

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

2024/HP/1557



BETWEEN:

MODRIN BWALYA MWANDA AND 238 OTHERS

PLAINTIFF

AND

STANDARD CHATERED BANK (Z) PLC

1ST DEFENDANT

MINET ZAMBIA CONSULTING LIMITED

2ND DEFENDANT



Before the Honourable Lady Justice S. Chocho, in chambers on the 12TH day of May, 2025.

For the Plaintiff: Mr. M Mukande of Messers M.L Mukande Legal Practitioners

For the 1st Defendant: Ms. M Undi & Mr. W Chinyemba of Messrs Eric Silwamba, Jalasi
And Linyama Legal Practitioners.

For the 2nd Defendant: Mr. I Ndafoka & Ms. C Zulu of Messers Nawa Mataa Advocates.

R U L I N G

Cases referred to:

1. *Solomon Laban Jumbe Ngwenya v Hope Chanda Appeal No 1 of 2021.*
2. *Joseph Malanji and Another v The Attorney General and Another CCZ Appeal No.18 of 2022.*
3. *The Attorney General V Aboubacar Tall and Zambia Airways Corporation Limited SCZ Appeal No. 77 of 1995.*
4. *Teichmann Zambia Limited v Mumana Pleasure Resort and Another SCZ Appeal NO. 196 of 2014*

Legislation referred to:

1. *Order 14 Rule 5(2) of the High Court Rules Chapter 27 of the Laws of Zambia.*

**2. Order 15 Rule 6(2) Rules of the Supreme Court of England 1965
(White Book) 1999 Edition.**

1. INTRODUCTION

- 1.1. This Ruling is in respect of an application by the 2nd Defendant for an Order to strike out a party from proceedings/misjoinder, made Pursuant to **Order 14 Rule 5(2) of the High Court Rules Chapter 27 of the Laws of Zambia** and **Order 15 Rule 6(2) Rules of the Supreme Court of England 1965 (White Book) 1999 Edition.**
- 1.2. The application is supported by an affidavit in support of Summons for an Order to strike out a party from proceedings for misjoinder and a list of authorities and skeleton arguments filed into Court on February 4th, 2025.

2. BACKGROUND

- 2.1. The background to this matter as per pleadings and affidavit evidence presented before Court is that the Plaintiffs commenced an action against the Defendants by way of Writ of Summons and Statement of Claim on October 31st, 2024, claiming the following reliefs;
- i) An Order for the production of a full statement of account of all contributions made for or on behalf of each of the Plaintiffs under Defined Benefit Scheme (DBS) and full payment for any differences established;

- ii) An Order for the full account of the principal and 70% accrued interest and bonuses in the Defined Benefit Scheme (DBS) prior to the 1996 cross over to the Defined Contributory Scheme (DCS);
 - iii) An Order for a full account of interest earned from the K 4,695,653,160.00 investment and how it was applied in the fund.
 - iv) An Order for the addition and subsequent payment of 100% housing allowances in the computation of various outstanding balances as at 1st July, 1996 on all the Plaintiffs' accounts with interest and bonuses;
 - v) An Order for the recalculation of the yearly opening and closing balances for each of the Plaintiffs up to date of retirement and a payment of all the differences established with interest and bonuses included;
 - vi) Interest on all sums found due;
 - vii) Costs; and
 - viii) Any other relief the Court may deem fit.
- 2.2. The 1st Defendant entered Appearance and filed a Defence on November 21st, 2024.
- 2.3. The 2nd Defendant entered Appearance and filed a Defence on November 20th, 2024.
- 2.4. The Plaintiff made an application for an Order to strike out party from proceedings for misjoinder on February 4th, 2025.
- 2.5. The Plaintiff's application was heard inter-partes on March 19th, 2025.

3. AFFIDAVIT EVIDENCE

- 3.1. The 2nd Defendant filed an affidavit in support of Summons for an Order to strike out a party from proceeding for misjoinder dated February 4th, 2025 deposed by one Kamphata Botha.
- 3.2. The 2nd Defendant avers that it was merely a fund administrator contracted by Standard Chartered Bank Pension Trust Fund and acted diligently and courteously in its capacity as fund administrator.
- 3.3. The 2nd Defendant avers that the said Pension Scheme has a separate legal personality capable of suing and being sued in its capacity as a corporate body and that the 2nd Defendant should not be a part of the proceedings by this reason.
- 3.4. The 2nd Defendant avers that it will be in the interest of justice if this Court grants the Order sought and it will not prejudice the Plaintiff in anyway.
- 3.5. The Plaintiffs filed an affidavit in opposition on March 14th, 2025 deposed by one Modrin Bwalya Mwanda.
- 3.6. The Plaintiffs aver that there is no clause disputing the fact that the 2nd Defendant was the fund administrator of the Pension Scheme in issue.
- 3.7. The Plaintiffs aver that under the Administration Agreement, it was the 2nd Defendant's duty to ensure accuracy of the records and compute the benefits as they fell due on the beneficiaries.

