

IN THE HIGH COURT OF ZAMBIA

2023/HP/1192

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

JOSEPHINE KAMALONI

AND

CEPHAS MULENGA

FREED SINDAZA



PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN CHAMBERS ON THE 13TH, DAY OF MAY, 2025.

For the Plaintiff:

Mr. R. Musumali, Messrs SLM Legal Practitioners

For the 1st Defendant:

Mr. S. Muchimba, Tembo Ngulube and Associates

For the 2nd & 3rd Defendant: *Mr. M. Phiri, M. C. Phiri and Associates.*

RULING

A. LEGISLATION REFERRED TO

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

B. WORKS REFERRED TO:

1. *Phipson on Evidence, 7th Edition, Sweet & Maxwell, 2010*

1. This is a Ruling in respect of an Application by Mr. Musumali on behalf of Plaintiff made during trial, specifically during Cross Examination of the 1st Defendant. The Application relates to moving the Court to site before the witness can be subjected to Re-Examination.
2. Mr. Phiri on behalf of the 2nd and 3rd Defendants objected to the Application for the reason that the application was

coming too late in the day. That the Plaintiff who is the owner of the case should have moved Court before concluding her testimony so that all issues relating to witnesses could be dealt with on site. Further that the Application is misconceived and that Counsel has not pointed out the bone of contention as to why we should go a site.

3. Mr. Muchimba on behalf of the 1st Defendant adopted the submissions made on behalf of the 2nd and 3rd Defendant.
4. I have considered the Parties' submissions and their respective positions. The beginning point in considering this Application is **Section 33** of the **High Court Act Chapter 27** of the **Laws of Zambia** which provides that:

“In any cause or matter, the Court may make such order for inspection by the Court, the parties or witnesses of any real or personal property the inspection of which may be material to the determination of the matter in dispute and may give such directions with regard to such inspection as to the Court may seem fit”.

5. Further Order **35 Rule 8 (1) (2)** of the **Rules of the Supreme Court of England, 1999** Edition provides that:

“The Judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter. Where a serious cause or matter is tried with a jury and the Judge inspects any place or thing under paragraph 1, he may authorize the jury to inspect”.

judicial discretion, neither party could compel or prevent the trial judge from holding a view should he decide in his discretion to hold a view, even where the parties were united in opposing such course”.

Further, explanation notes 35/8/2 states that:

“this is not merely to enable a Judge to follow the case: the inspection is just as much of the evidence as is the testimony of witnesses and unless the testimony of experts or other witnesses is required, the Judge may form a conclusion based on the inspection alone, and contrary to the evidence of the witnesses”.

6. Quite clearly from the law cited above, the decision to hold a view is solely in the Court’s discretion and where he decides to do so, the parties’ opposition can not prevent him from holding one. Further, the evidence obtained from such a view is as important as the other forms of evidence and may aid the Court in arriving at a decision, of itself or in connection with or in connection with other evidence.
7. **Phipson on Evidence, 7th Edition, Sweet and Maxwell 2010** at pages 8 to 12 gives an explanation on of when it is ideal to conduct a view as follow.

“Inspection may be made by, or in the presence of the trial Judge including the jury, during

The explanation notes **35/8/1** of this order provide that:

“Since the discretion to inspect is a matter of judicial discretion, neither party could compel or prevent the trial judge from holding a view should he decide in his discretion to hold a view, even where the parties were united in opposing such course”.

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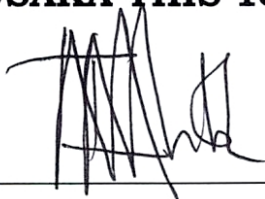
the course of trial. This inspection may be either in the Court, or a location elsewhere such as in the case of a view of a promise.....,.....

.....

The view should take place at some convenient time before the start of final speeches, although it has been held that a view is permissible even after the conclusion of the summing up.....”

8. In the present case, the matter is at a point when the 1st Defendant is giving his testimony. In my reading and understanding of the authorities cited above, nothing would preclude the Court from moving to the site at this stage. There can be no doubt that I have the power to move to the site and inspect the same under my inherent discretion if this may aid my determination of this case.
9. Accordingly, I Order that the Court moves to the site when the matter comes up on 20th May, 2025 at 09:30hours specifically for continued Cross Examination and Re-Examination of the 1st Defendant.

DELIVERED AT LUSAKA THIS 13TH DAY OF MAY, 2025.



**I. M. MABBOLOBOLO
HIGH COURT JUDGE**