

**IN THE HIGH COURT FOR ZAMBIA**

**2023/HP/765**

**THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(CIVIL JURISDICTION)*



**BETWEEN:**

**MERRIFIELD RESOURCES LIMITED**

**APPLICANT**

**AND**

**VWANGILA KALUMBA MWAMBAZI**

**1<sup>ST</sup> ALLEGED CONTEMNOR**

**BRIAN SIALUMBA**

**2<sup>ND</sup> ALLEGED CONTEMNOR**

**BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 22<sup>ND</sup> DAY OF JANUARY, 2026.**

**For the Applicant:** *Mr. D. M. Bwalya – Bwalya Sampa Legal Practitioners*

**For the 1<sup>st</sup> Alleged Contemnor:** *In Person*

**For the 2<sup>nd</sup> Alleged Contemnor:** *Mr. S. M. Lungu, SC and Ms. Z. L. Nkolola*

*Messrs Shamwana and Company*

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**RULING ON AN APPLICATION FOR DETERMINATION OF  
QUESTIONS ON A POINT OF LAW**

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**A. CASES REFERRED TO:**

1. *Enock Kavindele and Dorothy Kavindele v Bologna Properties Limited and Diego Casili 2023/HP/ 0196;*
2. *Sitima Tembo v National Council for Scientific Research (1988-1989) ZR 4;*

3. *Hussein Versi and Van Tall Logistics Forwarding Limited v Airsea Cleaning and Forwarding Limited and Omar Awadh Transport Limited* CAZ Appeal No. 24/ 2020 (CAZ/08/409/2019);
4. *Sun Country Limited v Kearney and Roslyn Kearney* Appeal No. 7 of 2017 (SCZ/8/265/2016);
5. *NFC Africa Mining PLC v Techno Zambia Limited* (2009) ZR 236;
6. *Twampane Mining Corporation Society Limited v E. M. Storti Mining Limited* (2011) ZR 67; and
7. *Republic v. Liberty Press Limited and others* (1968) GLR 123

## **B. LEGISLATION REFERRED TO:**

8. *Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia;*
9. *The High Court Rules Chapter 27 of the Laws of Zambia;*
10. *The Commissioner for Oaths Act, Chapter 33 of the Laws of Zambia;*  
and
11. *The Rules of the Supreme Court of England 1965, 1999 Edition.*

## **1.0 INTRODUCTION**

- 1.1. This is a Ruling on the 2<sup>nd</sup> Alleged Contemnor's Application for Determination of Questions on a Point of Law filed on 25<sup>th</sup> September, 2025.
- 1.2. The Application by the 2<sup>nd</sup> Alleged Contemnor was accompanied by an Affidavit in Support and Skeleton Arguments filed on even date.
- 1.3. The Applicant opposed the Application by filing an Affidavit in Opposition accompanied by Skeleton Arguments on 7<sup>th</sup> October, 2025.
- 1.4. The 2<sup>nd</sup> Alleged Contemnor also filed an Affidavit in Reply to the Affidavit in Opposition of the Application accompanied by Skeleton Arguments on 10<sup>th</sup> October, 2025.

## **2.0 BACKGROUND**

- 2.1 The matter was commenced by way of Originating Summons for Possession of Property pursuant to **Order 113 Rule 1 and 2 of the Rules of the Supreme Court of England**<sup>11</sup> on 10<sup>th</sup> May, 2023. The Court in its Ruling dated 31<sup>st</sup> May, 2023 granted the Applicant an Order of Possession of the residential property known as the remaining extent of Lot No. 1 1289/M in the extent of 3.1061 hectares situate in New Kasama, Lusaka.
- 2.2 On 2<sup>nd</sup> June, 2023, the Court granted an *Ex-Parte* Order for Leave to issue Writ of Possession for the subject property and the Applicant issued the Writ of Possession and its Praecipe on 5<sup>th</sup> June, 2023.
- 2.3 The 1<sup>st</sup> Alleged Contemnor filed an Application for an Order to Suspend Writ of Possession on 23<sup>rd</sup> June, 2023. The Application was heard on 10<sup>th</sup> October, 2024 and I rendered my Ruling on 18<sup>th</sup> December, 2024 dismissing the Application.
- 2.4 On 5<sup>th</sup> August, 2025, the Applicant filed into Court an *Ex-Parte* Summons for Leave to Apply for Order of Committal. This Court granted leave to issue Notice of Motion for an Order of Committal to Prison for Contempt of Court on 20<sup>th</sup> August, 2025.
- 2.5 The 2<sup>nd</sup> Alleged Contemnor did on 25<sup>th</sup> September, 2025, filed into Court an Application for Determination of Questions on a Point of Law on where the Court is being invited to determine the position of the law on the following:

