

R1

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



2023/HP/0748

BETWEEN:

IMAGE CIVIL AND ELECTRICAL ENGINEERING LIMITED

PLAINTIFF

AND

ELEANA STELLA KOUKLOUDIS

(Trading as Aetos Estates)

1st DEFENDANT

JULIET MUBABE

(Trading as Aetos Estates)

2nd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 23rd
DAY OF APRIL, 2025**

For the Plaintiff : Mr G. Tembo, Messrs James & Doris Legal Practitioners
For the 1st Defendant : Mr E. Chibeluka, Messrs Chibeluka and Partners
For the 2nd Defendant : Mr C. Chilufya, Messrs DMK Legal Practitioners

R U L I N G

CASES REFERRED TO:

1. *Hollman v Johnson* 1775 1 COWP 341
2. *Re: Mohamoud and Ispahani's Arbitration* 1921 ALL ER 217
3. *Gideon Mundanda v Timothy Mulwani and The Agricultural Finance Co. Ltd and S.S.S. Mwiinga* 1987 ZR 29
4. *Mohammed S. Itowala v Variety Bureau De Change* SCZ No 51 of 2001
5. *Josia Tembo Henry Jawa v Peter Mukuka Chitambala (sued as Administrator of the estate of the late Frank Macharious Chitambala* 2005/HP/0208

LEGISLATION REFERRED TO:

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

1. INTRODUCTION

- 1.1 This Ruling is on a Notice of Motion to determine the matter on points of law, which notice was raised pursuant to **Order 14A Rule 2** as read with **Order 33 Rule 3 of the Rules of the Supreme Court of England, 1965, 1999 Edition**.
- 1.2 The Notice of Motion was filed by Eleana Stella Koukoudis and Juliet Mubabe both trading as Aetos Estates, and was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.3 The questions sought to be determined by the Notice of Motion are:
- i. *Whether Image Civil and Electrical Engineering Limited is registered with the Zambia Institute of Architects for purposes of offering architectural services in the Republic of Zambia;*
 - ii. *Whether Image Civil and Electrical Engineering Limited's claim for the sum of United States Dollars US\$7, 629.00 and damages for repudiation of contract of the agreement are not illegal and unenforceable for breach of various provisions under the Zambia Institute of Architects Act, Chapter 442 of the Laws of Zambia;*
 - iii. *Whether this Court has jurisdiction to hear and determine Image Civil and Electrical Engineering Limited's action in light of the issues raised above.*
- 1.4 Opposition to the Notice of Motion was filed on 18th November, 2024, by way of an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition.

2. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR ELEANA STELLA KOUKOUDIS AND JULIET MUBABE

- 2.1 At the hearing, Counsel for Eleana Stella Koukoudis stated that in making the application, they relied on the affidavit which was filed in support of the application together with the List of Authorities and Skeleton Arguments in support.
- 2.2 In augmenting, Counsel submitted that it was clear from the affidavit which was filed in opposition to the Notice of Motion, that Image Civil and Electrical Engineering Limited is not entitled to provide architectural services in this country. Further submission was made, that Image Civil and Electrical Engineering Limited had not disputed that the provision of architectural services is governed by ***The Zambia Institute of Architects Act, Chapter 442 of the Laws of Zambia.***
- 2.3 It was Counsel's submission, that the only argument that had been advanced, as could be seen from paragraph 2 of the skeleton arguments that Image Civil and Electrical Engineering Limited had filed, was that the drawings were provided to Eleana Stella Koukoudis and Juliet Mubabe after they were done by Creators Concept Architects Limited, at Image Civil and Electrical Engineering Limited's cost, which it seeks to recover.
- 2.4 The submission was that in support of that position, Image Civil and Electrical Engineering Limited had referred to the drawings which were in Eleana Stella Koukoudis and Juliet

Mubabe's bundle of documents. It was also stated that paragraphs 6, 8 and 11 of the statement of claim had pleaded that Image Civil and Electrical Engineering Limited had designed the drawings which gave birth to these proceedings.

