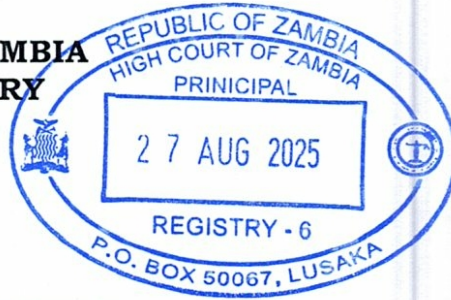


**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)



**2025/HP/0250**

BETWEEN:

**THELMA CHIMUKA SIACHEMBELE**

**PLAINTIFF**

AND

**MIKA MEATS LIMITED**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 27<sup>th</sup>  
DAY OF AUGUST, 2025**

*For the Plaintiff : Mr S.D. Botha, Messrs BDS Legal Practitioners and Mr B  
Mwelwa, Messrs Mwelwa Phiri and Partners*

*For the Defendant : Messrs M.K Achiume & Associates*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. *Drummond-Jackson v British Medical Association 1970 1 ALL ER 1095***
- 2. *Auto Engineering Limited v M.K Holdings 2002 ZR 56***

LEGISLATION REFERRED TO:

- 1. *The High Court Rules, Chapter 27 of the Laws of Zambia***
- 2. *The Rules of the Supreme Court of England, 1965, 1999 Edition***

OTHER WORKS REFERRED TO:

- 1. *Halsbury's Laws of England, 4<sup>th</sup> Edition Re-Issue, Vol 36***
- 2. *Odgers Principles of Pleadings & Practice, 22<sup>nd</sup> Edition, by D.B Carson, Stevens & Sons Limited, 1981***

### **1. INTRODUCTION**

- 1.1 On 14<sup>th</sup> April, 2025, the Plaintiff herein, Thelma Chimuka Siachembele filed a Notice of Motion raising preliminary

issues, pursuant to **Order 11 Rule 8 of the High Court Rules, Chapter 27 of the Laws of Zambia**, as read together with **Order 2 Rule 2 and Order 18 Rule 8 (3) of the Rules of the Supreme Court of England, 1965, 1999 Edition**.

- 1.2 The Notice of Motion which was supported by an affidavit and a List of Authorities and Skeleton Arguments, seeks the determination of the following questions:
1. *Whether or not, the Memorandum of Appearance which was filed by Mika Meats Limited on 20<sup>th</sup> March, 2025 properly discloses the name of the Defendant in this matter?*
  2. *Whether or not the defence which was filed by Mika Meats Limited on 20<sup>th</sup> March, 2025, presents speculation and legal arguments instead of allegations of facts?*
  3. *If the answer to 1 and 2 above, is in the negative, and the answer to 2 above is in the positive, whether or not the same ought to be struck off the record for irregularity?*
  4. *If the answer to 3 above is in the positive, whether or not Thelma Chimuka Siachembele is entitled to costs?*
- 1.3 Mika Meats Limited on 20<sup>th</sup> May, 2025, filed an affidavit in opposition and a List of Authorities and Skeleton Arguments. An affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 29<sup>th</sup> May, 2025.

## **2. BACKGROUND**

2.1 Thelma Chimuka Siachembele commenced these proceedings against Mika Meats Limited on 21<sup>st</sup> February, 2025, by Writ of Summons which is accompanied by a statement of claim and the other requisite documents seeking:

- i. An Order for damages for negligence amounting to US\$25, 000.00;*
- ii. An Order for special damages amounting to K10, 000.00;*
- iii. An Order for aggravated and exemplary damages to be assessed;*
- iv. Interest on all amounts found due at the short-term deposit rate from the date of the Writ to the date of Judgment, and at the commercial lending rate as established by the Bank of Zambia from the date of Judgment to the date of full payment;*
- v. Any other relief that the Court may deem fit; and*
- vi. Costs.*

2.2 Mika Meats Limited entered appearance and filed the defence and the other documents on 20<sup>th</sup> March, 2025.

2.3 Thereafter, the application which is the subject of this Ruling was filed.

## **3. SUBMISSIONS AT THE HEARING**

3.1 At the hearing, only Counsel for Thelma Chimuka Siachembele was before Court. Counsel informed the Court that they had served the application on Counsel for Mika

Meats Limited. It was further Counsel's submission, that they relied on the documents which were on the record.

