

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

2025/HP/1139

BETWEEN:

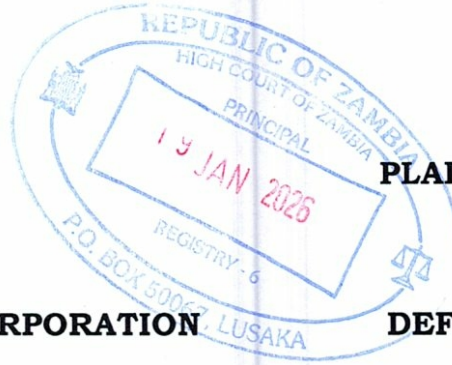
HANDA RESOURCES LIMITED

AND

**ZAMBIA MINERALS EXCHANGE CORPORATION
LIMITED**

PLAINTIFF

DEFENDANT



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 19th
DAY OF JANUARY, 2026**

For the Plaintiff : Mrs S. Kalima Banda, Messrs J&M Advocates

For the Defendant : Mr P.K Chibundi, Messrs Mosha and Company & Mr S.
Lukangaba, Messrs Sukwana Mweemba and Partners

R U L I N G

CASES REFERRED TO:

1. *William David Carlisle Wise v E.F Hervey Limited* 1985 ZR 179
2. *Barclays Bank Zambia Plc v Zambia Union of Financial Institutions Allied Workers* 2007 ZR 106
3. *Beatrice Muimui v Slyvia* SCZ/50/2000 (unreported)
4. *Legal Brain Trust (LBT) Limited v the Attorney General of the Republic of Botswana* Appeal No 4 of 2012
5. *Astro Holdings Limited v Lusaka City Council and others* CAZ/08/110/2020
6. *SP. Mulenga Associates International, Sonny Paul Mulenga v First Alliance Bank Limited* Appeal No 244/2020
7. *Fred Mmembe and the Post Newspapers v Abel Mbozi and others* Appeal No 7 of 2021
8. *Lukasu Properties Limited v African Banking Corporation Zambia Limited* Appeal No 5 of 2023
9. *Sonali Weerackody & another v Scaw Limited and four others* 2025/HPC/0086

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***
3. ***The Companies Act No 10 of 2017***

OTHER WORKS REFERRED TO:

1. ***Black's Law Dictionary, 8th Edition by Bryan A. Garner, 2004***

1. INTRODUCTION

- 1.1 On 8th September, 2025, Zambia Minerals Exchange Corporation Limited filed a Notice of Motion to raise preliminary issues, pursuant to ***Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition.***
- 1.2 The questions sought to be determined by the Notice of Motion, which was supported by an affidavit and a List of Authorities and Skeleton Arguments are:
 - i. *That this action is improperly before this Court because the cause of action has not yet arisen;*
 - ii. *That the matters raised in this action pertaining to Zambia Minerals Exchange Corporation Limited's issuance of the Writ of Fieri Facias is active before Hon Mr Justice Bonaventure Mbewe and the Court of Appeal, and as such, the action is an abuse of Court process.*
- 1.3 The Notice of Motion was opposed by an affidavit in opposition and a List of Authorities and Skeleton Arguments which were filed on 25th September, 2025.
- 1.4 Zambia Minerals Exchange Corporation Limited on 30th September, 2025, also filed summons to dismiss the action for irregularity, on the ground that no letter of demand was

served on Zambia Minerals Exchange Corporation Limited, pursuant to **Order VI Rule 1 (d) of the High Court Rules, as amended by Statutory Instrument No 58 of 2020.**

- 1.5 The application was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.6 In opposition, Handa Resources Limited filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 31st October, 2025.

2. BACKGROUND

- 2.1 Handa Resources Limited, on 13th August, 2025 applied ex-parte for leave to file originating process and summons for an Order of injunction during the Michaelmas Vacation pursuant to **Order II Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 2.2 Leave was granted on 15th August, 2025, and thereafter, on 18th August, 2025, Handa Resources Limited filed the Writ of Summons which was accompanied by a statement of claim and the other requisite documents claiming:
 - i. *A declaration that the execution that was conducted by Zambia Minerals Exchange Corporation Limited through the Sheriff of Zambia on 25th April, 2024 on goods situated at Plot No 1266 Haile Selassie Avenue, Longacres in Lusaka was wrongful and illegal;*
 - ii. *An Order of injunction restraining Zambia Minerals Exchange Corporation Limited, its' servants and/or agents from taking any further steps to enforce the said Writ of Fieri Facias;*

