

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

2024/HP/0116



BETWEEN:

ROY YOBA KAUSA

PLAINTIFF

AND

GOLDEN LEOPOLD INVESTMENT COMPANY LIMITED

1ST DEFENDANT

ISAAC AND PARTNERS

2ND DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 06TH MAY, 2024 - IN CHAMBERS

For the Plaintiff : Mr. C. Ng'ona from Messers Chris & Partners
For the Defendant's : Mr. I. Nonde from Messers. Isaac & Partners

RULING

CASES REFERRED TO:

1. *Sirocco Enterprises Limited v Bell Equipment Limited*¹
2. *Republic of Botswana, Ministry of works, Transport and communications, Rincean Design Consultants (Sued as a firm T/A KZ Architects) v Mitre limited SCJ No. 2 of 1995*
3. *Antonio Ventrigilia v Finsbury Investment Limited SCZ Appeal No.2 of 2019*
3. *United Engineering Group v Mackson Mungalu and Others and The Post Newspapers v Rupiah Bwezani Banda*
4. *Finsbury Investments Limited v Antonio Ventriglia, Manuel Ventriglia and Ital Terrzo Limited (in receivership)*
5. *Indeni Petroleum Refinery Limited v Kafco Oil Limited and 3 others*
6. *Twampane Mining Co-operation Limited V A.M Storti Mining Limited (2011) 3 ZR 67*

LEGISLATION & OTHER WORK REFERRED TO:

1. *High Court Act Chapter 27 of the Laws of Zambia*
2. *Rules of the Supreme Court 1999 edition*

1.0 INTRODUCTION

1.1 By Notice of Motion to raise preliminary issues made pursuant to *Order 14A of the Rules of the Supreme Court (Whitebook) 1999 edition*, the Defendant's seek for the summary disposal of the Plaintiff's application for an interim Order namely that:

1. **Whether the Plaintiff's application for an interim order filed on 29th January, 2024 is in breach of Rule 3A (1) of Order XXX of the Rules of the High Court Act, Chapter 27 of the Laws of Zambia as amended by Statutory Instrument No. 58 of 2020 of the Laws of Zambia as the Plaintiff did not file his skeleton arugument and list of Authorities at the time of filing the summons.**
2. **And if it is found that the Plaintiff's application for an Interim Order is incompetently before this Court then the Defendants prays that the said application be dismissed with costs to the Defendants.**

1.2 The said Order upon which this application is premised provides that:

Order 14 *"The Court may upon the application of a party or 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 Such

determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.”

2.0 HISTORICAL BACKGROUND

2.1 The brief facts leading to the Defendant’s application, is that on the 24th January 2024, the Plaintiff by way of Writ of Summons accompanied by a statement of claim commenced this action against the Defendant seeking for the following reliefs:

- 1. An Order that the Defendants immediately hand over the Original title deeds for farm No.9014 Southern province to the Plaintiff to facilitate conveyancing.**
- 2. Costs of and incidental to these proceedings.**
- 3. Any other reliefs the Court may deem fit.**

3.0 THE DEFENDANT’S APPLICATION

3.1 The Defendant’s application is supported by an affidavit and skeleton arguments.

3.2 In the affidavit in support sworn by Isaac Nonde, in the capacity as the Defendant’s Advocate, deposed that on the 29th January, 2024, the Plaintiff through his Advocates filed an application for an Interim Order. That on 2nd February,

2024 at 15:00hrs, the Plaintiff, through its Advocates served the Defendant summons for an Interim Order, Affidavit in support of summons and a certificate of urgency. Exhibit marked "IN 1" a copy of the acknowledgment letter of service was produced as evidence.

