

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

2021/HP/0680

(Civil Jurisdiction)

BETWEEN:

MICHEL SCARANTINO

AND

SUSAN ZUZE GEHART



PLAINTIFF

DEFENDANT

**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA ON THIS
26TH DAY OF FEBRUARY, 2025.**

*For the Plaintiff: Mr. R. Petersen and I. Shikapwasha - Messrs.
Howard Maria Petersen;*

Mr. F. Muzimu - Corpus Legal Practitioners;

Mr. K. Sianga - Paul Norah & Associates.

*For the Defendant: Mr. J. C. Kalokoni and Ms. M. M Manda -
Kalokoni and Company.*

RULING

CASES REFERRED TO:

- 1. Dolomite Aggregates Limited Vs Paul Marais (Appeal No. 254/2021);*
- 2. Law Association of Zambia Vs The President of the Republic of Zambia, The Attorney General and The National Assembly (13/CCZ/2019 [unreported Ruling]);*
- 3. Subramaniam Vs the Public Prosecutor (1956) 1 W.L.R;*



4. *Access Bank Limited Vs Group Five/ZCON Business Park Joint Ventures (Suing as a Firm) (SCZ/ 8/ 52/ 2014);*
5. *Amanita Zamanita and Others Vs OTK Limited (Appeal 6 of 2006);*
6. *Mutambo and 5 Others Vs the People (1965) Z.R 15;*
7. *Chakaka Village Country House Limited & Lawrence Sikutwa Vs African Banking Corporation Zambia Limited Selected Judgment No. 5 of 2018; and*
8. *Wilson Masauso Zulu Vs Avondale Housing Project (1982) ZR 172.*

LEGISLATION REFERRED TO:

1. *The High Court Rules Chapter 27 of the Laws of Zambia;*
2. *The Electronic Communications and Transactions Act No 21 of 2009;*
3. *The Data Protection Act No 3 of 2021; and*
4. *The Evidence Act, Chapter 43 of the Laws of Zambia.*

OTHER WORKS REFERRED TO:

1. *The Rules of the Supreme Court of England 1999 edition (White Book).*

1.0 INTRODUCTION

- 1.1 This Application was taken out by the Defendant on the 6th of November, 2024 by summons accompanied by an Affidavit in support and skeleton arguments of even dates.

2.0 DEFENDANT'S AFFIDAVIT EVIDENCE IN SUPPORT

- 2.1 The Affidavit in support was deposed to by Susan Zuze Gehart, who deposed that she is the Defendant herein therefore competent to depose to the Affidavit from the facts within her personal knowledge and belief.
- 2.2 The Deponent deposed that the Plaintiff herein commenced these proceedings against her claiming damages for libel. And when the matter came up for trial on the 31st of October, 2024, the authenticity and source of a data message in the form of a WhatsApp message received on Airtel Mobile Number +260 978388597 belonging to Given Kwapu, the siavonga Council Chairman who was at the time checking on the disputed property on behalf of the Defendant came into question.
- 2.3 The Deponent deposed that the said Mr. Kwapu said that the WhatsApp messages came from Mr. Scarantino who sent it to the Member of Parliament, Darius Mulunda for onward transmission to the Plaintiff with instructions that he adopts it as his own.
- 2.4 The Deponent also deposed that the said message was intended for the trial Judge who was hearing the land issue in the High

Court. Further that she believes that the said data message was transmitted by Airtel Mobile Network between 17th August, 2022 and 24th August, 2022.

2.5 The Deponent further deposed that she verily believes that the verification of the source and authenticity of the data message is critical in the matter at hand.

2.6 Further, the Deponent deposed that she verily believes that the verification of the authenticity and source of the afore said data message is necessary for purpose of substantiating her defense in these proceedings.

2.7 That Airtel Zambia being the service provider, data controller and custodian of the aforesaid data message is legally mandated to assist this Honourable Court to ascertain and determine the originality of the said data message.

3.0 DEFENDANT'S SKELETON ARGUMENTS IN SUPPORT

3.1 In support of the Application, Counsel for the Defendant submitted that this Application is made pursuant to **Order 3 Rule 2** of the **High Court Rules Chapter 27** of the **Laws of Zambia** which provides that:

“Subject to any particular rules, the Court or a judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.”

