

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



2024/HP/1523

BETWEEN:

KABULONGA TENANTS ALLIANCE LIMITED**PLAINTIFF**

AND

**NATIONAL PENSION SCHEME AUTHORITY
STAFF PENSION SCHEME****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 18th
DAY OF FEBRUARY, 2025**

For the Plaintiff : Mr V.K Luswili and Ms Agness Lombe, Messrs Lennard
Tembo Legal Practitioners

For the Defendant : Mr B Stephen & Mr M. Chungu, Messrs Mwamba & Milan
Advocates

R U L I N G

CASES REFERRED TO:

1. ***Zambia National Holdings Limited v UNIP and the Attorney General SCZ No 3 of 1994***
2. ***NFC Africa Mining Plc v Techno Zambia Limited SCZ No 22 of 2009***
3. ***Thomson Phiri v Toyota Zambia Limited Appeal No 0031/2022***
4. ***Lukasu Properties Limited v African Banking Corporation Limited Appeal No 5 of 2023***
5. ***Moses Muteteka and another v Bliss Financial Services Limited Appeal No 188 of 2023***
6. ***State Bank of India v Mojan Marketing***

LEGISLATION REFERRED TO:

1. ***The Rules of the Supreme Court of England, 1965, 1999 Edition***

OTHER WORKS REFERRED TO:

1. ***Black's Law Dictionary, by Bryan A. Garner, Thomas Reuters, 2009***

1. INTRODUCTION

1.1 By an application that was filed pursuant to **Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition**, on 22nd November, 2024, the National Pension Scheme Authority Staff Pension Scheme, seeks the determination of the following questions:

- i. *Whether Kabulonga Tenants Alliance Limited has locus standi to bring this action in view of the fact that it is not party to or privy to the lease agreements which were signed with the individual tenants;*
- ii. *Whether the lack of locus standi divests this Court of jurisdiction to hear and determine this matter; and*
- iii. *Whether this action is properly before the Court in view of the fact that Kabulonga Tenants Alliance Limited did not serve a letter of demand on the National Pension Scheme Authority Staff Pension Scheme outlining its' claims against the said National Pension Scheme Authority Staff Pension Scheme prior to the commencement of this action?*

And that if the said questions be answered in the negative, then the action herein be dismissed and that Kabulonga Tenants Alliance Limited do pay the costs thereof, but if the questions be answered in the affirmative, then the Court proceeds to trial on all of Kabulonga Tenants Alliance Limited's claims.

1.2 The summons was supported by an affidavit and a List of Authorities and Skeleton Arguments in support.

- 1.3 In opposing the application, Kabulonga Tenants Alliance Limited filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 2nd December, 2024. An affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 9th December, 2024.

2. BACKGROUND

- 2.1 The background leading up to the application being filed, is that Kabulonga Tenants Alliance Limited commenced this matter on 25th October, 2024, by Writ of Summons which was accompanied by a statement of claim and the other requisite documents claiming:
- i. Specific performance;*
 - ii. Breach of contract;*
 - iii. An interim injunction against the National Pension Scheme Authority Staff Pension Scheme to restrain itself or any other person from bidding or selling Plot No F377a/15/B/2 Sable Road Kabulonga Lusaka and from conveying the said property to a third party until full and final determination of the matter, or further Court Order;*
 - iv. Costs.*
- 2.2 On the same date that the Writ of Summons was filed, Kabulonga Tenants Alliance Limited, filed an ex-parte application for an Order of injunction as prayed for in the Writ of Summons. I directed that the application for the

Order of injunction be heard interpartes, and I gave it a hearing date for 15th November, 2024.

2.3 On that date, Counsel for Kabulonga Tenants Alliance Limited applied for a very short adjournment, on the premise that the parties wished to settle the matter excuria. There was no opposition to the application by Counsel for the National Pension Scheme Authority Staff Pension Scheme, and the matter was adjourned to 2nd December, 2024, with directions being given to file the opposition and reply to the application on 22nd November, 2024 and 27th November, 2024, respectively.

2.4 The National Pension Scheme Authority Staff Pension Scheme entered appearance and filed its' defence on 22nd November, 2024, as well as the documents in opposition to the application for the application for the Order of injunction on the same date. It also filed the application, which is the subject of this Ruling.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR THE NATIONAL PENSION SCHEME AUTHORITY STAFF PENSION SCHEME

3.1 In submitting, Counsel for the National Pension Scheme Authority Staff Pension Scheme, stated that they relied on the affidavit which was filed in support of the application, together with the List of Authorities and Skeleton Arguments in support.

