

IN THE HIGH COURT FOR ZAMBIA
AT THE KITWE DISTRICT REGISTRY

2011/HK/251

(CIVIL JURISDICTION)

BETWEEN:

DERRICK PRINGLE (Suing in his own behalf and for - 1ST PLAINTIFF
And on behalf of the United Church of God (An Association
Registered Under the Societies Act, Cap 119 of the Laws
Of Zambia)

AND

WILSON NKHOMA (Suing in his own behalf and for - 2ND PLAINTIFF
And on behalf of the United Church of God (An Association
Registered Under the Societies Act, Cap 119 of the Laws
Of Zambia)

AND

KAMBANI BANDA - DEFENDANT

AND

UNITED CHURCH OF GOD REGISTERD TRUSTEES- 1ST INTERVENER

AND

JAMES MFULA (Suing as Trustee of and on behalf - 2ND INTERVENER
Of Life Nets Zambia Chapter)

Before the Hon. Mr. Justice I.C.T. Chali in Chambers on the **16th** day of **November**,
2011

For the Plaintiffs: Mr. W.B. Nyirenda, SC – William Nyirenda and Company

For the Defendant: Non Appearance

For the 1st and 2nd Interveners: Mr. L. Zulu - Tembo, Ngulube and Associates

RULING

Legislation referred to:

1. *High Court Rules, Chapter 27 of the Laws of Zambia*

The interveners applied for an order transferring this case which was commenced by the Plaintiffs by writ of summons at the Kitwe District Registry to the Principal Registry at Lusaka. The 2nd intervener swore an affidavit in which he gave the grounds for the application, namely, that the 2nd Plaintiff, the Defendant and the two interveners were based in Lusaka; that the properties the subject of the proceedings were in Lusaka; that the majority of the parties would be put to great cost in travelling and lodging when attending court at Kitwe; and that the transfer would be in the interest of justice and would not prejudice the Plaintiffs.

The application was made pursuant to Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia which provides thus:

“Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice whether such order has been expressly asked by the person entitled to the benefit of the order or not.”

Mr. Zulu, Counsel for the interveners, submitted that it would only be fair and just if the matter was transferred to Lusaka considering the excessive cost the majority of the parties who were based in Lusaka would be put to. He argued that the cost of four of the parties travelling to Kitwe would be higher as compared to only one of them travelling to Lusaka. He said even if a party or parties were to bear the costs if they lost at the end of the day those costs would be considerably lower if the matter were concluded at Lusaka. That, he said, is where justice and fairness come in.

In opposing the application, Mr. Nyirenda, SC, Counsel for the Plaintiffs, submitted that the grounds advanced have the effect of limiting the Court's jurisdiction territorially or geographically. That, he said, would be against the provisions of Article 94(1) of the Constitution of Zambia which provides for the **“unlimited”** jurisdiction of the Court. He submitted that the Plaintiffs had a right and chose to commence their action at the Kitwe Registry and to pursue it there to its conclusion; and that, if at the end of the day the matter were to be determined against them, the issue of their choice of forum would be reflected in the order for costs.

I have considered the reasons given by the interveners for their application and the arguments by Counsel for the parties.

The application seeks a variation in the Order for Direction signed on 11th October, 2011 in which I directed inter alia that the trial of the action be at Kitwe before a Judge sitting alone.

Firstly, I do not think that the application for transfer is intended to limit the jurisdiction of the Court territorially or geographically, namely, that a matter involving residents or property of a particular locality ought to be heard and determined in that particular locality. That would be an absurd approach to the jurisdiction of the High Court. Indeed, we do not have such a provision in our laws.

Secondly, the court enjoys discretion in determining the place of trial. In this regard, I think that Order 3 Rule 2 ought to be read together with Order 31 of the High Court Rules which provides as follows;

“31.1.(1) In every action commenced by writ of summons, an order made on the summons for directions shall determine the place and mode of trial; but any such order may be varied by a subsequent order of the Court or a Judge made at any time at or before the trial.

(2).....

(3) The discretion of the Court or a Judge in making or varying any order under this rule is an absolute one”.

I think that in making or varying an order as to place of trial, the Court or a Judge ought to have regard to the convenience of the parties and their witnesses, as well as to the locality of the object to be viewed when a view is desirable. The cost to the parties is, no doubt, also a corollary factor in such a consideration.

I think these are considerations which cannot be ignored but rather which ought to weigh with the Court or a Judge exercising the discretion under Order 31 Rules 1 and 3.

On the other hand a party's personal preference for a particular forum for trial cannot, in my opinion, be said to be so relevant even if he has stated a preparedness to meet whatever costs may be awarded against them in the event of their loss of the action.

In the circumstances of this particular case, I find the application to have merit and I allow it. The costs of the application shall be costs in the cause.

Delivered at Kitwe in Chambers this 16th day of November, 2011

I.C.T. Chali
JUDGE