- 3.2 It was Counsel’s submission that the above provision of the law endows this Court with the jurisdiction to make any Interlocutory Order which it considers necessary for doing justice.
- 3.3 Counsel submitted that when this Matter came up for trial, the Defendant sought to rely on a data message in the form of WhatsApp message contained in her Bundle of Documents which is believed to have originated from the Plaintiff to the Siavonga Member of Parliament Darius Mulunda. Counsel, further submitted that on instruction from the Plaintiff the MP sent it to the Siavonga Council Chairperson so that he could adopt it as his own to the trial Judge who was handling the Matter at the time.
- 3.4 The Plaintiff however, denied being the source and author of the aforesaid WhatsApp message on oath. It was Counsel’s

submission that justice will not be attained in this Matter unless the source and authenticity of the data message is ascertained.

3.5 It was Counsel's further submission that since the Plaintiff did not object to the WhatsApp message being admitted into evidence during inspection and discovery, the only issue for determination is the authenticity and source of the date message.

3.6 Counsel referred the Court to **Section 7 (2) and (3)** of the **Electronic Communications and Transactions Act No. 21 of 2009** which provides thus:

“7(1) Where a law requires information to be presented or retained in its original form, that requirement shall be met by a data message if-

a) The integrity of the information from the time when it was first generated in its final form as a data message or otherwise, has passed the assessment specified under subsection (2); and

b) That information is capable of being displayed or produced to the person to whom it is to be presented.

(2) For the purposes of paragraph (a) of subsection (1), the integrity of any information shall be assessed-

a) by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;

b) in the light of the purpose for which the information was generated; and

c) having regard to all other relevant circumstances.”

3.7 It was Counsel’s submission that the above provision is instructive determining the issue at hand which is the source and authenticity of the WhatsApp message.

3.8 Counsel referred the Court to the case of **Dolomite Aggregates Limited Vs Paul Marais**⁽¹⁾ which defined the term authentic as;

“The assurance that a message, transaction or other exchange of information is from the author of service, it purports to be from”

The Court went further to state that:

“Our understanding of the provision is that for a data message to be relied on, at some point during the trial, there must be led evidence proving that the data

message is authentic. The provision does not state that authenticity of a data message must be proved upfront.”

3.9 Counsel submitted that the issue of authenticity has arisen because the Plaintiff denied on oath that he is not the source of the data message. It was Counsel’s submission that Airtel Zambia is the only entity which can help to arrive at the answer as to who the author of the message was, according to Counsel, this is because Airtel Zambia is the custodian of any such data message.

3.10 Counsel also referred the Court to **Section 2** of the **Data Protection Act No. 3 of 2021** which defines a Data Controller as:

“A person who, either alone or jointly with other persons, controls and is responsible for keeping and using personal data on a computer or in structured manual files and requests, collects, collates, processes or stores personal data from or in respect of a data subject.”

3.11 It was Counsels submission that Airtel Zambia as a Mobile Service provider is both a Data controller and a Data processor.

And **Section 41** of the same Act provides for duty in legal proceedings, it provides:

“Where processing of personal data is necessary for enforcing a legal right or claim, seeking a relief, defending a charge, opposing a claim, obtaining legal advice from a legal practitioner in an impending legal proceeding, that processing shall be exempt from the provisions of part IV except section 12(1) (c) (e) and (g).”

3.12 It was Counsel’s further submission that this application is for a legitimate purpose provided for under **Section 41** above and that is to authenticate and determine the sources of the data message being the WhatsApp message, which it is alleged originated from the Plaintiff.

3.13 Further, it was Counsel’s submission that Airtel Zambia being the custodian of this data message as both controller and processor, can assist this Honourable Court to determine the weighty evidential issue relating to the data message in question.

3.14 It was Counsel’s submission that **Section 13** of the **High Court Act** compels the High Court to administer the law and equity

concurrently so that all matters arising in this cause are determined with finality.

3.15 Counsel prayed that her application for an Order to compel Airtel Zambia to establish the authenticity and source of the data message in issue be granted.

4.0 AFFIDAVIT EVIDENCE IN OPPOSITION

4.1 Affidavit evidence in opposition was deposed to by Michel Scarantino who deposed that he is the Plaintiff in this Matter therefore competent to depose to the said Affidavit.

