

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2023/HP/1050



BETWEEN:

**MAXIMILIEN PAUL KEREN
LESLIE SZEFTTEL
AND
GEOSPATIAL ENGINEERING**

**PLAINTIFF
INTENDED 2ND PLAINTIFF

DEFENDANT**

**BEFORE THE HONOURABLE LADY JUSTICE A. MALATA-
ONONUJU IN CHAMBERS ON THIS 24th DAY OF JULY 2024.**

For the Plaintiff:

*Z. M. Mubiana and M.
Mbulakulima – Messrs. Nsapato
& Company Advocates.*

For the Defendant:

*Roy Chafwakale Hatimbula and
Mr. Godfery Mataa – Messrs.
Keith Mweemba Advocates.*

RULING ON JOINDER OF PARTY

CASES REFERRED TO:

- 1. Hakainde Hichilema and Geoffrey Bwalya Mwamba Vs Attorney General (2016/CC/0033);*
- 2. Fred M'membe and the Post News Paper (In Liquidation) Vs Abel Mboosi and Others Appeal No. 07/2021 S.C.Z./08/09/2021;*

3. *David Moonga and Others Vs Jonathan Hamweenda and Others Appeal No. 18 of 2016;*
4. *Africare Vs Jordan Chiwamine Tundu, Isaac Sakala, Nchimunya Choboola (C.A.Z. Appeal No. 087/2021 C.A.Z./08/080/2021); and*
5. *The Attorney General Vs Aboubacar Tall and Zambia Airways Corporation Ltd. (1995) S.J. (S.C.).*

LEGISLATION AND WORKS REFERRED TO:

1. *The High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia; and*
2. *The Rules of the Supreme Court of England, White Book. (1999) Edition.*

1. INTRODUCTION

- 1.1 The Defendant, on 20th October, 2023, filed Summons for Joinder of Party pursuant to **Order 14 Rule 5** of the **High Court Rules** and **Order 15 Rule 6** of the **Rules of the Supreme Court, White Book (1999 Edition)** (RSC) for an Order for Joinder of **Leslie Szeftel** as 2nd Plaintiff herein.
- 1.2 The Plaintiff, in response filed Affidavit in Opposition to the Summons for Joinder of Party, with List of Authorities and Skeleton Arguments on 1st November, 2023.

2 BACKGROUND

- 2.1 The Plaintiff commenced an action against the Defendant on 20th June, 2023, by way of Originating Summons accompanied with an Affidavit in Support and List of Authorities and Skeleton Arguments. The Originating Summons were made pursuant to

Order 113 Rule 1 and 2 of the **RSC** wherein the Plaintiff is seeking the following reliefs:

- i. An Order that the Plaintiff is entitled to the possession of the whole Subdivision A9 of Farm No. 299a, Lusaka;
- ii. An Order that the Defendant is occupying the said Subdivision A9 of Farm No. 299a illegally (i.e. without consent or license from the Plaintiff); and
- iii. An Order that the Defendant should vacate and yield vacant possession of the said property;
- iv. Costs for and incidental to these proceedings be for the Plaintiff in any event.

2.2 The Defendant filed Affidavit in Opposition to the Affidavit in Support of Originating Summons with List of Authorities and Skeleton Arguments on 29th June 2023 denying the reliefs sought above.

2.3 The Plaintiff did cause to be filed an Affidavit in Reply with List of Authorities and Skeleton Arguments on 31st June, 2023.

3 THE APPLICATION BY THE DEFENDANT

3.1 On 20th October, 2023, the Defendant filed Summons for Joinder of Party pursuant to **Order 14 Rule 5** of the **High Court Rules** and **Order 15 Rule 6** of the **RSC** with Affidavit in Support and List of Authorities and Skeleton Arguments, for Joinder of Leslie Szeftel as a 2nd Plaintiff to these proceedings.

3.2 In the Affidavit in Support for Joinder of Party, sworn by **Foster Lubilo**, a Zambian national and Director of the Defendant Company, it was deposed that the Plaintiff in the Matter in the main filed before this Court an Affidavit in Reply dated 31st July,

2023, and at Paragraph 4 therein is a Joint Affidavit sworn by the Plaintiff and Leslie Szeftel, the Intendent 2nd Plaintiff.

