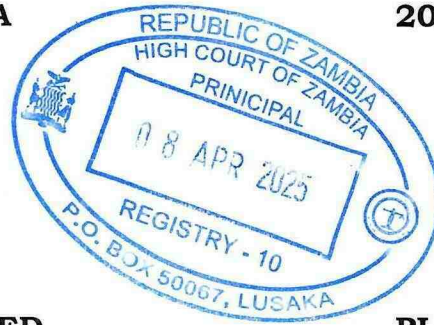


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2025/HP/0167



BETWEEN:

M.I.A TRADE INVESTMENT LIMITED

PLAINTIFF

AND

CINDY MUBANGA MUTALE

1ST DEFENDANT

**CINDY MUTALE MPUNDU FAMILY TRUST
REGISTERED TRUSTEES**

2ND DEFENDANT

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 8th day of
April, 2025**

For the Plaintiff: Messrs GM Legal Practitioners

For the Defendants: Mesdames Chalwe & Kabalata Legal Practitioners

RULING

Delivered ex-tempore

Cases referred to:

1. *Lukasu Properties Limited vs African Banking Corporation Zambia Limited Appeal No. 5 of 2023 SCZ*
2. *African Banking Corporation vs Copper Harvest and Others Appeal No. 216/2023*
3. *Leopold Walford (Z) Limited vs Unifreight S.C.Z. Judgment 23 of 1985*
4. *Copperbelt Energy Corporation Plc Vs Patrick Mwila and Others Appeal No. 190 of 2021*

Legislation referred to:

The High Court Act, Chapter 27 of the Laws of Zambia

1.0 Introduction

By this application, the defendant is seeking an order to set aside the originating process on reasons that:

1. The defendants were not served with a letter of demand prior to commencement of this action;
2. The writ of summons was filed without a letter of demand;
3. The court has no jurisdiction to hear this matter; and
4. It is in the interest of justice that this matter be set aside.

The application is made by summons filed pursuant to *Order 6 rule 1* of the *High Court Rules, Chapter 27* of the *Laws of Zambia*. The application was filed on 24th February, 2025.

2.0 The Defendants' Affidavit in Support

The defendants' application is supported by an affidavit deposed to by the 1st defendant, who deposes that: this matter was commenced on 6th February, 2025 by way of writ of summons and statement of claim, and the court process served on mesdames Chalwe & Kabalata Legal Practitioners on 11th February, 2025, who at the time had no instructions from the defendants to receive any court process on their behalf. The court process was never personally served on the defendants but shared with her via email by Chalwe & Kabalata Legal Practitioners.

Upon receipt of the court process, she immediately perused through and noticed that the plaintiff had listed a letter of demand as one of the documents to be produced at trial, meanwhile neither her nor the 2nd defendant were served with a letter of demand related to this case and in fact there was no letter of demand amongst the documents served on Chalwe & Kabalata Legal Practitioners. She instructed Chalwe & Kabalata Legal Practitioners to conduct a file search and determine whether there was a letter of demand filed by the plaintiff and who that letter was addressed and sent to. The search showed that there was no letter

of demand on record. She has been advised that it is a mandatory requirement that a demand letter first be served on the person one wishes to sue. The failure to serve a letter of demand by the person who has issued court process prior to the commencement of the matter is fatal and that in the absence of such letter, the originating process before this court should not have been filed.

On or about 11th February, 2025, the day court process under this cause was served on the Advocates aforesaid, the 2nd defendant had already commenced an action under cause number 2025/HP/0198 and the same was served on the plaintiff herein. Prior to the plaintiff commencing this action, the 2nd defendant's Advocates had already issued a letter of demand to the plaintiff and asked the plaintiff's Advocates to confirm if they had instructions to receive court process on behalf of the plaintiff herein when the plaintiff's advocates responded to the letter of demand issued. However, no response was ever given by the plaintiff's Advocates. Aside from filing process without a letter of demand, the plaintiff has further gone on to obtain an ex-parte order of mandatory injunction which has a return date of 8th April, 2025. The originating process was not properly before this court and hence the subsequent ex-parte order obtained is improperly before this court. The defendants have greatly been prejudiced by this court action as they were deprived an opportunity to respond to any of the claims made by the plaintiff through a letter of demand prior to court action being commenced.

