

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

2023/HP/1616

BETWEEN:



DOMINIC CHANDA

PLAINTIFF

AND

DANNY YENGA

DEFENDANT

**BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA IN
CHAMBERS ON 29TH AUGUST 2024**

For the Plaintiff : No Appearance
For the Defendant : Miss. M. Phiri from Messrs. Makebi Zulu Advocates

RULING

CASES REFERRED TO:

1. *Savenda Management Services Limited and Stanbic Bank Zambia Limited and Another Selected judgment No.47 of 2018*
2. *Wise v E.F Harvey Limited (1985) ZR 179*
3. *Paul Judika v Attorney General and Another (2015) Z.R. 339*
4. *Bank of Zambia as liquidator of credit Africa Bank limited in liquidation v AL Shama Building materials Company (Appeal 16 of 2017) [2022] ZMSC 1*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The High Court Rules Chapter 27 of the Laws of Zambia*
2. *Rules of the Supreme Court of England (1999) edition*
3. *Halsbury's Laws of England, 4th edition, volume 37*
4. *Atkins Court forms, second edition, volume 32, 1994*

1.0 INTRODUCTION

1.1 This is the Ruling on an application by the Defendant for an order to dismiss this action for failure to furnish the Defendant with further and better particulars. The application was made pursuant to **Order 14A of the Rules of the Supreme Court of England**, the Order of the Court dated 24th November 2024 and the inherent jurisdiction of the Court. The ground upon which the Defendant sought to dismiss this matter was couched as follows:

“The striking out of the paragraphs specified in the order for further and better particulars dated 24th November, 2024 render the statement of claim devoid of any cause of action”

2.0 HISTORICAL BACKGROUND

2.1 A brief historical background leading to this application was that on the 14th September 2023, the Plaintiff commenced this action claiming among others; an order for replacement of the damages on the car or payment of money equivalent to the value of repairing the motor vehicle; damages for the inconvenience caused for loss of use of the motor vehicle; compensation for the use of car by the third party; interest on the money found due.

3.0 AFFIDAVIT EVIDENCE OF THE APPLICATION

- 3.1 The Defendant's affidavit in support of the application was deposed by Defendant himself.
- 3.2 It was averred that on the 14th September, 2023 the Plaintiff issued a writ of summons and a statement of claim. That by a letter dated the 19th August, 2023 the Defendant's advocates requested further and better particulars from the Plaintiff. That the letter was duly served on the Plaintiff's advocates on the 29th September, 2023. A copy of the letter was exhibited and marked "DY1". That however, the Plaintiff has failed to provide the requested particulars.
- 3.3 It was the deponent averment that as a consequence of the Plaintiff's non-compliance, on the 12th October, 2023 the Defendant applied before this Court for an order directing the Plaintiff to provide the requested particulars within seven days. That this order was granted by Honorable Justice Wina.
- 3.4 It was averred that on the 29th November, 2023 the Plaintiff applied to this Court for an order to set aside the order for further and better particulars, claiming that the Plaintiff was not heard. That the Defendant opposed the application.
- 3.5 It was further deposed that on the 25th June 2024 this Court rendered its ruling, dismissing the Plaintiff's application for being devoid of merit. That immediately following the delivery

of the said ruling, the Defendant's advocates wrote to the Plaintiff's advocates on the 5th July, 2024 requesting them to furnish the further and better particulars in light of the Court's ruling. A copy of the letter was exhibited and marked "DY2".

- 3.6 That to date, the Plaintiff has failed to comply with the Court's order by not furnishing the further and better particulars within the time specified by the Court.
- 3.7 That the Defendant was advised by his advocates and verily believe the same to be true and correct that under these circumstances, the Defendant can apply before this Court for an order dismissing this action for want of prosecution, given the Plaintiff's failure to comply with the order of Justice Wina dated 24th November, 2024.
- 3.8 It was deposed that the Defendant is aware that the Plaintiff has not complied with the order dated 24th November, 2023 and advised by the Defendant's advocates that by reason of such non-compliance and the consequent striking out of the paragraphs specified in the said order thereof of the statement of claim no longer discloses any cause of action as such it must be dismissed.
- 3.9 That no prejudice will be occasioned to the Plaintiff by the dismissal of this matter and that the interest of justice will be served.