- 2.6.1. *Whether the Ruling dated 18<sup>th</sup> December, 2024 can be enforced by way of contempt proceedings in the absence of personal service of the Ruling on the Alleged Contemnor as required by **Order 45 Rule 7(2)(a) of the Rules of the Supreme Court of England**<sup>11</sup>; and*
- 2.6.2. *Whether the Ruling that does not bear a Penal Notice in compliance with **Order 45 Rule 7(4) of the Rules of the Supreme Court of England**<sup>11</sup> can be enforced by way of contempt of proceedings.*

### **3.0 AFFIDAVIT EVIDENCE**

- 3.1 The Affidavit in Support of the Application was deposed by **Brian Sialumba**, the 2<sup>nd</sup> Alleged Contemnor.
- 3.2 He deposed that, on 18<sup>th</sup> December, 2024, this Court delivered a Ruling on an Application for an Order to suspend the Writ of Possession. That the Applicant commenced contempt proceedings against the Alleged Contemnors premised on the aforementioned Ruling.
- 3.3. He averred that, he was not a party to the Proceedings that resulted in the Ruling dated 18<sup>th</sup> December, 2024. That contrary to the Applicant's Statement in the Affidavit in Support of the Application, he was not aware and is still not aware of a Ruling dated 24<sup>th</sup> December, 2024.
- 3.4. That the deponent only become aware of the Ruling dated 18<sup>th</sup> December, 2024 after his lawyers conducted a search on the

Court record. Reference was made to exhibit marked **“BS 1”** being a search form.

- 3.5. An averment was made that the Applicant had not exhibited any proof of service of the Ruling. That the 2<sup>nd</sup> Alleged Contemnor had not been served with the Writ of Possession which is subject of the Ruling.
- 3.6. Further, that the 2<sup>nd</sup> Alleged Contemnor had been informed by his lawyers and believes to be true that the Ruling does not have a Penal Notice on the front page.
- 3.7. The Affidavit in Opposition to the Application was sworn by **Mwiche Chasaya**, the Chief Executive Officer of the Applicant Company.
- 3.8. It was deposed that the 2<sup>nd</sup> Alleged Contemnor was not a party and that a non-party to the proceedings can correctly be committed to prison. That the 2<sup>nd</sup> Alleged Contemnor was aware of the Ruling of 18<sup>th</sup> December, 2024, and had been in communication with the Applicant’s Advocates *via* letters. Reference was made to exhibit marked **“MC1”** being letters exchanged between the Applicant and the 2<sup>nd</sup> Alleged Contemnor.
- 3.9. Further that, the Ruling dated 18<sup>th</sup> December, 2024, due to a typographical error was indicated as 24<sup>th</sup> December, 2024 and that this error was curable.
- 3.10.A deposition was made that the 2<sup>nd</sup> Alleged Contemnor was served with the aforementioned Ruling whilst he was in the

company of the 1<sup>st</sup> Alleged Contemnor. That after service of the Ruling, the 2<sup>nd</sup> Alleged Contemnor started generating letters and the last of such letters was written on 25<sup>th</sup> February, 2025 as referred to.