- 3.2 By way of augmenting, the submission that was made, was that under the first and second questions which had been raised, the simple issue was whether Kabulonga Tenants Alliance Limited was privy to any of the contracts or lease agreements with the National Pension Scheme Authority Staff Pension Scheme, for it to have the requisite locus standi to commence the action.
- 3.3 It was stated that the affidavit evidence revealed that it was clear that Kabulonga Tenants Alliance Limited which has a separate legal personality from its' members, had never executed any lease agreement with the National Pension Scheme Authority Staff Pension Fund.
- 3.4 Counsel added that the reason for the incorporation of Kabulonga Tenants Alliance Limited was completely immaterial, and therefore, it lacked locus standi to commence this action.
- 3.5 In relation to the third question that had been raised, Counsel's submission was that it was whether Kabulonga Tenants Alliance Limited, having a separate legal personality, ever served a letter of demand on the National Pension Scheme Authority Staff Pension Scheme.
- 3.6 It was submitted that the Supreme Court had clearly stated that where this was not done, a matter should be dismissed. Based on the above, the prayer was that all the questions that had been raised, be answered in the negative, and that the action be dismissed for want of jurisdiction, with costs

to the National Pension Scheme Authority Staff Pension Scheme.

RESPONSE BY COUNSEL FOR KABULONGA TENANTS ALLIANCE LIMITED

- 3.7 It was submitted in response, that the application was vehemently opposed, and in doing so, reliance was placed on the affidavit in opposition and the List of Authorities in opposition which were filed on 2nd December, 2024.
- 3.8 Counsel also stated that the National Pension Scheme Authority Staff Pension Scheme had argued that Kabulonga Tenants Alliance Limited, which is a company that is limited by guarantee, lacked locus standi to commence this action, based on the fact that it was not privy to any of the lease agreements which are subject of these proceedings.
- 3.9 Therefore, the Court's jurisdiction to hear and determine the matter had been ousted. Counsel stated that they however took a contrary view, and opined that the company which is limited by guarantee, did in fact have interest in the facts surrounding this case, and the lack of locus standi could not be determined at a preliminary stage.
- 3.10 This was submitted, as being because the facts of the case as a whole, including the Writ of Summons and the statement of claim and the affidavits which contained the facts which led to the incorporation of the company that is limited by guarantee, and not by shares, established so.
- 3.11 Assertion was made, that the National Pension Scheme Authority Staff Pension Scheme had thrown the card of

jurisdiction to the Court, so that it could obtain a summary Judgment of the whole matter, to the detriment of hearing the case and Kabulonga Tenants Alliance Limited.

- 3.12 In justifying that submission, Counsel stated that this was because the Court would consider that application first. He took the view that the lack of locus standi did not oust the Court's jurisdiction to hear and determine the matter, as if that were the case, the High Court Rules would not have provided for **Order 14 Rule 5 (2)**, which clothes this Court with jurisdiction to Order the joinder of any interested parties to the proceedings.
- 3.13 Counsel added that premised on that, the application by any interested party or entity, could be made by way of commencing an action. He went on to submit that what was cardinal, was the reliefs sought, and the facts surrounding the matter.
- 3.14 In that regard, it was stated that the affidavit in opposition highlighted that the National Pension Scheme Authority Staff Pension Scheme had advertised the sale of the whole unit, and not individual units, which assertion had even been admitted by the said National Pension Scheme Authority Staff Pension Scheme.
- 3.15 Counsel also submitted that by virtue of that, the individuals were advised for formalize or register the Association, so that the National Pension Scheme Authority Staff Pension Scheme could attend to their plea. He stated that there was no other way that the National Pension Scheme Authority

Staff Pension Scheme could have engaged the tenants without the said tenants registering their group.