4.0 SKELETON ARGUMENTS

- 4.1 In the Skeleton arguments filed in support of the application, it was argued that **Order 14A rule 1 and 2 of the Rules of the Supreme Court 1999 Edition** bestows this Court with considerable powers to pronounce on questions of law and summarily dismiss this matter summarily without the need for trial.
- 4.2 It was then argued that the inherent powers of the Court were eloquently explained by the authors of **Halsbury's Laws of England, 4th Edition, Volume 37** at paragraph 14 that:

"The jurisdiction of the Court which is comprised within the term "inherent" is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings but in relation to anyone, whether a party or not and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the Court enables it exercise control over the process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process... in sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular, to ensure the observance of the due process of law, to prevent improper vexation or oppression, to justice between the parties and to secure a fair trial between them".

4.3 In reinforcing the above quotation, counsel cited the case of *Savenda Management Services Limited and Stanbic Bank Zambia Limited and Another*¹ wherein the Supreme Court observed that:

“It is the unlegislated ancillary power of this court in the exercise of its duty in the administration of justice. Put differently, it is the power of the court which is incidental to its day to day functions which is intended to ensure that the wheels of justice do not grind to a halt... the other source of our jurisdiction is what is known as the inherent jurisdiction of the court, Black’s law dictionary does not define the phrase but refers to “inherent power” which it defines as a power that necessarily derives from an office, position or status”.

4.4 It was then argued that the Court order granted by Justice Wina required that the Plaintiff furnish further and better particulars within seven days, failure of which the specified paragraphs therein would be expunged, leaving the action devoid of a cause of action and subject to dismissal based on the inherent jurisdiction of the Court. That the Plaintiff by failing to furnish further and better particulars, has failed to prosecute this case.

4.5 As regards striking out of the paragraphs specified in the order for further and better particulars dated 24th November, 2024 renders the statement of claim devoid of any cause of action, it was submitted that the fact that the paragraphs specified in the order dated 24th November, 2024 and the reliefs thereof which alleged the existence of an agreement and conditions therein were the germane part of the cause of

action. That the Plaintiff's non-compliance with the order dated 24th November, 2023 means that the statement of claim no longer discloses any cause of action and that the action must be dismissed.

- 4.6 Counsel submitted that in Black dictionary, 9th edition the word cause of action is defined as "the ground on which an action can be maintained, as when we say that such a person has a cause of action". The case of *Wise v E.F Harvey Limited*² was also cited wherein it was held that:

"That a cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right or entitlement to a judgment in his favour".

Counsel reiterated the submission that the Plaintiff's claim must be dismissed due to non-compliance with the Court's order dated 24th November 2023, which rendered the statement of claim devoid of any cause of action. That the Plaintiff's failure to comply with the order, especially regarding the struck-out paragraphs, essential to enforcing an agreement and its conditions, results in a lack of a coherent and actionable cause. That the Plaintiff's claim must be dismissed in its entirety.

- 4.7 As regards the effect of failure to comply with the order of the Court, the Court was referred to *Atkins Court Forms, Second Edition, Volume 32, 1994 issue at page 100* which provides that:

"If no particulars are served in time the statement of claim or the paragraph specified in the order will be automatically struck out without further application but if particulars are served and there might be genuine conflict of opinion as to their sufficiency a further summons to strike out may be necessary".

Counsel argued that the order of the court specified that if the Plaintiff fails to furnish further and better particulars, the said paragraphs must be struck off. That even, after serving the Plaintiff with the ruling dismissing the application to set aside the order for further and better particulars, compliance has not been forthcoming. That consequently, the specified paragraphs, were automatically struck off the statement of claim.

4.8 Further that the ***Explanatory Note 25/L/2 of the White Book*** provides that:

"There are two distinct, though related, circumstances in which an action may be dismissed for want of prosecution, namely (a) when a party has been guilty of intentional and contumelious default and (b) where there has been inordinate and inexcusable delay in the prosecution of the action. That contumelious default by this is meant deliberate default in compliance with a peremptory order of the court or conduct amounting to an abuse of the process of the Court. A peremptory order is one which makes clear to the other party, either from its terms or from the circumstances in which it was made, that exact compliance with no further argument, is required by the court within a stated time and indicating expressly or by implication that default will incur serious consequences. The best practical form of peremptory order is the "unless order". this is in the following or similar effect that "unless the plaintiff by 4p.m on February 28, 1997 has set the action for trial the action be

dismissed with costs. The justification for this apparently draconian jurisdiction is the principle that "orders are made to be complied with and not ignored".

In these circumstances, it is usually fair to conclude that a party who persists in default has no confidence in the merits of his case or has lost the desire to pursue.

4.9 Counsel submitted that the order dated 24th November, 2023 issued by Justice Wina was a peremptory order. That it clearly stipulated that the Plaintiff was required to furnish further and better particulars within seven days. That the terms of the order explicitly indicated that failure to comply would result in the striking out of the specified paragraphs which are central to the Plaintiff's cause of action.