3.11. That the 2<sup>nd</sup> Alleged Contemnor was served with the Writ of Possession and was present at the time the Bailiffs were executing the Writ of Possession. That the Bailiffs executed after a fee of ZMW 120, 050.00 was paid by the Applicant *via* Stanbic Bank Account Number 9130002128148 belonging to Judiciary Clients Account – Sheriff held at Kabulonga Branch.

3.12. Further, that the 2<sup>nd</sup> Alleged Contemnor had parked his machinery for road constructions at the Applicant's Premises and the Bailiffs ordered him to remove the machinery, following which he requested the Applicant for indulgence of a few days to do so.

3.13. Furthermore, that the Penal Notice is contained on the front page of an Injunction Order and not a Ruling issued by the Court. That the jurat of the Affidavit in Support of this Application filed on 25<sup>th</sup> September, 2025 does not have an endorsed date as required and he was advised by Counsel and believes to be true that the date and place are mandatorily required to be endorsed.

3.14. In an Affidavit in Reply deposed by **Brian Sialumba**, the 2<sup>nd</sup> Alleged Contemnor, he stated that he was not aware of the

Ruling dated 18<sup>th</sup> December, 2025 and that the same was never served on him.

- 3.15. That he was communicating with the Applicant's Advocates in the hope of resolving the matter amicably. That the letters exhibited as "**MC1**" do not constitute proof of knowledge of the Ruling dated 18<sup>th</sup> December, 2024.
- 3.16. Further, that the letter dated 13<sup>th</sup> September, 2024 was sent to the Applicant's Advocates before the Ruling of this Court was delivered while the letter dated 25<sup>th</sup> February, 2025 was sent after the said Ruling was delivered. That however, the Applicant's Advocates never responded to his letters nor served him with the Ruling dated 18<sup>th</sup> December, 2024.
- 3.17. It was averred that the Applicant had not exhibited any proof of service. That the letter dated 25<sup>th</sup> February, 2025 was an attempt to resolve the matter amicably by way of sale of the property. That the Applicant's Advocates did not respond to his request for an amicable resolution. Further that the Applicant's letter dated 26<sup>th</sup> February, 2025 did not enclose nor refer to any Ruling of this Court.
- 3.18. It was also averred that he was neither served with the Writ of Possession as alleged by the Applicant nor has there been exhibited any proof of service or any explanation offered for the omission. That he was informed of the presence of the Bailiffs and the Police at the premises by a third party. That he only arrived at the premises after the Bailiffs had already executed the Writ of Possession. That at the time of his arrival on the

premises, the tenants and their belongings were already outside.

3.19. Further, that the 2<sup>nd</sup> Alleged Contemnor's machines were parked at the premises in 2021 and were subsequently removed after the Applicant allegedly gained ownership of the premises. That he had been informed by his lawyers and reasonably believes the same to be true, that a Ruling or Order of the Court should bear a Penal Notice if it is to be enforced through Contempt Proceedings.

3.20. Furthermore, that he had been informed by his lawyers and believes to be true that an Affidavit containing a minor defect may still be used where such defect does not prejudice the opposing party in anyway.

#### **4.0 SKELETON ARGUMENTS**

4.1 In the Skeleton Arguments in Support of the Application filed by the 2<sup>nd</sup> Alleged Contemnor, it was submitted that this motion was brought pursuant to **Order 33 Rule 3 and 7 of the Rules of the Supreme Court of England**<sup>11</sup>. That the 2<sup>nd</sup> Alleged Contemnor raised the following questions for determination on a point of law:

*4.1.1 Whether the Court can grant an Order to commence contempt proceedings on a non-existing Ruling;*

*4.1.2 Whether the Ruling dated 18<sup>th</sup> December, 2024 can be enforced by way of contempt proceedings in the absence of personal service of the Ruling on the*

*Alleged Contemnor as required by **Order 45 Rule 7 (2)(a) of the Rules of the Supreme Court of England**<sup>11</sup>; and*

*4.1.3 Whether the Ruling that does not bear a Penal Notice is in compliance with **Order 45 Rule 7(4) of the Rules of the Supreme Court**<sup>11</sup> can form the basis of contempt proceedings.*