4.2 The Deponent deposed that paragraph 5 of the Affidavit in Support is within the peculiar knowledge of the Defendant, and the said Given Kwapu and the deponent herein were not privy to the conversation between the said Given Kwapu and the Defendant and the Plaintiff denies any such assertions made.

4.3 The Deponent deposed that at all material times, the said data message has never been transmitted by Airtel Zambia. Further, that he verily believes that Airtel Zambia is a separate entity from Meta a technology incorporated company that owns and operates the WhatsApp instant messaging software application.

- 4.4 That in any event, WhatsApp messages are by their design (and through the employment of end-to-end encryption technology) never stored for Meta's or any other third party's (such as Airtel) use.
- 4.5 The Deponent also deposed that he is advised by Counsel and verily believes the same to be true that paragraphs 5, 6 and 7 of the Affidavit in support offend the rules of evidence on the basis that the evidence is hearsay and if admitted will be prejudicial to the Plaintiff.
- 4.6 The Deponent further deposed that he is duly advised by Counsel that the inclusion of the said data message in the Defendant's Bundle of Documents does not constitute an admission by the Deponent of the truthfulness and authenticity of the said data message, nor does it cure the defects of the Defendant's failure or omission to properly lay foundation for introducing a data message.
- 4.7 Further, the Deponent deposed that he is advised by Counsel and believes the same to be true that paragraphs 9 and 10 have no material bearing on the Defendant's defamatory act and the

effect that the Defendant's malicious statement had on the mind of right-thinking people.

4.8 Further, it was deposed that he is duly advised by his Advocate that Airtel Zambia is merely an internet service provider and does not own, control, operate or have access to WhatsApp and Meta Incorporation information system.

4.9 It was also the Deponent's deposition that he is advised by his Advocate and verily believes the same to be true that this Application is improperly before Court as it has been made in breach of the law and the Order of Directions of this Honourable Court dated 18th April, 2024.

4.10 That allowing the Defendant's Application will be prejudicial to the Plaintiff's interest in expeditiously exonerating his personal and professional reputation. Further that this Matter is widely reported in the media, and therefore time is of the essence in the protection of his public and professional reputation.

5.0 SKELETON ARGUMENTS IN OPPOSITION

5.1 In opposing the Application, Counsel for the Plaintiff raised a preliminary issue on the Defendant's Affidavit in Support of the Application filed on the 6th November, 2024 on the grounds that

the Defendant's has deposed to facts not within her own personal knowledge, but information told to her by a third-party not a party to these proceedings.

5.2 It was Counsels submission that this Honourable Court is clothed to hear and determine a preliminary issue raised by a party in its opposition to any application. Counsel referred the Court to the case of **Law Association of Zambia Vs The President of the Republic of Zambia, The Attorney General and the National Assembly**⁽²⁾ where the Court guided on the next approach of raising and determining preliminary issues:

“... This Court frowns upon the practice of raising preliminary issues which have a tendency of unnecessary delaying proceeding. Given the policy implications of the constitutional questions and the wide public interest in the said matter it is important that they are heard in a timely manner without undue delay. Litigants are therefore encouraged to incorporate their preliminary issues in their opposing affidavit and skeleton arguments so as to minimize the possibility of multiple hearings.”

5.3 It was Counsel's submission that paragraphs 5, 6 and 7 of the Defendant's Affidavit in support hereof offends the settled rules

of evidence. It was Counsels submission that the information in the contested paragraphs deposed by the Defendant is hearsay evidence and does not form part of the exceptions under hearsay evidence.

5.4 Counsel referred the Court to **The Evidence Act, Chapter 43 of the Laws of Zambia, Section 3** which provides that:

“In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of the fact if the following conditions are satisfied, that is to say:

A) If the maker of the statement either -

- i) Has personal knowledge of the matters dealt with by the statement; or*
- ii) Where the document in question is or forms part of a record purporting to be continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had or might reasonably be supposed to have, personal knowledge of those matters; and*

iii) If the maker of the statement is called as a witness in the proceedings”.

