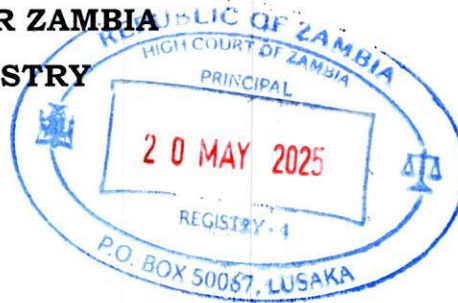


IN THE HIGH COURT FOR ZAMBIA

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



2023/HP/1792

BETWEEN:

ENGINE CENTER ZAMBIA LIMITED

PLAINTIFF

AND

GOD PROVIDERS CAR SALES ENTERPRISES LIMITED

1ST DEFENDANT

THE ATTORNEY GENERAL

2ND DEFENDANT

BEFORE HON. JUSTICE E. P. MWIKISA

For the Plaintiff: Mr. J. Kapila- Mesdames TMB Advocates.
For the 1st Defendant: Mr. L. Phiri- Messrs M.C. Phiri and Associates. Mr C. Chandano of D Findlay & Associates
For the 2nd Defendant: Ms. L. Chibesakunda- The Attorney General Chambers.

RULING

Cases referred to:

- 1) *New Plast Industries vs. Commissioner of Lands and Attorney General* 2001 ZR 51
- 2) *Societe Nathnale Des Chemis De Pur Congo (SNCC) vs. Joseph Nonde Kakonde* 2013 ZR 51
- 3) *Mareen vs. Dawson Bentley and Co Ltd* (1961) 2 QB 135
- 4) *Corpus Legal Practitioners vs. Mwanandani Holdings Limited* SCZ judgment No. 50 of 2014.
- 5) *Bank of Zambia vs. Tembo and Others* 2002 ZR 103

- 6) *Zimba Jane Ndelemani Musanya (co-administrator of the estate of Newton Bwalya Musanya) vs. Musanya Henry Chola (co-administrator of the estate of Newton Bwalya Musanya) 2012 Vol.1 ZR*
- 7) *Chick Maters Limited vs. Investrust Bank Plc SCZ/8/271/2014*
- 8) *Development Bank of Zambia vs. Sunvest Limited and Another SCZ judgment No. 3 of 1997*
- 9) *African Banking Corporation vs. Mubende Country Lodge*
- 10) *Thomson Phiri vs. Toyota Zambia Limited Appeal No.31/2022*
- 11) *Philip Mutantika and Mulyata Sheal S vs. Kenneth Chipungu SCZ judgment No. 13 of 2014*
- 12) *Gift Luyako Chilombo v Biton Manje Hameleke Appeal No. 2 of 2016*
- 13) *Leopold Walford (Z) Limited v Unifreight 1985 ZR 203*
- 14) *Gabriel Muyinda vs. Menox Property Merchants 2020/HPC/0551*
- 15) *Access Bank Zambia Limited vs. Attorney General CCZ judgment No. 21 of 2019*
- 16) *NFC Mining PLC. vs. Techro Zambia Limited*

Legislation referred to:

- 1) *High Court Act, Chapter 27 of the Laws of Zambia*
- 2) *Rules of the Supreme Court, Whitebook, 1999 Edition.*

Other works referred to:

- 1) *Halsbury laws of England volume 16, 4th Edition*
- 2) *Blacks Law dictionary 8th edition*

1. Introduction and Background.

- 1.1 On 14th November 2023, the 1st Defendant filed a notice of motion to raise preliminary issues against the Plaintiff's cause of action against the Defendants. The notice of motion was pursuant to **Order 30 Rule 14** of the High Court Rules, Chapter 27 of the Laws of Zambia as read

together with **Order 33 Rule 3 and Order 14A Rule 1** of the Rules of the Supreme Court of England, 1999 edition.

