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

2021/HP/0585

BETWEEN:

MAGODI LODGE LIMITED

AND

LAZARUS MANKUNSHA



PLAINTIFF

DEFENDANT

BEFORE THE HONOURABLE MRS. JUSTICE M.C KOMBE

For the Plaintiff:

*Mr. N. Nsamba - Messrs. Sameta Mapushi
Legal Practitioners.*

For the Defendant:

*Mr. V. M. Chizawu- Messrs. Shepande &
Company.*

R U L I N G

Cases referred to:

1. **Elizabeth Catherine Cooke v. Moses Mpundu and two others (Appeal No. 207/2015).**

Legislation and other material referred to:

1. **The High Court Rules, Chapter 27 of the Laws of Zambia.**
2. **The Rules of the Supreme Court (White Book) 1999 Edition.**

1. **INTRODUCTION**

- 1.1 The Plaintiff is a limited Company and by law, a body corporate must appear by counsel. In exceptional circumstances, the Court may grant leave to the Plaintiff to be represented by the Director or Manager of the Company.
- 1.2 In this particular case, the Manager appeared before this Court on 6th June, 2024. Prior to that date, the Court had informed him that he could only appear on behalf of the Company if the Court had granted him leave to appear.
- 1.3 On 6th June, 2024, the Manager appeared but as at that date, no application to appear without counsel had been filed. Thus, the matter was struck off the active cause list with liberty to restore within a period of twenty-one (21) days from the stated date as the Plaintiff was delaying in prosecuting the case.
- 1.4 The Plaintiff made an application to restore the matter to the active cause list on 19th June, 2024 and this ruling relates to the application made herein.

2 **PLAINTIFF'S AFFIDAVIT EVIDENCE**

- 2.1 In support of the application, the Plaintiff filed an affidavit in support which was deposed to by **GIFT KASONDE**, the

Manager in the Plaintiff Company. The deponent explained that the reason there was non- attendance on 6th June, 2024 was because they had delayed in filing an application for leave for him to represent the Company and appear without counsel.

- 2.2 That the delay was not deliberate but due to the fact that he had gone to attend a funeral in the village in Northern Province. He apologised to the Court for the delay.

3 DEFENDANT'S AFFIDVIT IN OPPOSITION

- 3.1 The Defendant opposed the application by filing an affidavit in opposition on 9th June, 2025.
- 3.2 The Defendant disclosed that when the matter came up for status conference on 6th June, 2024, he was in attendance while the Plaintiff was not. That there was no reason advanced for the non - attendance by the Plaintiff and that this prompted him to apply for the Plaintiff's case to be dismissed. The Court granted this application by removing it from the active cause list with liberty to restore within a period of twenty-one (21) days.
- 3.3 That the Plaintiff now contended that it opted to stay away from the status conference on account of the fact that it had

neglected to file an application for leave to appear without counsel as guided by this Court on 11th April, 2024.

3.4 It was deposed that by its own admission, these proceedings had been marred by the Plaintiff's persistent failures to abide by this Court's orders and procedural guidelines.

3.5 Furthermore, that the Plaintiff's contention that it did not adhere to this Court's orders on account of a supposed bereavement could not stand because the Plaintiff was a limited company and its operations could not come to a standstill on account of one of its members having suffered a bereavement.

3.6 He added that if the application was granted, he would suffer undue prejudice as he would continue to incur legal costs in defending the Plaintiff's case which had failed to progress from 2021 till date on account of the Plaintiff's actions.

3.7 That he had been advised by his advocates that in the absence of compelling reasons for its failure to attend Court, the Plaintiff's current application to restore this matter to the active cause list must fail.

4 PLAINTIFF'S AFFIDAVIT IN REPLY

- 4.1 The Plaintiff exercised its right to respond to the affidavit in opposition. The deponent **JETHO KANDELA**, the Manager in the Plaintiff Company.
- 4.2 He explained that the Plaintiff did not attend Court on 6th June, 2024 as the then General Manager failed to communicate the Court's directive and scheduled hearing to the Plaintiff whilst he was attending to his personal issues. As result, the Plaintiff did not proffer an explanation to the Court for its failure to attend the hearing.
- 4.3 While acknowledging that there had been delays in prosecuting the matter, this was attributed to the change in legal representation and negligence of the former General Manager.
- 4.4 That the Plaintiff was ready to proceed with the prosecution of the case having since appointed advocates who were duly on record.
- 4.5 The deponent added that all parties had since complied with the Court's pre-trial directions and therefore, the Defendant would not suffer any prejudice.