- 3.3 That Leslie Szeftel is the previous owner of Subdivision A9 of Farm No. 299a which he sold to the Plaintiff with solid and immovable improvements thereon.
- 3.4 It was deposed that Leslie Szeftel and the Defendant had an agreement to sell plots that were serviced with water, roads and electricity to their customers. A copy of a letter written by Leslie Szeftel to the Zambia Electricity Supply Corporation (ZESCO) wherein he acknowledges that Geospatial Engineering Limited (the Defendant) and himself agreed to extend the High Tension and Medium Voltage lines to other subdivisions, both sold and unsold, within Farm 299a and 301a is exhibited and marked **"FL1"**.
- 3.5 It was further deposed that Leslie Szeftel and the Defendant agreed and signed a document of sharing the proceeds of the plot sales following the installation of the water reticulation tank, roads and power lines to some of Leslie Szeftel's properties that include Subdivision A9 of Farm No. 299a whereon the tanks are situate and sold to the Plaintiff later on. A copy of the agreement between Leslie Szeftel and the Defendant signed by both Parties on 29th July, 2018 is exhibited and marked **"FL2"**.
- 3.6 The Deponent avowed further, that based on the agreement, the Defendant went on to construct the water reticulation project, roads and High Tension and Medium Voltage power lines on Leslie Szeftel's properties that included Subdivision A9 of Farm No. 299a.

- 3.7 It was avowed that bank transfers of USD35,000.00 and USD20,000.00 dated 1st August, 2019, and 17th July, 2018, respectively are exhibited and marked "**FL3**", where Leslie Szeftel was depositing money to the Defendant for the water reticulation project, that included tanks, roads and electricity, to his properties including Subdivision A9 of Farm No. 299a.
- 3.8 The Deponent swore that prior to Leslie Szeftel selling the said Subdivision, the Defendant got into a dispute with him over payments on the sharing of the proceeds of sale mentioned above and for the payment of services rendered to him by the Defendant to construct roads, power lines and the water tank. Copies of letters by Leslie Szeftel's Advocates to the Deponent's Advocates seeking dates to discuss an excuria settlement of the dispute were exhibited and marked "**FL4**".
- 3.9 It was deposed that having failed to resolve the dispute between the Defendant and Leslie Szeftel, the Deponent caused to be filed before the Commercial Court Cause Number 2021/HPC/589 wherein the Defendant is claiming payment of an amount exceeding ZMW40,000,000.00 for the services rendered to Leslie Szeftel through construction of the water tank, roads and power lines.
- 3.10 The Deponent averred that sometime in 2021, having noticed the action in Court by the Defendant, Leslie Szeftel decided to sell Subdivision A9 of Farm No. 299a whereon the water tanks were situated to the Plaintiff in a clear manoeuvre of trying to evade his liability to the Defendant. A true copy of the Lands Registry printout showing that the Plaintiff only acquired title to

Subdivision A9 of Farm No. 299a in February, 2022, long after the tanks, roads and power lines got constructed on the said property was exhibited and marked "**FL5**".

- 3.11 The Deponent swore that when he noticed the change of ownership of Subdivision A9 of Farm No. 299a, he endeavoured to register a caveat but was advised to attach a Court Order showing his interest therein which he did not have at the time.
- 3.12 That having been advised by his Advocates and verily believing the same to be true, that having sworn a Joint Affidavit in Reply with the Plaintiff, and being a person having a matter with the Defendant relating to reliefs being sought herein, it will be just and convenient to determine this matter with Leslie Szeftel as a party, rendering it appropriate that he be joined to these proceedings as a 2nd Plaintiff.
- 3.13 Further, that because Leslie Szeftel is a person who is likely to be affected by the decision of this Court in this matter, owing to the fact that he is a Defendant in Cause Number 2021/HPC/589 in which the water tank in question is in issue, he be joined to these proceedings as a 2nd Plaintiff in order that the Court may not arrive at a contradictory decision.
- 3.14 Further, it was deposed that joining Leslie Szeftel in these proceedings would be necessary to ensure that the matters in the cause may be effectively and completely determined and adjudicated upon to put an end to any further litigation.
- 3.15 The Defendant filed List of Authorities and Skeleton Arguments in Support of even date.