- 3.8. The Plaintiffs aver that the 2nd Defendant's are appropriately placed to know the amount of contributions received and paid out to each Plaintiff.
- 3.9. The Plaintiffs aver that the 2nd Defendant is properly before the Court because their response to the claims will enable this Court resolve the dispute without duplicity of actions.

4. THE LAW AND SUBMISSIONS

- 4.1. I have had occasion to review and consider the application, having read the Parties affidavits, skeleton arguments and list of authorities.
- 4.2. The 2nd Defendant drew this Court's attention to **Order 14 Rule 2 of the High Court Rules** and submits that this Court is vested with the power to strike out a party from proceedings were it finds it necessary to do in the interest of justice.
- 4.3. Placing reliance on the case of **Solomon Laban Jumbe Ngwenya v Hope Chanda Appeal No 1 of 2021**¹, the 2nd Defendant submits that in order for a misjoinder application to be granted the applicant must orchestrate the same elements as those in a joinder. That is, only a necessary party to a Court proceeding must be joined to the proceedings and must show that a necessary party is a person that:
- i) May be entitled to claim or have an interest in the subject matter of the suit;
 - ii) Is likely to be affected by the suit;

- iii) Is necessary to ensure that all matters in the dispute in a suit are completely determined; and
- iv) Is necessary to determine an existing question or issue claimed in the matter.

4.4. The 2nd Defendant also placed reliance on the case of **Joseph Malanji and Another v The Attorney General and Another CCZ Appeal No.18 of 2022**² in which it was held as follows:

“It is trite that for a party to be joined to proceedings; the Court must satisfy itself that such a party possesses sufficient interest in the subject matter before Court”.

4.5. The 2nd Defendant submits that the Plaintiff has commenced an action against a party that was merely contracted to provide services to Standard Chartered Bank PLC Pension Trust Fund as administrator and as such has no sufficient interest in the subject matter of the suit.

4.6. In response, the Plaintiffs submit that the law cited by the 2nd Defendant clearly states the issues to be determined when considering the application in casu and that the case of **Solomon Laban Jumbe Ngwenya v Hope Chanda Appeal No 1 of 2021**¹ clearly lays down the issues to be considered.

4.7. The Plaintiffs avers that the Plaintiffs in paragraph 20 of the Statement of Claim state that the 2nd Defendant in the year 1999 managed the

Pension Scheme and the 2nd Defendant has not disputed this in its affidavit in support of the application to strike out party.

- 4.8. The Plaintiffs further submit that if the management of the Pension Scheme was under their control, the 2nd Defendant is properly placed to answer the claims raised by the Plaintiffs.
- 4.9. The Plaintiffs aver that That exhibit “KBI” in clauses 3.3 and 3.4 clearly state that the mandate of the 2nd Defendant involved maintenance of the register relating to the contributions from the employers and that it also was their duty to compute entitlement of the benefits to the members.
- 4.10. The Plaintiffs submit that if the 2nd Defendant’s involvement is curtailed, it may lead to inception of another matter to determine their involvement in the scheme which may lead to duplicity of actions and placed reliance on the case of **The Attorney General V Aboubacar Tall and Zambia Airways Corporation Limited SCZ Appeal No. 77 of 1995³** which I have taken note of.
- 4.11. The Plaintiffs submit that a Court has to satisfy itself that the party brought in is not only relevant but that they possess sufficient interest in the subject matter and that the 2nd Defendant’s interest is that they did not only keep records of contributions but also that they computed benefits due to the beneficiaries.

5. COURTS DECISION

5.1. I have had occasion to review and consider the application, having heard Counsel for the Defendants and Counsel for the Plaintiff, read the affidavits, skeleton arguments and authorities cited by the parties for which I am grateful.

5.2. This Court has the power to strike out a party from proceedings (misjoinder) conferred on it by **Order 14 Rule 5(2) of the High Court Rules** which provides as follows:

“(2) The Court or a Judge may, at any stage of the proceedings, and on such terms as appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out”.

5.3. Furthermore, **Order 15 Rule 6(2)(a) of the Rules of the Supreme Court of England** provides as follows:

“(2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party”.

5.4. From the above provisions, I am of the considered opinion that this Court has the power to order that a party be struck out from

proceedings upon determination that a party has been improperly joined in an action. That is to say, if a person/party does not have sufficient interest in a matter/cause or whose presence is not necessary to ensure that all matters in dispute are completely determined, the Court may order that such party be struck out from the proceedings.

