ltd & Kobil Zambia Limited***<sup>(4)</sup> is also cited as authority, having held that:

***“In addition to the grounds laid down in Order 23 (1), the Court may, having regard to the circumstances of the case consider other instances where an Order for security for costs is appropriate to make. At paragraph 304 of***

*Halsbury's Laws of England, the following guidelines are laid down for a Court to consider in either granting or refusing to grant an Order for security for costs:*

- i. Whether the Plaintiff's claim is made in bad faith and is not a sham;*
- ii. Whether the Plaintiff has reasonably good prospects of success;*
- iii. Whether there is admission by the Defendant on the pleading;*
- iv. Whether there is substantial payment into Court;*
- v. Whether the application for security for costs was being used oppressively so as to stifle a genuine claim;*
- vi. Whether the application for security for costs is made at a late stage of the proceedings;*
- vii. Whether the Plaintiff's want of means has been brought about by the conduct of the Defendant;*

## **5. AFFIDAVIT IN OPPOSITION**

5.1 Augustine Mukoka in opposition, admits that he instituted this action against the Football Association of Zambia, and that he is domiciled in the United States of America. He also admits that this Court has the requisite jurisdiction to grant or to refuse to grant an Order for security for costs,

where a Plaintiff resides outside the jurisdiction of the Court.

- 5.2 It is also Augustine Mukoka's averment, that he has been advised by his advocates, that the power to grant an Order for the payment of security for costs is discretionary, and that this is done with circumspect and judiciously. Augustine Mukoka further, deposes that he has been advised by his advocates, which advise he verily believes to be true, that an applicant in such an application, must demonstrate grounds that are sufficient, in Order for the application to be granted.
- 5.3 It is his averment, that the Football Association of Zambia has merely made an application to stay the proceedings pending an application for the payment of security for costs, in the absence of the substantive application for an Order for the payment of security for costs.
- 5.4 In that regard, he states that his advocates conducted a search on the record, as evidenced by the search forms which are exhibited as 'AM1' and 'AM2'. It is stated that the said searches, revealed that no substantive application for an Order for the payment of security for costs had been made. Augustine Mukoka states that while he is resident outside the jurisdiction of the Court, he has assets within the jurisdiction, and he is a Zambian national.
- 5.5 Further, his residential address is Plot No 13581/M, House No 2 off Shantumbu Road Lusaka, where his family resides. Exhibited as 'AM3, 'AM4' and 'AM5' are copies of

Augustine Mukoka's national registration card and the relevant businesses that he runs in Zambia. He adds that he has no intentions of moving or transferring his assets or businesses.

## **6. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION**

6.1 Augustine Mukoka cites the provisions of **Order 40 Rules 7 and 8 of the High Court Rules, Chapter 27 of the Laws of Zambia**. He also relies on the case of **Sir Lindsay Parkinson and Company Limited v Triplan Limited<sup>(1)</sup>**, stating that in that matter, *Lord Denning MR* guided on the factors that are to be considered when granting Orders for the payment of security for costs as follows:

- i. Whether the claimant has reasonable and good prospects of success;
- ii. Whether the Defendant has made admissions in its' statement of claim or elsewhere;
- iii. Whether the Defendant is using the application for security for costs to stifle a genuine claim.

6.2 Also cited, is the case of **Glocom Marketing Limited v Contract Haulage Limited<sup>(3)</sup>** which has been relied on by the Football Association of Zambia. In that regard, it is stated that it was held in that case that:

**“Generally, costs are not determined until the claim is fully disposed of whether by consent, interim process or trial.**

*The successful party recovers costs from the loser and the outcome on the merits is only known when the Judgment is obtained.*

*The Order for payment of security for costs is not one that is made freely and will not be made simply because the Plaintiff appears impecunious.*

*Before exercising the discretion to Order any Plaintiff to give security for costs, the Court will have regard to all the circumstances of the case, and will grant the Order if it thinks just to do so. The circumstances which the Court may take into account, include, the Plaintiff's bona fide, and his prospects of success, whether the Defendant has admitted on his pleadings or elsewhere that money is due, whether there is a substantial payment into Court, or an open offer of a substantial amount, whether the application for security for costs is being used oppressively e.g to stifle a genuine claim, whether the Plaintiff's want of means was brought about by any conduct of the Defendant, such as delay in doing part of the work, the substantial rights of enforcement of Judgment and the stage of the proceedings at which at the application is made.*