- 3.3 It was averred that on 6th February, 2024, the Defendant's conducted a search on the Court record relating to this matter and the said search revealed that the Plaintiff did not file his application for an Interim Order with Skeleton Arguments and List of authorities in support of this case. A copy of the search form dated 6th February, 2024 was exhibited and marked "IN2".
- 3.4 Further that the deponent verily believe that the Plaintiff's application for an Interim Order is amenable to be dismissed as the Plaintiff did not file his skeleton arguments and list of authorities in support of his case at the time of filling the summons dated 29th January, 2024 as required by the relevant rules relating to interlocutory applications.
- 3.8 In the skeleton argument filed, Learned Counsel began by arguing that the Plaintiff has not complied with the provisions of Rule 3A (1) of Order XXX of the Rules of the High Court Act as amended by Statutory Instrument No. 58 of 2020. as the Plaintiff did not file his skeleton argument and list of authorities in support of his case at the time of filing his summons.

3.9 Though of persuasive value, counsel also cited the case of *Scirocco Enterprises Limited v Bell Equipment Limited*¹ wherein it was pronouncement that:

“A perusal of the record confirms that the Plaintiff did not file skeleton arguments and lists of authorities as required under Order 53 Rule 8 and 9 of the High Court Rules, Chapter 27 of the laws of Zambia. I take this opportunity to caution counsel that rules of court are meant to be obeyed. Those who choose to ignore them do so at their own peril and there is a plethora of authorities in this respect. This preliminary issue succeeds”.

3.10 I was then urged to dismiss the Plaintiff’s application for an Interim Order.

4.0 RESPONSE IN OPPOSITION

4.1 In opposing the application, the Applicant filed an affidavit in opposition to the notice of motion to raise preliminary issues.

4.2 The gist of the affidavit was that the skeleton arguments and list of authorities were inadvertently not filed together with the summons but were nonetheless already prepared at the time of filing and that the filing clerk accidentally left them at the Plaintiff’s Chambers. A copy of the skeleton arguments and list of authorities were exhibited and marked “CN1”.

4.3 It was averred that it would be prejudicial to the Plaintiff, if the application is dismissed on a point of law as it was not deliberate but rather an oversight that the skeleton arguments and list of authorities were not filed when making the application and that the Plaintiff believe that the this court has the discretion to order that the same list of authorities and skeleton arguments be filed out of time in order to meet the interest of injustice.

4.4 In reinforcing the above argument, the Counsel **cited Order 2 Rule 1 of the Supreme Court Rules** provides that:

“(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.”

Counsel referred this Court to the case of **Republic of Botswana, Ministry of works, Transport and communications, Rincean Design Consultants (Sued as a firm T/A KZ Architects) v Mitre limited SCJ No. 2 of 1995²** where the Supreme Court made the following observation:

“The High Court Rules were rules of procedure and were therefore regulatory and any breach should be treated as a mere irregularity which is curable.”

The case of *Leopold Walford (Z) Limited v Unifright (1985) Z.R 203*³ was cited in which the Supreme Court held that:

“A breach of a regulatory rule is curable and not fatal”

5.0 CONSIDERATION AND DECISION BY THIS COURT

- 5.1 I have carefully considered the written and oral submissions by learned Counsel for the respective parties as well as the authorities cited.
- 5.2 At the hearing of this matter, both learned counsel for the parties more or less merely repeated their written argument except for counsel for the Plaintiff who applied for leave of this court to file skeleton arguments and list of authorities so that this matter can be heard on its merit.
- 5.3 Let me begin by stating that whenever, a preliminary issue is raised in the matter and as aptly observed by the Supreme Court in the case of *United Engineering Group v Mackson Mungalu and Others and The Post Newspapers v Rupiah Bwezani Banda*⁴ that:

“Preliminary issues are meant to save the Court’s time as they have the potential to affect the outcome of the main matter. Further that the Court is obliged to dispose of preliminary issues as a matter of priority”.