- 5.5. On perusal of the evidence on record, in particular the Administration Agreement exhibited as “KB1”; I am of the considered opinion that the 2nd Defendant is required to ensure that all matters are dealt with adequately.
- 5.6. The contents of paragraphs 5,11,14,15 and 16 of the 2nd Defendant’s Defence further cement the fact that the 2nd Defendant is a necessary party to these proceedings and sufficiently interested. That the may claim indemnity is a matter for another day.
- 5.7. Clause 3 of the Administration Agreement contains duties of the 2nd Defendant as an Administrator of the Pension Scheme and I find the duties carried out by the 2nd Defendant under the agreement are relevant to this matter. The 2nd Defendant is likely to help this Court in determining the liability of the Defendant(s) or what is due to the Plaintiffs if any.
- 5.8. The Supreme Court in the **Solomon Ngwenya**¹ case cited by both parties stated as follows:

***“Moving on to the applicable law, it is as stated by the appellants; order 14 rule 5(4) of the High Court Rules and order 15 rule 6 (2) (a) and (b) of the Rules of the Supreme Court.*”**

Accordingly, as the appellants are likely to be affected by the suit, it is necessary that they remain parties to the suit as it is obligatory to ensure that all matters in dispute in the suit are completely determined after trial.”

5.9. In light of the above authority I am of the considered opinion that it is necessary that the 2nd Defendant remains a party to this action to ensure that all matters in dispute are completely determined.

5.10. I am of the considered opinion that Courts have an inherent power to prevent abuse of Court process. **Section 13 of the High Court Act Chapter 27 of the Laws of Zambia provides as follows;**

“In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the Court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter; the rules of equity shall prevail.”

5.11. I agree with the Plaintiffs submission that striking out the 2nd Defendant from these proceedings may lead to commencement of a fresh action to determine the 2nd Defendant's involvement in the Scheme which is likely to give rise to an abuse of Court process. As provided in **Section 13 of the High Court Rules**, the Courts retain inherent power to prevent such abuse of Court process/duplicity of actions.

5.12. I am fortified by the authority in the case of **Teichmann Zambia Limited v Mumana Pleasure Resort and Another SCZ Appeal NO. 196 of 2014⁴** in which the Supreme Court has the following to say:

"It is clear from the record that the parties and the Court below were alive to the power given to the Court under this rule to join parties to an action or to remove them from such action. They were also alive to the requirement under Section 13 of the High Court Act that the Court should determine disputes before it in such a manner that all issues in controversy are resolved. To that end, a number of our decisions on the two issues were cited. We do not see the need to cite them again as they are well known; and the principles enunciated therein are not at the centre of the issue herein. However, from the provisions of Rule 5 which we have quoted above we see the following words as being key to the resolution of the application that was before the court below. The words are: "the subject-matter of the suit". This is where, in our view, the Court below missed the point; the Court focused its attention on the contract and the parties thereto instead of the subject-matter of that contract. In this case, it

was established that the appellant and Mumana Hotels Limited entered into a contract whose subject matter was a portion of Stand No. 0446 which was described as "S/D "A". It was established that in that contract Mumana Hotels Limited appears to have promised to give priority to the Appellant in the event of the sale of the adjacent vacant portion of land. It was also established that there was a transaction of sale between the 1st Respondent and the 2nd Respondent involving the same vacant portion of land; in fact, that is what brought about this action. While the court below, rightly, joined Mumana Hotels Limited to the action, it overlooked the fact that the subject of the action between the appellant and Mumana Hotels Limited is a portion of land in which the two respondents also have an interest; and that the two Respondents are likely to be affected, probably adversely, by the result of this action. Therefore, in terms of Rule 5 of Order XIV of the High Court Rules, the two Respondents needed to be parties to this action in order for all issues in controversy to be determined conclusively. Hence, the issue at this stage of the proceedings is not whether or not the Appellant's intention to pierce the corporate veil was pleaded, or that any cause of action has been established against the Respondents. The issue is simply that, since the common denominator is the vacant portion of land, all the parties that have an interest in it must be joined to the action so that the issues are determined in a holistic fashion. It is for this reason that we concur with the appellant in its third ground of appeal that the court below erred in law when it struck out the action as against the two Respondents.

5.13. In view of the above cited authority, it can be concluded that the subject matter by virtue of being the Pension Fund Administrator and the 2nd Defendant remains relevant to this action for its final determination.

5.14. In light of the foregoing, I find that the 2nd Defendant's application is bereft of merit and the application fails.

6. CONCLUSION

6.1. For the foregoing reasons, **I ORDER** that the Plaintiff's application **BE** and **IS HEREBY** dismissed.

6.2. Costs in the cause.

6.3. This matter shall be heard on June 4th, 2025 at 09:40 hours for Scheduling Conference.

Delivered at Lusaka on the 12th day of May, 2025.



S. CHOCHO

HIGH COURT JUDGE