1.2 The preliminary issues raised for determination are the following;

- 1) Whether this action is not a nullity “ab initio” and or incompetent for the Plaintiff not having issued a demand letter to the 1st Defendant prior to commencement of the action and having filed the action without service of and accompanied by a letter of demand contrary to the requirement of **Order 6 Rule 1(d)** of the High Court Rules, Chapter 27 of the Laws of Zambia.
- 2) Whether the Plaintiff’s case is not res judicata as the same issues affecting the same parties are already adjudicated upon under cause No. 2013/HP/0733 and final judgment rendered on 25th July 2023.
- 3) Whether the Plaintiff’s case is not statute barred as the cause of action arose between 2006 and 2009 and twelve (12) years has since elapsed within which the Plaintiff was entitled to commence the action.

4) Whether the Plaintiff's conduct of commencing a fresh action without disclosing material facts relating to cause No. 2013/HP/0733 does not amount to abuse of Court process and whether the statement of claim under cause No. 2023/HP/1792 should not be struck out for containing offensive and inadmissible contents and being an abuse of Court process.

5) Whether based on the above issues in (1) to (4), this action must not be wholly dismissed.

1.3 The notice of motion to raise preliminary issues was accompanied by an affidavit in support and skeleton arguments.

1.4 The Plaintiff contested the application and filed an affidavit in opposition and skeleton arguments on 5th July 2024.

1.5 The 2nd Defendant contested the application and filed an affidavit in opposition and skeleton arguments on 7th October 2024.

1.6 The 1st Defendant's affidavit in reply was filed on 16th July 2024.

2. Background.

2.1 The Plaintiff commenced action against the Defendants on 10th October 2023 by way of a Writ of Summons and a Statement of Claim. The claims advanced against the Defendants are as follows;

- 1) An order for the forthwith cancellation or nullification by the 2nd Defendant of the Certificate of Title No. 90364 obtained by the 1st Defendant fraudulently;
- 2) An order compelling the 2nd Defendant for the forthwith issuance of the offer in favour of the Plaintiff in respect of the property;
- 3) Further or alternatively an order for forthwith repayment of the sums paid by the Plaintiff to the squatters on the property as compensation at the issuance and instigation of the 2nd Defendant;
- 4) Interest on (1) above at the current Bank of Zambia lending rate;
- 5) Costs of the action herein and
- 6) Any other relief the Court may deem fit under the circumstances hereof.

3. The 1st Defendant's Affidavit in support.

3.1 It was deposed by one Mr. Kabulika Banda, the director and shareholder of the 1st Defendant.

3.2 It was deposed that the Plaintiff did not write any letter of demand to the 1st Defendant which could have given notice of the impending litigation against the 1st Defendant. That he has been advised by his advocates that an omission of a letter of demand and not filing it together with the Originating process is contrary to the rules of the Court and it is fatal.

3.3 That the matter herein was lately before the High Court and there is a judgment to that effect involving the same parties as they appear in this cause and dealing with the same subject matter, thus, this matter is res judicata. A copy of the said judgment was marked and exhibited as "KB1".

3.4 He deposed further that the reliefs endorsed on the Writ of Summons and Statement of Claim of the matter herein are same as those earlier endorsed under cause No. 2013/HP/0733 which matter was duly adjudicated upon

and final judgment rendered. A copy of the statement of claim was marked and exhibited as “KB2”.

3.5 It was also deposed that the matter is statute barred as demonstrated in the Plaintiff’s Statement of Claim as the cause of action arose between 2006 and 2009, thus twelve (12) years has elapsed. That the Plaintiff is abusing the Court process as it has failed to disclose the similar or same matter which was before the High Court under cause No. 2013/HP/0733.

3.6 Furthermore, it was stated that the Plaintiff has failed to disclose to the Court that it’s certificate of title No. 98823 for Stand No. 37055 was cancelled by the High Court under cause No. 2013/HP/0733 in the judgment dated 25/07/23. That the issue with regards to enforcement notice by the Lusaka City Council was dealt with, as Lusaka City Council withdrew the enforcement notice, compensated the 1st Defendant and commenced contempt proceedings against the Plaintiff. These documents were exhibited and marked as “KB4” and “KB5”.