- iii. Damages against Zambia Minerals Exchange Corporation Limited for trespass while conducting the said wrongful execution;*
- iv. General damages in favour of Handa Resources Limited for the loss of business due to Zambia Minerals Exchange Corporation Limited's wrongful execution;*
- v. Interest on any sums found due to Handa Resources Limited;*
- vi. Legal costs; and*
- vii. Any other relief that the Court may deem fit.*

2.3 On 8th September, 2025, Zambia Minerals Exchange Corporation Limited entered appearance and filed its' defence and the other requisite documents, as well the Notice of Motion which is the subject of this Ruling.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR ZAMBIA MINERALS EXCHANGE CORPORATION LIMITED ON THE NOTICE OF MOTION

- 3.1 Counsel for Zambia Minerals Exchange Corporation Limited Mr Sukwana, in raising the Notice of Motion, submitted that they relied on the affidavit which was filed in support of the Notice of Motion, whose gist was that a cause of action had not yet arisen.
- 3.2 In that regard, he stated that the pleadings showed that the action is premised on the irregular execution of the Writ of Fieri Facias. Further submission was made, that there is a matter that is active before Hon Mr Justice Bonaventure

Mbewe in which the Writ of Fieri Facias was issued by Zambia Minerals Exchange Corporation Limited, and which Handa Resources Limited had attempted to set aside.

- 3.3 Then as shown by the Ruling which was exhibited as 'KK1' at page 58 in paragraph 108, the Court vacated the application which challenged the Writ of Fieri Facias. Thus, that in itself showed that the Writ of Fieri Facias is still valid.
- 3.4 Counsel went on to submit that Handa Resources Limited in paragraphs 18, 19, and 21 of the affidavit in opposition had admitted that the Writ of Fieri Facias is still valid.
- 3.5 He stated that it is trite that a Court order is valid unless it is set aside. Counsel still in submission, stated that exhibits 'KB1' to 'KB4' showed that the validity of the Writ of Fieri Facias is still active before Hon Mr Justice Bonaventure Mbewe and the Court of Appeal.
- 3.6 In that respect, the submission was that before Hon Mr Justice Bonaventure Mbewe, was an application to stay the Ruling on the basis that there was fear that there could be execution. Counsel stated that this showed that the Writ of Fieri Facias is valid and not irregular.
- 3.7 As for the matter before the Court of Appeal, it was submitted that the Memorandum of Appeal which was exhibited as 'KV3' in paragraphs 1 to 3, was clear that the Writ of Fieri Facias is still valid, hence the need to appeal the Ruling.
- 3.8 Counsel therefore formed the view that if the Writ of Fieri Facias and its' validity is still in contention, it followed that

a cause of action had not yet arisen and the action is incorrectly before this Court.

- 3.9 On the other leg of the preliminary issue, Counsel submitted that the action is an abuse of the Court process as the application to stay the Writ of Fieri Facias is still active before Hon Mr Justice Bonaventure Mbewe.
- 3.10 It was stated that a stay would only arise if there is an active Court order. The submission was also that secondly, there is an appeal before the Court of Appeal, which has challenged Hon Mr Justice Bonaventure Mbewe's action.
- 3.11 The position taken by Counsel, was that this action raised the potential of conflict that may arise depending on the outcome of the matters before the two other Courts.
- 3.12 On that basis, Counsel's prayer was that the matter be dismissed for want of a cause of action, as it was an outright abuse of the Court process.

SUBMISSIONS BY COUNSEL FOR ZAMBIA MINERALS EXCHANGE CORPORATION LIMITED MR P. CHIBUNDI

- 3.13 Counsel concurred with the submissions that had been raised with respect to the Notice of Motion, and stated that they did on 30th September, 2025, file summons to dismiss the matter for irregularity, on account of failure to serve a letter of demand before commencing the action.
- 3.14 He stated that in paragraph 7 of the affidavit in opposition, it had been averred that there was electronic service on a director. However, it was submitted that this did not meet

the threshold for service, and reliance was placed on the Skeleton Arguments.

- 3.15 Still in submission, Counsel stated that by an Order of the High Court at Kitwe, Handa Resources Limited is in Receivership. Further submission was made, that Counsel and Counsel for Handa Resources Limited, Ms Banda represent the parties before Hon Mr Justice K. Chenda, where there is a challenge to the receivership.
- 3.16 Counsel stated that he had raised the question, who represents Handa Resources Limited, and that Messrs Chonta Musaila represent the other party, with the lawyer being Frederick Mudenda.

