

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2025/HP/0092

(Civil Jurisdiction)

BETWEEN:

REUBEN KABALA

AND

GUSTAVE BWALYA BULETI

*Sued in capacity as the Administrator of the Late
HAPPINESS EMMANUELLA BULETI.*

BEFORE HON. JUSTICE E. P. MWIKISA

*For the Plaintiff: Mr. C.P. Chilambwe- Messrs Chipoma P. Chilambwe Legal
Practitioners.*

For the Defendant: Mr. A.K.Phiri- Messrs Anthony Associates



PLAINTIFF

DEFENDANT

RULING

Cases referred to:

- 1. Mumba (suing on behalf of the Kalindawalo Mndikula Royal Family) vs. Nsangu and Others Appeal No. 31 of 2021.*
- 2. Lukasu Properties Limited vs. African Banking Corporation Zambia Appeal No. 5 of 2023.*
- 3. Thomson Phiri vs. Toyota Zambia Limited Appeal No. 31 of 2022.*
- 4. African Banking Corporation vs. Mubende Country Lodge Appeal No 116 of 2016*
- 5. Philip Mutantika and Mulyata Sheal S vs. Kenneth Chipungu SCZ judgment No. 13 of 2014*

6. *Gift Luyako Chilombo v Biton Manje Hameleke Appeal No. 2 of 2016*
7. *Leopold Walford (Z) Limited v Unifreight 1985 ZR 203*
8. *Gabriel Muyinda vs. Menox Property Merchants 2020/HPC/0551*
9. *Access Bank Zambia Limited vs. Attorney General CCZ judgment No. 21 of 2019*

Legislation referred to:

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

1. Introduction.

1.1 On 27th February 2025, the Defendant filed into Court summons to determine a matter on point of law. The summons was pursuant to Order 14A and Order 33 Rule 3 of the Rules of the Supreme Court of England, 1999 edition as read together with Order 6 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia.

1.2 The preliminary issues raised for determination are the following;

- a) **Whether in the absence of a letter of demand for the Plaintiff's claim, the Writ of Summons herein is competently before the Court; and**
- b) **Consequently, whether the Writ should be set aside and or this action be dismissed with costs.**

1.3 The summons to determine matter on a point of law was accompanied by an affidavit in support and skeleton arguments of an even date.

1.4 The Plaintiff contested the application and filed an affidavit in opposition and skeleton arguments on 5th May, 2025.

2. Background

2.1 The Plaintiff commenced action against the Defendant on 24th January, 2025, by way of a Writ of Summons and a Statement of Claim. The claims advanced against the Defendants are as follows;

- a) Outstanding sum of ZMW277,000.00**
- b) Interest at commercial bank lending rate from March 2021 to the date of payment;**
- c) Damages for the breach of loan contract;**
- d) Alternatively, an order for the sale of titled property pledged as security by the Late Emmanuella Buleti known as Stand No. LUSAK/LN_18305/3 for the Plaintiff to recover there from the outstanding sum of ZMW277,000.00 plus damages and the aforesaid interest;**
- e) Any other reliefs that the Court may deem fit; and**
- f) Costs of and incidental to this action.**

3. The Affidavit in Support

3.1 It was deposed by one Anthony Khetani Phiri, the Counsel seized with conduct of this matter that on 24th January 2024, the Plaintiff commenced the action herein. That the Plaintiff has not filed into Court a letter of demand to the

Defendant for his claims. Thus, the action is not competently before Court.

4. Skeleton Arguments in support of the application.

4.1 Counsel cited both **Order 14A Rule 1 and Order 33 Rule 3** of the Rules of the Supreme Court of England, 1999 edition and argued that the purpose of an application under the above-mentioned law is to determine an action without a full trial as affirmed in the case of **Mumba (suing on behalf of the Kalindawalo Mndikula Royal Family) vs. Nsangu and Others¹**. Thus, it was submitted that the action is suitable for determination on a point of law without the necessity for a full trial.

4.2 Counsel cited Order 6 of the High Court Rules, Chapter 27 of the Laws of Zambia and argued that it is imperative for a letter of demand setting out the claim and circumstances of the claim in full detail to be filed together with a Writ of Summons. To buttress this position, the case of **Lukasu Properties Limited vs. African Banking Corporation Zambia²** was relied upon.

4.3 Furthermore, Counsel argued that the letter of demand that was filed together with the Writ of Summons, did not make mention the claim for ZMW277,000.00 thus, the action is not properly before Court and should be dismissed.

5. Affidavit in Opposition

5.1 It was deposed by one Hope Kapapula, Legal Assistant for the Law Firm representing the Plaintiff.

5.2 It deposed that on 21st November, 2024, the Plaintiff through his Advocate wrote a letter of demand to the Defendant in which they clearly demanded for the sum of ZMW530, 000.00 as the total sum owed to the Plaintiff constituting the borrowed sum, plus interest among other reliefs. A copy of the demand letter was exhibited and marked "HK1".