- 3.16 In the Skeleton Arguments, Counsel begun by giving reasons why Leslie Szeftel should be joined as stated above in the Affidavit in Support and went on to submit that having Leslie Szeftel as a party to these proceedings is necessary not only because he possesses vital information necessary in these proceedings, but also because he is the Defendant in Cause Number 2021/HPC/589 between him and the Defendant herein. That the said matter is still active before the Commercial Court wherein the water tank which is in issue before this Court, is also the main issue in the other Court.
- 3.17 Counsel invited this Court to take Judicial Notice of Cause Number 2021/HPC/589 and submitted that it is highly probable that Leslie Szeftel and the Plaintiff could be forum shopping. Counsel relied on the case of **Hakainde Hichilema and Geoffrey Bwalya Mwamba Vs Attorney General** ⁽¹⁾ in which the Constitutional Court took Judicial Notice of Cause Number 2016/CC/31.
- 3.18 Counsel referred the Court to the case of **Fred M'membe and the Post News Paper (In Liquidation) Vs Abel Mboози and Others** ⁽²⁾ at page J54 wherein the Supreme Court made the following decision:

“We refer the matter to the High Court before a different judge to re-open the liquidation proceedings with a view to ensuring compliance with the relevant legal provisions. The action shall be between the original parties as they were when the petition was filed. However, for purposes of receiving all the necessary

reports from the liquidator and considering his possible personal liability, we order joinder of the liquidator.”

(Emphasis theirs)

- 3.19 Counsel submitted that as in the **M'membe case** above, in the same vein, this Court will be greatly assisted by the evidence of Leslie Szeftel on the water tank. That the Defendant will equally have an opportunity to test the veracity of that evidence through cross examination or reply.
- 3.20 That by swearing a Joint Affidavit with Leslie Szeftel, the Plaintiff herein concedes that Leslie Szeftel holds vital information and therefore, Leslie Szeftel is vital to these proceedings and will be helpful to this Court in order for it to effectively and completely determine and adjudicate upon this matter.
- 3.21 Counsel submitted that he is fortified by the provision of **Order 15/6/2/b/i/ii** of the **RSC** which he quoted as well as the decision of the Court of Appeal in **David Moonga and Others Vs Jonathan Hamweenda and Others** ⁽³⁾ when it was held at J17 that:

“It is apparent that if determination of issues before the Tribunal or the grant of the relief sought is likely to affect a person who is not a party to the proceedings, the Tribunal must join such a person to the proceedings.”

And further at J8 as follows:

“Therefore, any person whose presence before the Tribunal was necessary, to ensure that all matters in dispute in the cause or matter, may be effectually and completely determined and adjudicated upon, or any

person between whom and any party to the cause or matter, there may exist a dispute or issue arising out of or relating to or connected with any relief or remedy claimed, which in the opinion of the Tribunal it would be just and convenient to determine, as between him and that party, as well as between the parties to the cause or matter, ought to have been joined as a party to the proceedings.”

- 3.22 It was Counsel’s further submission that in his view, the decision of the Court in whichever way it turns out to be, may affect the portion of land the Plaintiff purchased from Leslie Szeftel should the Court make an Order that affects the portion of land the tank stands in.
- 3.23 It was Counsel’s submission that Leslie Szeftel sold the Plaintiff Subdivision A9 of Farm No. 299a with solid and immovable improvements thereon that has several interests of people who depend on the said tanks who purchased plots from Leslie Szeftel and the Defendant on the legitimate expectation that the plots were serviced with water, electricity and roads.
- 3.24 Counsel referred the Court to the case of **Africare Vs Jordan Chiwamine Tundu, Isaac Sakala, Nchimunya Choboola** ⁽⁴⁾ and the findings of the Court of Appeal therein, and argued that in the same vein, Leslie Szeftel, having deposed an Affidavit in Reply and exhibited that he wrote to the Defendant on 14th February, 2022 to remove the tanks after he had already sold the property to the Plaintiff, the terms of **Order 14 Rule 5** of the **High Court Rules**

deems him to have an interest in the subject matter of the suit and he ought to be joined to the proceedings.

3.25 Counsel further referred this Court to the case of **The Attorney General v Aboubacar Tall and Zambia Airways Corporation Ltd.** ⁽⁵⁾ and the findings of the Supreme Court and submitted that based on this case, this Court has the power to ensure that disputes in this Cause and Cause Number 2021/HPC/589 be effectively and completely determined and adjudicated upon to put an end to any further litigation by joining Leslie Szeftel to these proceedings.

3.26 Counsel submitted that the Defendant is satisfied that these authorities give this Court jurisdiction to join Leslie Szeftel to these proceedings as a 2nd Plaintiff.