RESPONSE BY COUNSEL FOR HANDA RESOURCES

- 3.17 Counsel in response, stated that on J&M Advocates being instructed in the matter following the appointment of the Receiver on 14th July, 2025, there was an Order that was issued on 23rd July, 2025 staying the powers of the Receiver, which was still in place.
- 3.18 It was also submitted that Hon Lady Justice Lamba in a Ruling dated 23rd October, 2025, set aside a preliminary issue which was raised by the Petitioner, and hearing of the Petition was scheduled for 5th December, 2025.
- 3.19 The case of ***Fred Mmembe and the Post Newspapers v Abel Mbozi and others*** (7) was stated as having guided on the residuary powers of a director. Therefore, on the strength of that authority, and as a stay of the order appointing the Receiver was still in place, the directors maintained

residuary powers by virtue of which the appointment of an Advocate could be done.

- 3.20 This Court was asked to take judicial notice of the proceedings in cause number 2025/HK/236 which is before the High Court at Kitwe.
- 3.21 Further request was made for this Court to take judicial notice of the matter which is before Hon Mr Justice K. Chenda under cause number 2025/HPC/0850, which Counsel contended does not challenge the appointment of the Receiver, but the Consent Judgment which was executed in Livingstone under cause number 2024/HL/189.
- 3.22 Counsel with respect to the merits of the application, stated that they filed an affidavit in opposition, as well as a List of Authorities and Skeleton Arguments in opposition on which they relied.
- 3.23 It was stated that a perusal of the Ruling that Hon Mr Justice Bonaventure Mbewe delivered, showed that he ruled that he was functus officio, and he could not hear the challenge to the enforcement process. Therefore, on that account, this action was commenced.
- 3.24 Further in submitting, Counsel stated that the Memorandum of Appeal showed that Handa Resources is not a party to the appeal, and that the Defendants in the matter before Hon Mr Justice Bonaventure Mbewe are Arc Minerals Limited, Kopara Investments Limited, Zamsort Limited and Handa Resources Limited.

- 3.25 It was submitted that once a party received a Ruling, they had various options that were available to them, and Handa Resources Limited opted not to appeal the decision but commenced this matter.
- 3.26 On that basis, Counsel's assertion was that the matter is properly before this Court.
- 3.27 The submission was further that exhibit 'KK2' to the affidavit in opposition, was a copy of the seizure form, which showed that the Sheriff of Zambia executed the Writ of Fieri Facias.
- 3.28 She stated that submission had been made that a Court order is valid until it is set aside. It was noted that a Writ of Fieri Facias is not signed by the Court, and after it was taken out, it was challenged.
- 3.29 The submission that Counsel also made, was that there is no risk of conflict of any Judgments of the Court, and that if this Court is of the view that there is such risk of conflict, the proper way would be stay to the proceedings pending determination of the appeal, and not to dismiss the action.
- 3.30 With regard to the application to set aside the proceedings for irregularity, it was submitted that an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition were filed on which reliance was placed.
- 3.31 Counsel's submission was that they maintained that there was no irregularity as service was properly effected. It was further stated that a case which was of persuasive value had been cited, which held that service of a demand letter by email was sufficient service.

3.32 The prayer was that the applications be dismissed.

**REPLY BY COUNSEL FOR ZAMBIA MINERALS
EXCHANGE CORPORATION LIMITED MR LUKANGABA**

3.33 Counsel in reply, stated that with regard to the contention that Handa Resources Limited is not a party to the appeal, exhibit 'KV4', the order staying execution listed the advocates as the advocates for Handa Resources Limited.

3.34 Further submission was made, that Messrs J&M Advocates are the advocates for Handa Resources Limited and the others who are not before Court.

3.35 It was also submitted that the appeal emanates from a matter arising from the same subject matter which is before Mr Justice Bonaventure Mbewe and the Court of Appeal.

3.36 Counsel as regards the submission that Mr Justice Bonaventure Mbewe in the Ruling stated that he was functus officio and could not determine the regularity of the Writ of Fieri Facias, stated that a perusal of the Ruling revealed that he did not address the issue of the validity of the Writ of Fieri Facias as seen in paragraphs 107 and 108.

3.37 It was stated that paragraph 5 of the Memorandum of Appeal is an appeal in respect of Mr Justice Bonaventure Mbewe having Ruled that he was functus officio.

3.38 Counsel stated that Handa Resources was flip flopping and going before different Courts to seek redress, which went to show that a cause of action had not yet arisen.

**REPLY BY COUNSEL FOR ZAMBIA MINERALS
EXCHANGE CORPORATION LIMITED MR CHIBUNDI**

3.39 Mr Chibundi in reply, submitted that the holding in the case of *Lukasu Properties Limited v African Banking Corporation Zambia Limited* ⁽⁸⁾ was that a letter of demand must be served on a Defendant. Counsel also stated that there was only a stay on the powers, and not on the Receivership. Thus, once there was an order for receivership, the directors could not take out an action in the name of the company without the leave of the Court.