*An Order for the payment of security for costs seeks to protect the party in whose favour it is*

***made against being unable to enforce any costs Order he may later obtain.***

***It is essential that applications for security for costs are made at an early stage in the proceedings. Lateness may itself be a reason for refusing the Order.***

***The amount to be imposed as security for costs should be such as the Court thinks just in all the circumstances of the case.”***

- 6.3 It is argued that Augustine Mukoka has good prospects of success in his claims, as in paragraphs 5 and 7 of the defence, the Football Association of Zambia admits that the ban was effected on the said Augustine Mukoka, and that the Football Association of Zambia gave a press statement which gave rise to this action. He argues that whether the Football Association of Zambia has the authority to ban a non-member or whether the suspension was lawful and legally done, is a matter that can only be determined at trial.
- 6.4 The argument is that salient in this case, is that Augustine Mukoka is resident outside this Court's jurisdiction, and that it would be difficult to enforce any Order for costs that may be made against him. However, Augustine Mukoka has demonstrated that he is a Zambian national, with a valid national registration card, and that he runs a number of businesses in Zambia, which are more than capable of

taking care of any Order for costs that may be made against him.

- 6.5 It is also argued that the said Augustine Mukoka frequently visits Zambia and his family members. Thus, this is not a proper case where an Order for the payment of security for costs should be made.

## **7. AFFIDAVIT IN REPLY**

7.1 Reuben Kamanga in reply, deposes that he has been advised by his advocates, that it is within the discretion of the Court to grant an Order for the payment for security for costs. He reiterates that Augustine Mukoka in his statement of claim, has averred that he is resident outside the jurisdiction of this Court. Thus, he should furnish security for costs.

7.2 It is also reiterated, that if the application is not granted, the rights of the Football Association of Zambia may be rendered an academic exercise in the event that an Order for costs is made in its' favour.

## **8. SUBMISSIONS AT THE HEARING**

### **SUBMISSIONS BY COUNSEL FOR THE FOOTBALL ASSOCIATION OF ZAMBIA**

8.1 At the hearing, Counsel for the Football Association of Zambia, relied on the affidavit and List of Authorities and Skeleton Arguments, which were filed in support of the application. In augmenting, Counsel stated the provisions of the law that had been relied on, in making the application, being ***Order 45 Rule 7 of the High Court***

**Rules**, gives this Court discretion to make an Order for the payment of security for costs.

- 8.2 It was reiterated that Augustine Mukoka in the statement of claim, had averred that he resides in the United States of America. Therefore, the contention was that if the Football Association of Zambia were to succeed against him, it would not be able to recover its' costs.

**RESPONSE BY COUNSEL FOR AUGUSTINE MUKOKA**

- 8.3 The response, was that reliance was placed on the affidavit in opposition, as well as the List of Authorities and Skeleton Arguments in opposition, which were filed on 6<sup>th</sup> July 2023. The view taken by Counsel, was that just because Augustine Mukoka had stated in the statement of claim that he is resident in the United States of America, did not entail that an Order for the payment of security for costs had to be made.
- 8.4 This Counsel submitted, was because the affidavit in opposition, had demonstrated that Augustine Mukoka has assets in Zambia, which are sufficient to offset any Order for costs that may be made against him, in favour of the Football Association of Zambia.
- 8.5 Counsel also stated that in addition, in applying for an Order for security for costs, the Football Association of Zambia was obliged to attach a draft bill of costs, that would reflect an estimate of the costs that it would incur in defending the matter. He submitted that this would enable

the Court to appreciate the amount of costs that it would Order Augustine Mukoka to pay.

- 8.6 It was further stated that however, the Football Association of Zambia had not attached a draft bill of costs. Therefore, the application was irregular and incompetent, and should be dismissed with costs to Augustine Mukoka.

**REPLY BY COUNSEL FOR THE FOOTBALL ASSOCIATION OF ZAMBIA**

- 8.7 Counsel for the Football Association of Zambia in reply, submitted that contrary to the assertion that the application was irregular, they had complied with the provisions of **Order 40 Rule 7 of the High Court Rules**, which does not make it mandatory to exhibit a draft bill of costs. Counsel reasoned that this was because, applications may be made, as the matter proceeds, whose costs could not be estimated.
- 8.8 Counsel reiterated that the mere fact that Augustine Mukoka resides outside jurisdiction, prejudiced the Football Association of Zambia, should Judgment be awarded in its' favour for costs.