3.27 In conclusion, Counsel submitted that having explained and satisfied the requirement for Joinder of Party, it was his prayer that this Application be granted in the interest of justice and that the costs thereof be in the cause.

4 RESPONSE BY THE PLAINTIFF

4.1 The Plaintiff herein filed Affidavit in Opposition to the Affidavit in Support of Summons for Joinder of Party with List of Authorities and Skeleton Arguments on 1st November, 2023.

4.2 The Affidavit in Opposition was sworn by **Maximilien Paul Keren**, a British national with permanent residence in Zambia, and the Plaintiff herein.

4.3 It was deposed that having read the Affidavit in Support, it was his averment that one Leslie Szeftel is the previous owner of the

land in question and the joint Deponent in his Affidavit in Reply, and has no interest in the subject matter before Court.

- 4.4 The Deponent avowed that on the advice of his Advocates, and verily believing the same to be true, that the Defendant has not shown the interest that Leslie Szeftel has in the subject matter and/or how he is likely to be affected by the outcome of these proceedings.
- 4.5 It was avowed that whereas there is a claim in Paragraph 7 of the Affidavit in Support by the Defendant that there had been an agreement with Leslie Szeftel to sell plots that were fully serviced with water, roads and electricity, the exhibit marked "**FL1**" produced as proof thereof does not speak of any such agreement as this Court will note. The Deponent avowed that it is in fact evidence that ZESCO did seek permission to install High Tension and Medium Voltage lines on the named pieces of land.
- 4.6 It was deposed that in the preceding Paragraph, exhibit "**FL2**" in the Affidavit in Support does not prove any consent to install tanks on the land in question, neither does it show any interest that Leslie Szeftel has in the land in question or how he will be affected by the outcome. That it is in fact evidence that the Defendant and Leslie Szeftel had worked together in disposing of their land, which is not in question in these proceedings.
- 4.7 The Deponent avowed that on the advice of his Advocates, and believing the same to be true, that exhibit "**FL3**" in the Affidavit in Support simply shows a transfer of money and does not in any way show that Leslie Szeftel has an interest in these proceedings or that he is likely to be affected by the outcome.

- 4.8 Further that the letter exhibited as "**FL4**" in the Affidavit in Support does not in any way speak to Leslie Szeftel having any interest in the subject matter or indeed to how the judgment in this matter would affect him.
- 4.9 It was deposed that the date of acquisition of Subdivision A9 of Farm No. 299a New Kasama is not in question in these proceedings, hence the Land Register exhibited as "**FL5**" proves nothing.
- 4.10 The Deponent avowed that having been advised by his Advocates and believing the same to be true, that contrary to Paragraph 14 of the Affidavit in Support a party is not joined as a matter of convenience but because they have an interest in the subject matter or are likely to be affected by the outcome of the case.
- 4.11 The Deponent was further advised that the cause of action under Cause Number 2021/HPC/589 which relate to matters that the Deponent is not privy to and transactions that are not in question under this Cause cannot bestow on Leslie Szeftel an interest in this Matter neither can they be a basis of concluding that he will be affected by the outcome of this Matter.
- 4.12 Further, that Leslie Szeftel has no interest whatsoever in the issues before Court as he no longer has any legal or equitable interest in Subdivision A9 of Farm 299a New Kasama which belongs to the Deponent as shown by exhibit "**FL5**" in the Affidavit in Support.
- 4.13 Further that the addition of Leslie Szeftel will only convolute the Record with collateral issues such as the agreements between him

and the Defendant that have no correlation to the cause of action in this Cause.

- 4.14 The Deponent averred that the joining of Leslie Szeftel will be prejudicial to him as it will delay the proceedings in that Leslie Szeftel will have to file documents and allow the Defendant to respond.
- 4.15 In the Skeleton Arguments filed, Counsel submitted that the law governing joinder is espoused in **Order XIV Rule 5/1** of the **High Court Rules** and **Order 15 Rule 4** of the **RSC**, which he quoted. Counsel argued that both these provisions give the Court power to direct any party or grant Leave to any party that ought to have been joined to an action but was not, to be joined to the action before Court. That this notwithstanding, the provisions provide criterion that must be satisfied for this Court to direct that a party be joined or to grant Leave for a party to be joined.
- 4.16 It was submitted that the provisions require that the individual to be joined should have an interest in the matter or they will be affected by the outcome of the matter of the suit. Counsel submitted that with regards to **Order 15 Rule 4** of the **RSC**, it, *inter alia*, requires that a case is such that if any other case was brought it would raise a common question of law or fact.
- 4.17 It was Counsel's submission that the intended 2nd Plaintiff does not meet the criteria that has been set by law for two reasons, firstly, he does not have any interest in the subject matter of litigation; and secondly, he will in no way be affected by the outcome of these proceedings that do not affect any interest of his.