- 5.5 Counsel further referred the Court to the case of **Subramaniam Vs the Public Prosecutor**⁽³⁾ wherein it was held that the general rule of evidence is that evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay and that it is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in a statement.
- 5.6 Counsel submitted that a perusal of the contested paragraphs will reveal that the Defendant deposes that she was informed by one Mr. Kwapu, which information was not within her personal knowledge.
- 5.7 Counsel also submitted on the main issue in contention, whether the Defendants summons for an Order to compel Airtel Zambia to authenticate a data message has any merit.
- 5.8 Counsel submitted that this Court has on a number of occasions held that litigants must strictly follow the rules of procedure. To buttress this point, Counsel referred the Court to the case of **Access Bank Limited Vs Group Five/ZCON**

Business Park Joint Ventures (Suing as a Firm)⁽⁴⁾ where it was held that:

“Rules of Court are intended to assist in the proper and orderly administration of justice and as such must be strictly followed.”

5.9 It was Counsel’s submission that the Defendant has not complied with **Order 19 Rule 3** of the **High Court Rules** as amended by **Statutory Instrument No. 58 of 2020** which provides that:

“(3) A party shall lodge and a judge shall not consider any interlocutory application fourteen days before commencement of trial.”

5.10 Counsel submitted that the Defendant has failed to comply with the rules of Court, having made her application over 3 months from commencement of trial. It was Counsel’s submission that by virtue of **Order 19 Rule 3** of the **High Court Rules**, this Honourable Court has no Jurisdiction to consider this application. Further that it is trite law that without jurisdiction the Court cannot make any order this is as, out of nothing, comes nothing.

5.11 It was Counsel's submission that the Defendant has not availed any reasons to satisfy the Court that the application could not with reasonable diligence have been made prior to the prescribed time. Further that the matter relating to authentication in this matter are not sudden.

5.12 Counsel also submitted on **Order 19 Rule 3 (4)** of the **High Court Rules** which provides that:

“(4) Subject to subrule (3) a Judge may in the Judge’s discretion, which decision shall not be subject of an Interlocutory Appeal, entertain an Interlocutory Application which, with reasonable diligence could not have been made before the time specified under subrule (3).”

5.13 Counsel also referred the Court to the case of **Amanita Zamanita and Others Vs OTK Limited**⁽⁵⁾ wherein it was held that:

“For our purpose, the most important procedural rule is that the proponent of an item of evidence must ordinarily lay the foundation before formally offering the item into evidence. For example, the proponent of a letter must present proof of its authenticity before offering the letter into evidence. Proof of the letter’s authenticity is part of the letter’s foundation or

predicate. Substantive Evidence law makes proof of authenticity a condition precedent to the letter's admission into evidence...

the lack of authentication as I have found earlier arises from the Plaintiff witness's failure to lay a proper foundation prior to the introduction of the emails. I have in the earlier part of this Judgment highlighted the test for authentication as per Edward J. Imwinkleried, he states at page 41 that:

"To authenticate an item of evidence, the proponent must present proof that the article is what the proponent claims that it is".

5.14 It was Counsel's submission that the integrity of the WhatsApp in this case is particularly pertinent as it falls in the category of evidence known as hearsay evidence. Counsel referred the Court to the case of **Subramaniam Vs Public Prosecutor**⁽³⁾ and **Mutambo and 5 Others Vs the People**⁽⁶⁾ where the Court defined hearsay evidence as:

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to

establish by the evidence, not truth of the statement but the fact that it was made.”

5.15 It was Counsel’s submission that by their own admission the Defendant has admitted that the WhatsApp message in question was allegedly provided by a Mr. Darius Mulunda who forwarded it to Mr. Given Mwapu, who in turn forwarded the message to the Defendant. Therefore, the Defendant ought to have made an application to authenticate the said message.

5.16 It was Counsel’s further submission that the Defendant’s Application has no prospects of success, firstly because the Defendant has relied on repealed law in their submissions, this is because the Electronic Communications and Transactions Act No 21 of 2009 was repealed and replaced by the Electronic Communications and Transactions Act No 4 of 2021. Further that the provisions relied on do not even relate to the power of the Court to compel Airtel Zambia to authenticate the said data message.

5.17 Counsel submitted that Airtel Zambia cannot be compelled to authenticate the said date message, because Airtel Zambia is not a data controller in the circumstances.

5.18 It was Counsel's submission that under **Section 85** of the **Electronic Communications and Transactions Act No.4 of 2021**, Airtel Zambia is not a key holder of WhatsApp encryption service and Airtel is prohibited from decrypting the said message. Counsel further submitted that it is common knowledge that WhatsApp is owned by Meta Incorporation, a company wholly separate from Airtel Zambia, and only Meta has the power to own Control, operate and access the WhatsApp instant messaging platform.

