

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

2024/HP/1601

**BETWEEN**

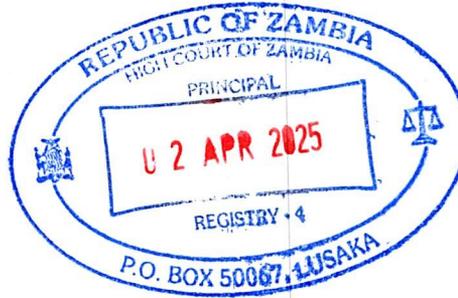
**SUZYO NKHOMA**

**AND**

**THOMAS PHIRI**

**DANNY KAMUNGOMA**

**THE UNKNOWN**



**PLAINTIFF**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**3<sup>RD</sup> DEFENDANT**

**Before the Honourable Lady Justice S. Chocho, in chambers at Lusaka on 2<sup>nd</sup> April, 2025.**

*For the Plaintiff: Ms. R Nyirenda of Messers Fred Jere and Company*

*For the 1<sup>st</sup> and 2<sup>nd</sup> Defendant: Ms. P Sibanda of Messers SCPN Legal Practitioners*

*For the 3<sup>rd</sup> Defendant: No Appearance*

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## **R U L I N G**

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**Cases Referred to:**

- 1. Chikuta v Chipata Rural Council 1974 ZR 241.**
- 2. African Banking Corporation v Mubende Country Lodge Limited Appeal No. 116 of 2016.**
- 3. Comprehensive HIV-AIDS Management Programme Ltd v Investrust Bank PLC CAZ APPEAL NO. 189/2019.**
- 4. Indeni Petroleum Refinery Company Ltd v Kafco Oil Ltd and Others Appeal 207 of 2014**
- 5. Aaron Chungu v Peter Chanda and Others SCZ/8/02/2023.**
- 6. Arch Michael Scarantino V Susan Zuze Gehard and Another CAZ Appeal No. 126 of 2024.**

Legislation referred to:

1. *Order 14A Rule 1 and 2 of the Rule of the Supreme Court of England (White Book) 1999 Edition.*
2. *Order 33 Rule 3 of the Rules of the Supreme Court of England (White Book) 1999 Edition.*
3. *Section 23 of the Subordinate Court Act, Chapter 28 of the Laws of Zambia.*
4. *Order 30 Rule 11 of the High Court Rules, Chapter 27 of the Laws of Zambia.*
5. *Order 11 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia.*
6. *Paragraph 14A/2/4 of the Rules of the Supreme Court of England.*
7. *Statutory Instrument No. 12 of 2024.*
8. *Article 134(a) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.*
9. *Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.*

**1. INTRODUCTION**

- 1.1. This is a Ruling on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Notice of Motion to raise Preliminary Issues pursuant to **Order 14A Rule 1 and 2 of the Rules of the Supreme Court of England (White Book) 1999 Edition Volume 1** as read together with **Order 33 Rule 3 of the Rules of the Supreme Court of England (White Book) 1999 Edition.**

**2. BACKGROUND**

2.1. The background to this matter as per pleadings and affidavit evidence is that the Plaintiffs commenced an action against the Defendants by way of Originating Summons and affidavit in support on November 8<sup>th</sup>, 2024 claiming the following reliefs;

- i) Declaration that the Plaintiff is the rightful owner of Plot 60/40 Chibombo situate in Mwachilando Village in Chief Mungule of Chibombo District in the Central Province;
- ii) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did trespass, fraudulently built houses and encroached on the Plaintiff's property;
- iii) The Defendants be restrained whether by themselves, agents or by whosoever from encroaching, trespassing or carrying out further development(s) or any activities of whatsoever description upon the Plaintiffs said plot;
- iv) Compensation in the sum of K243,000.00 for the loss incurred;
- v) Punitive damages;
- vi) Damages;
- vii) Any other relief the Court may deem fit; and
- viii) Costs.

2.2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Notice of Motion to raise Preliminary Issues on January 23<sup>rd</sup>, 2025. The following issues were raised for determination:

- i) That this Honourable Court has no jurisdiction in this matter because the value of the property which is subject to these proceedings is less than One Million Kwacha (K 1,000,000.00).
- ii) The Originating Summons should be set aside for irregularity as it is an incorrect way to commence this action.