- 4.18 With regard to the submission by the Defendant that the intended 2nd Plaintiff has interest in the subject matter of the litigation, Counsel stated that the intended 2nd Plaintiff in early 2022, after following all processes, sold the land in question and all his interest in the said land relinquished, and he, therefore, has no residue interest in the land to be deemed to be one with interest.
- 4.19 It was Counsel's submission that the question before this Court is – is the Defendant Company a squatter within the meaning of **Order 113** of the **RSC**? That if so, then it ought to yield vacant possession.
- 4.20 It was Counsel's contention that the only parties that can legitimately have an interest in these proceedings are firstly, the owner of the land seeking eviction and the person sought to be evicted. That is, only the Plaintiff and the Defendant have an interest in the Matter before Court.
- 4.21 Counsel submitted that the Defendant in its Application implores the Court to take Judicial Notice of the proceedings under Cause Number 2021/HPC/589 where the water tank is also an issue and there is a possibility of forum shopping. It was submitted that this argument should not be entertained by this Court as the Defendants own Affidavit in Support at Paragraph 10 and 11 indicates that the issue before Court in the said cause is their dispute over payments and sharing of proceeds of sales. That the issue therein is different from the issues before this Court as it does not concern the Plaintiff in any way, manner or form.
- 4.22 Counsel submitted that to the extent that all authorities relating to Judicial Notice are intended to aid the argument that there is a

connection between the proceedings in Cause Number 2021/HPC/589 and this Cause, they are ill fated and do not aid the Defendant's Application, and are of no relevance to this Application.

- 4.23 It was submitted that the Defendant's argument that the Court will be greatly assisted by the evidence of one Leslie Szeftel as such he should be joined is not a ground for joinder, as doing so will be tantamount to holding that all persons who appear as witnesses should be made parties as the information they provide is valuable to the Court in making its decision.
- 4.24 Counsel argued that the reliance on the case of **Fred M'membe and The Post News Paper (In Liquidation) Vs Able Mboozu and Others** ⁽²⁾ for the said proposition is misconceived because the appeal substantially impugned the actions of the Liquidator. Further and in any case, Counsel submitted that there were a number of Orders issued against the Liquidator warranting his joinder unlike the case in *casu* which does not need any other persons aside from the Parties themselves.
- 4.25 Counsel submitted that the Defendant's reliance on the case of **Africare Vs Jordan Chiwamine Tundu, Isaac Sakala, Nchimunya Choboola** ⁽⁴⁾ is misconceived as the circumstances in that case and in *casu* are totally different. That whereas the parties in that case had an interest, the Party sought to be added in *casu* has no interest whatsoever aside from the misconceived connecting of this Cause to Cause Number 2021/HPC/589.
- 4.26 Counsel submitted that the intended 2nd Plaintiff will not be affected by the outcome of these proceedings and reiterated that

the intended 2nd Plaintiff sold the land in question and transferred interest therein as far back as early 2022. That, therefore, any pronouncements affecting the said piece of land, more so those relating to a squatter, cannot affect him in the very least.

4.27 Counsel submitted that depositions in the Affidavit in Reply from the intended 2nd Plaintiff are proffered in his capacity as a witness of fact; an individual who has first-hand information that proves an aspect of the question before Court and not one who has an interest that can lead to him being affected by the outcome of the proceedings.

4.28 It was Counsel's contention that the Defendant's argument that Leslie Szeftel will be affected because he instructed the Defendant to install the water tanks does not hold water because the issue of who instructed who to install the tank is not an issue. That the Record shows that the tanks were opposed by both the Plaintiff and his predecessor in title who the Defendant seeks to drag to Court on matters that do not affect him or his interest.

4.29 It was argued that adding the intended 2nd Plaintiff with the view to resolve all the issues is ill fated as the issues therein are being dealt with by the Court seized with the adjudication of the matter. Further that the two matters cannot be consolidated as they are totally different in nature, reliefs sought and the parties involved.

