

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

2024/HP/1093

BETWEEN:

KOBS INVESTMENT LIMITED

AND

KALUKA AMUKENA (sued as the Administrator
of the estate of the late Patricia Amukena)

**JOHN SEPISO T/A SEPISO TRANSPORT
AND 18 OTHERS**

PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

Before:

For the Plaintiff:

The Hon. Mr. Justice Charles Zulu.
Mr. N. Siwila of Mulungushi Chambers.

For the "Applicants":

*Mrs. A. Mwalula of Ndemanga Mwalula &
Associates, on behalf of Messrs K. Mwale
& Company.*

R U L I N G

1.0 INTRODUCTION

1.1 This ruling is in respect of a notice of motion to raise a preliminary objection, by David Magalashi and another unnamed respectively claiming to be the seventh and eighth Defendants to this action. And by this application the said "defendants" seek to have this action dismissed, because it was issued without the letter of demand being served on them as

prescribed by Order VI rule 1 (1) of the **High Court Rules Chapter 27 of the Laws of Zambia.**

2.0 BACKGROUND

2.1 The Plaintiff, Kobs Investment Limited, took out a writ of summons and statement of claim dated August 1, 2024, against two defendants. The first Defendant was designated as “Kaluka Amukena sued as the Administrator of the estate of the late Patricia Amukena and 18 Others”. The list of the alleged 18 Others was not attached. The second Defendant is “John T/A Sepiso Transport”. And in the statement of claim only the above mentioned defendants are described and identified as such.

2.2 In this action, the Plaintiff seeks to have the consent settlement order executed under Cause No. 2011/HP/757 dated August 22, 2023 set aside for fraud.

3.0 HEARING

3.1 I will not labour to summarize the affidavits and the arguments thereof given the approach I have taken to deal with the matter procedurally.

4.0 DETERMINATION

4.1 The application is out-rightly incompetent and incurably bad, for want of *locus standi*, because the purported “Applicants” are not parties to this action. Regrettably, the Plaintiff misled the Court by proceeding as if the ‘Applicants’ were defendants to the action when in fact not.

4.2 The mere fact that the “Applicants” appear to have been the seventh and eighth Plaintiffs together with the first Plaintiff herein under Cause No. 2011/HP/757 does not automatically make them to switch to be the seventh or/and eighth defendants. The two actions are distinct. Likewise, the mere fact that the Plaintiff may have erroneously served the writ of summons on them, that service does not make them parties to this action.

5.0 CONCLUSION

5.1 In the light of the foregoing, the application is dismissed for want of *locus standi*.

5.2 I make no order as to costs, because the Plaintiff bears the blame for this situation.

5.3 Leave to appeal is granted.

DATED THE 6TH DAY OF MAY, 2025


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THE HON. MR. JUSTICE CHARLES ZULU