4. The 1st Defendant's Skeleton Arguments.

4.1 Counsel addressed the preliminary issues as raised in the notice in support of the application herein. With regards to the action being nullity "ab initio" as the Plaintiff did not issue a demand letter. Counsel submitted that it is a mandatory requirement that a letter of demand is written and served on the intended Defendants and the letter of demand should be filed together with the Writ of Summons and Statement of Claim.

4.2 Counsel argued that the Plaintiff's action has been filed in violation of **Order 6 Rule 1 and 2** of the High Court Rules, thus, it is an incompetent entry before this Court. To fortify this submission, Counsel relied on the case of **New Plast Industries vs. Commissioner of Lands and Attorney General**¹ where it was stated that;

"Where a matter has been wrongfully commenced, the Court has no jurisdiction to make any declarations. By commencing the Court process without writing a demand letter, the Plaintiff's cause is incompetent."

4.3 With regards to the issue of the Plaintiff's action being res judicata. Counsel relied on the definition of res judicata as defined by the learner authors of **Halsbury laws of England volume 16, 4th edition** and **Blacks Law dictionary 8th edition** which states as follows;

“An issue that has been definitively settled by judicial decision (judgment). An affirmative defence barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit. The three essential elements are; an earlier decision on the issue, a final judgment on the issue and the involvement of the same parties or parties privity with the original parties”.

4.4 To reinforce the definition above-stated, counsel argued that the Plaintiff's matter is res judicata as firstly, under cause No. 2013/HP/0733 the parties to that suit are the same with the parties herein. Secondly, the subject matter under cause No. 2013/HP/0733 was with regards to stand No. 37055 and stand No. 14177, Lusaka which is the subject matter herein. Thirdly, a judgment was rendered under cause No. 2013/HP/0733.

4.5 Furthermore, it was counsel's submission that the principle of res judicata applies to the matter herein as the cause of action in cause No. 2013/HP/0733 and the present case are the same as they emanated from a dispute on the ownership of Stand No. 37055 and Stand No. 14177 of Lusaka.

4.6 In a nutshell, counsel argued that there was no need for re-litigation of the matter by the Plaintiff rather, an appeal would have been more appropriate. To reinforce this position, counsel relied on several cases amongst others was **Societe Nathnale Des Chemis De Pur Congo (SNCC) vs. Joseph Nonde Kakonde²** where the Supreme Court held that;

“There must be an end to litigation. The purpose of the doctrine of res judicata is to support the good administration of justice in the interest of both the public and litigants by preventing abusive and duplicative litigation”.

4.7 With regards to the Plaintiff's case being statute barred, counsel submitted that the cause of action arose between 2006 and 2009, thus according to **Section 4(3)** of the **Law**

Reform (Limitation of Actions) Act, the twelve (12) years period provided by law has elapsed. To reinforce this position, counsel relied on the case of **Mareen vs. Dawson Bentley and Co Ltd**³ where it was stated that;

“Time runs from the day following the day on which the cause of action arose as parts of a day are ignored.”

4.8 With regards to the Plaintiff’s case being an abuse of court process. Counsel argued that the Plaintiff has been fully aware of the judgment rendered under cause No. 2013/HP/0733 which judgment cancelled the certificate of title for Stand No. 37055 Lusaka, which now does not exist.

4.9 Furthermore, it was argued by counsel that the Plaintiff has not observed **Oder 18 Rule 19 (1)** of the Rules of the Supreme Court as the Plaintiff has cited the law and made prejudicial statement towards the 1st Defendant which are embarrassing and not admissible, thus, the Statement of Claim should be struck off.

5. The Plaintiff's Affidavit in Opposition.

5.1 It was deposed by one Mr. Eddie Kapalu, a manager in the Plaintiff's company.

5.2 He deposed that the Plaintiff did issue a letter of demand dated 2nd August 2023 to the 2nd Defendant demanding them to cancel or nullify the certificate of title No. 90364 obtained by the 1st Defendant fraudulently and allocation of the said property to the Plaintiff. That the reason why the demand letter was served on the 2nd Defendant is simply because they have the mandate to cancel or nullify a certificate of title in the Republic of Zambia.