4.30 It was Counsel's conclusion and prayer that they have shown that the intended 2nd Plaintiff does not meet the criteria for Joinder of Party, and that they have shown that there is no basis upon which Leslie Szeftel can be joined as a Party as he is at best a witness of fact. That in view of the foregoing, it was his submission that the

Application for Joinder is dead on arrival and should, therefore, suffer the inevitable fate of dismissal with costs to the Plaintiff.

5 THE HEARING

5.1 The Hearing of this Matter was held on 3rd May, 2024, and present were the Counsel for both Parties. Having established that the matter, which was under the hand of the previous presiding Judge, was due for Ruling of the Defendant's Application herein, and Counsel for both Parties agreeing to rely on the documents filed as summarized above, this Court adjourned the Matter for delivery of the said pending Ruling.

6 ANALYSIS AND DECISION OF THE COURT

6.1 I am grateful to Counsel for their submissions and spirited arguments for and against the Application herein.

6.2 With regards to this Court's jurisdiction to hear the Application, I am guided by **Order XIV Rule 5/1** of the **High Court Rules** on which the Defendant's Application is anchored which states as follows:

"5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either Plaintiffs or defendants in the suit, as the case may be.

In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:"

6.3 The Defendant's Application is further anchored on **Order 15 Rule 6/2/b i** and **ii** of the **RSC**, which equally guides this Court and must be read together with **Order XIV Rule 5/1** of the **High Court Rules** above and states as follows:

"(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application –

a) ...

b) order any of the following persons to be added as a party, namely –

i. any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

ii. any person between whom and any party to the cause or matter there may exist a

question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and the party as well as between the parties to the cause or matter.”

- 6.4 A careful reading of the above Orders clearly establishes this Court’s jurisdiction to hear the Defendant’s Application and grants this Court discretion to join a party should the criteria be established.
- 6.5 The criteria are apparent. A person to be joined and thereby bound by all proceedings in the cause must be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result.
- 6.6 Further such person must be necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, and between whom and any party to a cause or matter, there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter.
- 6.7 So, a person may be joined not just in relation to the determination of a cause or matter or because they have an interest in the subject matter of the suit or may be affected by the result, but also to answer a question or clarify an issue arising out of or connected to the reliefs sought or claimed in the main Matter;

and the Court must be of the opinion that it would be just and convenient to do so as between the person and the party, as well as between the parties to the cause or matter.

- 6.8 The question before this Court is whether or not, based on the evidence submitted and the circumstances of this Matter, to join the intended 2nd Plaintiff, Leslie Szeftel.
- 6.9 The Defendant's Application for Joinder of Party is to join Leslie Szeftel to these proceedings. It has been submitted by the Defendant that joining Leslie Szeftel as a 2nd Plaintiff is necessary, just and convenient to determine the Matter in the main, which is a Summons filed by the Defendant under **Order 113** of the **High Court Rules** essentially asking this Court to declare the Defendant a squatter or trespasser on the said property, being Subdivision A9 of Farm 299a.
- 6.10 It has been submitted that Leslie Szeftel was the previous owner of the property which he later sold to the Plaintiff sometime in 2022. That prior to the sale, Leslie Szeftel and the Defendant had an agreement to sell plots that would be serviced with water, roads and electricity to their customers, constructed and put up by the Defendant. That the proceeds of the sale of the serviced plots would be shared by Leslie Szeftel and the Defendant following the installation of the water reticulation tank, roads and powerlines for the plots.
- 6.11 It was submitted that a dispute as to monies owed by Leslie Szeftel to the Defendant for the works done arose resulting in a suit under Cause Number 2021/HPC/589 in the Commercial Court which is

still on-going. The Defendant feels that the decision of this Court will impact on Cause Number 2021/HPC/589.

