

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2024/HP/1721

BETWEEN:

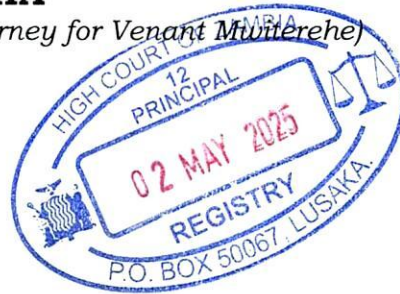
GABRIEL HABUMUGESHA

(Suing in his capacity as an attorney for Venant Muberehe)

PLAINTIFF

AND

**MARTIN MUKONDE
IDA MUKONDE
CECILIA MUKONDE
MARY MUKONDE**



**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT**

Before:

The Hon. Mr. Justice C. Zulu

For the Plaintiff:

*Ms. M. Kashimbaya, of Messrs M.B.
Christopher Legal Practitioners.*

The Defendants:

No Appearance.

R U L I N G

Cases referred to:

- 1. *Anisminic Limited v The Foreign Compensation Commission and Another* [1969] 1 ALL E.R. 208 at page 213.**
- 2. *Aristogerasimos Vangelatos and Another v Metro Investments Limited* (Selected Judgment No. 35 of 2016).**

Legislation referred to:

- 1. *Rules of the Supreme Court of England and Wales 1965* (White Book 1999 Edition).**
- 2. *High Court Rules (HCR), Chapter 27 of the Laws of Zambia.***

1.0 INTRODUCTION

- 1.1 This ruling is in respect of an application dated February 26, 2025 by the Plaintiff, Gabriel Habumugesha (suing in his capacity as attorney for Venant Mwitirehe), for leave to amend pleadings.
- 1.2 The application was made pursuant to Order 20 rule 5 of the **Rules of the Supreme Court of England and Wales 1965 (White Book 1999 Edition)** and Order XVIII rule 1 of the **High Court Rules, Chapter 27 of the Laws of Zambia.**

2.0 BACKGROUND

- 2.1 The Plaintiff in his name, supposedly relying on a power of attorney donated by the donor, Venant Mwitirehe, took out a writ of summons and statement of claim dated November 27, 2024, against the Defendants essentially seeking an order for specific performance in relation to a piece of land purchased by his donor, Venant Mwitirehe on November 11, 2020 from the Third and Fourth Defendants.
- 2.2 And on November 27, 2024 the Plaintiff sought an interlocutory injunction against the Defendants. The application for interlocutory injunction was unsuccessful on account of impropriety. In my ruling dated January 28, 2025 I stated the following at paragraph 4.7 and 4.8:
- 2.2.1 ***While it is legally tenable for a donor to empower a donee with authority to sue on behalf of the donor, the action ought to be taken out in the principal's name (see Halsbury's Laws of England, 4th Edition Vol.1,***

para 739, 744, pages 444,447). In the present case, this was not so, the action was taken out in the donee's own name.

Therefore, the Plaintiff has not established a clear right to relief. This is because prima facie, the cause of action is questionable granted the Plaintiff's apparent want of locus standi to take out the action in his own name.

3.0 AFFIDAVIT EVIDENCE & ARGUMENTS

3.1 An affidavit in support of the application was deposed to by the Plaintiff, Gabriel Habumugesha. And written arguments in support of the application were filed. Given the course I have taken to again question the *locus standi* of Gabriel Habumugesha to prosecute the present application on behalf of the donor Venant Mwiterehe, I will not summarize the contents of the affidavit and the arguments thereof seriatim.

3.2 However, it is worth noting that the Plaintiff's Counsel argued that the Court had the requisite jurisdiction to allow a party to amend the pleadings.

4.0 DETERMINATION

4.1 I have carefully considered the application. While it is trite law that the Court has the requisite jurisdiction to allow amendment of pleadings at any time, I do not agree that this application is tenable on account of *locus standi* on the Plaintiff's part.

4.2 I took the time earlier, to state the reason for denying the grant of an order of injunction, that is to say, that the Plaintiff, Mr. Gabriel Habumugesha had no *locus standi* because, the action was taken out in his name and not the principal's name.

Similarly, the present application is untenable for the Plaintiff's want of *locus standi*.

4.3 In the case of **Anisminic Limited v The Foreign Compensation Commission and Another**¹ it was held:

4.3.1 ***An order made without jurisdiction is a nullity.***

4.4 Further, in **Aristogerasimos Vangelatos and Another v Metro Investments Limited and 3 Others**² the Supreme Court guided as follows:

4.4.1 ***The rationale for this lies in the consequence of the Court exercising jurisdiction which it does not possess. Halsbury's at paragraph 715 states, in this regard, that where a Court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing.***

5.0 CONCLUSION

5.1 In the light of the foregoing, the application for an order to amend pleadings is dismissed for impropriety on account of want of *locus standi*. And I shall proceed to hear the Defendants' pending application to dismiss the writ of summons and statement of claim for irregularity, on **May 21, 2025 at 08:30hours.**

5.2 I make no order as to costs.

5.3 Leave to appeal granted.

DATED THE 2ND DAY OF MAY, 2025


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THE HON. MR. JUSTICE CHARLES ZULU