5.3 Furthermore, it was stated as advised by their counsel, no relief is sought against the 1st Defendant save for the fact that the 1st Defendant is likely to be affected by the outcome of the proceedings in the event the certificate of title is cancelled or nullified.

5.4 That under cause No. 2023/HP/0733, the Honorable Court did not adjudicate upon or determine any subject matter or relief relating to the subject matter or reliefs in the action herein.

- 5.5 It was deposed that the reliefs in the matter herein are not the same as those under cause No. 2013/HP/0733 and that the Court only adjudicated upon the 1st Defendant's counterclaim as the entire action was dismissed.
- 5.6 That the reliefs regarding the cancellation of the certificate of title No. 90364 and subsequent allocation of the said property No. 14177, Lusaka, have never been adjudicated or determined by any Court.
- 5.7 He stated that the matter herein is not statute-barred as this case did not arise between 2006 and 2009, but arose on 25th July 2023, following the delivery of the judgment declaring the certificate of title No. 90364 fraudulent.
- 5.8 Furthermore, he deposed that the Plaintiff has merely cited the law under which the parties are established. That the Plaintiff has merely pleaded a factual matter relating to the factual issue of the 1st Defendant's director being convicted of a criminal offence of fraud.
- 5.9 That the Plaintiff has not raised and does not seek any relief relating to the alleged issues of encroachment, and the issues raised by the 1st Defendant are wholly otiose.

6. The Skeleton Arguments in Support of the Opposition

6.1 Concerning a demand letter, counsel argued that the action herein is not incompetent for the alleged failure to issue a demand letter. Counsel argued that a demand letter was issued to the 2nd Defendant as the demands for the nullification and cancellation of the certificate of title could only be addressed by the 2nd Defendant. That there is no relief sought against the 1st Defendant to warrant a letter of demand to be issued to them, as the 2nd Defendant is the only one with the mandate to address the reliefs sought.

6.2 That the 1st Defendant has merely been joined to the action on the basis that it can likely be affected by the outcome of the proceedings. To reinforce this position, Counsel relied on the case of **Corpus Legal Practitioners vs. Mwanandani Holdings Limited**⁴ and argued that the proper and appropriate party to effect a demand letter was the 2nd Defendant which the service of the letter was done.

- 6.3 Concerning the issue of res judicata, counsel submitted that the subject matter is not the same as the subject matter under cause No. 2013/HP/0733. Counsel argued that the subject matter under cause No. 2013/HP/0733 dealt with the 1st Defendant's counterclaim.
- 6.4 Counsel argued that for a relief of res judicata to be granted, one has to demonstrate to the Honorable Court the issue in controversy, the parties are the same and a Court of competent jurisdiction adjudicated upon all the matters in controversy. This position was fortified with the case of **Bank of Zambia vs. Tembo and Others**⁵.
- 6.5 Furthermore, it was submitted that the issues in controversy in the action herein are wholly distinct from the issues under cause No. 2013/HP/0733
- 6.6 With regards the action being statute barred, counsel submitted that the cause of action did not arise between 2006 and 2009, as alleged but arose on 25th July 2023, after the delivery of judgment declaring the certificate of title No. 90364 fraudulent and further that the property

No. 14177 Lusaka, did not belong to either the Plaintiff or the 1st Defendant.

6.7 Counsel argued that assuming the time started running in 2006 or 2009, as alleged, there is no limitation of actions with respect to a matter relating to fraud and to fortify this argument, the case of **Zimba Jane Ndelemani Musanya (co-administrator of the estate of Newton Bwalya Musanya) vs. Musanya Henry Chola (co-administrator of the estate of Newton Bwalya Musanya)**⁶ was relied on.

6.8 Concerning the action amounting to abuse of Court process, counsel argued that the 1st Defendant has not shown that the parties to this action, litigated the present cause of action relating to cancellation or nullification by the 2nd Defendant of the certificate of title No. 90364 obtained by the 1st Defendant fraudulently and allocation of Stand No. 14177, Lusaka, to the Plaintiff respectively. That the 1st Defendant has not proved that there is an abuse of Court process due to the nature of the

proceedings that have been commenced by the Plaintiff in this matter, thus, the matter cannot be said to be an abuse of Court process.