2.1 The Defendants' Supporting Arguments

The defendants filed skeleton arguments wherein counsel referred to *Order 6 (1)* of the *High Court rules* as amended by *statutory instrument No. 58 of 2020*, as the law pursuant to which this application has been made. That the said order clearly highlights what documents should accompany a writ of summons before the High Court. That the Supreme Court recently had an opportunity to pronounce itself regarding the importance of service of a letter of demand letter in the case of **Lukasu Properties Limited vs African Banking Corporation**

Zambia Limited¹ wherein it directed that plaintiffs are required to serve demand letters on defendants prior to commencing an action, which letters must be acknowledged as received. That the court further held that failure to serve a letter of demand is a fatal omission. Counsel argued that this action was incompetently commenced and hence should be dismissed with costs to the defendants.

3.0 The Plaintiff's Affidavit in Opposition

The plaintiff filed an affidavit in opposition of 21st March, 2025, where James Chisanga, the director in the plaintiff company deposed that on commencement of this matter, the plaintiff filed an affidavit exhibiting a letter of demand. That the 1st defendant, after being served with the letter of demand, informed one Zanzi Nambeye the executive personal assistant to the plaintiff, that any communication to the defendants should be made through Chalwe & Kabalata Legal Practitioners. The 1st defendant did receive the demand letter via WhatsApp messenger and acknowledged the same by responding to the said demand letter.

This action was commenced on 6th February, 2025 while the 1st defendant's action was commenced on 11th February, 2025. The originating process was properly filed and hence no prejudice will be occasioned to the defendants. The defendants acknowledged receipt of the demand letter but decided to sleep on their rights. The plaintiff will be prejudiced if this action is dismissed and the injunction discharged.

3.1 The Plaintiff's Arguments in Support of the Affidavit in Opposition

The plaintiff filed skeleton arguments wherein counsel argued that the plaintiff complied with the provisions of *Order 6 rule 1 (1)* of the *High Court Rules* by issuing and serving a demand letter on the defendants. The 1st defendant acknowledged receipt of the demand letter. The originating process had met the requirements and hence was accepted by the registry and this court subsequently granted an injunction in favour of the plaintiff. That the law relied on the by defendants deals with originating process not yet filed into court. Once documents are filed, *Order 6 of S.I No. 58 of 2020* does not provide a penalty. For this argument, counsel relied on the case of **African Banking Corporation vs Copper Harvest and Others**² wherein the court held that the failure to serve a letter of demand is curable and ought not to lead to a dismissal. Counsel referred to the case of **Leopold Walford (Z) Limited vs Unifreight**³ to buttress the argument that breach of a regulatory rule is curable. That if the plaintiff is found wanting in this matter, the same should not result in a dismissal of this matter. That the defendants herein were properly served with a letter of demand which they acknowledged receipt of. That the plaintiff's application should be dismissed with costs.

4.0 At the hearing

The parties relied on the documents filed in support and in opposing the application, which they both restated.

5.0 The decision of the Court

Upon hearing both counsel and upon seeing the documents in support of and against this application, it is trite that a letter of demand has to be issued and

served on the parties being sued and the *rules* require that the person served must acknowledge receipt of the said letter of demand or an affidavit of service attesting to the service of the letter of demand be filed.

While the plaintiff has filed an affidavit of service showing that the 1st defendant was served a letter of demand via WhatsApp, this is proof of service on the 1st defendant only. In relation to the 2nd defendant however, counsel for the plaintiff argued that it served the same as it did so by serving the 1st defendant in their dual capacity as a Trustee of the 2nd defendant. Counsel for the defendants however has argued that this cannot be taken to be service as the 1st defendant is not the trustee of the 2nd defendant.


While the Court of Appeal has held in the case of **Copperbelt Energy Corporation Plc Vs Patrick Mwila and Others**⁴ that service on a Director of a company can be considered service on the company as the Director was served in a dual capacity, in *casu* I find that the same can be distinguished as the relevant provisions relate to the *Lands and Perpetual Succession Act* and not the *Companies Act* as correctly pointed out by counsel for the defendants. As such, it was incumbent upon the plaintiff to show that service had been affected on the 2nd defendant which has a distinct personality from the Trustees who can also be sued in their personal capacity.

Consequently, the requirement that service be affected on each defendant is key to ensuring that this court has jurisdiction to entertain the cause of action. As things stand the 2nd defendant was not served and as such this Court has no jurisdiction to entertain this cause of action, in line with the **Lukasu Properties**

Limited case. This cause of action is hereby dismissed and the plaintiff is advised to effect service of the letter of demand correctly on each defendant. Costs for this application are for the defendants to be taxed in default of agreement.

Delivered at Lusaka this day of 2025

gta *April*



REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
~~08 APR 2025~~
R. Chibbabbuka
HIGH COURT JUDGE
P.O. BOX 50067, LUSAKA