

IN THE HIGH COURT FOR ZAMBIA

2023/HP/1416

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

AMARAT AFGHAN INVESTMENTS LIMITED

PLAINTIFF

AND

INTER FERTILIZER COMMODITIES EXCHANGE LIMITED 1<sup>ST</sup> DEFENDANT

FLOYD MAYAMBA

2<sup>ND</sup> DEFENDANT

Before the Honourable Mrs. Justice R. Chibbabbuka on the 16<sup>th</sup> day of April, 2024

For the Plaintiff: Mr. C. Nyangu, Messrs & Company

For the Defendant: Mr. W. Phiri & Mr. E. Sakala, Messrs Miyanda William  
Legal Practitioners

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### EXTEMPORE RULING

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**Cases referred to:**

1. *Sachar Narendra Kumar Vs Joseph Brown Mutale (2013) Volume 1 ZR 398*
2. *The Attorney General Vs Tall and Zambia Airways Corporation Limited (1995-1997) ZR 54*
3. *Abel Mulenga and others Vs Mabvuto Adani Chivuta Makumbi and others vs The Attorney General 2006 Z.R*

**Legislation referred to:**

*The High Court Act Chapter 27 of the Laws of Zambia*

*The Rules of the Supreme Court of England 1965.*

**Others works referred to:**

*Halsbury's Law of England 4<sup>th</sup> Edition, Volume 17 at paragraph 226*

## **1.0 Introduction**

This is an application by an intended intervener, Milner Muyambango, for joinder of a party filed on the 27<sup>th</sup> February, 2024 and made pursuant to *Order 14 Rule 5 (1)* of the *High Court Rules, Chapter 27 of the Laws of Zambia* and *Order 15 Rule 6 (2)* of the *Rules of the Supreme Court of England 1965*.

## **2.0 Affidavit in Support of Summons for Joinder of a Party**

The intended intervener filed an affidavit in support on even date wherein he avers as follows:

Between 1<sup>st</sup> January, 2022 and July, 2023, he entered into a verbal agreement to purchase a tractor unit from the 2<sup>nd</sup> defendant (Alas Floyd Malembeka) as an agent of the 1<sup>st</sup> Defendant at the consideration of ZMW400,000.00 to be paid in instalments. During the aforesaid duration of time, he paid a total sum of ZMW230,000.00 towards the purchase price leaving a balance of ZMW170,000.00. He took possession of the tractor chasis number N3HKRA3BKV80015 and Engine Number 153501W00116H leaving out a trailer uncollected from the Defendants. He informed the 2<sup>nd</sup> Defendant as an agent/servant of the 1<sup>st</sup> Defendant to come to Lusaka and collect the balance of the purchase price but for unknown reasons he couldn't come.

On 11<sup>th</sup> July, 2023, he received a demand letter from the 1<sup>st</sup> defendant's Advocate demanding payment of the balance of the purchase price. On the 18<sup>th</sup> August, 2023 he learnt that that the Plaintiff herein had commenced an action against the Defendants seeking several reliefs inter alia an Order of release of all the four (4) tractors he had purchased from the Defendants.

In the premises, it will be just and equitable for him to be joined to these proceedings as the verdict of these proceedings are likely to affect him.

### **3.0 The intended intervener's skeleton arguments**

Reliance was placed on *Order 14 Rule 5 (1)* of the *High Court Rules*, of the *High Court Act Chapter 27* of the *Laws of Zambia* and *Order 15 Rule (2)* of the *Rules of the Supreme Court* which give this court jurisdiction to determine applications for joinder of a party at any stage of the proceedings who claim an entitlement, share or interest in the suit. To buttress this position, the court was also referred to the cases of **Sachar Narendra Kumar Vs Joseph Brown Mutale<sup>1</sup>**, **Halsbury's Law of England 4<sup>th</sup> Edition, Volume 17 at paragraph 226** and the case of **The Attorney General Vs Tall and Zambia Airways Corporation Limited<sup>2</sup>**.

Counsel submitted that the intervener had demonstrated that he has an interest in the matter which meets the requirements for one to be joined as a party. That his interest being the tractors which he bought from the defendants that are a subject of this litigation.

Counsel prayed that the intended intervener be added as a party to this cause of action.

### **4.0 The hearing**

Counsel for the intended intervener placed reliance on the writ of summons, affidavit in support and skeleton arguments filed into court on the 27<sup>th</sup> February, 2024. It was counsel's contention that they had demonstrated sufficient interest that the applicant will be affected by the outcome of these proceedings on the ground that the tractor he partially paid for is one of the four being claimed by the Plaintiff. That further, the record will indicate that the tractor is subject of an Order of attachment issued by this Court and therefore, in the interest of dealing with the matter conclusively, they felt that the intended defendant be joined to these proceedings.

Counsel for the Plaintiff submitted that they would not be opposing the application.

In opposing the application, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants argued that the intended intervenor had not demonstrated sufficient interest or locus standi for him to be joined to these proceedings and did not have sufficient interest as was guided by the Supreme Court in the case of **Abel Mulenga and others Vs Mabvuto Adani Chivuta Makumbi and others vs The Attorney**<sup>3</sup>.

Counsel acknowledged that it is true that the intended intervenor might be affected by the order that this Court will make, but that from the **Abel Mulenga** case the Court went further to state that the mere fact that the appellants may have been affected by the decision of the court below does not clothe them with sufficient interest entitling them to be clothed with locus standi in the dispute. As such, it was therefore the defendants' view that in terms of the affidavit in support of the application, the intended intervenor has not demonstrated that it has sufficient locus standi to be joined to these proceedings. The Court's attention was drawn to the intended intervenor's affidavit from paragraphs 1-11 which counsel argued did not show the intended intervenor's interest and neither did it show how the intended intervenor will be affected.

Counsel submitted that the intended intervenor has failed to discharge its legal burden for such an application and should therefore not be made a party to these proceedings. Further that there is no connection demonstrated before this Court that there is any relationship between the Plaintiff and intended intervenor that may result in him being substantially affected by an order of this Court.

For these reasons, counsel entreated this Court to dismiss the intended intervenor's application with costs.

In reply, counsel for the intended intervenor argued that sufficient interest in the matter before this Court has been demonstrated. That Paragraph 5 of the affidavit in support shows the engine and chassis number which the intended intervenor bought is subject of the attachment of this Court. Further that all the intended intervenor has demonstrated his interest.

Counsel argued that the intention of joining the matter by the intended intervenor was to reduce a multiplicity of actions before Court so as to deal with all issues in contention. That should this Court be of the view of denying this application, there was a probability of another action by the intended intervenor being commenced so as to protect this interest. Counsel prayed that the application be granted.

### **5.0 The decision of the Court**

Upon hearing all Counsel, it is not in dispute that the plaintiff has claimed for an Order of release of four tractors to the plaintiff. The intended intervenor has claimed that he has partially paid for one of those tractors. On these facts I find that the intended intervenor has an interest in the subject matter of the dispute and will be affected by the outcome in terms of the plaintiff's claim.

Further to avoid a multiplicity of actions, I find that the intended intervenor has sufficient locus standi and is joined to this action as the 2<sup>nd</sup> Plaintiff in the matter.

Costs are in the cause.

Delivered at Lusaka this ..... 16<sup>th</sup> ..... day of ..... April ..... 2024

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