

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

2021/HP/1125

BETWEEN:

BONIFACE MWANZA

AND

MWATA CHISHA



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 7th DAY
OF JUNE, 2024**

For the Plaintiff : Mr J. Chimankata, Messrs Cholt Legal Practitioners
For the Defendant : Mr V.M Chilao, Messrs Chilao Nyirongo and Mwiinde Legal Practitioners

R U L I N G

Upon hearing Counsel, and upon reading the affidavit filed in support of the application, the affidavit in reply, as well as the List of authorities and Skeleton Arguments in support, and upon reading the affidavit in opposition and the List of Authorities and Skeleton Arguments in opposition, the application is to set aside the Judgment, pursuant to **Order 35 Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

The basis for making the application, is that the Defendant was out of jurisdiction when the trial Court then, heard the matter and delivered its' Judgment.

Order 35 Rule 5 of the High Court Rules empowers the Court to set aside a Judgment, which is delivered in the absence of a party, on sufficient grounds being demonstrated. The applicant before Court, has demonstrated that he was out of jurisdiction when the matter was heard and the Judgment was delivered. This has even been confirmed by the Plaintiff.

As to whether the Defendant is the proper or correct Defendant, cannot be resolved in this application on affidavit evidence, but on evidence being adduced at trial.

Therefore, on the basis that the applicant has demonstrated that he was out of jurisdiction when trial was held and Judgment was delivered, that is sufficient reason to set aside the Judgment, as he was not heard. The fact that there was substituted service does not suffice, as he was out of the country. I accordingly set aside the Judgment and the Defendant shall enter appearance and file the defence and the other documents by 3rd July, 2024. Leave to appeal is granted.

The matter shall come on 10th July, 2024 at 08:20 hours for Orders for Directions. Costs shall be in the cause.

DATED THE 7th DAY OF JUNE 2024

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