- 3.16 Assertion was further made, that the National Pension Scheme Authority Staff Pension Scheme appeared to confuse the substantive law relating to capacity to contract, with the jurisdiction or lack of it, for the Court to consider and determine the case for Kabulonga Tenants Alliance Limited. He stated that the issue of jurisdiction must be critically considered, and not just on the face of it.
- 3.17 The case of ***Zambia National Holdings Limited v UNIP and the Attorney General*** ⁽¹⁾ was relied on, as where the Court stated with regard to jurisdiction, that it should first be understood in one sense; that it is, the authority that a Court has to decide matters that are litigated before it; and in the other sense, that it is the authority that a Court has to take cognizance of matters that are presented in a formal way for its' decision.
- 3.18 Counsel stressed the need to bear in mind the distinction between the right to relief, and the procedure by which such relief is obtained, adding that the former is a matter of substantive law, and the latter is adjective or procedural law.
- 3.19 He stated that his view was that the issue of capacity of a party to a lease agreement or the lack of it, could not be an issue of jurisdiction, as it is a substantive issue which could only be determined by considering all the facts surrounding the case at full trial.

- 3.20 It was further Counsel's submission that the National Pension Scheme Authority Staff Pension Scheme had argued that the purpose for incorporation of Kabulonga Tenants Alliance Limited was immaterial. Counsel however argued that the materiality or otherwise of the said incorporation, could not be determined at a preliminary stage, without considering all the facts surrounding the matter, reiterating that it was an issue for a full trial.
- 3.21 Submission was also made, that the case of ***Moses Muteteka and another v Bliss Financial Services Limited*** ⁽⁵⁾ had been cited as being on all fours with this case with regard to locus standi. Counsel however stated that the said case was distinguishable from this case, as firstly, the financial institution which was the purported lender in that matter, was in existence at the time of the lending agreement, which was in issue, and it was not party to the said lending agreement.
- 3.22 Counsel submitted that on the other hand in this case, firstly, Kabulonga Tenants Alliance Limited was incorporated way after the lease agreements were executed, and after a lot of correspondence had been exchanged leading to its' incorporation, on the date that this matter was commenced.
- 3.23 The submission was that secondly, in the ***Moses Muteteka*** case, it was held that in line with the case of *Foss v Harbottle*, only the Defendant had the right to sue for any purported

wrong doing against it, which meant that the company was trying to enforce a right according to the lending agreement.

- 3.24 Still in submission, Counsel stated that in this matter, Kabulonga Tenants Alliance Limited was not claiming that it had a lease agreement with the National Pension Scheme Authority Staff Pension Scheme. Rather, it sought to enforce the rights of its' members, based not only the lease agreements, but also on a number of factors, which the National Pension Scheme Authority Staff Pension Scheme itself had established or laid down in disposing of similar properties in the past.
- 3.25 Counsel again reiterated that these issues could only be resolved at trial.
- 3.26 As regards the demand letter being served on the National Pension Scheme Authority Staff Pension Scheme, Counsel's submission was that they had in the Skeleton Arguments highlighted the purpose of **Order 6 of the High Court Rules**, as being to alert the party that is served of the demands of the other party.
- 3.27 Counsel asked the question whether the National Pension Scheme Authority Staff Pension Scheme was aware of the claims that had been made by Kabulonga Tenants Alliance Limited. He answered the question in the affirmative, and stated that based on the letter of demand, the National Pension Scheme Authority Staff Pension Scheme advised the tenants to incorporate a company.

3.28 The submission was that it would not be in the interests of justice to claim procedural default, and usurp the power of the Court's power to hear the matter. The decision in the case of ***State Bank of India v Mojan Marketing*** ⁽⁶⁾ was reiterated as having stated that where the facts were interwoven with legal issues, it was not desirable to determine the legal issues without considering the facts in summary form. The prayer was that the application be dismissed with costs.

**REPLY BY COUNSEL FOR THE NATIONAL PENSION
SCHEME AUTHORITY STAFF PENSION SCHEME**

3.29 Counsel in reply, stated that they relied on the affidavit in reply and the List of Authorities and Skeleton Arguments in reply. In augmenting, Counsel submitted that Counsel for Kabulonga Tenants Alliance Limited had submitted that there were a number of issues in this matter, that could only be determined at trial.

3.30 However, note was made that Kabulonga Tenants Alliance Limited claims among other reliefs, specific performance and damages for breach of the lease agreements. Counsel asked the question whether Kabulonga Tenants Alliance Limited which has separate legal personality, could sue on a lease agreement to which it was not party.