5.4 Furthermore, in the case of *Finsbury Investments Limited v Antonio Ventriglia, Manuel Ventriglia and Ital Terrzo Limited (in receivership)*⁵ the Supreme Court opined that:

“The High Court Rules are couched in a manner that all actions before that court are Judge driven, which entails that a Judge of that court has the responsibility of ensuring that all actions before him are stirred to their logical conclusion promptly. In doing so, the High Court has the responsibility of ensuring that it adopts the quickest method of disposing of a matter before it, justly and having, afforded the parties an opportunity to be heard. To achieve this, there is built in the practice and procedure of the High Court and indeed appellate courts, a system whereby, an obviously hopeless, frivolous or vexatious matter may be dealt with at interlocutory stage without having to await a full hearing. This ensures that there is a saving on the already overstretched resources of the court and indeed that matters are disposed of at least cost to the parties”.

5.5 The question for determination is therefore whether or not the application by the Plaintiff for an interim Order ought to be dismissed for offending *Order 30 Rule 3A (1) of the High Court Rules as amended by Statutory Instrument Number 58 of 2020. Order 30 rule 3A(1)* provides that:

“At the time of filing the summons, the applicant shall file skeleton arguments of their case and list of authorities”.

5.6 I must emphasize the point that civil procedure rules are enacted to govern the methods and practices used in civil litigation. To this effect, *section 44 (1) (a) of the High Court Act* states that Rules of the court may be made:

“For regulating and prescribing the procedure (including the method and pleading) and the practice to be followed in the court in all causes and matters”

5.7 In the case of ***Indeni Petroleum Refinery Limited v Kafco Oil Limited and 3 others***⁵. The Supreme Court held that:

“This practice, in our considered view, is aimed at ensuring that there is proper case flow and case management of matters before the court below which eventually leads to the proper administration of justice. A robust Judge, such as the Learned High Court Judge, must ensure that he is alert and invokes the inherent jurisdiction vested in him of weeding out hopeless, frivolous and vexatious matters and those wrongly presented before him after giving the parties an opportunity to be heard”

5.8 In the current case and as graciously conceded by counsel for the Plaintiff, the Plaintiff did not comply with ***Order 30 Rule 3A(1) of the High Court Rules***. ***Order 30 Rule 3A(1)*** uses the word “shall” which denote mandatory. This entails that failure to comply with the same is fatal.

5.9 It is a fact that the summons for an interim Order were filed on the 29th Janury, 2024 without skeleton arguments and lists of authorities. Consequently, the application for the interim Order was not properly launched by the Plaintiff as no skeleton arguments and list of authorities where filed as provided for under ***Order 30 rule 3A (1) of the High Court Rules***.

5.10 I reiterate the point that the failure by the Plaintiff to satisfy this jurisdictional requirement under Order 30 Rule 3A (1) of the High Court Rules rendered the application for an Interim Order incompetent before me. The Supreme Court has guided in plethora of cases including *Twampane Mining Corporation Limited v A.M Storti Mining Limited*⁶ that:

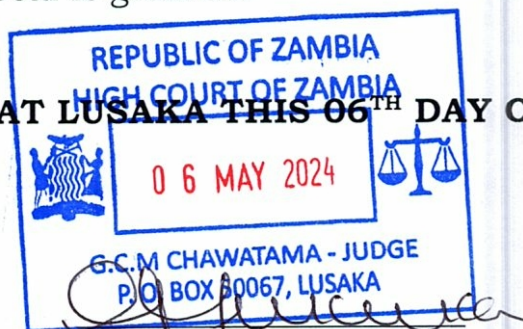
“It is important to adhere to the rules of the Court in order to ensure that matters are heard in an orderly and expeditious manner and those who choose to ignore rules of the court do so at their own peril”.

5.11 For the reasons given above, the net result is that this application to dispose this matter on the point of law succeeds and the Plaintiff’s application for an interim order is dismissed forthwith.

5.12 I further order that costs of and occasioned by this application be borne by the Plaintiff.

5.13 Leave to appeal is granted.

DELIVERED AT LUSAKA THIS 06TH DAY OF MAY, 2024.



**G.C. CHAWATAMA
HIGH COURT JUDGE**