- 4.2 Relying on the editorial introduction to **Order 45**<sup>11</sup>, it was submitted that the Rules applicable for enforcement of Judgments are contained in **Orders 45 to 52 of the Rules of the Supreme Court of England**<sup>11</sup>. That it is a requirement under **Order 45 Rule 7(2)(a)**<sup>11</sup> of the law that personal service of the Order should be effected on the Alleged Contemnor.
- 4.3 Citing the case of **Enock Kavindele and Dorothy Kavindele v Bologna Properties Limited and Diego Casili**<sup>1</sup>, it was submitted that the Contempt Proceedings were improperly before this Court. That the reason for taking this position is that the Ruling that formed the basis of the Contempt Proceedings was not served on the 2<sup>nd</sup> Alleged Contemnor and should therefore be dismissed.
- 4.4 It was submitted that **Order 45 Rule 7(4) of the Rules of the Supreme Court of England**<sup>11</sup> was considered in the aforementioned case. Further that the case of **Sitima Tembo v National Council for Scientific Research**<sup>2</sup> dismissed an Application for leave to commence Contempt Proceedings on

grounds that the order on which leave was being sought was not endorsed with a Penal Notice.

- 4.5 Furthermore, that the Contempt Proceedings are irregular on the ground that the Ruling sought to be enforced does not bear a Penal Notice. That the Ruling was delivered in relation to an Application to Suspend the Writ of Possession and contains no directive to the Alleged Contemnors. That accordingly they ought to be dismissed. Reliance was placed on the explanatory notes of **Order 45 Rule 7 of the Rules of the Supreme Court**<sup>11</sup>.
- 4.6 In the Skeleton Arguments in Opposition filed by the Applicant, it was contended that according to **Order 5 Rule 20 (g) Of the High Court Rules**<sup>9</sup> and **Section 6 of the Commissioner of Oaths Act**<sup>10</sup> the Affidavit deposed by the 2<sup>nd</sup> Alleged Contemnor was irregular.
- 4.7 It was submitted by the Applicant that the said Affidavit was irregular because it was undated and showed no place where it had been sworn. That the aforementioned legal provisions are couched in mandatory form by the mere fact that the word 'shall' leaves no room for an alternative or allow such Affidavit to be used by the Court.
- 4.8 Further, that the said defect was incurable and as such, the Affidavit should not be allowed to be used by the party that filed it because it offends mandatory rules regulating Affidavit evidence. Reliance was placed on the cases of **NFC Africa**

**Mining Plc v Techno Zambia Limited<sup>5</sup>** and **Twampane Mining Corporation Society Limited v E. M. Storti Mining Limited<sup>6</sup>**, for the position that rules of Court must be strictly followed and that a party who ignores the rules does so at its own peril.

- 4.9 It was submitted that **Order 45 Rule 7(4) of the Rules of the Supreme Court of England<sup>11</sup>** provides that a Penal Notice should be displayed on the front of the Order served under the said Rule, as a warning to the person served against disobedience to the Order at the risk of being in contempt of Court. That the requirement of having a Penal Notice does not apply to a Ruling that was rendered by this Court but to Injunction Orders. The cases of **Enock Kavindele and another v Bologna Properties Limited<sup>1</sup>**, and **Sitima Tembo v National Council for Scientific Research<sup>2</sup>** were called in aid for the position that these cases are distinguishable from this matter as they relate to Injunctions which require Penal Notices.
- 4.10 Relying on **Order 45 Rule 7(2)(a) of the Supreme Court of England<sup>11</sup>**, the Applicant submitted that the said Rule that provides for display of the Penal Notice and personal service of documents in Contempt Proceedings speaks to injunctions. That in the present case, there was no Injunction that this Court issued against the parties, their agents or servants.
- 4.11 That the 2<sup>nd</sup> Alleged Contemnor's Application is misplaced and should not be entertained by this Court as the law relied

on by him relates to Injunctions and Penal Notices among others. That this Court should proceed to hear and determine the Application for Committal.