5.19 It was Counsel's further submission that the WhatsApp message in question does not exist, this is because WhatsApp messages employ end to end encryption technology which prevents any person, including Meta Incorporation from storing and accessing the said private data messages.

5.20 Counsel drew the Court's attention to WhatsApp Private Policy which states:

"We do not retain your messages in the ordinary course of providing our services to you, instead your messages are stored on your device and not typically stored on our servers. Once your messages are delivered, they are deleted from our servers."

5.21 It was Counsel's further submission that Meta in the Meta' WhatsApp Private policy states the few circumstances in which information of an individual can be shared it reads:

“Law, Our Rights and Protection

We access, preserve and share your information described in the “information we collect” section of this Private Policy above if we have a good-faith belief that it is necessary to (a) respond pursuant to applicable law or regulations. Legal process or government request; (b) enforce our terms and any other applicable terms and policies, including for investigations of potential violation; (c) detect, investigate, prevent or address fraud and other illegal activity or security and technical issues; or (d) protect the rights, properly and safely of our users, WhatsApp, the other meta-Companies or others including to prevent, death or imminent bodily harm.”

5.22 It was also Counsel's submission that the Court should consider the prejudice that may be suffered by the other party. It was Counsel's position that this application is one likely to cause delay as in this matter is of the essence as the Plaintiffs

wants to be exonerate his reputation amongst right thinking members of the public.

5.23 It was Counsel's final submission that the Defendants application is wholly without merit, and prayed that the Court dismisses it.

6.0 HEARING

6.1 When the Matter came up for trial on the 31st October, 2024, Counsel for the Defendant raised this preliminary issue in contention, the Court ordered the parties to make a formal application after which it would render a ruling on the same.

7.0 ISSUES FOR DETERMINATION

7.1 The following issues have been framed for determination:

- i. Whether this Court has the jurisdiction to entertain this application vis-à-vis Order 19 Rule 3 of the High Court Rules?***
- ii. Whether the Honourable Court in the circumstances of this case can validly compel Airtel Zambia Limited to authenticate the WhatsApp communication in question?***

8.0 ANALYSIS AND DECISION

- 8.1 I have considered the affidavit evidence adduced by both Parties and the competing skeleton arguments filed into Court. I note that the Plaintiff in opposing the Application has raised a number of preliminaries. Firstly, the Plaintiff raises the issue of hearsay contained in the Defendant's affidavit in support. Secondly, the Plaintiff has raised the issue of the Court's jurisdiction to entertain this Application which according to Counsel goes against **Order 19 Rule 3** of the **High Court Rules**. I am compelled to address these preliminary issues before delving into the substantive application.
- 8.2 The starting point as I see it is to determine whether the Plaintiff can validly raise preliminary issues in the manner it has done. Counsel argues that the Constitutional Court by its decision in *Law Association of Zambia Vs The President of the Republic of Zambia, The Attorney General and the National Assembly*⁽²⁾ does provide authority by which preliminary issues can be raised via affidavit in opposition. Notwithstanding the Constitutional Court's position, the Supreme Court in the case of *Chakaka Village Country House*

Limited & Lawrence Sikutwa Vs African Banking Corporation Zambia Limited⁽⁷⁾ found that albeit the issues

raised having merit the party having not filed a formal objection had waived its rights.

8.3 Faced with the competing positions from the two superior Courts, I am inclined to agree with the Supreme Court that where one mounts a formal response instead of filing a formal application to raise preliminary issues, such party waives its rights and cannot be heard to raise the issue in its substantive opposition.

8.4 I am fortified in this finding by the provisions of **Order 2 Rule 2** of the **Rules of the Supreme Court of England 1999 edition (White Book)** which equally reinforce the principle that where one has taken a fresh step in the face of an irregularity, such step amounts to a waiver.

8.5 Further, **Order 30 Rule 1** of the **High Court Rules Chapter 27** of the **Laws of Zambia** clearly stipulates that an application should be made by summons accompanied by an affidavit and skeleton arguments. The Defendants application being devoid of the requirements required by law for an application, it is my

finding that preliminary issues cannot be raised in an opposition.

i. Whether this Court has the jurisdiction to entertain this Application vis-à-vis Order 19 Rule 3 (3) of the High Court Rules.

