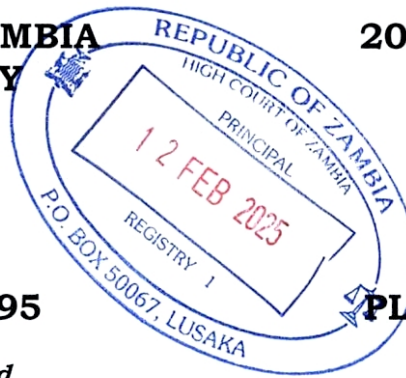


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2024/HP/0688



BETWEEN:

CHABO KYALUSANZA AND 95
*(Suing as Ward Councillor of Libala
South Community on his own behalf and
On behalf of other local residents of Libala South)*

PLAINTIFFS

AND

**HORIZON PROPERTIES LIMITED
THE COMMISSIONER OF LANDS
LUSAKA CITY COUNCIL
DAUSEN SINKALA**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT**

Before: ***The Hon. Mr. Justice Charles Zulu***

For the Plaintiff: Mr. F. Mwauluka, Legal Aid Counsel, Legal Aid Board.

For the 1st Defendant: Mrs. N. P. Nkuninka, Messrs Milner and Paul Legal Practitioners.

The 2nd to 4th Defendants: No appearance

R U L I N G

Case referred to:

1. Access Bank (Zambia) Limited V Group Five/ ZCON Business Park Joint Venture(SCZ /8/54/2014).

Legislation referred to:

1. The High Court Rules Chapter 27 of the Laws of Zambia.

1.0 INTRODUCTION

1.1 This ruling is in respect of an application by the Plaintiff dated August 2, 2024, for an order to file a reply, and a defence to the

counter-claim out of time. The application was made pursuant to Order XIX rule 2 of the **High Court Rules Chapter 27 of the Laws of Zambia.**

2.0 BACKGROUND

2.1 On April 5, 2023, the Plaintiff, Chabo Kyalusanza suing as a Ward Councilor for Libala South, Lusaka, and on behalf of 95 others, took out a writ of summons and statement of claim against the Defendants, Horizon Properties Limited, the Commissioner of Lands, Lusaka City Council and Dausen Sinkala.

2.2 The Plaintiffs' action is that, the allocation of the subject land, Stand No. LS/24611, off Kasama Road, Libala South, Lusaka, to the fourth Defendant, Dausen Sinkala and later on, its assignment to the first Defendant, Horizon Properties Limited was questionable and illegal. It was alleged that the land was set apart for the benefit of the Libala South Community.

2.3 The first Defendant entered appearance and defence on June 17, 2024, wherein he denied the Plaintiff's claim and averred that he purchased Stand No. 24611, Lusaka, from the fourth Defendant, the registered owner of the said property.

2.4. He counter claimed as follows:

- 2.4.1 ***(1) an order of declaration that the 1st Defendant is the legitimate owner of Stand No. 24 611, Lusaka;***
(2) an order and/or declaration that the 1st Defendant is entitled to quiet enjoyment and possession of Stand No. 24611, Lusaka;

(3) an order of injunction restraining the Plaintiffs whether by themselves, their agents or servants or otherwise how so ever from interfering with the 1st Defendant's quiet possession and ownership of Stand No. 24611, Lusaka; and

(4) in the alternative, if the claim by the Plaintiffs is upheld, an order for compensation should be granted to the 1ST Defendant, against the 2nd Defendant, 3rd Defendant and 4th Defendant.

3.0 PARTIES' RESPECTIVE AFFIDAVIT EVIDENCE

3.1 An affidavit in support was deposed to by Chabo Kyalusanza, the Plaintiff herein. He stated that, he was unable to comply with the order for directions, to file his reply and defence to counter-claim by July 9, 2024 because, his lawyer was unwell and had taken sick leave.

3.2 An affidavit in opposition was deposed to by Saul Kiwempindi, the Chief Executive Officer in the first Defendant Company. The gist of the opposition was that the Plaintiff had not proffered evidence to show that his lawyer was unwell.

3.3 It was further stated that the Legal Aid Board given the size of the institution, with numerous advocates, it was inexcusable and unjustifiable that the alleged illness of one advocate should delay progress of the matter.

4.0 THE PARTIES' ARGUMENTS

4.1 The Plaintiff's Counsel argued that the Court was clothed with sufficient jurisdiction to grant the application sought.

4.2 In opposition, the first Defendant's Counsel contended that in as much as the position of the law was that matters should be heard

on their merits, the law equally guided that this should not be used as a scapegoat for parties to avoid adherence to court procedures and timelines. The memorable case of **Access Bank (Zambia) Limited V Group Five/ ZCON Business Park Joint Venture¹** was cited.