3.31 That question was answered in the negative, with Counsel adding that the case of ***Moses Muteteka***, was clear that a person who is not party to an agreement cannot sue on it. The submission was further that locus standi did not oust

an agreement, and that it went to the jurisdiction of the Court, as demonstrated in the Skeleton Arguments.

3.32 It was also stated that **Section 16 of the Companies Act** is clear on incorporation of companies, including companies which are limited by guarantee. Counsel stated that attempt had been made to distinguish the case of **Moses Muteteka** based on the reason that the company had been incorporated at the time. However, the view taken, was that the issue was whether it was party to the agreement, for it to sue upon it, which was not the position.

3.33 The reply to the submission that the purpose of a letter of demand is to alert a defendant on the claims that are made against them, was that this was irrelevant, and reliance was placed on the Supreme Court decision which they had cited in the Skeleton Arguments, as well as **Order 6 of the High Court Rules** which requires a Plaintiff to serve a letter of demand, failure to which goes to the jurisdiction of the Court. Therefore, Counsel's submission was that the matter should be dismissed with costs.

4. DECISION OF THIS COURT

4.1 I have considered the application. It was brought pursuant to **Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition**. That Order provides as follows:

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any

cause or matter at any stage of the proceedings where it appears to the Court that –

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

- 4.2 I will start with the question of whether this action is properly before Court, in view of the assertion that Kabulonga Tenants Alliance Limited did not serve a letter of demand on the National Pension Scheme Authority Staff Pension Scheme outlining the claims against it, prior to commencing this action.
- 4.3 In the affidavit which was filed in support of the application, Vernon Maaya Mutaka, the Finance Manager of the National Pension Scheme Authority Staff Pension Scheme, deposed that this matter was commenced on 25th October, 2024 in which Kabulonga Tenants Alliance Limited seeks inter alia, specific performance and breach of contract.
- 4.4 He contended that as advised by his advocates, Kabulonga Tenants Alliance Limited did not serve a letter of demand on the National Pension Scheme Authority Staff Pension Scheme prior to issuing the Writ of Summons. Rather, the

letter of demand which was issued, was from its' individual tenants.

- 4.5 In the List of Authorities and Skeleton Arguments, the law in **Order 6 Rule 1 of the High Court Rules** was cited. The argument was that premised on the said law, a Plaintiff is required on commencing a matter by Writ of Summons, to file proof of service of a demand letter, which was duly served on a Defendant and received.
- 4.6 The case of **Lukasu Properties Limited v African Banking Corporation Zambia Limited** ⁽⁴⁾ was relied on as having held that **Order 6 Rule (1) (1) (d) of the High Court Rules** leaves no doubt that a Plaintiff is required to serve a letter of demand on a Defendant, and that service of a demand letter, enables a Defendant to know the Plaintiff's claim.
- 4.7 Further argument was made, that in this matter, the demand letter which was on the Court record, showed that the Advocates, stated in the said demand letter that they acted for Honourable Chilufya Tayali, Ezekiel Sekele, Chilufya Musosha, Davies Kabuswe and 7 others.
- 4.8 Thus, the letter of demand was clear that Counsel acted on behalf of some individuals, and not on Kabulonga Tenants Alliance Limited's behalf. It was argued that the said Kabulonga Tenants Alliance Limited being a company, it has separate legal personality with its' own rights and liabilities.
- 4.9 Accordingly, there was breach of **Order 6 Rule (1) of the High Court Rules** and the matter was improperly before Court.

- 4.10 In opposition, Chilufya Musosha a member of Kabulonga Tenants Alliance Limited, deposed that he had been advised by his advocates, that the main purpose of a letter of demand is to inform the Defendant about the Plaintiff's claims. The averment was that this was done by a letter dated 18th October, 2024, that the individual tenants wrote to the National Pension Scheme Authority Staff Pension Scheme.
- 4.11 In the List of Authorities and Skeleton Arguments in opposition, the provisions of **Order 6 Rule 1 of the High Court Rules** were cited.
- 4.12 The definition of *demand letter* as given by **Black's Law Dictionary, by Bryan A. Garner, Thomas Reuters, 2009 at page 495** was given as:
- “A letter by one party which explains its’ legal position in a dispute and requests the recipient to take some action (such as paying money owed) or else risk being sued. Under some statutes (esp Consumer-Protection laws), a demand letter is a prerequisite for filing a lawsuit.”***
- 4.13 It was argued that Kabulonga Tenants Alliance Limited complied with the requirements of **Order 6 Rule 1 (1) (d) of the High Court Rules**, as its’ advocates wrote a demand letter to the National Pension Scheme Authority Staff Pension Scheme on behalf of its’ members.
- 4.14 Reliance was placed on the case of **Thomson Phiri v Toyota Zambia Limited** ⁽³⁾ stating that in that matter, in allowing a

demand letter which was on “without prejudice” basis, the Court of Appeal stated as follows:

“In addition, we have perused Order 6 Rule 1 (1) (d) of the HCRs' and note that the said Order does not specify what form a letter of demand must take. Therefore, in our view we do not agree with the Respondent that the letter dated 28th May, 2020 does not suffice as a letter of demand to accompany the writ of summons as provided for under Order 6 Rule 1 (1) (d) of the HCRs'. Our view is that the letter dated 28th May, 2020 does qualify to be classified as a letter of demand as defined in Black's Law Dictionary and Order 6 Rule 1 (1) (d) of the HCRs' above. In addition, we have perused the reliefs in the statement of claim on record and we note that the reliefs therein are connected to the Appellant's claim before Court below in unequivocal terms.”

- 4.15 Other authorities that were relied on, was the case of ***NFC Africa Mining Plc v Techno Zambia Limited*** ⁽²⁾, the argument being that it held that the Rules of Court are intended to assist in the proper and orderly administration of justice, and as such, they should be strictly followed.
- 4.16 The reply reiterated that no letter of demand had ever been served on the National Pension Scheme Authority Staff Pension Scheme by Kabulonga Tenants Alliance Limited. Argument was made, that it was not the form in which the

demand letter had been drafted in this matter, but whether Kabulonga Tenants Alliance Limited drafted and served a letter of demand on the National Pension Scheme Authority Staff Pension Scheme.

4.17 Thus, as Kabulonga Tenants Alliance Limited did not serve the letter of demand on the National Pension Scheme Authority Staff Pension Scheme, the matter was improperly before Court.

DECISION

4.18 **Order 6 Rule (1) of the High Court Rules** is as follows in provision:

“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) 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;

(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 case.”

4.19 The Supreme Court in the case of ***Lukasu Properties Limited v African Banking Corporation*** ⁽⁴⁾ held as follows as regards the service of a letter of demand:

“This is the first time the meaning of Order VI Rules 1, 2 and 4 as amended is being interrogated in this Court. The issue that arises is whether the failure to serve a letter of demand on the defendant before the writ is issued is fatal.....

Rule 1 (i) (d) of Order VI in paragraph 1 above leaves no doubt that the Plaintiff is required to serve a letter of demand on the Defendant. The letter must set out the claims and the circumstances that surround it in detail. When commencing the action, the Plaintiff is required to include the letter of demand with an acknowledgment of its’ receipt by the Defendant, or an affidavit attesting to service of the letter of demand.

Thus, the writ will be accompanied by a statement of claim, a list and description of documents to be relied on at trial, a list of witnesses to be called by the Plaintiff at trial and the said letter of demand.....”

4.20 They further noted that:

“The rule refers to the Defendant as the party on whom the letter of demand must be served....

Our considered view is that when the literal rule of interpretation is applied, the word Defendant

means a Defendant that is cited to an action and does not include associated companies....

A statutory instrument is interpreted as written law, in Section 3 of the Act. Order VI Rule (i) (d) should be in light of these provisions be read as referring to a plural of Defendants where there are more Defendants than one. It follows that a Plaintiff is required to serve a letter of demand on every Defendant before issuing a writ of summons...

The first is that Order VI of the High Court Act has undergone a number of amendments before Statutory Instrument number 58 of 2020. These amendments have never addressed the effect of failure to comply with the Order. It is only in Statutory Instrument No 58 of 2020 that the Order now forbids the acceptance of a writ of summons when the documents that should accompany the writ are missing.....

In stark contrast to this position, a reading of Order VI of our High Court Rules clearly reveals that the intention behind sub rule 2 of Order VI is that a writ of summons that is unaccompanied by the list of documents enumerated in the Order is incompetent. It is not to be accepted by the Court under any circumstances. This proscription demolishes the argument that the failure to serve

a letter of demand on a Defendant is an irregularity that will be countenanced by the Court.”

