

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

2024/HP/1025

IN THE MATTER OF: RULE 3 OF THE RULES OF THE RENT ACT
CHAPTER 206 OF THE LAWS OF ZAMBIA
IN THE MATTER OF: SECTION 4 (e)(i) and (ii) OF THE RENT ACT
CHAPTER 206 OF THE LAWS OF ZAMBIA
IN THE MATTER OF: PREMISES KNOWN AS PLOT NO. 39 MULUNGUSHI
ROAD, ROMA, LUSAKA, ZAMBIA

BETWEEN:

JULIE J. G. LIMPIC

AND

MKP SOUTH AFRICA (ZAMBIA) LIMITED

BIZWELL MUTALE

BEFORE HON. JUSTICE E. P. MWIKISA

FOR THE PLAINTIFF: MR. C. KAPATALA OF MESSRS CHILUPE AND PERMANENT
CHAMBERS

FOR THE DEFENDANT: MR. V. MAPULANGA OF MESSRS KAMWI ANDELEKI
LEGAL PRACTITIONERS



APPLICANT

1ST RESPONDENT

2ND RESPONDENT

RULING

Cases Referred To:

- 1. Associated Chemicals Limited vs. Hill and Delamain Zambia Limited and Ellis and Company (as a law firm) (1998) S.J 7 (SC)*

2. *Saasa Shamambo vs. Jonathan Mwanza and 13 Others and 13 Others CAZ Appeal No. 20 of 2020*
3. *Techman Zambia Limited vs. Muman Pleasure Resort and Puma Energy Zambia PLC Appeal No. 196/2014, SCZ/8/2014*
4. *Salomon v Salomon and Company Ltd (1897) AC 72*

Legislation Referred To:

1. *Order 14 Rule 5(2) of the High Court Rules, Chapter 27 of the Laws of Zambia*
2. *Order 24 Rule 5(2) of the High Court Rules and Section 16 of the Companies Act*
3. *Order 15 Rule 5(1) of the High Court Rules, Order 15 Rule 6(2) of the Rules of the Supreme Court of England, 1999 edition*

Works Referred To:

1. *Company Law, Brenda Hannigan, Lexis Nexis, Butterworths, 2003.*

This ruling addresses the 2nd Respondent's application for misjoinder. The application was made pursuant to **Order 14 Rule 5(2)** of the High Court Rules, Chapter 27 of the Laws of Zambia via summons supported by an affidavit and skeleton arguments.

The said application is dated 31st July 2024. The affidavit in support was deposed to by one Bizwell Mutale the 2nd Respondent herein and Director of the 1st Respondent.

It was deposed that the action was commenced on 8th February 2024 by way of Originating Summons and supporting affidavit seeking rental arrears, among other reliefs under the lease agreement dated 24th April 2019. A copy of the lease agreement was exhibited and marked as "BM1".

It was stated that the lease agreement was executed and entered into between the Applicant and the 1st Respondent and can only be enforceable against the 1st Respondent. The deponent stated that the 1st Respondent is an entity with a separate legal personality from himself and capable of being sued in its own name.

It was deposed further that, the Applicant has no cause of action against the 2nd Respondent, and as such, he is improperly joined to the proceedings. Thus, he seeks to be struck off from the proceedings.

The central argument supporting the application for misjoinder was that the 1st Respondent is a registered company which is a distinct legal person from its members or Shareholders. **Order 24 Rule 5(2)** of the High Court Rules and **Section 16** of the Companies Act were cited to support the assertion.

Furthermore, it was argued that by virtue of the 1st Respondent being a separate entity by law, the Court has the power to strike off the 2nd Respondent from the proceedings. This assertion was buttressed by citing the cases of **Associated Chemicals Limited vs. Hill¹** and **Delamain Zambia Limited and Ellis and Company (as a law firm) and Saasa Shamambo vs. Jonathan Mwanza and 13 Others²**

On the other hand, the Applicant filed an affidavit in opposition dated 2nd October 2024, deposed by one Julie J.G. Limpic the Applicant herein. She deposed that the lease agreement was between herself and the 1st Respondent and duly executed by the 2nd Respondent. The 2nd Respondent witnessed the agreement and eventually took occupation of the property. That the 2nd Respondent made the payment of \$9000.00 in cash as rentals for three (3) months.