3.40 The prayer accordingly was that the preliminary issues raised be sustained.

4. DECISION OF THIS COURT

4.1 I have considered the Notice of Motion and the application to dismiss the action for irregularity. I will start with the application to dismiss the matter for irregularity.

4.2 **Order VI Rule 1 (d) of the High Court Rules**, pursuant to which the application was made, provides that:

“Except as provided by any other 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; 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....”

- 4.3 In the affidavit which was filed in support of the application, Brian Chisala, the Executive Director of Zambia Minerals Exchange Corporation Limited deposed that the letter of demand was served on Mumena Mushinge who is a Defendant in this matter.
- 4.4 In the List of Authorities and Skeleton Arguments which were filed in support of the application, the case of ***Lukasu Properties Limited v African Banking Corporation Zambia Limited*** ⁽⁸⁾ was relied on as where the Supreme Court noted as follows:

“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.

.....

Rule 2 leaves no doubt that all the accompanying documents are necessary for a writ to be properly issued. To argue that a matter is tried on a statement of claim is to miss the point.

.....

The failure to serve the letter of demand on the appellant was fundamental and fatal omission.”

- 4.5 Harold Hanyuma, the Finance Consultant at Handa Resources Limited, in the affidavit in opposition averred that the letter of demand was served on Mumena Mushingwe a Director in Zambia Minerals Exchange Corporation Limited, as shown by the letter of service which was exhibited as ‘HH1’.
- 4.6 In the List of authorities and Skeleton Arguments in opposition, the decision in the case of ***Lukasu Properties Limited v African Banking Corporation Zambia Limited*** ⁽⁸⁾ was acknowledged.
- 4.7 It was argued that Mumena Mushingwe received the letter of demand in his capacity as Director, and not in an individual capacity, which was in furtherance of corporate governance and the agency relationship which exists between a company and its’ directors.
- 4.8 Reliance was placed on ***Section 86 of the Companies Act No 10 2017*** stating that it empowers directors to exercise all powers of the company.

4.9 The case of ***Sonali Weerackody & another v Scaw Limited and four others*** ⁽⁹⁾ was stated as where Hon Lady Justice C.B. Maka held that a letter of demand served vide an email, was sufficient service under the circumstances.

4.10 It is noteworthy, that the Defendant Zambia Minerals Exchange Corporation Limited, is a company that it is incorporated under the ***Companies Act No 10 of 2017***. Consequently, it is an artificial person.

4.11 ***Section 86 (1) of the Companies Act No 10 of 2017*** provides that:

“86. (1) Subject to this Act, the business of a company shall be managed by, or under the direction or supervision of, a board of directors who may—

(a) pay all expenses incurred in promoting and forming the company; and

(b) exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the members.”

4.12 Then, ***Section 34*** of the said ***Companies Act*** states that:

“34. (1) Despite this Act or any other law, a document may be served on a company by—

(a) delivery of the document to the registered office of the company; or

(b) personally serving a director or secretary of the company.

(2) Where service in the manner specified in subsection (1) is not possible, a document may be served on a company by registered mail or electronic mail.”

- 4.13 It can be seen from the above, that the primary modes of service of any documents on a company under the Act, is service at the registered office of the company or personally on a director or secretary of the company.
- 4.14 Where the two modes of service are not possible, service may be effected by registered mail or by email.
- 4.15 Exhibit ‘HH1’ to the affidavit in opposition, is a letter addressed to the Managing Director of Zambia Minerals Exchange Corporation Limited, which letter served the Writ of Summons and the accompanying documents.
- 4.16 When the Writ of Summons and the other documents were filed when the action was commenced, an affidavit of service was filed, which showed that on 14th August, 2025 an attempt was made to serve the letter of demand on Zambia Minerals Exchange Corporation Limited at Plot No 42 Luato Road Roma, as shown by letter of demand, which was exhibited as ‘SS1’, but Zambia Minerals Exchange Corporation Limited could not be located there.
- 4.17 Further, as evidenced by a search which was conducted at the Patents and Companies Registration Agency (PACRA) which was exhibited as ‘SS2’, no data was found relating to Zambia Minerals Exchange Corporation Limited.