#### **4. DECISION OF THIS COURT**

4.1 I have considered the Notice of Motion. **Order 11 Rule 8 of the High Court Rules** states as follows:

***"8. The memorandum of appearance shall be in Form 18 in the First Schedule, with such variations as circumstances may require."***

4.2 Then **Order 2 Rule 2 of the Rules of the Supreme Court of England, 1965, 1999 Edition** provides that:

***"(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.***

***(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.***

4.3 The explanatory notes in **Order 18 Rule 8 (3) of the Rules of the Supreme Court of England** state that:

***"Confess and avoid"***

***It often is not enough for a party to deny an allegation in his opponent's pleading; he must go further and dispute its validity in law, or set up some affirmative case of his own in answer to it. It***

***will not serve his turn merely to traverse the allegation; he must confess and avoid it.”***

- 4.4 In the affidavit which was filed in support of the Notice of Motion, Hope Mikwala an advocate in the firm BDS Legal Practitioners, who is seized with conduct of the matter on behalf of Thelma Chimuka Siachembele, gave a background to how Thelma Chimuka Siachembele commenced this action, and the reliefs that she seeks.
- 4.5 She averred that on 20<sup>th</sup> March, 2025, Mika Meats Limited entered appearance and filed its’ defence and the other documents. However, as shown on the memorandum of appearance which was exhibited as ‘HM1’, it did not bear the names Mika Meats Limited, as the Defendant.
- 4.6 Further averment was made, that the defence which was exhibited as ‘HM2’, did not contain allegations of material facts, but speculations and legal arguments.
- 4.7 In the List of Authorities and Skeleton Arguments in support, it was argued, citing the provisions of ***Order 11 Rule 8 of the High Court Rules***, that the circumstances as required in that Order, mean that the correct name of a Defendant must be stated.
- 4.8 The argument was that, the name that had been entered in the Memorandum of Appearance was not for Mika Meats Limited.
- 4.9 Further argument was made, with reference to the explanatory notes in ***Order 18/8/3 of the Rules of the Supreme Court of England***, that the defence as filed, did

not disclose a reasonable defence at law, as it had failed to answer to the claims as pleaded by Thelma Chimuka Siachembele. It was also stated that mere denials were not enough to sustain a defence.

- 4.10 Simon Mwila Mulenga, who is Counsel seized with conduct of the matter, on behalf of Mika Meats Limited, deposed in the affidavit in opposition, that the name Mika Meats Limited was stated in the heading or caption of the Memorandum of Appearance.
- 4.11 It was averred that the name Wallance Moonga was wrongly typed in the body of the Memorandum of Appearance, and that the same could be cured by amendment.
- 4.12 In still deposing, Simon Mwila Mulenga stated that the defence was properly structured, and it responded to the claims as made by Thelma Chimuka Siachembele. He added that it raised bona fide triable issues.
- 4.13 The List of Authorities and Skeleton Arguments in opposition reiterated that the name Mika Meats Limited had been captured in the caption of the Memorandum of Appearance. It was argued that a party that was correctly and consistently named in a Court document, could not as a matter of law or fact, be said to be improperly named due to minor human error, which was not fatal, and which could be cured by way of amendment.
- 4.14 With regard to the allegation that the pleadings in the defence are defective, the argument was that where a party believes that a pleading is defective or scandalous, the

appropriate procedure is to apply to strike out the pleadings or to amend, and not to raise preliminary issues.

- 4.15 Reliance was placed on the case of ***Auto Engineering Limited v M.K Holdings*** <sup>(2)</sup> stating that the said case demonstrated the position that preliminary issues are reserved for pure points of law, which are capable of disposing of a matter in time, and not for procedural complaints or allegations of defective pleadings.
- 4.16 It was argued that the defect in the Memorandum of Appearance could be cured by amendment, and the threshold for raising preliminary issues had not been satisfied.
- 4.17 The averments as made by Benzu Phiri, an advocate in the firm Mwelwa Phiri and Partners, who are also Counsel who are seized with conduct of the matter on behalf of Thelma Chimuka Siachembele in the affidavit in reply, were that there was an error in the Memorandum of Appearance.
- 4.18 He also stated that the defence was not certain and definitive.
- 4.19 The List of Authorities and Skeleton Arguments in reply referred to the case of ***Drummond-Jackson v British Medical Association*** <sup>(1)</sup> as having held that a party should not be allowed to proceed where no proper foundation exists. This it was argued, reinforced that any document that was filed without legal grounding was a nullity.

4.20 Other reliance was placed on ***Odgers Principles of Pleadings and Practice, 22<sup>nd</sup> Edition*** at page 87 as stating that:

***“Pleadings should always be conducted so as to evolve some clearly defined issues, that is some definite propositions of law or fact, asserted by one party and denied by the other. It is a benefit to the parties themselves to know exactly what matters are left in dispute.”***

4.21 It was argued that the defence as filed had introduced uncertainty, and confusion, and it lacked proper party identification, which defeated the very purpose of pleadings.