It was deposed that the premises in question have been occupied by the 2nd Respondent who time and time would insist that he was indebted to the Applicant. The deponent deposed that she has never had any knowledge or interactions with the 1st Respondent or any of its agents besides the 2nd Respondent.

Further, it was deposed that the 2nd Respondent's application should not be granted as he had played an active and instrumental role in the whole affair whilst hiding behind the role of a Director.

The Applicant deposed that the 2nd Respondent has sufficient direct and personal interest to warrant him as a party to the proceedings. **Order 15 Rule 5(1)** of the High Court Rules, **Order 15 Rule 6(2)** of the Rules of the Supreme Court of England, 1999 edition and the case of **Techman Zambia Limited vs. Mumana Pleasure Resort and Puma Energy Zambia PLC³** were cited in fortifying the assertion that the 2nd Respondent has an interest in the matter, thus, he should be remain joined to these proceedings so that the issues are determined in a dualistic fashion.

When the matter came up for hearing on 21st November 2024, both counsel present stated that they would rely on the documents filed into Court.

I have carefully considered the affidavit evidence as well as the list of authorities and skeleton arguments on record. The 2nd Respondent's application is anchored on the provisions of **Order 14 Rule 5 (2)** of

the High Court Rules which for the avoidance of doubt provides as follows;

“The Court or a Judge may, at any stage of the proceedings, and on such terms as appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out.”

That the foregoing provision of the law clothes this Court with the power to strike out names of parties improperly joined to a matter. In casu, the 2nd Respondent argued that he was improperly joined to the main action as he was only a Director of the 1st Respondent. He relied on the legal principle of separate legal personality which applies to incorporated companies.

The Applicant on the other hand, argued that the lease agreement was duly executed by the 2nd Respondent. That the 2nd Respondent witnessed the agreement and eventually took occupation of the property. She states that the 2nd Respondent played an active and instrumental role in the whole transaction whilst hiding behind the role of a Director. Furthermore, she asserted that the 2nd Respondent had sufficient direct and personal interest to warrant him as a party to the proceedings.

I have carefully considered the affidavit evidence on record together with the skeleton arguments. This application borders on the principle of separate legal personality which is the basic tenet on which company law is premised as was established in the case of **Salomon vs. Salomon & Company Limited**⁴ cited by the 2nd Respondent. It was held therein, in part that:-

“The company is at law a different person altogether from the subscribers ...”

The Salomon principle espouses that on incorporation, a company becomes a separate legal entity distinct and separate from its shareholders as the learned Author of Company Law, Brenda Hannigan states in her text book, Lexis Nexis, Butterworths, 2003, at page 63, that:

“The company is not the agent of those shareholders not even if it is a one man company with one shareholder controlling all its activities.”

Further, at page 69 of the same book, the learned Author states that:

“However, an agency relationship may arise from the facts, but it must do so from circumstances other than mere control of the company or ownership of its shares. Whether such circumstances exist will involve the court in a detailed factual examination in order to determine whether the company is carrying on business on its own

account or on the account of a controlling (Individual or Corporate) shareholder.”.....The court will pierce the corporate veil where special circumstances exist indicating that it is a mere facade concealing the true facts, as the House of Lords confirmed in Woolfson v. Strathclyde Regional Council (1978) 38P & CR521, HL.”

While it is true that a company, as an artificial legal entity, acts through its Directors, the corporate veil protects the directors and shareholders from the company's liabilities. It is not in dispute that the 2nd Respondent witnessed the lease agreement and eventually took occupation of the property. However, he may have done that in his capacity as Director of the 1st Respondent. Consequently, any rights, obligations, or liabilities of a company are distinct from those of its shareholders.

In view of the above, I am of the considered view that the facts in casu, do not show whether Bizwell Mutale, the 2nd Respondent herein, and Director of the 1st Respondent, was acting alone or with the authority of the company when he entered into a lease agreement with the Applicant. These issues would have to be determined at the full trial of the matter. It is for this reason that I decline to disjoin or misjoin the 2nd Respondent herein. I accordingly dismiss the application with costs to the Applicant, namely Julie J. G. Limpic,

(who is the Respondent in this application) to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka the ^{29th} day of *January*, 2025



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ELITA PHIRI MWIKISA
HIGH COURT JUDGE