4.10 In conclusion it was submitted that in the interest of justice and to uphold the integrity of the Court's orders, it is imperative that this action be dismissed for want of prosecution. That the principle that orders are made to be complied with and not ignored must be upheld to maintain the sanctity and efficacy of judicial proceedings. That by dismissing the Plaintiff's claim, this Court will reaffirm that compliance with its orders is not optional but obligatory, ensuring that the wheels of justice continue to turn smoothly and effectively.

5.0 OPPOSITION

5.1 The Plaintiff did not file any opposition. According to the affidavit of service on record filed on the 13th August 2024 deposed by Jonathan Muloshi, the legal clerk in the Defendant's advocates firm, the Plaintiff were on the 23rd July, 2024 served with an affidavit of summons for an order of dismissing the action for failure to furnish further and better particulars and skeleton arguments. Furthermore, the Plaintiff's advocates on the 12th August, 2024 were served a notice of hearing.

6.0 HEARING IN COURT

6.1 At the hearing of this matter, only learned counsel for the defendant was present. She relied on the affidavit in support and skeleton arguments filed into Court and repeated the content in her brief oral submissions.

7.0 ANALYSIS AND THE DECISION OF THIS COURT

7.1 I have carefully considered the application before me. In this application, counsel for the Defendant has basically urged this Court to dismiss the matter on the ground that the Plaintiff has failed to comply with the Orders of further and better particulars issued by my learned sister justice Wina who had conduct of this matter before re-allocation of this

matter before me. The said order dated 24th November, 2021 is reproduced hereunder as follows:

“IT IS HEREBY ORDERED AND DIRECTED that the application for an order for further and better particulars IS NOW AND HEREBY GRANTED.

AND THAT FURTHER that the paragraphs relating to the particulars sought to be struck off the statement of claim, these include paragraphs 3, 4 and 5 as well as claims i, ii, iii, iv and v, if the plaintiff fails to deliver and furnish the further and better particulars within 7 days from the date of this Order”.

7.2 I have carefully considered the above order which the Defendant allege have not been complied with by the Plaintiff. I have noticed that my learned sister specifically stated that:

“Paragraphs relating to the particulars sought to be struck off the statement of claim, include paragraphs 3, 4 and 5 as well as claims i, ii, iii, iv and v, if the plaintiff fails to deliver and furnish the further and better particulars within 7 days from the date of this Order”.

The Plaintiff was directed to furnish the Defendant with further and better particulars within 7 days. Clearly, the Plaintiff has not complied with this Order of the Court.

7.3 It is my firm view that the Order directing the Plaintiff to furnish the Defendant with further and better particulars within 7 days was a peremptory order. A peremptory order is defined by the learned authors of Halsbury's Laws of England, 3rd edition, volume 37 paragraph 184 at page 104. The Supreme Court in the case of *Paul Judika v Attorney General and Another*³ simply described a peremptory order as:

“An order that prescribes unpleasant consequences unless a particular act is done in an order that requires a person to do an act within in the meaning of RSC, order 42 rule 2.

Rule 2 (1) requires that (subject to important exceptions mentioned in paragraph 7 below) such an order must make clear to the party against whom it is made the precise period within which the act is to be done, failure to which the unpleasant consequences are to follow and is usually called an unless order. To comply with rule 2 (1) such orders either (a) specify the time after service of the order within which the act is to be done or (b) specify some other time for this purpose.

Accordingly, an unless order should be worded either: (a) unless within fourteen days of service of this order, the defendant serves his list of documents the defence be struck out and judgment entered for the plaintiff without costs (or as may be)”.

7.4 In view of the above guidance, the order of further and better particulars dated 24th November, 2021 set out what would happen in the case of a breach of the same order. The consequence was that paragraphs 3, 4 and 5 as well as claims i, ii, iii, iv and v were to be struck out.

7.5 I have no hesitation in holding that paragraphs 3, 4 and 5 as well as claims i, ii, iii, iv and v of the statement of claim are hereby struck out. The Supreme Court in the case of **Bank of Zambia as Liquidator of Credit Africa Bank Limited in Liquidation v AL Shama Building Materials Company⁴** citing Romer, LJ, in the case of **Hadkinson V Hadkinson** where he said that:

“It is the plain an unqualified obligation of every person against or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

7.6 Having struck out the Plaintiff’s claims in the statement of claim numbered i, ii, iii, iv and v, the net effect is that there is no claim against the Defendant. This matter is hereby dismissed for failure to disclose a cause of action against the Defendant. I further award cost of this application to the Defendant.

7.7 Leave to appeal to the Court of Appeal is hereby granted.

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


G.C. CHAWATAMA
HIGH COURT JUDGE