4.22 Placing reliance once again on ***Odgers Principles of Pleadings and Practice, 22<sup>nd</sup> Edition***, at pages 93 and 94, the argument was that it states that pleadings must contain in a summary form, the material facts on which a party relies, but not the evidence by which those facts are to be proved.

4.23 It was also stated that the learned author states that the statement must be as brief as the nature of the case admits.

4.24 Further argument was made, that this position is also stated in ***Order 18 Rule 7 (1) of the Rules of the Supreme Court of England***, which reinforced the principle that pleadings must be material, certain and concise.

4.25 In still arguing, it was contended that paragraphs 6, 7 and 10 of the defence called for speculation, and seemed to be arguments and speculation, as to how the foreign object

found itself embedded in the sausage that was bought from Mika Meats Limited's shop.

- 4.26 Further in arguing, it was stated that the defence should have brought out facts which tended to disagree or provide an alternative version of the events, and not use words such as "it could have been caused", "could be due" and "could have contributed" as had been repeatedly used in the said impugned paragraphs.
- 4.27 It was argued that use of such words took away from certainty and definitiveness that ought to characterize pleadings as speculation is unprovable by its' very nature.

### **DECISION**

- 4.28 A perusal of the Memorandum of Appearance which was filed on 20<sup>th</sup> March, 2025, shows that immediately after the caption, and where the parties are cited, starting where it states "Enter an appearance for (full names)", the names are indicated as Wallance Moonga.
- 4.29 The parties in this matter, are Thelma Chimuka Siachembele as Plaintiff, and Mika Meats Limited as Defendant. Therefore, the indication of Wallance Moonga as the Defendant was irregular. This has been conceded. However, as noted by Counsel for Mika Meats Limited, the irregularity is not fatal, as it can be cured by way of amendment.
- 4.30 Coming to the allegation that the defence as filed, is not in accordance with the Rules that govern pleadings, as it is uncertain and causes confusion, the arguments in reply

specifically pointed out paragraphs 6, 7 and 10 as the offending paragraphs.

- 4.31 In that regard, note was made, that the said paragraphs use words such as, “it could have been caused”, “could be due” and “could have contributed” which is speculation and defeats the requirement that pleadings should be certain and definitive.
- 4.32 The response was that the defence as pleaded, complies with the rules of pleading, as it is well structured and responds to the claims that Thelma Chimuka Siachembele has made. Further, it raises bona fide triable issues.
- 4.33 It was also contended that if the view was that the defence is defective, then an application to strike out or to amend the defence should have been made, as opposed to taking out a Notice of Motion raising preliminary issues, which is reserved for determination of points of law, which will determine a matter.
- 4.34 The case of ***Auto Engineering Limited v M.K Holdings 2002 ZR 56*** was relied on as authority.
- 4.35 ***Order 18 Rule 19 (1) of the Rules of the Supreme Court of England*** provides that:
- “(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -***

- (a) it discloses no reasonable cause of action or defence, as the case may be; or**
- (b) it is scandalous, frivolous or vexatious; or**
- (c) it may prejudice, embarrass or delay the fair trial of the action; or**
- (d) it is otherwise an abuse of the process of the Court;**

**and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”**

4.36 The explanatory notes in **Order 19/1/1 of the said Rules of the Supreme Court of England** in explaining the rule state that:

**“This rule applies to the whole or part of the indorsement on any writ, or any pleading, as well as to an originating summons (para. (3)). In applying this rule, it must be remembered that “it is not the practice in the civil administration of our Courts to have a preliminary hearing, as it is in crime”.**”

4.37 While the caption of the application is a Notice of Motion, it will be seen that in effect, the application is to strike out the Memorandum of Appearance and the defence for irregularity.

4.38 Coming to the impugned paragraphs in the defence, they read as follows:

***“6. The Defendant will aver that her stomach pains could be due to other factors such as pre-existing health issues or something else she ate.***

***7. The defendant denies the contents of paragraph 8 of the statement of claim that the Plaintiff’s illness could have been caused by other factors.***

***10. The Defendant will aver that there are many factors that could have contributed to the presence of the fly after the sale, which raises questions about the timing and the circumstances of the contamination.”***

4.39 It is trite that the functions of pleadings, is to inform the other party of the case that they will meet at trial.

4.40 When it comes to the settling of pleadings, ***Order 18 Rule 7 (1) of the Rules of the Supreme Court of England, 1965, 1999 Edition***, provides that:

***“(1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.”***

4.41 Further, the explanatory notes to that Rule, in ***Order 18/7/4 of the Rules of the said Supreme Court of England*** state that:

***“Need for compliance***

***These requirements should be strictly observed. Pleadings play an essential part in civil actions, and their primary purpose is to define the issues and thereby to inform the parties in advance of the case which they have to meet, enabling them to take steps to deal with it; and such primary purpose remains and can still prove of vital importance, and therefore it is bad law and bad practice to shrug off a criticism as a "mere pleading point". ”***

4.42 Then ***Order 18 Rule 3 of the said Rules of the Supreme Court of England*** states that:

4.43 13. - Admissions and denials

***“(1) Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.***

***(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.***

***(3) Every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and***

*a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.”*

4.44 The explanatory notes in *Order 18/8/3 of the Rules of the Supreme Court of England* provide that:

*“It often is not enough for a party to deny an allegation in his opponent's pleading; he must go further and dispute its validity in law, or set up some affirmative case of his own in answer to it. It will not serve his turn merely to traverse the allegation; he must confess and avoid it....*

*But all these various defences must be clearly and distinctly pleaded, and the facts upon which each is grounded should be stated separately. As a rule, each answer to the action should be pleaded in a separate paragraph. The defendant must make it quite clear what line of defence he is adopting.”*

4.45 *Halsbury's Laws of England, 4<sup>th</sup> Edition re-issue Volume 36* in paragraph 30 states that:

*“When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but must answer the point of substance.”*

4.46 Then *paragraph 45 of the said Halsbury's Laws of England* provides in part that:

***“In his defence, the defendant must plead to the allegations contained in the statement of claim in accordance with the rules previously set out.”***

- 4.47 Paragraph 6 of the defence is a response to paragraph 7 of the statement of claim, in which Thelma Chimuka Siachembele alleges that soon after consuming the said sausage, she began to experience severe stomach aches and abdominal pains.
- 4.48 It will be seen that in paragraph 5 of the defence, the assertion as made in paragraph 7 of the statement of claim is denied, with contention being made that there is no direct cause and effect relationship between eating of the contaminated sausage and the stomach aches being experienced thereafter.
- 4.49 Then the pleading in paragraph 6 of the defence is made.
- 4.50 It has been seen that the defence is that there is no relationship between eating of the alleged contaminated sausage and the stomach pains. Hence the follow up that the stomach pains could have been caused by anything else.
- 4.51 Paragraph 6 of the defence would only have been speculative had paragraph 5 of the defence not been pleaded.
- 4.52 Paragraph 7 of the defence which alleges that the illness could have been caused by other factors, is a response to paragraph 8 of the statement of claim. That paragraph alleges that Thelma Chimuka Siachembele upon discovery of the green housefly which was embedded in the sausage that she had partially consumed, suffered severe stomach pain

and fever which caused her significant distress and discomfort.

- 4.53 Paragraph 7 of the defence in denying that consumption of the sausage which had a green housefly embedded in it caused Thelma Chimuka Siachembele to experience stomach ache and fever, alleges that the same could have been caused by other factors. However, no basis has been given for that defence.
- 4.54 There was need to plead a factual basis for why Mika Meats Limited took that position.
- 4.55 Paragraph 10 of the defence states that there are many factors that could have contributed to the presence of the fly after the sale, which raised the question of timing and the circumstances of the contamination.
- 4.56 It is a response to paragraph 12 of the statement of claim in which Thelma Chimuka Siachembele alleges that the laboratory results which were undertaken by the Ministry of Health Public Analyst, Dr F.S Kowa, under the Directorate of the National Food Laboratory, revealed that there was indeed a housefly that was embedded in the subject sausage.
- 4.57 The defence as pleaded in paragraph 10 of the defence should have given a factual basis for disputing paragraph 12 of the statement of claim.
- 4.58 Therefore paragraphs 7 and 10 of the defence are accordingly speculative, as they do not give a factual basis for denying the assertions that they respond to.

## 5. CONCLUSION

- 5.1 It has been conceded that Mika Meats Limited has not been entered as a Defendant in the Memorandum of Appearance which was filed. That is curable by way of amendment.
- 5.2 Further, as paragraphs 7 and 10 of the defence do not give a factual basis for denying the averments that they respond to, they are defective, as they are speculative.
- 5.3 I accordingly direct that amendment be made to the Memorandum of Appearance to reflect Mika Meats Limited as the Defendant who is entering appearance.
- 5.4 Paragraphs 7 and 10 of the defence shall also be amended to give a factual basis for the positions taken in defence, so that they are not speculative. The amendment shall be done by 12<sup>th</sup> September, 2025, failure to which the appearance and defence shall be struck out for irregularity.
- 5.5 The matter shall come up on 6<sup>th</sup> October 2025 at 08:20 hours for Orders for Directions.
- 5.6 Costs shall be in the cause and leave to appeal is granted.

**DATED AT LUSAKA THE 27<sup>th</sup> DAY OF AUGUST 2025**

  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