- 6.12 The Defendant contends that this Court will be greatly assisted by the evidence of Leslie Szeftel on the water tank erected and that he holds vital information to these proceedings and will be helpful to this Court in order for it to effectively and completely determine and adjudicate this Matter.
- 6.13 The Plaintiff on the other hand, submitted that Leslie Szeftel is the previous owner of the land in question and the joint Deponent in his Affidavit in Reply to the Affidavit in Opposition of the Originating Summons as a witness of fact, but argues that the Defendant has not shown the interest that Leslie Szeftel has in the subject matter or how he will be affected by the outcome of the proceedings in the Main.
- 6.14 The Plaintiff argued that the issue in Cause No. 2021/HPC/589 is a dispute over payments and sharing of proceeds of sale between Leslie Szeftel and the Defendant, and is different from the issue in *casu* and does not concern the Plaintiff in any way or form.
- 6.15 It was averred that the Defendant has failed to prove any consent or agreement between Leslie Szeftel and themselves to sell plots that were fully serviced with water, roads, and electricity, let alone to install water tanks on the property. That Leslie Szeftel has no interest whatsoever in the issues before this Court as he no longer has any legal or equitable interest in the said property and that he will not be affected by the outcome of these proceedings.
- 6.16 It was the Plaintiff's contention that consequently, the intended 2nd Plaintiff does not meet the criteria for joining of a party.

- 6.17 Having perused the Record and the submission from both Parties as summarized above, what is clear is that Leslie Szeftel, the Intended 2nd Plaintiff, was the previous owner of Subdivision A9 of Farm No. 299a, New Kasama, Lusaka. That he sold the property to the Plaintiff in 2022 as evidenced by the Lands Registry printout exhibited as “**FL5**” in the Defendant’s Affidavit in Support of Summons for Joinder of Party and by exhibit marked “**MKP1**” in the Plaintiff’s Affidavit in Support of the Originating Summons being a Certificate of Title relating to the property.
- 6.18 It is alleged that prior to the sale of the property to the Plaintiff, Leslie Szeftel and the Defendant agreed to install on the property, and subdivisions, water reticulation tanks, roads and powerlines to service plots to be sold to customers thereon; and that the works would be done by the Defendant. That the Defendant would be paid for its services from the sale of the said serviced plots.
- 6.19 That the serviced plots have been sold to customers including Foster Lubilo, the Director in the Defendant Company as evidenced from exhibit marked “**FL1**” a letter penned by Leslie Szeftel to ZESCO and “**FL2**” entitled Commission Sales in Foster Lubilo’s Affidavit in Support of Summons for Joinder of Party, and “**FL5**”, entitled List of Geospatial – Leslie Water Tank Beneficiaries So Far, in the Affidavit in Opposition to the Affidavit in Support of Originating Summons.
- 6.20 It is also clear and not in dispute that there arose a dispute as to payments between Leslie Szeftel and the Defendant for services rendered, resulting in a suit under Cause No. 2021/HPC/589 in the Commercial Court which is still on going.

- 6.21 It is also clear and not in dispute that the Plaintiff, now being owner of the property, filed Originating Summons pursuant to **Order 113 Rules 1 and 2** of the **RSC** in which he is claiming reliefs listed at 2.1 above, which, if found to be proved, would result in the Defendant being declared a squatter and trespasser on the said land and the water tanks thereon removed.
- 6.22 It is clear and not in dispute that the Plaintiff and Leslie Szeftel swore a Joint Affidavit in Reply. That based on the Joint Affidavit in Reply to the Defendant's Affidavit in Opposition to the Affidavit in Support of Originating Summons deposed to by both the Plaintiff and Leslie Szeftel, the averments and allegations under Paragraphs 4 to 14, *inter alia*, therein raise a number of questions which need clarification from Leslie Szeftel.
- 6.23 That the reference to Leslie Szeftel as a Witness of Fact, being a person with direct observation or knowledge of events related to the case and able to provide factual information that they have personally witnessed or experienced related to the case, by the Plaintiff in the Skeleton Arguments in Support of the Affidavit in Opposition to Affidavit in Support of Summons for Joinder of Party speaks to the assertion by the Defendant that Leslie Szeftel holds answers to key issues in play in the main Matter.
- 6.24 It would be remiss of this Court to ignore that Leslie Szeftel sold serviced plots to customers benefiting from the water tanks, roads and powerlines installed by the Defendant, and that removal of the water tanks as desired by the Plaintiff based on the allegations made and supported by Leslie Szeftel, that the Defendant is occupying the property without consent or license and the

demand that the Defendant vacate and yield vacant possession of the property resulting in the removal of the water tanks, may affect persons that bought the said plots from Leslie Szeftel and bring about further litigation.

6.25 It is my considered view that Leslie Szeftel, the Intended 2nd Plaintiff, not only has vital information necessary to these proceedings, but also has the potential to be personally liable for acts or omissions herein that make him a person of interest and consequently a person with interest in the proceedings and therefore, must be joined to the proceedings in the main.