2.3. The matter was heard and Ex-Tempore Ruling delivered on March 26<sup>th</sup>, 2025.

### **3. AFFIDAVIT EVIDENCE**

- 3.1. The Notice of Motion is supported by an affidavit in support of Notice of Motion dated January 23<sup>rd</sup>, 2025 deposed by one Thomas Phiri who is the 1<sup>st</sup> Defendant herein.
- 3.2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants aver that claims for land and property with the value of less than K1,000,000.00 should be heard by the Subordinate Court.
- 3.3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants aver that claims of less than K1,000,000.00 ought to be heard by the Subordinate Court.
- 3.4. In response, the Plaintiff filed an affidavit in opposition of February 4<sup>th</sup>, 2025 deposed by one Suzyo Nkhoma who is the Plaintiff herein.
- 3.5. The Plaintiff avers that this Court has unlimited jurisdiction.
- 3.6. The Plaintiff avers that this Court has jurisdiction to entertain matters involving customary land.
- 3.7. The Plaintiff avers that this matter was competently commenced before this Court.

- 3.8. The Plaintiff avers that in order for a party(s) to make this type of application, they ought to first enter appearance and/file an opposition to the action.
- 3.9. The Plaintiff avers that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not entered appearance / filed an opposition for them to qualify making the current application.
- 3.10. The Plaintiff avers that this Court has original jurisdiction and as such has the jurisdiction to determine this matter.
- 3.11. The Plaintiff avers that in an unlikely event that this Court is inclined to agree with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the matter ought to have been commenced by Writ of Summons in order for witnesses to be called and the matter be subjected to full trial; then this is a good case in which this Court can also exercise its jurisdiction and discretion and order that the matter be deemed to have been commenced by way of Writ of Summons in the interest of justice.
- 3.12. The Plaintiff submits that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is bereft of merit and must be dismissed with costs.

#### **4. AT THE HEARING**

- 4.1. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that reliance will be placed on the affidavit in support of Notice of Motion to raise Preliminary Issues, skeleton arguments and list of authorities filed into Court on January 23<sup>rd</sup>, 2025.

- 4.2. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submits that the High Court has no jurisdiction over land/monetary claims less than K1,000,000.00 in accordance with **Sections 2(a) and 3(a) of Statutory Instrument No. 12 of 2024.**
- 4.3. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submits that the **African Banking Corporation<sup>2</sup>** case that the Plaintiff relies on to make the submission that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is improperly before this Court is not applicable incasu as the **African Banking Corporation<sup>2</sup>** case dealt with a matter that was commenced by way of Writ of Summons. Counsel submits that in the present case, there is no provision for a memorandum of appearance, so the rules cited do not apply.
- 4.4. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submits that this Court should dismiss these proceedings with costs based on **Orders 14A Rule 1 and Order 33 Rules 3 and 7 of the Rules of the Supreme Court of England.**
- 4.5. Counsel for the Plaintiff submits that the Plaintiff will entirely rely on the affidavit in opposition and skeleton arguments filed on February 4<sup>th</sup>, 2025.
- 4.6. Counsel for the Plaintiff submits that what the Plaintiff is claiming is not money perse but rather the issue has to do with land which is customary in nature therefore, this Court has the requisite jurisdiction.
- 4.7. Counsel for the Plaintiff further submitted that **Statutory Instrument No. 12 of 2024** does not deprive this Court of the original and

unlimited jurisdiction to deal with matters whose value is less than K1,000,000.00 as this Court has original and unlimited jurisdiction.