5.3 That in a letter dated 29th November, 2024, the Defendant through its lawyers responded to the demand letter dated 21st November, 2024, in which he acknowledged a debt of ZMW277,000.00, as an outstanding balance from the

borrowed sum of ZMW417,000.00. This correspondence was exhibited and marked as “HK2”.

5.4 Furthermore, that due to the Defendant’s admission of owing the Plaintiff the sum of ZMW277,000.00 and after a series of correspondences, the Plaintiff commenced the action herein and claimed for the sum of ZMW277,000.00 which debt has been acknowledged by the Defendant. Thus, it was argued that the requirement to issue a demand letter before commencement of an action at the High Court was dully complied with.

6. Skeleton arguments in support of the Opposition.

6.1 Order 6 Rule 1 of the High Court rules, Chapter 27 of the Laws of Zambia was cited and Counsel argued that the Plaintiff did satisfy the requirement of the law above-mentioned. It was argued that the said letter of demand reveals the detailed circumstances leading to the claim for sale of titled property pledged as security by the late Emmanuella Buleti known as Stand No. LUSAK/LN_18305/3 for which the Plaintiff demanded payment of the outstanding loan sum as well as interests

on the said sum. That from a letter dated 29th November, 2024, the Defendant herein acknowledged owing a reduced sum of ZMW277,000.00 as outstanding principal debt.

- 6.2 It was argued that in accordance with the case of **Thomson Phiri vs. Toyota Zambia Limited³**, the demand letter dated 24th November, 2024, is sufficient proof that the cause of action is well known by the Defendant and the Defendant was well alerted by the Plaintiff that non-compliance of the demand letter, the Plaintiff would resort to commencing an action before him.
- 6.3 Furthermore, it was argued that the late Happiness Emmanuella Buleti, freely and voluntarily executed a contract of sale, pledging the subject property as collateral clearly intending that the same should be sold in default of payment and that it is factual that the Defendant has defaulted since 2021, to date.
- 6.4 It was argued that the Defendant's application should be dismissed with costs.

7. Hearing.

7.1 The application was heard on 17th June, 2025, both counsel for the Plaintiff and Defendant were present.

7.2 Counsel for the Defendant Mr. Phiri, informed the Court that their reliance is placed on the documents filed in support of the application herein. Counsel briefly augmented that the action be dismissed on the basis that the Plaintiff failed to file a demand letter together with the Writ of Summons.

7.3 Mr. Chilambwe, Counsel for the Plaintiff informed the Court that his reliance is placed on the documents filed in opposition to the application herein. I shall not recast the oral submissions as they have already been submitted in the skeleton arguments.

8. Consideration and Determination.

8.1 I have considered all the evidence and the submissions by all parties.

8.2 It is trite that **Order 33 Rule 3** of the Rules of the Supreme Court of England provides for determination of a

preliminary point of law at any stage of the proceedings, including before trial and provides as follows;

“The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated”

- 8.3 The supreme court in the case of **African Banking Corporation vs. Mubende Country Lodge**⁴ stated that Order 33 Rule 3 should be invoked together with the mandatory requirements of Order 14A of the Rules of the Supreme Court of England.
- 8.4 It is common cause that this case was commenced by way of Writ of Summons. The Defendant entered appearance and filed defence on 25th February, 2025, thus, adhering to the procedural requirements as guided by the case cited above. Thus, the summons to determine matter on point of law is properly before this Court.
- 8.5 The first issue for consideration is whether the Plaintiff’s action is incompetent for failure to adhere to **Order 6 Rule**

1(d) of the High Court Rules, Cap 27 of the Laws of Zambia, with regards to the requirements of a demand letter.

8.6 **Order 6 Rule 1(d)** of the High Court Rules, Chapter 27 of the Laws of Zambia, as amended by Statutory Instrument No.58, of 2020, provides for the commencement of matters in the High Court as follows:-

“Except as otherwise provided by any written law or these Rules, an action in the High Court shall be commenced, in writing or electronically by writ of summons endorsed and accompanied by-

(a) a statement of claim;

(b) list and description of documents to be relied on at trial;

(c) list of witnesses to be called by the plaintiff at trial; and

(d) letter of demand whose receipt shall be acknowledged by the defendant or an affidavit of service attesting to the service of the letter of demand, which shall set out the claim and circumstances surrounding the claim in detail.”

8.7 It is clear from the foregoing provision that a Plaintiff who commences an action by way of a Writ of Summons must file a letter of demand together with the Writ of Summons.

This position was confirmed in the case of **Thomson Phiri**

vs. Toyota Zambia Limited⁽³⁾ cited by the Plaintiff, wherein it was stated as follows;

“It is patent that in Order 6 Rule I (d) of the HCRs, a letter of demand must be one of the documents to be attached to the Writ of Summons. This is in order to help the Court ascertain what the action instituted encompasses as well as alert the Defendant what action he would face if the matter ends up in court.”

8.8 Sub rule (2) of the above-mentioned Order goes on to state that;

“A writ of summons which is not accompanied by the documents under sub-rule (1) shall not be accepted.”