6.9 In conclusion, counsel argued that the matter ought not be wholly dismissed as the 1st Defendant has failed to demonstrate that the matter should be dismissed as the grounds relied upon are wholly untenable.

7. The 2nd Defendant's Affidavit in Opposition to the Affidavit in Support.

7.1 It was deposed by one Mr. Love Godwin Mumba, a surveyor in the employ of the Ministry of Lands.

7.2 It was deposed that the matter that was before the High Court was not dealing with the cancellation of the certificate of title rather it was cancelled for re-issuing purposes and to enable boundary clarification as the certificate of title issued to the 1st Defendant was given by mistake, as it contained wrong survey diagrams.

7.3 Furthermore, the matter under cause No.2013/HP/0733 was commenced between 2006-2009, and judgment was delivered on 25th July 2023, thus, the matter cannot be

said to be statute-barred as a claim for title for land expires after twelve (12) years.

8. Skeleton Arguments in support.

8.1 With regards to the issue of the demand letter, counsel defined a demand letter according to **Black's Law Dictionary** and cited **Order 6 Rule 1** of the High Court Rules to fortify the position that a letter of demand should be served upon the intended Defendants before commencement of Court process. That it should be filed together with all other documents.

8.2 Counsel submitted that an omission of serving a demand letter renders the matter incurable as the same cannot be done retrospectively. Thus, counsel argued that the matter was irregularly commenced due to non-service of a letter of demand on the Defendant, rendering it null ab initio.

8.3 With regards to res judicata, counsel relied on **Black Law's dictionary** and the case of **Chick Maters Limited vs. Investrust Bank Plc**⁷ and submitted that the Court did not pronounce itself on the certificate of title relating to

property No. 14177, thus, counsel was of the view that the matter is rightly before this Court.

8.4 With regards to the case being statute barred, counsel submitted as per **Section 2 (1) (a)** of the Limitation Act provides for limitation period on commencement or continuation of a matter period is six years from the date the cause of action accrued. Thus, counsel was of the view that the matter herein commenced around 2006 and the cause of action only began to accrue when the judgment was delivered on 25th July 2023, therefore, the six years has not elapsed and the action is not statute barred.

8.5 With regards to the matter being an abuse of Court process, counsel submitted that the re-litigation of the matter herein is not an abuse of Court process and this was fortified with the case of **Development Bank of Zambia vs. Sunvest Limited and Another**⁸ where the Supreme Court was of the view;

“Multiplicity of actions is to be deprecated. Quoting from the whitebook (1999 edition), order 18/19/19, counsel submitted that it is an abuse of the process of the Court and contrary to public

policy for a party to re-litigate an issue that has been tried and decided by a court of law.”

8.6 With regards to dismissing the whole action, counsel argued that the certificate of title relating to stand No. 30255 be cancelled for fraud or mistake in accordance with the provisions of Section 33 of the Lands and Deeds Registry Act.

8.7 In summary, counsel submitted that the questions of law are indeed suitable for determination without a full trial and that the whole matter be dismissed in favor of the 2nd Defendant.

9. The 1st Defendant’s Reply.

9.1 It was stated that the Plaintiff’s affidavit in opposition is a contradiction in many ways, that he 1st Defendant should have received the demand letter as it is the title holder of the certificate of title No. 90364.

9.2 The contents of the Plaintiff’s affidavit in opposition are misleading as the Plaintiff raised fraud issues in the 2013/HP/0733. These issues were adjudicated upon and

determined, thus, the Plaintiff ought to have appealed and not commence a fresh action

9.3 Furthermore, the 2013/HP/0733 cause squarely dealt with the same reliefs of fraud or mistake pleaded by both the Plaintiff and the Defendant of plots No. 37055 and 14177 Kafue Road, Lusaka, resulting in the cancellation of the Plaintiff's certificate of title to stand No. 37055. The judgment referred to by the Plaintiff only ordered cancellation of the Plaintiff's certificate of title No. 98823 relating to stand No. 37055 Lusaka, as stand No. 14177 Lusaka belongs to the 1st Defendant.