- 4.12 A submission was made that on 5th June, 2023, the Writ of Possession and its Praecipe were filed into Court. That the Applicant paid the Sheriff of Zambia ZMW 120, 050.00 as execution fees, which amount was deposited into Account Number 9130002128148 at Stanbic Kabulonga and whose beneficiary was the Judiciary Clients Account- Sheriff. That on 16th June, 2023, a Writ of Possession was executed by the Court Bailiffs and the 2<sup>nd</sup> Alleged Contemnor was present during execution.
- 4.13 Further, that the 2<sup>nd</sup> Alleged Contemnor requested for a few days to remove his machinery from the Applicant's premises. That the 1<sup>st</sup> Alleged Contemnor was also present in his office that was located inside the Applicant's premises and was evicted too. That the Writ of Possession and its Praecipe were served on the Alleged Contemnors. That the said service formed the basis for the challenge, mounted by the 1<sup>st</sup> Alleged Contemnor on the Writ of Possession, but without success.
- 4.14 Furthermore, that the 1<sup>st</sup> Alleged Contemnor obtained an *Ex-parte* Order suspending the Writ of Possession which was discharged by Ruling dated 18th December, 2024. That following the discharge of the Order suspending the Writ of Possession, the 2<sup>nd</sup> Alleged Contemnor engaged the Applicant's Advocates and held several meetings. That the 2<sup>nd</sup>

Alleged Contemnor was aware of the Ruling dated 18th December, 2024, and had been requesting to settle the matter. That the subject property belongs to the Applicant who changed ownership before the matter was even commenced in Court.

4.15 Lastly, that despite knowing that there exists a Ruling in favour of the Applicant and having witnessed execution of the Writ of Possession by the Sheriff's Officers, the 2<sup>nd</sup> Alleged Contemnor illegally evicted the Applicant's caretaker.

4.16 In the Skeleton Arguments in Reply to Skeleton Arguments in Opposition filed by the 2<sup>nd</sup> Alleged Contemnor, it was submitted that the Affidavit in Support of this Application was defective because it had no date in the jurat contrary to **Order 5 Rule 20 (g) of the High Court Rules**<sup>9</sup>.

4.17 It was argued that **Order 5 Rule 13 of the High Court Rules**<sup>9</sup> gives jurisdiction to permit the use of a defective Affidavit. Reliance was also placed on **Section 47 of the Interpretation of General Provisions Act**<sup>8</sup> and the case of **Sun Country Limited v Kearney and Roslyn Kearney**<sup>4</sup> on how a defective instrument in form and not substance is receivable in proceedings under **Order 5 Rule 13 of the High Court Act**<sup>9</sup>.

4.18 A follow up submission was that, in light of the above authorities, this Court can permit the use of the Affidavit in Support of the Application filed on 25<sup>th</sup> September, 2025.

That the defect is one of form and not substance, and would not prejudice the Applicant. That in the alternative, this Court can Order for the Affidavit to be re-sworn and refiled.

- 4.19 It was submitted that under **Order 45 Rule 7(4) of the Rules of the Supreme Court of England**<sup>11</sup>, the Penal Notice should be displayed on the front of the Order served on the Alleged Contemnors warning against disobedience of the Order that such disobedience would be in contempt of Court punishable by imprisonment.
- 4.20 It was contended that the aforementioned Rule does not state that it is Applicable only to Injunction Orders. That therefore, the Applicant cannot claim that it is inapplicable in the present case on grounds that the Ruling is not an Injunction Order.
- 4.21 Relying on the case of **Enock Kavindele and Dorothy Kavindele v Bologna Properties Limited and Diego Casili**<sup>1</sup>, the 2<sup>nd</sup> Alleged Contemnor submitted that the Applicant's argument that **Order 45 Rule 7(4) of the Rules of Supreme Court of England**<sup>11</sup> applies only to injunctions cannot stand.
- 4.22 That contrary to the Applicant's contention that the requirement for personal service only relates to Orders for an Injunction which argument is misplaced, **Order 45 Rule 7(2)(a) of the Rules of the Supreme Court**<sup>11</sup>, provides that any Order sought to be enforced by Contempt Proceedings should be personally served on the Alleged Contemnor. That

this position is fortified by explanatory notes under **45/7/6<sup>11</sup>**  
**of the said Rule.**