- 4.18 Exhibit 'SS3' is an email dated 15th August, 2025, which was sent to Mumena Mushingi asking him to confirm the official address for Zambia Minerals Exchange Corporation Limited, attaching the demand letter.
- 4.19 In the case of ***Lukasu Properties Limited v African Banking Corporation Zambia Limited*** ⁽⁸⁾, the Supreme Court stated the following:

“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 I have noted that Zambia Minerals Exchange Corporation Limited is an artificial person at law. It therefore acts through its' directors.
- 4.21 No dispute was raised to the assertion that Mumena Mushinge who was served the letter of demand vide email, is a Director of Zambia Minerals Exchange Corporation Limited. Handa Resources Limited by the affidavit which was filed, evidencing service of the letter of demand when commencing the matter, demonstrated that service at the office of the company, and personally on the directors failed, as the company was not found at Plot No 42 Luato Road, Roma Lusaka.
- 4.22 As such, service was done by email which is permissible under **Section 34 (2) of the Companies Act**, the primary modes of service having failed.
- 4.23 It therefore follows, that service of the letter of demand was proper in the circumstances, and the application to set aside the matter for irregularity fails, and it is dismissed.

THE CAUSE OF ACTION HAS NOT YET ARISEN

- 4.24 As for the Notice of Motion, **Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition** provides that:

“(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.”

4.25 Kelvin Vlahakis in the affidavit which was filed in support of the Notice of Motion, deposed that there were legal disputes which culminated into a Settlement Agreement, which was incorporated in the Consent Judgment, and which was executed before Hon Mr Justice Bonaventure Mbewe among different parties, who included Handa Resources Limited and Zambia Minerals Exchange Corporation Limited.

4.26 Further averment was made, that the contents of the Consent Judgment and the Settlement Agreement and its' implications and enforcement, are matters which are still active before Hon Mr Justice Bonaventure Mbewe.

4.27 It was stated that arising from the Consent Judgment and the Settlement Agreement, Zambia Minerals Exchange Corporation Limited, took out a Writ of Fieri Facias to enforce the Consent Judgment, due to failure by Handa Resources Limited to comply with the terms of the Consent Judgment and the Settlement Agreement.

- 4.28 The averment was that property was seized pursuant to the Writ of Fieri Facias to give effect to the Consent Judgment, which incorporated the Settlement Agreement. Then through the legal representatives, Messrs Shamwana and Company, Handa Resources Limited applied to stay execution of the Writ of Fieri Facias and to set aside the Writ of Fieri Facias before Hon Mr Justice Bonaventure Mbewe.
- 4.29 It was deposed that the application to stay execution of the Writ of Fieri Facias was granted ex-parte. Then Zambia Minerals Exchange Corporation Limited responded to the application to set aside the Writ of Fieri Facias, and raised a preliminary application, whether the Hon Judge could consider any other application apart from enforcement related matters that culminated in the Consent Judgment.
- 4.30 Thus, by a Ruling dated 7th August, Hon Mr Justice Bonaventure Mbewe dismissed the applications to stay execution of the Writ of Fieri Facias, and to set aside the said Writ of Fieri Facias. He further vacated the exparte order staying execution.
- 4.31 Kelvin Vlahakis deposed that the legality or lawfulness of the Writ of Fieri Facias was not an issue that was under consideration by Hon Mr Justice Bonaventure Mbewe, and that following dismissal of the application the Writ of Fieri Facias was still valid.
- 4.32 He stated that following delivery of the Ruling by Hon Mr Justice Bonaventure Mbewe, an application to Stay

Execution, a Notice of Appeal and Memorandum of Appeal which were exhibited as 'KV1' to 'KV3' were filed.

- 4.33 Then by the Ruling which was exhibited as 'KV4', Hon Mr Justice Bonaventure Mbewe stayed execution of the Ruling.
- 4.34 It was stated that in paragraph 3 of exhibit 'KV3', admission was made that the Writ of Fieri Facias is still valid.
- 4.35 Kelvin Vlahakis deposed that the fact that Hon Mr Justice Bonaventure Mbewe vacated only the application to stay execution of the Writ of Fieri Facias, and to set aside the Writ of Fieri Facias, meant that the Writ of Fieri Facias is unchallenged and valid, and that the cause of action that the Writ of Fieri Facias was wrongly executed has not yet arisen.
- 4.36 It was averred in the alternative, that considering that the matter is on appeal before the Court of Appeal, and is yet to be determined, suggests that the validity or issuance of the Writ of Fieri Facias as being wrongful and irregular has not yet been determined, thereby establishing that a cause of action has not yet arisen.
- 4.37 In the List of Authorities and Skeleton Arguments which were filed in support of the Notice of Motion, the cases of ***Astro Holdings Limited v Lusaka City Council and others*** ⁽⁵⁾, ***Beatrice Muimui v Sylvia*** ⁽³⁾ and ***SP. Mulenga Associates International, Sonny Paul Mulenga v First Alliance Bank Limited*** ⁽⁶⁾ were cited as authority for abuse of Court process and forum shopping.
- 4.38 Also relied on, was the case of ***Legal Brain Trust (LBT) Limited v the Attorney General of the Republic of***

Botswana ⁽⁴⁾ as having held that a Court will not adjudicate hypothetical questions, and will not hear a case in the abstract or one that is purely academic or speculative in nature.