10. Hearing.

10.1 The application was heard on 8th October 2024 and Counsel for all parties were present.

10.2 Mr. Phiri, Counsel for the 1st Defendant stated that he would rely on the documents filed in support of his application and also an affidavit in reply. I will not recast the oral submissions as they have already been submitted in the skeleton arguments.

10.3 Ms. Chibesakunda, counsel for the 2nd Defendant also stated that she would rely on the documents filed in opposing the application.

10.4 Mr. Kapita, counsel for the Plaintiff also stated that he would rely on the documents filed in opposing the application. I will not recast the oral submissions as they have already been submitted in the skeleton arguments

11. Consideration and Determination.

11.1 I have considered all the evidence and the submissions by all parties.

11.2 It is trite that **Order 33 Rule 3** of the Rules of the Supreme Court of England provides for determination of a preliminary point of law at any stage of the proceedings, including before trial and provides as follows;

“The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated”

- 11.3 The supreme court in the case of **African Banking Corporation vs. Mubende Country Lodge**⁹ stated that **Order 33 Rule 3** should be invoked together with the mandatory requirements of **Order 14A** of the Rules of the Supreme Court of England.
- 11.4 It is common cause that this case was commenced by way of Writ of Summons. The 1st Defendant entered appearance and filed defence on 23rd October 2023, thus, adhering to the procedural requirement as guided by the case cited above. Thus, the notice to raise preliminary issues is properly before this Court.
- 11.5 The first issue for consideration is whether the Plaintiff's action is incompetent as the Plaintiff failed to adhere to **Order 6 Rule 1(d)** of the High Court Rules with regards to a demand letter.
- 11.6 **Order 6 Rule 1(d)** of the High Court Rules, Chapter 27 of the Laws of Zambia, as amended by Statutory Instrument No.58, of 2020, provides for the commencement of matters in the High Court as follows:-

“Except as otherwise provided by any written law or these Rules, an action in the High Court shall be commenced, in writing or electronically by writ of summons endorsed and accompanied by-

- (a) a statement of claim;**
- (b) list and description of documents to be relied on at trial;**
- (c) list of witnesses to be called by the plaintiff at trial; and**
- (d) letter of demand whose receipt shall be acknowledged by the defendant or an affidavit of service attesting to the service of the letter of demand, which shall set out the claim and circumstances surrounding the claim in detail.”**

11.7 It is clear from the foregoing provision that a Plaintiff who commences an action by way of a Writ of Summons must file a letter of demand together with the originating process. This position was confirmed in the case of **Thomson Phiri vs. Toyota Zambia Limited**¹⁰ wherein it was stated as follows;

“It is patent that in Order 6 Rule I (d) of the HCRs, a letter of demand must be one of the documents to be attached to the Writ of Summons. This is in order to help the Court ascertain what the action instituted encompasses as well as alert the Defendant what action he would face if the matter ends up in court.”

11.8 Sub rule (2) of the above-mentioned Order goes on to state that;

“A writ of summons which is not accompanied by the documents under sub-rule (1) shall not be accepted.”

11.9 As guided by the law above-mentioned, it imposes a penalty for breach in that if a Writ of Summons is not accompanied by the documents highlighted under sub rule (1), then the Writ of Summons shall not be accepted.

11.10 I am of the considered view that the above provision is couched in mandatory terms as it uses the word "shall". This in my considered view means that it is not in the discretion of this Court to either accept or not accept a Writ of Summons not accompanied by the documents mentioned in the said order, but it is rather mandatory. This position is fortified by the case of **Philip Mutantika and Mulyata Sheal S vs. Kenneth Chipungu**¹¹ wherein the Supreme Court stated;

“Both provisions are couched in a mandatory manner as each uses the word 'shall'. The two Rules are therefore not regulatory as they do not at all give the Court discretionary power.”

11.11 I am guided by the case of **Gift Luyako Chilombo v Biton Manje Hameleke**¹² wherein the Constitutional Court held that;

“In its ordinary usage, “shall” is a word of command and is normally given a compulsory meaning because it is intended to show obligation and is generally mandatory.”