8.9 As guided by the law above-mentioned, it imposes a penalty for breach in that if a Writ of Summons is not accompanied by the documents highlighted under sub rule (1), then the Writ of Summons shall not be accepted.

8.10 I am of the considered view that the above provision is couched in mandatory terms as it uses the word "shall". This in my considered view means that it is not in the discretion of this Court to either accept or not accept a Writ of Summons not accompanied by the documents mentioned therein Order 6 (1), but it is mandatory. This position is fortified by the case of **Philip Mutantika and**

Mulyata Sheal S vs. Kenneth Chipungu⁵ wherein the

Supreme Court stated;

“Both provisions are couched in a mandatory manner as each uses the word 'shall'. The two Rules are therefore not regulatory as they do not at all give the Court discretionary power.”

8.11 I am further guided by the case of **Gift Luyako Chilombo v Biton Manje Hameleke**⁶ wherein the Constitutional

Court held the view that;

“In its ordinary usage, "shall" is a word of command and is normally given a compulsory meaning because it is intended to show obligation and is generally mandatory.”

8.12 I am also alive to the general position that the High Court Rules are regulatory, and the Supreme Court has guided in several cases that a breach of a regulatory rule is curable. One such example is the holding of the Supreme Court in the case of **Leopold Walford (Z) Limited v Unifreight**⁷ wherein the Court stated that:

“There has been an alternative argument put forward by Mr. Kawanambulu, namely, that non-compliance with Order VII, r. (1)R14 (a) is not fatal because the rule is merely regulatory or directory. In accepting this

argument, we wish to add that, where there has been a breach of a regulatory rule, such breach will not always be fatal, as much will depend upon the nature of the breach and the stage of the proceedings reached. This, therefore, means that, as a general rule, breach of a regulatory rule is curable.”

8.13 In the case of **Gabriel Muyinda vs. Menox Property**

Merchants⁸ Honourable Lady Justice Dr. W.S. Mwenda

had this to say concerning the need for a Plaintiff to comply with Order 6 1 (d) of the High Court Rules and whether the same was fatal;

*“It seems to me that the new law, as amended, is meant to enhance the need for a plaintiff to define the parameters of their case and what the defendant should meet, at the earliest possible time, to allow the defendant to prepare for his case as well. In my view, therefore, a breach that would warrant a cure to be ordered would be one that touches, for instance, on the substance and form of the documents filed before a court, such as was the case in **Leopold Walford (Z) Limited vs. Unifreight** where the plaintiff did not endorse the plaintiffs address on the Writ as required by Order 7, Rule (1) (a) of the High Court Rules. The same would not be the case as regards the breach in *casu*.”*

8.14 Similarly, I am of the considered view that failure to file a letter of demand together with the originating process is more of a breach that would warrant a dismissal of a

matter. In this particular case however, there is a letter of demand on record filed on 24th January, 2025, and failure to not mention the sum on claim of ZMK277,000.00 is not fatal as it can be amended. This position was made very clear by the Supreme Court in the case of **Access Bank Zambia Limited vs. Attorney General**⁹, where the court stated that;

“Court rules are an integral part of the administration of justice in this jurisdiction. The importance of court rules was pre-eminently pronounced in the case of NFC Mining PLC. vs. Techro Zambia Limited (16), where the Supreme Court stated that rules of court are intended to assist in the proper and orderly administration of justice.”

8.15 Premised on the foregoing, a perusal of the record shows that the Plaintiff adhered to Order 6 Rule 1(d) as there is a demand letter dated 21st November 2024. However, what is in contention is the content of the demand letter, as mentioned above. The Defendant argues that what was demanded for in the letter of demand dated 21st November, 2024, does not make mention of the claims stated in the

Writ of Summons, thus, it is submitted by the Defendant that the Plaintiff has not complied with Order 6 Rule 1(d).

8.16 On the other hand, the Plaintiff argues that there were correspondences between the himself and the Defendant, where the Defendant admitted owing the Plaintiff the sum claimed in the Writ of Summons.

8.17 A perusal of the correspondence between the Defendant and the Plaintiff specifically the letter dated 29th November 2024, shows that the Defendant was notified about the claims in the Writ of Summons. I am of the considered view that the law is clear concerning serving or issuing a demand letter before the commencement of an action. The rationale behind making such a law is to bring to the Defendant's attention before a matter is commenced, the substance of the Plaintiff's claims against the Defendant and to let the Defendant know that if he does not meet the Plaintiff's demands, the Plaintiff would commence court proceedings against the Defendant based on the said claims.

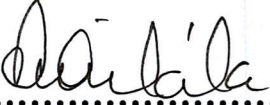
9. Conclusion

9.1 Premised on the foregoing, I find no merit in the Defendant's application and it is hereby dismissed. I order that the matter proceed to trial for determination

9.2 Costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal is hereby granted.

Dated at Lusaka this.....13th.....day of.....November.....2025


.....
ELITA PHIRI MWIKISA
HIGH COURT JUDGE