- 2.5 Counsel stated that nowhere in the pleadings, had Image Civil and Electrical Engineering Limited pleaded that it seeks to recover the costs that it paid to Creators Concept Architects Limited. The continued submission was that Image Civil and Electrical Engineering Limited is not qualified to provide architectural services, and therefore, it could not sue to recover for such services.
- 2.6 The prayer was that the Court finds merit in the Notice of Motion.

SUBMISSIONS BY COUNSEL FOR JULIET MUBABE

- 2.7 Counsel reiterated the basis for the application, and added that the claim as couched, did not indicate that it had been made on behalf of a third party. It was his further submission, that if any fees were due to Creators Concept Architects Limited, the suit should have been brought by the said Creators Concept Architects Limited.
- 2.8 Still in submission, Counsel stated that the arguments that had been made by Image Civil and Electrical Engineering Limited were new evidence at the bar, which was not supported by the pleadings.
- 2.9 Reliance was placed on the case of **Hollman v Johnson** ⁽¹⁾, stating that it held that no Court will lend its' aid to a man

who founds his action upon immoral or illegal acts. The case of *Mohammed S. Itowala v Variety Bureau De Change* ⁽⁴⁾ was also relied on.

- 2.10 The prayer was that the preliminary issues which had been raised be upheld with costs.

RESPONSE BY COUNSEL FOR IMAGE CIVIL AND ELECTRICAL ENGINEERING LIMITED

- 2.11 It was Counsel's submission in response, that they had filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 18th November, 2024. Counsel stated that the facts of the case were not in dispute, as they revealed that Image Civil and Electrical Engineering Limited on the one hand, and Eleana Stella Koukoudis and Juliet Mubabe on the other contracted, which resulted in the drawings that Image Civil and Electrical Engineering Limited seeks to enforce by this action.
- 2.12 Counsel further submitted that the question was whether Image Civil and Electrical Engineering Limited is a qualified architect. He answered that question by stating that it had been shown in the affidavit in opposition, that the person who created the drawings at the instance of Image Civil and Electrical Engineering Limited is qualified.
- 2.13 As to whether, Image Civil and Electrical Engineering Limited could claim the payment, Counsel's view, was that such a question could only be decided at trial.
- 2.14 Counsel added that such question could not be determined as a preliminary issue, and that to argue that Creators

Concept Architects Limited should have been the party to sue, was also an issue that could only be determined at trial. On that basis, the prayer was that the preliminary issues raised should fail.

REPLY

2.15 The submission in reply, was that the contention that the expenses which were sought to be recovered was an issue that could only be determined at trial, when considered against the statement of claim, in which Image Civil and Electrical Engineering Limited had pleaded that it had designed the drawings, showed that the preliminary issues raised should be upheld.

3. DECISION OF THIS COURT.

3.1 I have considered the Notice of Motion. ***Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition*** provides that:

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

- (a) such question is suitable for determination without a full trial of the action, and***
- (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.***

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.”

- 3.2 In making the application, Eleana Stella Koukoudis and Juliet Mubabe in the affidavit which was filed in support of the application, deposed giving a background to how Image Civil and Electrical Engineering Limited commenced these proceedings. They stated that by these proceedings, it claims the sum of USD8, 629.00 for the design and manning of the property, with the Writ of Summons and statement of claim being exhibited as 'ESKJM1'.
- 3.3 Further averment was made, that out of that amount, USD7, 629.00 is being claimed as payment for purported design works, which Image Civil and Electrical Engineering Limited undertook.
- 3.4 It was deposed that as shown on the printout from PACRA which was exhibited as 'ESKJM2', Image Civil and Electrical Engineering Limited is a limited liability company, and not a Firm of Architects. Also stated, was that to Eleana Stella Koukoudis and Juliet Mubabe's knowledge, Image Civil and Electrical Engineering Limited is not duly registered with the Zambia Institute of Architects, and none of its' directors are licenced by the Zambia Institute of Architects for purposes of providing architectural services in Zambia.
- 3.5 In the List of Authorities and Skeleton Arguments in support, Eleana Stella Koukoudis and Juliet Mubabe argued that ***Section 29 of the Zambia Institute of Architects Act***

Chapter 442 of the Laws of Zambia and **Statutory Instrument No 106 of 1999** stipulate who qualifies to practice as an architect in Zambia. Further argument was made, that **Section 29 (2)** of the said **Zambia Institute of Architects Act Chapter 442 of the Laws of Zambia** makes provision for how firms are registered under the Act.