- 4.3 It was contended that the Plaintiff neglected to comply with the order for directions, and that the first Defendant should not be prejudiced by the Plaintiff's blatant disregard to obey the order for directions.
- 4.4 It was also argued that the Plaintiff failed to provide proof of his advocate being unwell, and that even in the event that the said advocate was unwell, the Legal Aid Board was a big institution, as such the file could have been re-allocated to a different advocate within the institution in the interim, so as not to prejudice the Defendants.
- 4.5 And in her *viva voce* submissions, Ms. Nkunika reiterated her earlier position. He urged the Court to take note that, the parties had since filed their respective bundles of documents, scheduling briefs and witness statements. It was thus argued that if the application was allowed, the first Defendant would have to redo its documents and re-file its bundles of documents
- 4.6 In reply, the Plaintiff's Counsel, Mr. Mwauluka, contended that the Defendants would not suffer any prejudice, if the application was granted, because the reply would not change any facts stated in the first Defendants' witness statement.

4.7 He concluded by stating that, the due administration of justice should not be hindered by procedural technicalities. I was urged to grant the application sought.

5.0 DETERMINATION

5.1 I have carefully considered the parties' affidavit evidence and the respective arguments for and against the application. It is imperative to recount events leading to the present application. The order for directions was issued on June 18, 2024. The Plaintiff was ordered to file his reply on July 9, 2024 and this was not done.

5.2 It should further be noted that the parties were directed to file their bundles of pleadings and documents on July 26, 2024, and their scheduling briefs and witness statements on August 8, 2024. On July 26, 2024 Plaintiff filed his bundle of documents and pleadings including his scheduling brief and witness statements. The first Defendant as well filed its bundles of documents and pleadings on July 26, 2024 and filed its witness statements on August 8, 2024. While the third Defendant filed its bundles and witness statements on September 24, 2024.

5.3 The present application was filed on September 16, 2024 way after the first Defendant, had fully complied with the order for direction.

5.4 From the recount of events above, it is clear that the Plaintiff consciously abandoned the need to file his reply and defence to the counter-claim. And instead proceeded to file his bundles of

documents and witness statements. Inferably, this was indicative that the Plaintiff was ready to proceed to trial notwithstanding the fact that he did not file his reply and defence to the counter-claim.

5.5 The factors which are normally taken into account in deciding whether or not to grant an extension of time are: (i) the length of the delay, (ii) the reason for the delay, and (iii) the degree of prejudice to the other party if the application is granted. I should add that in the case of **Access Bank (Zambia) Limited v. Group Five/ZCON Business Park Joint Venture** (supra) the Supreme Court gave the following guidance:

5.5.1 ***This in our opinion, is what the ends of justice demand. Yet, justice also requires that this court, indeed all courts, must never provide succor to litigants and their counsel who exhibit scant respect for rules of procedure. Rules of procedure and timelines serve to make the process of adjudication fair, just, certain and even-handed. Under the guise of doing justice through hearing matters on their merit, courts cannot aid in the bending or circumventing of these rules and shifting goal posts, for while laxity in application of the rules may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. It is in the even-handed and dispassionate application of the rules that courts can give assurance that there is a clear method in which things should be done so that outcomes can be anticipated with a measure of confidence, certainty and clarity. This is regardless of the significance of the issues involved or questions to be tried***

5.5 I am disinclined to allow the application. Firstly, the reason given for the failure to comply with the order for directions is not satisfactory. Secondly, the Plaintiff consciously opted not to

file his reply and defence to the counter-claim. Perhaps the Plaintiff's solace was on account that the matter would still be determined on the merits, thus, the Plaintiff's statement of claim pitted against the first Defendant's defence and counter-claim.

5.6 Thirdly, the default to comply with the order for direction in this particular instance occurred on July 9, 2024, and the present application was only filed on September 16, 2024, after the first Defendant had fully complied with the order for direction. Relative to the circumstances herein, I reckon the delay was inordinate.

5.7 Fourthly, allowing the application will cause prejudice to the first Defendant granted the circumstances of the case. The parties have settled their bundles of documents and witness statements, and to allow the Plaintiff to reopen the pleadings after waiving the right to do so, would be prejudicial to the Defendants, in particular the first Defendant.

6.0 CONCLUSION

6.1 In the light of the foregoing, the Plaintiff's application is hereby dismissed with costs to the Defendants.

6.2 Leave to appeal is granted.

DATED THE 12TH DAY OF FEBRUARY 2024



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THE HON. MR. JUSTICE CHARLES ZULU