- 4.39 It was further argued that the Court in that matter, explained this as being on the basis, that it is to avoid the hollow and futile scenario of a Court engaging its' efforts in applying a specific law to a set of mere speculative facts, and that there must be pre-existing factors arising from a real live situation that gives rise to, for instance, a breach of contract, a tortious wrong, etcetera.
- 4.40 It was stated that the Court noted that absence such a dispute, the exercise would be an abuse of the Court process.
- 4.41 The argument was that in this matter, the contention is that, there was wrongful or irregular issuance of a Writ of Fieri Facias. However, the documents that are before the Court, establish that the Court refused to set aside the Writ of Fieri Facias, and the challenge to the refusal to set aside the Writ of Fieri Facias is before both the High Court and the Court of Appeal.
- 4.42 Accordingly, the matter before this Court is premature and should not be entertained, as that the issuance of the Writ of Fieri Facias and other applications that would have a bearing on the same are still active before other Courts.
- 4.43 It was argued that this poses a danger of conflicting decisions being made over the validity of the Writ of Fieri Facias. Thus, commencing this matter amounts to

multiplicity of actions and an abuse of Court process. Accordingly, it should be dismissed.

- 4.44 Kate Kayola, the affiant of the affidavit in opposition, deposed that she is the Finance Manager of Anglo Exploration Zambia Limited, a company that has been appointed to provide certain management, exploration and administrative services to Handa Resources Limited.
- 4.45 She admitted the contents of the Consent Judgment and the Settlement Agreement and its' implications and enforcement, to the extent that it is active before Hon Mr Justice Bonaventure Mbewe, as the Consent Judgment expressly discontinued the action and brought it to a final close.
- 4.46 Her averment was that as advised by the Advocates, the discontinuance entails that the Court ceased to have jurisdiction to entertain any applications in the cause.
- 4.47 Kate Kayola deposed that Zambia Minerals Exchange Corporation Limited issued a Writ of Fieri Facias to allegedly enforce the Consent Judgment.
- 4.48 It was also her averment, that Handa Resources Limited did not fail to abide by the terms of the Consent Judgment as there was no Judgment of the Court which conclusively determined the same or ascribed any liability to Handa Resources Limited.
- 4.49 However, a Writ of Fieri Facias was issued to enforce the Consent Judgment.

- 4.50 Kate Kayola agreed Handa Resources Limited applied to stay execution, and to set aside the Writ of Fieri Facias for irregularity, which challenged the issuance in a matter that was discontinued, and without any Judgment or assessment determining that the Consent Judgment was the basis for enforcement, as opposed to rendering the matter settled for purposes and rendering the Court functus officio and/or ascribing liability to Handa Resources Limited.
- 4.51 The averment was that the Writ of Fieri Facias is still valid as the applications to stay execution and to set aside the Writ of Fieri Facias were dismissed on jurisdictional grounds.
- 4.52 Kate Kayola further in deposing, stated that on the Consent Judgment being executed, the Court became functus officio and the irregularities in the Writ of Fieri Facias remain unexamined as well as the Court's capacity or jurisdiction to issue and/or sustain the Writ of Fieri Facias.
- 4.53 Referring to exhibit 'KK1', it was stated that the Court in that Ruling, stated that no further steps could be taken in an action that had been discontinued, as the Court was functus officio.
- 4.54 The further averment was that Handa Resources Limited is not a party to the appeal that is before the Court of Appeal.
- 4.55 Kate Kayola deposed that the Sheriff of Zambia executed the Writ of Fieri Facias as evidenced by exhibit 'KK2', the seizure form.
- 4.56 It was stated that there is a cause of action.

- 4.57 Further averment was made, that as shown on exhibit 'KK3', Zambia Minerals Exchange Corporation Limited had applied to place Handa Resources Limited under receivership and subsequent orders.
- 4.58 **Black's Law Dictionary, 8th Edition by Bryan A. Garner** was stated as having defined *cause of action* as:
- “A group of operative facts giving rise to one or more basis for suing: a factual situation that entitles one person to obtain a remedy in Court from another.”**
- 4.59 Also relied on, was the case of **William David Carlisle Wise v E.F Hervey Limited** ⁽¹⁾.
- 4.60 It was argued that there is a cause of action in this matter as **Order 42 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia**, provides that there has to be a decree before execution can be done.
- 4.61 Further argument was made, that the case of **Barclays Bank Zambia Plc v Zambia Union of Financial Institutions Allied Workers** ⁽²⁾ held that execution can only be levied on amounts which are found due by the Court in a judgment or agreed to by the parties to an action, and incorporated in a Consent Judgment.
- 4.62 Further authorities were referred to on trespass, stating that they were applicable, as the Writ of Fieri Facias was irregularly issued.
- 4.63 It was denied that this matter is an abuse of the Court process as the Consent Judgment which was executed and

as shown by exhibit 'KK2', withdrew the matters which were before the Court. However, thereafter, Zambia Minerals Exchange Corporation Limited filed a Writ of Fieri Facias and execution was levied on its' premises.