- 4.23 That the requirement for personal service of the Order sought to be enforced by way of Contempt Proceedings does not apply only to Injunctions. That the absence of personal service and a Penal Notice render Contempt Proceedings defective at law. Reliance was placed on the case of **Hussein Versi and Tall Logistics Forwarding limited v Airsea Cleaning and Forwarding Limited and Omar Awadh Transport Limited<sup>3</sup>**.

## **5.0 HEARING**

- 5.1. At the hearing held on 28<sup>th</sup> November, 2025, Mr. S. M. Lungu, SC acting for the 2<sup>nd</sup> Alleged Contemnor relied on the Affidavit in Support of this Application and Skeleton Arguments filed on 25<sup>th</sup> September, 2025. He augmented to the effect that this Court has been called upon to answer two questions outlined in paragraph 2.6 herein.
- 5.2. Regarding the Affidavit which was said to be defective because it was not dated in the jurat, the contention was that a plethora of authorities had discussed that issue and the Courts have held that notwithstanding that a jurat should be dated, the defect does not in anyway change the form of the Affidavit. That the Affidavit that does not contain a dated jurat should be allowed for use in a matter.

- 5.3. Mr. Lungu, SC also stated that Contempt Proceedings are serious and that is why personal service, not through a third party or substituted service, is a requirement.
- 5.4. Further that, there is a requirement that where service is effected on a party to proceedings, an Affidavit of Service should be filed before Court to prove that personal service was effected. That there was no Affidavit of Service before this Court.
- 5.5. In concluding his submission, Mr Lungu, SC stated that a Penal Notice was important to warn the party of the consequences that would arise if they did not comply with an Order of the Court and that this is a requirement at law. That in the case of the 2<sup>nd</sup> Alleged Contemnor, the Order was not served and there was no Penal Notice. That there was no excuse for the absence of a Penal Notice. It was the 2<sup>nd</sup> Alleged Contemnor's prayer that this Court in determining the two questions before it should find in his favour.
- 5.6. The 1<sup>st</sup> Alleged Contemnor opted not to comment during the hearing.
- 5.7. In opposing the Application, Mr. Bwalya acting for the Applicant herein relied on the Affidavit in Opposition and Skeleton Arguments and List of Authorities filed on 7<sup>th</sup> October, 2025.
- 5.8. Mr. Bwalya also reiterated that the 2<sup>nd</sup> Alleged Contemnor was aware of the Ruling in question and did engage the Applicant. That as regards the Penal Notice, it is well settled law that in Injunction Orders, a Penal Notice ought to be present. That

this Court is not dealing with an Injunction or its breach but rather with a Ruling rendered by this Court. It was the Applicant's prayer that the Application should be dismissed and the Court should proceed to hear the Committal Proceedings.

- 5.9. In replying to the submissions by opposing Counsel, it was submitted that service of documents, Court Orders requires proof of such and for documents such as an Order of Court, the only proof that service was effected was by filing an Affidavit of Service. That in this case that was not done. That the assertion that the Applicant was aware and was engaged is hearsay and should not be considered by this Court.
- 5.10. It was also submitted that as regards the second question, what this Court has to determine, is not premised on the law relating to Injunctions but on **Order 45 of the Rules of the Supreme Court of England**<sup>11</sup> that deals with enforcement of Judgments and Orders and the requirement that the Penal Notice is contained therein.

## **6.0. CONSIDERATION AND DECISION OF THE COURT**

- 6.1. I have carefully considered the Application by the 2<sup>nd</sup> Alleged Contemnor, the Parties' respective Affidavits, Skeleton Arguments and authorities. I am grateful for the industry by Counsel on behalf of the Parties.