6.26 In this regard, I will take Judicial Notice of Cause No. 2021/HPC/2022 as guided by the case of **The Attorney General v Aboubacar Tall and Zambia Airways Corporation Ltd.** ⁽⁵⁾ wherein the Supreme Court stated as follows:

“In our view, without prejudicing the outcome of the trial court's judgment, but going by the documentary and oral evidence on record, the joining of the Attorney General in these proceedings would be necessary to ensure that the matters in the cause may be effectually and completely determined and adjudicated upon to put an end to any further litigation. Both our order 14 and the English order 15 as well as Section 13 of Cap.50 are intended to avoid a multiplicity of actions.”

6.27 I am fortified in my decision to join Leslie Szeftel to the main Matter by the decisions of the Supreme Court and Court of Appeal in the cases of **Fred M'membe and The Post News Paper (In Liquidation) Vs Abel Mboози and Others** ⁽²⁾ and **David Moonga**

and Others Vs Jonathan Hamweenda and Others ⁽³⁾ respectively, and as ably quoted by the Defendant herein and above.

6.28 I am further fortified by the decision of the Court of Appeal in the case of **Africare Vs Jordan Chiwamine Tundu, Isaac Sakala, Nchimunya Choboola** ⁽⁴⁾ wherein it was stated as follows:

“9.8 The appellant contends that the lower court joined Ms. Turner-Barnes to the proceedings on the basis that she is carrying out the duties of an office bearer when there is no evidence to that effect, and that the joinder was made without hearing the appellant.

9.9 We are of the view that Ms. Turner-Barnes must be deemed to have an interest in the suit against the appellant. She authored the letters of termination on behalf of Africare and advised of the closure of the operations in Zambia. We uphold the decision of the lower court ordering that Ms. Turner-Barnes, in her capacity as Chief Human Resources and Administration Officer for the appellant, be a party to the proceedings as representative of the appellant.”

6.29 In line with the reasoning of the Court of Appeal above, I am of the considered view that the genesis of the issues surrounding the said property and indeed the potential issues that may arise with the sold serviced plots mentioned herein is Leslie Szeftel, the Intended 2nd Plaintiff and previous owner of the property.

6.30 The alleged agreement and ensuing dispute between the Intended 2nd Plaintiff and the Defendant, the manner and nature of sale of

the said property by the Intended 2nd Plaintiff to the Plaintiff, the resultant issues between the Plaintiff and the Defendant leading up to the Originating Summons filed by the Plaintiff against the Defendant, all point to the Intended 2nd Plaintiff as the common denominator and the person with not only interest but vital information that will assist this Court ensure that matters in dispute in the cause may be effectively and completely determined and adjudicated upon.

6.31 It is evident that the Intended 2nd Plaintiff is a person between whom and the Parties to this cause there exists a question or issues arising out of or connected with the Matter in the main and the reliefs sought therein.

6.32 It is therefore, the considered view of this Court that it would be just and convenient to join the Intended 2nd Plaintiff to determine issues between him and the Defendant, and subsequently the issues between the Parties to the cause or Matter in the main.

7 CONCLUSION

7.1 The Application by the Defendant to join the Intended 2nd Plaintiff to the Matter succeeds.

7.2 The Intended Party is forthwith joined and will be referred to as the 2nd Plaintiff.

7.3 The 2nd Plaintiff is hereby Ordered to file Affidavit in Support of the Originating Summons with List of Authorities and Skeleton Arguments with Proof of Service on all Parties on or before 26th August, 2024.

7.4 The Defendant shall file Affidavit in Opposition to the 2nd Plaintiff's submissions above with List of Authorities and Skeleton

Arguments with Proof of Service on all Parties on or before 12th September, 2024.

- 7.5 The 2nd Plaintiff is at liberty to file Affidavit in Reply with List of Authorities and Skeleton Arguments to the Defendant's Affidavit in Opposition and List of Authorities and Skeleton Arguments above with Proof of Service on all Parties on or before 27th September, 2024.
- 7.6 There shall be a Status Conference and/or Hearing of the Plaintiffs' Application in the main in Chambers on 3rd October, 2024 at 11:00am.
- 7.7 Costs are in the cause.

DELIVERED AT LUSAKA THIS 24TH DAY OF JULY 2024



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A. MALATA-ONONUJU
HIGH COURT JUDGE