- 4.64 It was stated that as challenge was made to the issuance of the Writ of Fieri Facias, which Mr Justice Bonaventure Mbewe dismissed, on the basis that the Court was functus officio once the Consent Judgment was executed. However, some of the parties in that matter appealed, while Handa Resources Limited did not and instead filed this action.
- 4.65 In still arguing, it was stated that should the Court of Appeal proceed to hear the appeal, the issues for determination before it, will be different from the substance of the matters which are before this Court.
- 4.66 It was stated that if there was any abuse, it lay in issuing a Writ of Fieri Facias in an action that was discontinued before Mr Justice Bonaventure Mbewe, in which assessment of liability was unilaterally done and execution was done against a wrong party.
- 4.67 Handa Resources Limited also argued that even if Mr Justice Bonaventure Mbewe was to set aside the Writ of Fieri Facias, whether as a result of the appeal or not, it would not remedy the wrongful execution, and he would not grant the remedies sought.
- 4.68 Referring to the Memorandum of Appeal, the argument was that the appeal did not wish to challenge the finding that the Court was functus officio following the entry of the Consent

Judgment, but the acquiescence by the Court to certain applications post the execution of the Consent Judgment, including the Writ of Fieri Facias.

- 4.69 Thus, the contention was that the appeal is unlikely to culminate in the Court of Appeal delivering a Judgment on the Court being functus officio, and that the fresh action should have been continued in the discontinued matter.
- 4.70 What the averments and arguments as made by the parties above reveal, is that in cause number 2021/HPC/244 in which the parties were Zambia Minerals Exchange Corporation Limited as Plaintiff, and Arc Minerals Plc, Kopara Investments Limited, Zamsort Limited and Handa Resources Limited as Defendants, by a Consent Judgment dated 3rd March, 2022, the parties agreed to be bound by the excuria settlement agreement which was entered into on 18th February, 2022 and which constituted full and final settlement between the parties, and that the action was wholly discontinued.
- 4.71 It is not in dispute that thereafter, a Writ of Fieri Facias was issued in the matter on 22nd April, 2024, and an application was filed to stay execution of the Writ of Fieri Facias and to set it aside.
- 4.72 After the Court granted an ex-parte Order to stay execution of the Writ of Fieri Facias on 24th April, 2025, Zambia Minerals Exchange Corporation Limited as Plaintiff in the matter, filed a Notice of Motion on 28th April, 2024 to set

aside the applications for irregularity, as the Court had no jurisdiction to do so.

4.73 What is also common cause, is that Hon Mr Justice Bonaventure Mbewe in a Ruling dated 7th August, 2025, in paragraph 103 held as follows:

“In the case in casu, the parties filed a Consent Judgment dated 3rd March 2022 which Judgment also discontinued the Plaintiffs action. I am of the firm view that the action herein terminated and this record is closed to any application whatsoever, especially as there is no lingering question of costs which were already addressed in the Consent Judgment.

Had the Consent Judgment not contained the order for discontinuance of the action, I would have taken the view that I have jurisdiction to hear and determine the applications herein as the applications are for enforcement and not brought to set aside the Consent Judgment. In the present circumstances, I have no jurisdiction to hear and determine the Defendant’s challenge of the enforcement process instituted by the Plaintiff.”

4.74 Mr Justice Bonaventure Mbewe as seen above, concluded that he had no jurisdiction to hear the application that was before him, including some of the issues that had been raised in the Notice of motion.

- 4.75 Therefore, he could not make any Order on the same relating to setting aside the Writ of Fieri Facias. Mr Justice Bonaventure Mbewe accordingly vacated the stay of the Writ of Fieri Facias which was granted ex-parte.
- 4.76 The record shows that Arc Minerals Limited and Kopara Investments Limited on 12th August 2025, under the hand of the Advocates J & M Advocates filed a Notice of Appeal, which is exhibited as 'KV2' to the affidavit which was filed in support of the Notice of Motion.
- 4.77 The Memorandum of Appeal, which is exhibited as 'KV3' to the said affidavit, reveals the grounds of appeal. The first ground alleges that the Court erred in law and in fact when it vacated the stay of the Writ of Fieri Facias, when it ruled that no application or procedure could be filed in a closed matter, thereby validating that the Writ of Fieri Facias was irregularly filed after the matter had been closed.
- 4.78 The second ground is that the trial Judge misdirected himself when he found that the Court retained jurisdiction over enforcement procedures following a formal discontinuance of the main action, while simultaneously declining jurisdiction to examine the substantive validity of the enforcement of the Writ of Fieri Facias.
- 4.79 The third ground contends that the trial Judge failed to exercise the Court's supervisory jurisdiction over its' own procedures and processes, by failing to determine the application to determine whether the Writ of Fieri Facias was

validly issued, which constituted de facto acquiescence to its' validity without proper examination of the merits.