- 6.2. First and foremost, I note that the Affidavit in Support of this Application is defective in form, in that it does not contain the date and place where it was sworn. I note however, that it was sworn before a person duly authorised. **Order 5 Rule 13 of the High Court Rules**<sup>9</sup> permits me to allow the use of a defective Affidavit. I accordingly allow the use of the Affidavit in Support of the Application despite its default which goes to form only and not substance as I believe doing so will not be prejudicial to the Applicant herein.
- 6.3. Secondly, this Court has been called upon to determine two questions on a point of law. The said questions are highlighted in paragraph 2.6 herein. In summary this Court has been called upon to determine if the Ruling dated 18<sup>th</sup> December, 2024 can be enforced by way of Contempt Proceedings in the absence of personal service and when such Ruling does not bear a Penal Notice on the face of it.
- 6.4. It is important to state that this matter was commenced by way of Originating Summons for Possession of Property pursuant to **Order 113 Rule 1 and 2 of the Rules of the Supreme Court of England**<sup>11</sup>. The Court on 31<sup>st</sup> May, 2023 found in favour of the Applicant and granted possession of the property known as the remaining extent of Lot No. 11289/M in extent of 3.1061 hectares situate in New Kasama, Lusaka and an *Ex-parte* Order to that effect was signed on 5<sup>th</sup> June, 2023.
- 6.5. A Writ of Possession was issued by the Applicant on 5<sup>th</sup> June, 2023. On 23<sup>rd</sup> June, 2023, the 1<sup>st</sup> Alleged Contemnor sought to

suspend the Writ of Possession. This Court in a Ruling dated 18<sup>th</sup> December, 2024 dismissed the said Application, among other reasons, because it was discovered that the law that was relied on did not support the 1<sup>st</sup> Alleged Contemnor's Application and also because execution had already taken place.

- 6.6. The Ruling dated 18<sup>th</sup> December, 2024, formed the basis of an Application for an Order for Contempt that was filed on 5<sup>th</sup> August, 2025.
- 6.7. A perusal of the said Ruling shows that it does not have a Penal Notice, and according to the 2<sup>nd</sup> Alleged Contemnor, the same was not personally served on him.
- 6.8. From the onset it is important to acknowledge that the Court has power to hear Contempt Proceedings by virtue of **Order 52 Rule 1 and 2 of the Rules of the Supreme Court of England**<sup>11</sup>. which provides that:

*"The term 'contempt of Court' is of ancient origin having been used in England certainly since the thirteenth century and probably earlier. It is based not on any exaggerated notion of the dignity of individuals be they judges, witnesses or others but on the duty of preventing any attempt to interfere with the administration of justice."*

- 6.9. In the case of **Republic v. Liberty Press Limited and others**<sup>7</sup>, it was stated thus:

***"The important position of the judiciary in any democratic set-up must be fully appreciated. Performing, as they are called upon to do, the sacred duty of holding the scales between the executive power of the State and the subject and protecting the fundamental liberties of the individual, the Courts must not only enjoy the respect and confidence of the people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority. For this reason, any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice becomes an offence not only against the Court but against the entire community which the Courts serve."***

6.10. The law has not left room for doubt as regards the nature of Judgment or Order of the Court that may be enforced by way of Contempt Proceedings. **The Rules of the Supreme Court of England under Order 45/5/1<sup>11</sup>** provides the following explanation:

***"This rule governs the methods for the enforcement by the Court of its judgments or orders in circumstances amounting to a contempt of Court. It applies to both positive and negative judgments or orders, i.e. those which require a party to do an act as well as those which require a party to abstain from doing an act, subject, however, to this important qualification that***

**the coercive methods of enforcement under this rule cannot be employed to enforce a judgment or order to do an act unless that act is required to be done, but is not done, within a specified time which has been fixed either by the original judgment or order, or by a subsequent order extending or abridging such time under O.3, r.5 or fixing such time under r.6.**

(Emphasis Mine)

6.11. From the forgoing it is clear that a Judgement or Order of the Court that can be enforced by way of Contempt Proceedings is that which requires a person to do something or to abstain from doing something within a specified period of time.