8.6 In answering this question, I am alive to the fact that the Rules require that all Interlocutory Applications be made not less than 14 days before commencement of trial. This is as per **Order 19 Rule 3 subrule 3** of the **High Court Rules Chapter 27** of the **Laws of Zambia**.

8.7 I should also hasten to mention that **subrule 4 of Order 19** of the **High Court Rules** grants the Court jurisdiction to allow an Interlocutory Application contrary to **subrule 3** to be heard, which with reasonable diligence could not have been made before the time specified under **subrule 3**.

8.8 The question therefore is, has the Defendant herein given any special and compelling reasons to show how it could not have been possible to have made this Application fourteen days before commencement of trial, to warrant the Court entertain the Application?

8.9 The Defendant in the Affidavit in Support and the supporting Skeleton Arguments has not in any way demonstrated the special and compelling reasons to satisfy the Court that the application could not, with reasonable diligence have been made prior to the prescribed time to warrant the Court to entertain the application in the middle of trial.

8.10 I am left to speculate and speculation is an exercise I refuse to venture into. In the premises, I am compelled to conclude that this application goes against **Order 19 Rule 3 subrule 3** of the **High Court Rules**. I am fortified in my finding as it is trite law that Rules of Court are intended to assist in the proper and Orderly administration of justice and as such must be strictly followed, this is as stated in the case of **Access Bank Limited vs Group Five/ZCON Business Park Joint Ventures**⁽⁴⁾.

ii. Whether the Honourable Court in the circumstances of this case can validly compel Airtel Zambia Limited to authenticate the WhatsApp communication in question?

8.11 Having, concluded as I have in the previous paragraph this Application fails and is now academic. However, even assuming

that the Application was properly before Court, same is bound to fail as the Order sought is not tenable. As rightly argued by the Plaintiff, the data message in question is a WhatsApp message and I take judicial notice that Airtel Zambia Limited is not the proprietor of WhatsApp messaging system, same being a product of Meta Incorporation.

8.12 In this vein, Airtel Zambia Limited cannot be expected to produced information transmitted on a platform they have no ownership or control over. Therefore, even on the merits of it the application is bound to fail as I have pointed out.

8.13 Even if the Plaintiff's argument is that what they seek to be authenticated is a direct Airtel message that was sent from the Plaintiffs Airtel mobile number to Honourable Darius Mulunda's Airtel Mobile number, between the 17th of August, 2022 and 24th of August, 2022, which was later adopted by the said Hon. Darius Mulunda as his own and sent to the Council Chairperson Mr. Kwapu, the Plaintiff has failed to prove why this Honourable Court should take his allegation that the said WhatsApp text was originally from the Plaintiff.

8.14 It is trite law that he who alleges must prove his/her case on a balance of probability this is as stated in the case of **Wilson Masauso Zulu v Avondale Housing Project** ⁽⁸⁾. Looking at the facts in *casu* the Plaintiff has failed to prove how the said WhatsApp message was sent by the Plaintiff to the Hon. Mr. Darius Mulunda who later adopted it as his own and transmitted it to the Council chairperson, to warrant this Court granting the Order to compel Airtel Zambia to authenticate the said data message.

8.15 In obiter, I wish to comment on the reference to the repealed law by Counsel for the Defendant. It is trite that once law is repealed it is erased from the statute books and it is as if same never existed. Therefore, this Court and indeed all Courts expect that Counsel at the very bare minimum will cite current law. I hope this will not be an experience that repeats itself before this Court or indeed any other Court.


9.0 CONCLUSION

9.1 In conclusion, the Defendant's application fails for the reasons stated herein. Accordingly, I dismiss the application with costs to the Plaintiff to be taxed in default of agreement.

9.2 The Matter shall come up on the 6th day of May, 2025, for continuation of trial at 09:00 hours.

9.3 The Defendant is at liberty to appeal.

DELIVERED AT LUSAKA THIS 26TH DAY OF FEBRUARY, 2025.


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S. V. SILOKA
HIGH COURT JUDGE

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
ECONOMIC & FINANCIAL CRIMES DIVISION
26 FEB 2025
JUDGE S. V. SILOKA
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