- 4.80 The appeal also alleges as a fifth ground, that the Judge erred in law and fact in the application of *functus officio* by failing to distinguish between legitimate enforcement of valid Judgments and enforcement attempts based on irregular or procedurally defective writs.
- 4.81 The sixth ground faults Mr Justice Bonaventure Mbewe for failing to consider the legal implications of the discontinuance on Zambia Minerals Exchange Corporation Limited's capacity to pursue enforcement remedies.
- 4.82 In the last ground of appeal, the contention is that Mr Justice Bonaventure Mbewe misdirected himself by creating an artificial distinction between enforcement procedures and substantive issues without providing adequate legal foundation for such distinction.
- 4.83 From the above, what can be noted, is that the appeal largely seeks to challenge the decision by Hon Mr Justice Bonaventure Mbewe to refuse to hear the application to stay execution and to set aside the Writ of *Fieri Facias* on the basis that he was *functus officio*.
- 4.84 Granted, the determination of the appeal may not address the merits of whether damages are due to Handa Resources Limited for any alleged wrongful issuance of the Writ of *Fieri Facias*, as that is a relief that is not covered in the appeal. It is a relief that is a new cause of action so to speak.

- 4.85 However, the Court of Appeal has the power, by virtue of the grounds of appeal as stated, to decide on whether Mr Justice Bonaventure Mbewe had the jurisdiction to decide on the validity or otherwise of the issuance of the Writ of Fieri Facias in cause number 2021/HPC/0244.
- 4.86 If the Court of Appeal on appeal decides that, that is the position, it will issue appropriate directions.
- 4.87 Only when that is done, and it is directed that Mr Justice Bonaventure Mbewe should proceed to hear the applications on their merits and decide, and he does so, will a cause of action be said to have accrued depending on what he decides.
- 4.88 I am alive to the fact that Handa Resources Limited contends that it chose not to appeal the Ruling by Mr Justice Bonaventure Mbewe. That it is perfectly entitled to do, and pursue other legal remedies that are available.
- 4.89 The fact that execution was done, does not in itself constitute a cause of action. Handa Resources Limited needs to establish that there was a wrong that was done in taking out the Writ of Fieri Facias, from which any damages may be ordered.
- 4.90 What is however noteworthy, is that Handa Resources Limited is represented by Messrs J&M Advocates who also represent the Appellants in the appeal.
- 4.91 Therefore, the parties who are dissatisfied with the Ruling which was delivered by Mr Justice Bonaventure Mbewe have taken two routes, this is, one of appealing and the other to

commence this action whilst being represented by the same advocates.

- 4.92 That is splitting hairs, and imploring different procedures to air their grievance over the same subject matter. It is thus a multiplicity of actions, shielded in the plea that each party has exercised the right to pursue the legal remedies that are available, when what is sought is ultimately to set aside the Writ of Fieri Facias.
- 4.93 In the opposition, there was exhibited as 'KK3', an ex-parte order to stay execution of the appointment of the Receiver for Handa Resources Limited which is dated 23rd July, 2025.
- 4.94 At the hearing, Counsel for Zambia Minerals Exchange Corporation Limited while agreeing that proceedings to place Handa Resources Limited have been instituted, stated that only a stay of the powers of the Receiver has been granted but not the appointment of the Receiver.
- 4.95 I am not privy to the said Order, as I have been unable to find it online. Should it be availed to the Court on an appropriate application be made, I will be able to determine the same.

5. CONCLUSION

- 5.1 In view of the fact that there is an appeal before the Court of Appeal that touches on whether Mr Justice Bonaventure Mbewe can actually hear the application to set aside the Writ of Fieri Facias which was issued in cause number 2021/HPC/0244 where a Consent Judgment was executed to discontinue the matter, in order to avoid conflicting

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decisions being made over the same subject matter by different Courts, I stay these proceedings pending determination of the appeal before the Court of Appeal.

5.2 Costs remain in the cause. Leave to appeal is granted.

DATED AT LUSAKA THE 19th DAY OF JANUARY, 2026

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