4.21 The Supreme Court also stated as follows in that matter:

“It is true that a letter of demand serves the purpose of bringing a claim to the notice of the intended Defendant. It is now required of a Plaintiff to state the claim in detail and explain the circumstances in which it arises. It is our considered view that this is intended to drive home to the prospective Defendant the claim that they will meet should an action be brought against them. They may decide to settle the claim even before the Plaintiff issues process against them.....

On this view, the argument that issuing a letter of demand to some of the defendants is sufficient compliance with the rule collapses. This is on account of the requirement to inform each and every Defendant of the claim against them, thereby affording them opportunity to decide to settle the matter or litigate the claim....

We stand by our sentiments in Standard Chartered Bank Zambia Plc v John M. Banda that rules should generally not be used as a mine field for parties who make fairly inadvertent mistakes that translate into no tangible prejudice to the other

party, and that if an irregularity can be cured without undue prejudice, then it is desirable that such irregularity be put right subject to an order as to costs against the erring party.

However, our considered view is the cited case is not applicable to this case. The reason is that currently it is not possible for one to issue a writ of summons without strict adherence to the requirements stipulated in Order VI if the documents outlined in Order VI do not accompany the writ of summons, but it is nonetheless issued as was done in the instant case, such a writ is improperly issued.”

4.22 By way of conclusion the Supreme Court stated that:

“In sum, the Plaintiff is required to serve a letter of demand on each and every Defendant before commencing the action. The failure to serve the letter of demand on the appellant was fundamental and fatal omission. It undermined the intention of Order VI Rules 1, 2 and 4 as amended. The action was improperly brought before Court and was bound to be set aside. We accordingly allow the appeal and set aside the writ of summons for incompetence.”

4.23 While the decision in the matter was primarily in relation to failure to serve the demand letter on all the Defendants to a suit, where there is more than One (1) Defendant, the case

nevertheless laid down the rationale for the demand letter being served on all Defendants to a suit, and the implications of failure to serve the same on a Defendant.

- 4.24 In this matter, the record shows that Kabulonga Tenants Alliance Limited is a company that is limited by guarantee. Being a company that is incorporated at law, it has separate legal personality from its' members, and it can sue and be sued in its' own name.
- 4.25 The demand letter that is on the Court record, which was authored by the Advocates Messrs Lennard Tembo Legal Practitioners, on 7th October, 2024 to the National Pension Scheme Authority Staff Pension Scheme, stated that they acted for their clients, Honourable Chilufya Tayali, Ezekiel Sekele, Chilufya Musosha, Davies Kabuswe and 7 others.
- 4.26 Given that Kabulonga Tenants Alliance Limited has legal personality at law, which is separate from its' members, the letter of demand could not have been written on behalf of its' members, but by itself.
- 4.27 As rightly argued by Counsel for the National Pension Scheme Authority Staff Pension Scheme, the issue in this application, is not about the form of the letter of demand, but rather, whether the same was authored by Kabulonga Tenants Alliance Limited, which is the Plaintiff in this matter and served on the National Pension Scheme Authority Staff Pension Scheme, laying down the claims that it has against National Pension Scheme Authority Staff Pension Scheme. As such, the case of ***Thomson Phiri v Toyota Zambia***

Limited ⁽³⁾ which was relied on by Kabulonga Tenants Alliance Limited is inapplicable in this application.

5. CONCLUSION

- 5.1 In the premises, it accordingly follows, that Kabulonga Tenants Alliance Limited did not serve a demand letter on the National Pension Scheme Authority Staff Pension Scheme as required by **Order 6 Rule 1 (1) (d) of the High Court Rules**.
- 5.2 In line with decision in the case of **Lukasu Properties Limited v African Banking Corporation Limited** ⁽⁴⁾ failure to serve a letter of demand by a Plaintiff on a Defendant renders the Court process being improperly before the Court and it is bound to be set aside, as the omission is fatal.
- 5.3 The Court process being improperly before Court, and the Court lacking jurisdiction to determine it as a result, I will not proceed to determine the rest of the questions that were raised in the application. I would only have done so, had the Court process been properly before me.
- 5.4 The matter is accordingly dismissed, with costs to the National Pension Scheme Authority Staff Pension Scheme, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THIS 18th DAY OF FEBRUARY, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