6.12. The law also provides that a Judgment or Order that is to form the basis of Contempt proceedings must be personally served on the Alleged Contemnor and must have a prominently displayed Penal Notice. This is highlighted in **Order 45 Rule 7(2)(a)** and **Rule 7(4) of the Rules of the Supreme Court of England**<sup>11</sup> respectively, which provide that:

Order 45 Rule 7(2)(a);

**“(2) Subject to Order 24, rule 16 (3), Order 26, rule 6 (3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question.”** (Emphasis Mine)

Order 45 Rule 7(4):

***“There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.”***

6.13. The Court of Appeal had occasion to discuss the above stated provisions in the case of **Hussein Versi and Tall Logistics Forwarding limited v Airsea Cleaning and Forwarding Limited and Omar Awadh Transport Limited**<sup>3</sup> and had the following to say:

***“Order 45 Rule 5 of Rules of the Supreme Court provides for enforcement of judgment where a person required by a judgment or order to do an act within a time specified in the judgment refuses or neglects to do so within the stipulated time. The judgment or order may be enforced by one or more of the following means; (i) With the leave of the court, a writ of sequestration against the property of that person (ii) Where that person is a body corporate, with leave of the court, a writ of sequestration against the property of any director or other officer of the body.” As regards the effect of the above cited rule, it governs***

**the methods for the enforcement by the court of its judgments in circumstances amounting to contempt of court.** (Emphasis mine)

Further, that:

***“It is trite that the provisions of Order 45 Rule (5) 1 of RSC must be read together with Rule 7. Enforcement cannot be obtained unless a copy of the order is served personally on the person in default. As regards an order requiring a body corporate to do an act, it shall not be enforced unless a copy of the order has been personally served on the officers against whom an order of committal is sought and served before the expiration of the time within which the corporate body was required to do the act. In casu, service of the consent judgment on the 2nd appellant's officers. A further requirement under Order 45 Rule 7 (4) is that there must be; "Prominently displayed on the front of the copy of an order served a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment etc.....***

***Order 45 Rules 7 makes explicit the conditions precedent to the enforcement of the judgment or order of committal, by specifying the documents to be served, the time within which the person on whom***

***such orders must be served and the terms of the penal notice to be endorsed.”***

6.14. In the case cited above, the Court of Appeal was dealing with a Consent Judgment between the Parties, this is one example to show that the Applicant’s assertion that **Order 45 of the Rules of the Supreme Court of England**<sup>11</sup> is incorrect when it stated that the said law only applied to Injunction Orders. Rather the said Order applies to any Judgment or Order of Court that requires a person to do an act or abstain from doing an act within a specified period.

6.15. From the forgoing, it is clear that contrary to the law that provides for enforcement of Judgments or Orders by way of Committal Proceedings, the Applicant has failed to show that the said Ruling dated 18<sup>th</sup> December, 2024 was served personally on the Alleged Contemnors and it is also clear that the same does not contain a Penal Notice. Further, the said Ruling did not order the Alleged Contemnors to do or abstain from doing any act within a specified period of time. Therefore, the same cannot form the basis for Contempt Proceedings.

## **7.0. CONCLUSION**

7.1. I find that this Application by the 2<sup>nd</sup> Alleged Contemnor succeeds as it is clear that contrary to the law regarding Contempt Proceedings, the Ruling dated 18<sup>th</sup> December, 2024, was neither served personally nor does it contain a Penal Notice.

7.2. I accordingly discharge the *Ex-parte* Order granting Leave to commence Committal Proceedings dated 20<sup>th</sup> August, 2025.

7.3. Costs are for the 2<sup>nd</sup> Alleged Contemnor to be taxed in default of agreement.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 22<sup>ND</sup> DAY OF JANUARY, 2026.**



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**I. M. MABBOLOBOLO**

**HIGH COURT JUDGE**