11.12 I am also alive to the general position that the High Court Rules are regulatory, and the Supreme Court has guided in several cases that a breach of a regulatory rule is curable. One such example is the holding of the Supreme Court in the case of **Leopold Walford (Z) Limited v Unifreight**¹³ wherein the Court stated that:

“There has been an alternative argument put forward by Mr. Kawanambulu, namely, that non-compliance with Order VII, r. (1)R14 (a) is not fatal because the rule is merely regulatory or directory. In accepting this argument, we wish to add that, where there has been a breach of a regulatory rule, such breach will not always be fatal, as much will depend upon the nature of the breach and the stage of the proceedings reached. This, therefore, means that, as a general rule, breach of a regulatory rule is curable.”

11.13 In the case of **Gabriel Muyinda vs. Menox Property**

Merchants¹⁴ Honourable Lady Justice Dr. W.S. Mwenda

had this to say concerning the need for a Plaintiff to comply with **Order 6 1 (d)** of the High Court Rules and whether the same was fatal;

*“It seems to me that the new law, as amended, is meant to enhance the need for a plaintiff to define the parameters of their case and what the defendant should meet, at the earliest possible time, to allow the defendant to prepare for his case as well. In my view, therefore, a breach that would warrant a cure to be ordered would be one that touches, for instance, on the substance and form of the documents filed before a court, such as was the case in **Leopold Walford (Z) Limited vs. Unifreight** where the plaintiff did not endorse the plaintiffs address on the Writ as required by **Order 7, Rule (1) (a)** of the High Court Rules. The same would not be the case as regards the breach in casu.”*

11.14 Similarly, I am of the considered view that failure to file a letter of demand together with the originating process is more than a breach that would simply warrant a cure of the defect. I find that the defect goes to the root of the entire proceedings. This position was made very clear by the Supreme Court in the case of **Access Bank Zambia**

Limited vs. Attorney General¹⁵, where the court stated that;

“Court rules are an integral part of the administration of justice in this jurisdiction. The importance of court rules was pre-eminently pronounced in the case of NFC Mining PLC. vs. Techro Zambia Limited¹⁶, where the Supreme Court stated that rules of court are intended to assist in the proper and orderly administration of justice.”

11.15 Premised on the foregoing, a perusal of the record shows that the Plaintiff adhered to **Order 6 Rule 1(d)** as there is a demand letter dated 10th October 2023. However, the demand letter was only addressed to the 2nd Defendant. The Plaintiff argues that the rationale behind this is simply because the 2nd Defendant has the mandate to cancel or nullify a certificate of title. In my view, this is not justification enough for the Plaintiff’s failure to adhere to the Rules of the law because as admitted by the Plaintiff, the 1st Defendant is likely to be affected by the outcome of the proceedings in the event the certificate of title is cancelled or nullified. For this reason, the Plaintiff ought

to have issued and served the 1st Defendant with a demand letter.

11.16 I am of the considered view that the law is clear concerning serving or issuing a demand letter before the commencement of an action. The rationale behind making such a law is to bring to the Defendant's attention before a matter is commenced the substance of the Plaintiff's claims against the Defendant and let the Defendant know that if he does not meet the Plaintiff's demands, the Plaintiff would commence court proceedings against the Defendant based on the said claims.

11.17 I consequently, in line with **Order 6 Rule 1(2)**, dismiss the matter herein for non-compliance with **Order 6 Rule 1(d)** of the High Court Rules, Chapter 27 of the Laws of Zambia. It is imperative to underscore the importance of adhering to Court rules, as they are integral to the fair and impartial administration of justice.

11.18 Regarding the other preliminary issues raised, I find it unnecessary to address them, as the matter at hand has been dismissed.

12. Conclusion

12.1 Premised on the above findings, the matter is hereby dismissed.

Leave to appeal is hereby granted.

Dated at Lusaka this.....20th.....day ofMay.....2025



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ELITA PHIRI MWIKISA
HIGH COURT JUDGE