5 HEARING

5.1 The application was heard on 16th September, 2025.

Learned counsel for the Plaintiff Mr. N. Nsamba relied on the affidavit in support, list of authorities and skeleton arguments. This was augmented with verbal submissions. Reliance was also placed on the affidavit in reply.

5.2 Similarly, learned counsel for the Defendant relied on the affidavit in opposition, list of authorities and skeleton arguments. He also submitted verbally.

5.3 I shall not replicate the arguments by the parties for the sake of brevity suffice it to mention that I have carefully considered the submissions and I am indebted to counsel.

6 DECISION OF THE COURT

6.1 By this application, the Plaintiff seeks an order to restore this matter to the active cause list.

6.2 As mentioned in the introductory paragraph, this matter was struck off the active cause list with liberty to restore within a period of twenty-one (21) days from 6th June, 2024. The reason for striking out the matter was because the Plaintiff was not represented by counsel and the Manager in attendance did not have the authority to represent the

Plaintiff. Thus, no progress was being made in prosecuting the matter.

- 6.3 The Plaintiff has moved this Court pursuant to **Order 35 rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

“Any civil cause struck out may with the leave of the Court be replaced on the list on such terms as the Court may deem fit.”

- 6.4 Given the foregoing provision, the Plaintiff contends that this Court has the powers to restore this matter to the active cause list. That the reason for not attending Court was not deliberate but due to the fact that there was a delay in filing the application for leave for the Manager to represent the Plaintiff and not counsel. This is because the Manager had a funeral in Northern Province and did not inform the other officers of the Court’s directive in this matter and the date of hearing.

- 6.5 The Defendant contends that the Plaintiff has failed to show compelling reasons why the matter should be restored to the active cause list.

6.6 I will begin by making reference to what the Supreme Court stated in the case of **Elizabeth Catherine Cooke v. Moses Mpundu and two others**⁽¹⁾ that:

“When a Court schedules a matter for hearing, the expectation is that the parties will attend before it at the appointed date and time. If the plaintiff or applicant does not attend, the Court enjoys the discretion to strike the matter off its cause list. The reason is that the Court is not obliged to keep matters that are in abeyance on account of a party’s procrastination on its cause list.

Often times when the Court strikes a matter off its cause list, it gives the plaintiff or applicant the liberty to apply to restore within a specified period of time, failing which the matter or application stands dismissed. This is what is called an “unless order”.”

6.7 What was stated by the Supreme Court clearly encapsulates what happened in the present case. The Supreme Court further stated that when the Court grants an unless order, it is used to assist the Judge in the case flow and case management.

6.8 That by this it meant that the art of modern adjudication must be cognizant of the fact that the resources of the Courts are limited and as such, the door to justice must

only be open to litigants who are willing to prosecute or defend their actions.

6.9 It is clear that the observations made by the Supreme Court underscore the importance of the rules of the court as well as rules of practice which have been devised in the public interest to promote expeditious dispatch of litigation.

6.10 And I should hasten to add that a litigant should only be denied an adjudication of his claim on merit by reason of procedural default if the default causes prejudice to the other party.

6.11 Taking into account the foregoing, I have carefully considered the reasons advanced by the Plaintiff in its affidavit in support of the application and its affidavit in reply. I must state that to its credit, the Plaintiff filed the application within the period directed by this Court and not after the lapse of twenty-one (21) days.

6.12 While the Defendant has argued that the reasons advanced by the Plaintiff are not compelling, I find the reasons advanced excusable considering the reasons the matter was struck out and the fact that the Plaintiff has since engaged counsel to represent it in the matter henceforth. The

Plaintiff has therefore demonstrated a desire to prosecute the matter on its merits.

6.13 In addition, I find that no prejudice will be occasioned to the Defendant if the application is granted as the Defendant was expected to defend the matter when the matter was still on the active cause list.

7 CONCLUSION

7.1 The upshot of my findings is that there is merit in the application by the Plaintiff. Consequently, the matter is restored to the active cause list but I make no order as to costs.

7.2 The next scheduling conference will be on 4th November, 2025 at 10:00 hours.

DATED AT LUSAKA THIS 29TH DAY OF SEPTEMBER, 2025

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M.C. KOMBE
JUDGE
M.C. KOMBE, J
P.O. BOX 50067, LUSAKA

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
29 SEP 2025