- 3.6 Thus, Image Civil and Electrical Engineering Limited not having been registered under the **Zambia Institute of Architects Act**, it is disqualified under **Section 30 (d) of the said Act** from providing architectural services. On further proscription on the part of Image Civil and Electrical Engineering Limited from providing architectural services, **Section 35 (1) of the Act** was referred to.
- 3.7 Relying on the cases of **Mohamed S. Itowala v Variety Bureau De Change** ⁽⁴⁾, **Gideon Mundanda v Timothy Mulwani and The Agricultural Finance Co. Ltd and S.S.S. Mwiinga** ⁽³⁾ and **Re: Mohamoud and Ispahani's Arbitration** ⁽²⁾, the argument was that Courts do not enforce illegal contracts.
- 3.8 In opposition, Jonathan Mwendabai, the Director of Image Civil and Electrical Engineering Limited deposed that the claim by Image Civil and Electrical Engineering Limited is for payment of the Architectural works which were done by Creators Concept Architects Limited at its' instruction and for its' benefit. The architectural works were exhibited as 'JM1'.

- 3.9 The averments stating that Image Civil and Electrical Engineering Limited is a limited liability company and not a Firm of Architects was admitted.
- 3.10 Further agreement was made, that Image Civil and Electrical Engineering Limited is not registered with the Zambia Institute of Architects, and that its' directors are not licenced by the Zambia Institute of Architects for purposes of offering architectural services in the Republic of Zambia.
- 3.11 In the List of Authorities and Skeleton Arguments in opposition, it was stated that the drawings were done by Creators Concept Architects Limited. The argument was that it was that cost that Image Civil and Electrical Engineering Limited seeks to recover as its' agreement for the construction of the drawn works.
- 3.12 It was also argued that as seen from the bundle of documents, the drawings were done in favour of Eleana Stella Koukoudis and Juliet Mubabe. Citing the case of ***Josia Tembo Henry Jawa v Peter Mukuka Chitambala (sued as Administrator of the estate of the late Frank Macharious Chitambala*** ⁽⁵⁾ it was argued that to dismiss the matter would result in unjust enrichment to Eleana Stella Koukoudis and Juliet Mubabe.
- 3.13 Therefore, the contention was that Eleana Stella Koukoudis and Juliet Mubabe benefited from the drawing which was provided to them by Image Civil and Electrical Engineering Limited, and they had not paid for it, and the Notice of Motion should be dismissed with costs.

DECISION

3.14 The Notice of Motion was raised pursuant to **Order 14A of the Rules of the Supreme Court of England**. The explanatory notes in **Order 14A/2/8 of the Rules of the Supreme Court of England** with respect to how applications are made pursuant to that Order state that:

“The summons should be supported by affidavit evidence deposing to all the material facts relating to the questions of law or construction to be determined by the Court. For the purposes of O.41, r.5 (2), proceedings under O.14A are not interlocutory proceedings, since by its nature, the application will decide the rights of the parties and will terminate the action or otherwise finally dispose of it (see para. 41/5/3, below and Rossage v. Rossage [1960] 1 W.L.R. 249; [1960] 1 All E.R. 600, CA; Re J (An Infant) [1960] 1 W.L.R. 253; [1960] 1 All E.R. 603), and therefore, the affidavits for use in proceedings under O.14A may depose only to such facts as the deponent is able of his own knowledge to prove (O.41, r.5 (1)).