**5. THE LAW**

- 5.1. I have had occasion to review and consider the application, having heard counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and Plaintiff, read the affidavits, skeleton arguments and authorities cited by the parties for which I am grateful.
- 5.2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submit that the increasing of the jurisdiction of the Subordinate Court by **Statutory Instrument No. 12 of 2024** to K1,000,000.00; the jurisdiction of the High Court has been increased to hear matters where the value of land or property and the sums claimed exceed K1,000,000.00.
- 5.3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants further submit that this matter ought not to have been commenced by Originating Summons as **Order 30 Rule 11 of the High Court Rules** provides guidance as to which matters can be commenced by Originating Summons and the action in casu does not fall within the provisions of **Order 30 Rule 11**. In making this submission, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants place reliance on the case of **Chikuta v Chipata Rural Council 1974 ZR 241<sup>1</sup>** in which it was held as follows:

***“Where an action is brought to the High Court by means of Originating Summons, when it should have been commenced by Writ, the Court has no jurisdiction to make any declarations”.***

- 5.4. the 1<sup>st</sup> and 2<sup>nd</sup> Defendant submit that the Plaintiff raised issues of fraud and issues of fraud cannot be adequately determined by way of Originating Summons and affidavit.
- 5.5. In response, the Plaintiff submits that the property in question is customary land and that the Plaintiff could not have commenced this matter in the Subordinate Court without the consent of the other party as per the requirement in **Section 23 of the Subordinate Court Act, Chapter 28 of the Laws of Zambia.**
- 5.6. The Plaintiff submits that **Order 14A** can only be invoked after the laid down procedures have been complied with and that the Court cannot be moved to determine a matter on a point of law under **Order 14A** without a party having satisfied the requirements under **Order 14A/2/3.**
- 5.7. The Plaintiff places reliance on the case of **African Banking Corporation v Mubende Country Lodge Limited Appeal No. 116 of 2016<sup>2</sup>** in which the Supreme Court held that where a Defendant is served with a Writ of Summons, what constitutes a notice of intention to defend is filing a memorandum of appearance and a defence as provided under **Order 11 Rule 1 of the High Court Rules.**
- 5.8. The Plaintiff submits that the Defendants were served with Court process, but have not entered appearance and filed an affidavit in opposition. The Plaintiff contends that the application is incompetently before this Court and should not be entertained.

5.9. The Plaintiff submits that **Order 14A** is not available to matters commenced by Originating Summons and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is void of merit.

## **6. COURTS DECISION**

6.1. I have carefully considered the arguments herein for and against the application. The issues for determination are reproduced in 2.2 above.

6.2. Before I go into determining the merits of this application, I shall first address the issue raised by the Plaintiff of whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is properly before me, in light of the fact that they have not entered appearance/ filed an affidavit in opposition. This issue is of importance as it speaks to the jurisdiction of this Court to entertain the application.

6.3. This Court does have the jurisdiction to dispose of cases on a point of Law pursuant to **Orders 14 A and 33 of the Rules of the Supreme Court of England.**

6.4. In order for an application to be made under **Order 14A** the requirements stated in **Paragraph 14A/2/4 of the Rules of the Supreme Court of England** should be met. **Paragraph 14A/2/4** provides that:

***“The requirements for employing the procedure under this Order are the following:***

***(a) The Defendant must have given notice of the intention to defend;***

- (b) The question of law or construction is suitable for determination without a full trial of the action;*
- (c) Such determination will be final as to the entire cause or matter or any claim or issue therein; and*
- (d) The parties had an opportunity of being heard on the question of law or have consented to an Order or Judgement being made on such determination”.*

6.5. It is the Plaintiff's contention that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is incompetently before this Court and should not be entertained on the ground that the Defendants were served with Court process, but have not entered appearance and filed an affidavit in opposition.

6.6. **Paragraph 14A/2/4 (a) of the Rules of the Supreme Court of England** is clear that in the determination of any question of law under **Order 14A** can only be made if the Defendant has given notice of intention to defend.

6.7. The Court of Appeal in the case of **Comprehensive HIV-AIDS Management Programme Ltd v Investrust Bank PLC CAZ APPEAL NO. 189/2019<sup>3</sup>** stated as follows:

*“The cited provisions are mandatory and Order 14A can only be invoked after the laid down procedure has been complied with. The implication is that the Court cannot be moved to determine a matter on a point of law under Order 14A without a party having satisfied the requirements of Order 14A/2/3”.*

- 6.8. Furthermore, the Supreme Court in the case of **African Banking Corporation Zambia v Mubende Country Lodge Limited Appeal No.116 of 2016<sup>2</sup>** held as follows:

*“It is plain from the preceding paragraph that there are certain requirements which must be satisfied before a matter can be disposed of on a point of law. One such requirement, according to Order 14A/1-2/2, RSC is the giving of notice of intention to defend... In the view that we take what constitutes a notice of intention to defend, in the context of our rules, is the filing of a memorandum of appearance which is accompanied by a defence. It, therefore it follows that the filing of a memorandum of appearance with a defence is a pre-requisite to launching an application under Order 14A, RSC...Order 33, rule 3 cannot be invoked independently or to the exclusion of the mandatory requirements of Order 14A, RSC which require the filing of a notice of intention to defend as a pre-requisite to raising a preliminary point of law. We stated earlier in this judgment that in the context of our rules, a notice of intention to defend is the filing of a memorandum of appearance with a defence”.*

- 6.9. In light of the above authorities, I am fortified in concluding that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is incompetently before this Court due to their failure to comply with the requirement to give a notice of intention to defend as per the mandatory requirement in **Paragraph 14A/2/3 of the Rules of the Supreme Court of England.**

- 6.10. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submit that in casu, the matter is commenced by way of Originating Summons and there is no provision

for a memorandum of appearance, so the rules cited do not apply. I am of the considered view that a Memorandum of Appearance is intended to serve as a notification to the Court that the Defendant intends to defend an action brought against the Defendant by a Plaintiff. Where a matter is commenced by way of Originating Summons a Defendant/Respondent notifies the Court by filing an affidavit in opposition. I am fortified by the authority in the Supreme Court case of **Indeni Petroleum Refinery Company Ltd v Kafco Oil Ltd and Others Appeal 207 of 2014** in which it was stated as follows:

***“The facts we have set out in the earlier part of this Judgment indicate that all the four requirements aforesated, were met. We say this because the Respondents did indeed intimate their intention to defend by filing the affidavits in opposition”.***

- 6.11. In light of the above, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ought to have filed an affidavit in opposition to the Plaintiffs Originating Summons and affidavit in support thereof.
- 6.12. I therefore find that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is incompetently before me to the effect that this Court lacks the jurisdiction to hear and determine the application.
- 6.13. The High Court Rules in **Order 3 Rule 2** gives this Court the authority to make any interlocutory orders necessary for doing justice. In light of this authority, I shall suo motto pronounce myself on jurisdiction as relates to actions below K1,000,000.00 threshold.

6.14. I am of the considered view that the unlimited jurisdiction conferred on this Court by **Article 134 of the Constitution** is not limitless

6.15. The Supreme Court in the case of **Aaron Chungu v Peter Chanda and Others SCZ/8/02/2023<sup>4</sup>** stated as follows:

*“We have in the past held in several judgments that the concept of the High Court having unlimited and original jurisdiction does not mean that its jurisdiction is limitless because it must operate within set boundaries which are stipulated in statutes, rules and common law”.*

6.16. In light of the above authority, I find that the unlimited jurisdiction of this Court is limited by the provisions contained in **Sections 2(a) and 3(a) of Statutory Instrument No. 12 of 2024** and this Court does not have the jurisdiction to entertain claims below K1,000,000.00.

6.17. Having found that this Court does not have the jurisdiction to entertain claims below K1,000,000.00, it follows that this Court equally does not have the jurisdiction to transfer this matter to the Subordinate Court. The case of **Arch Michael Scarantino V Susan Zuze Gehard and Another CAZ Appeal No. 126 of 2024<sup>5</sup>** refers. In the **Arch Michael Scarantino<sup>5</sup>** case, the of Appeal Court stated as follows:

*“As the Court below having lacked the requisite jurisdiction it should not have entertained the 1<sup>st</sup> Respondent's application, or granted the order to transfer the matter... Instead, the Court below ought to have dismissed the action”.*

**7. CONCLUSION**

- 7.1. In light of the foregoing, I hereby dismiss the Plaintiff's action in its entirety for want of jurisdiction.
- 7.2. By reason of the above the the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application is **HEREBY DISMISSED.**
- 7.3. The Plaintiff's action is **HEREBY DISMISSED** in its entirety.
- 7.4. Each party shall bear its own costs.

**Delivered at Lusaka on the 2<sup>nd</sup> of April, 2025.**



**S. CHOCHO**  
**HIGH COURT JUDGE**