**9. DECISION OF THIS COURT**

- 9.1 I have considered the application. **Order 40 Rule 7 of the High Court Rules**, provides that:

***“7. The Court or a Judge may, on the application of any Defendant, if it or he sees fit, require any Plaintiff in any suit, either at the commencement or at any time during the progress thereof, to give***

*security for costs to the satisfaction of the Court or a Judge, by deposit or otherwise, or to give further or better security, and may require any defendant to give security, or further or better security, for the costs of any particular proceeding undertaken in his interest.”*

9.2 *Order 23 Rule 1 of the Rules of the Supreme Court of England, 1999 Edition* on the other hand states that:

*“(1) Where, on the application of a Defendant to an action or other proceeding in the High Court, it appears to the Court -*

*(a) that the Plaintiff is ordinarily resident out of the jurisdiction, or*

*(b) that the Plaintiff (not being a Plaintiff who is suing in a representative capacity) is a nominal Plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the Defendant if ordered to do so, or*

*(c) subject to paragraph (2) that the Plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or*

*(d) that the Plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the*

***litigation, then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the Plaintiff to give such security for the Defendant's costs of the action or other proceeding as it thinks just."***

- 9.3 It can be seen from the above, that ***Order 23 Rule 1 of the Rules of the Supreme Court of England***, unlike ***Order 40 Rule 7 of the High Court Rules***, gives the instances in which an Order for security for costs may be made. ***Order 40 Rule 7 of the High Court Rules*** just empowers the Court to make an Order where it deems fit.
- 9.4 While the assertion by Augustine Mukoka is that the substantive application for an Order for the payment of security for costs has not been made, as only an application to stay the proceedings pending an application for the payment for security for costs has been made, it is noteworthy from the provisions of the law that have been cited in the summons and the Skeleton Arguments in support, that the application is actually for the payment of security for costs. Therefore, that is the application that is up for determination.
- 9.5 That said, in this matter, it is not in contention that Augustine Mukoka, who is the Plaintiff herein, is currently resident in the United States of America. Under ***Order 23 Rule 1 of the Rules of the Supreme Court of England***, he qualifies to pay security for costs.

- 9.6 The learned author **Patrick Matibini** in the book, ***Zambian Civil Procedure: Commentary and Cases, Vol 1 Lexis Nexis, 2017 at page 517*** states that the question of who pays the costs of a matter, is usually determined when the matter is disposed of. This is because, the general rule is that a successful party recovers costs from the party that has lost, after the matter is determined on its' merits.
- 9.7 Therefore, an Order for the payment of security for costs seeks to protect the party in whose favour it is made, against the risk of being unable to enforce any Order that they may later obtain.
- 9.8 ***Order 23/3/7 of the Rules of the Supreme Court of England*** states that:
- “Security will not be required from a person permanently residing out of the jurisdiction, if he has substantial property, whether real or personal, within it and the same rule applies to a foreign company but semble, the property must be of a fixed and permanent nature, which can certainly be available for costs.”***
- 9.9 In the case of ***Glocom Marketing Limited v Contract Haulage Limited***<sup>(3)</sup> the Court in that matter, with reference to the case of ***Procon (Great Britain) Ltd v Provincial Building Limited***<sup>(2)</sup> held that it is usual to exhibit a summary of the costs to support an application for security for costs.

9.10 Therefore, in view of that, the requirement to exhibit a bill of costs to an application for payment of security for costs is not mandatory, but it assists the Court in arriving at a figure to be Ordered as security for costs. In this matter, Augustine Mukoka has demonstrated in the affidavit in opposition that while he is resident in the United States of America, he has businesses in Zambia, and he has a tenancy agreement with a landlord in Zambia.

9.11 Therefore, he has assets that may be used to offset any Order for costs that may be made against him

## 10. CONCLUSION

10.1 As Augustine Mukoka has demonstrated that while he is resident in the United States of America, he has assets within Zambia, this is not a proper case to Order payment of security for costs. The application is accordingly declined. The matter shall come up for hearing of the injunction application on 29<sup>th</sup> August, 2023 at 11: 00 hours. Costs shall be in the cause, and leave to appeal is granted.

**DATED AT LUSAKA THE DAY OF AUGUST, 2023**

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