The defendant may of course file affidavit evidence in answer, but such an affidavit must also be confined to matters within the personal knowledge of the deponent. The object of the defendant's affidavit evidence should be to confirm or adopt or supplement the material facts deposed

to, by and on behalf of the plaintiff, but not to traverse or challenge or contradict such facts since on an application under O.14A there is no room for any dispute between the parties as to the necessary material facts.”

- 3.15 The above having explained that an application under that Order will dispose of the matter with finality, entails that the issues raised by the application should determine the rights of the parties in relation to what has been pleaded.
- 3.16 A perusal of the affidavit which was filed in support of the Notice of Motion reveals that Eleana Stella Koukoudis and Juliet Mubabe contend that because Image Civil and Electrical Engineering Limited is not registered to practice as an Architect in Zambia, it cannot sue to recover the fees for the drawings which it has pleaded that it did, as such is an illegal contract, which cannot be enforced at law.
- 3.17 Further submission was made, that Image Civil and Electrical Engineering Limited had not pleaded that it seeks payment on behalf of a third party.
- 3.18 Image Civil and Electrical Engineering Limited in response, conceded that it is not registered to practice as an Architect. However, its' position was that it seeks to recover payment for the drawings which were given to Eleana Stella Koukoudis and Juliet Mubabe which were done by Creators Concept Architects Limited.
- 3.19 A perusal of paragraphs 6, 8 and 11 of the statement of claim show that Image Civil and Electrical Engineering Limited has

pleaded that it agreed that it would carry out the design works without a charge to Eleana Stella Koukoudis and Juliet Mubabe, provided that it was engaged to construct the designed works.

- 3.20 It has also been pleaded that in pursuance of the agreement, Image Civil and Electrical Engineering Limited designed the construction works that were to be undertaken on the property. However, Eleana Stella Koukoudis and Juliet Mubabe repudiated the agreement, hence the claims before Court.
- 3.21 The affidavit which was filed in support of the Notice of Motion, alleged that Image Civil and Electrical Engineering Limited cannot claim payment for the drawings as it not registered to provide architectural services in Zambia.
- 3.22 The response by Image Civil and Electrical Engineering Limited was that indeed it is not registered as such, but that the drawings were done by Creators Concept Architects Limited. As such, it can claim payment.
- 3.23 In reply at the hearing of the application, it was stated that there is no pleading that the money being claimed is for the architectural works on behalf of a third party.
- 3.24 The fact that the averments in the affidavit in opposition dispute facts which are alleged in the affidavit which was filed in support of the Notice of Motion, shows that the application is not suitable to be determined under **Order 14A of the Rules of the Supreme Court of England**, as seen from the explanatory notes in **Order 14A/2/8 of the**

Rules of the Supreme Court of England which I have cited above.

- 3.25 This is because, the affidavit in opposition in part traverses, challenges and contradicts the facts as deposed to in the affidavit in support.
- 3.26 Whilst it was argued that the pleadings do not allege that the claim is being made on behalf of a third party, that does not bring the application within the ambit of ***Order 14A of the Rules of the Supreme Court of England***, as the explanatory notes which I have referred to above, speak to facts which are contained in the affidavits which are filed in respect of the application, and not the pleadings.
- 3.27 Moreover, there are other claims for payment for manning of the building which claim is not in relation to the claim for payment for the drawings, which is subject of the Notice of Motion. There is also a claim for damages for repudiation of the agreement, which claim I have to determine whether it can be lawfully claimed.

4. CONCLUSION

- 4.1 Having so found, the issues raised in the Notice of Motion cannot stand, and they can only be determined at trial. The issues raised cannot determine the rights of the parties with finality in relation to the reliefs which are sought.
- 4.2 The Notice of Motion fails on that basis, and it is dismissed with costs in the cause.

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4.3 The matter shall come up for the application to enter Judgment on Admission on 5th June, 2025 at 08:30 hours. Leave to appeal is granted.

DATED AT LUSAKA THE 23rd DAY OF APRIL, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

