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

2013/HP/1654

BETWEEN:



- |                           |                                  |
|---------------------------|----------------------------------|
| <b>COSMAS MWEEMBA</b>     | <b>1<sup>ST</sup> PLAINTIFF</b>  |
| <b>ANDREW SIKOSWE</b>     | <b>2<sup>ND</sup> PLAINTIFF</b>  |
| <b>ANTSON CHANGULA</b>    | <b>3<sup>RD</sup> PLAINTIFF</b>  |
| <b>BENSON MUNENGA</b>     | <b>4<sup>TH</sup> PLAINTIFF</b>  |
| <b>CHIMUKA MAYUNI</b>     | <b>5<sup>TH</sup> PLAINTIFF</b>  |
| <b>CONARD MUMBA</b>       | <b>6<sup>TH</sup> PLAINTIFF</b>  |
| <b>ELISON HANKUMBA</b>    | <b>7<sup>TH</sup> PLAINTIFF</b>  |
| <b>EMELIA MWEEMBA</b>     | <b>8<sup>TH</sup> PLAINTIFF</b>  |
| <b>EMELIA TEMBO</b>       | <b>9<sup>TH</sup> PLAINTIFF</b>  |
| <b>EVANS MAYUNI</b>       | <b>10<sup>TH</sup> PLAINTIFF</b> |
| <b>FESTON HACHIFWA</b>    | <b>11<sup>TH</sup> PLAINTIFF</b> |
| <b>GEORGE MOONGA</b>      | <b>12<sup>TH</sup> PLAINTIFF</b> |
| <b>HACHIFWA CHOONGO</b>   | <b>13<sup>TH</sup> PLAINTIFF</b> |
| <b>HARRY HAMUNTAMBA</b>   | <b>14<sup>TH</sup> PLAINTIFF</b> |
| <b>HIGHNESS MALAMBO</b>   | <b>15<sup>TH</sup> PLAINTIFF</b> |
| <b>JOEL SIMUNIKA</b>      | <b>16<sup>TH</sup> PLAINTIFF</b> |
| <b>JUDITH LWIINDI</b>     | <b>17<sup>TH</sup> PLAINTIFF</b> |
| <b>KENSON CHOONGO</b>     | <b>18<sup>TH</sup> PLAINTIFF</b> |
| <b>LAZAROUS CHEELO</b>    | <b>19<sup>TH</sup> PLAINTIFF</b> |
| <b>LUPIYA MOONGA</b>      | <b>20<sup>TH</sup> PLAINTIFF</b> |
| <b>MAPULANGA MWEEMBA</b>  | <b>21<sup>ST</sup> PLAINTIFF</b> |
| <b>MATILDAH KASUSA</b>    | <b>22<sup>ND</sup> PLAINTIFF</b> |
| <b>NCHIMUNYA HACHANDI</b> | <b>23<sup>RD</sup> PLAINTIFF</b> |
| <b>OSWARD DINDA</b>       | <b>24<sup>TH</sup> PLAINTIFF</b> |
| <b>PATRICK MOMBELELA</b>  | <b>25<sup>TH</sup> PLAINTIFF</b> |

<b>PENDINCE SHAMAYUMA</b>	<b>26<sup>TH</sup> PLAINTIFF</b>
<b>PETER MULOANI</b>	<b>27<sup>TH</sup> PLAINTIFF</b>
<b>RUTH MILIMO</b>	<b>28<sup>TH</sup> PLAINTIFF</b>
<b>SILVIA ANGOLA MULULUMA</b>	<b>29<sup>TH</sup> PLAINTIFF</b>
<b>SIMEON MAAMBO</b>	<b>30<sup>TH</sup> PLAINTIFF</b>
<b>SIMON MOONGA</b>	<b>31<sup>ST</sup> PLAINTIFF</b>
<b>TRAVOR MWIINGA</b>	<b>32<sup>ND</sup> PLAINTIFF</b>
<b>VINCENT CHEEMBO</b>	<b>33<sup>RD</sup> PLAINTIFF</b>
<b>WILFRED MUDUDU</b>	<b>34<sup>TH</sup> PLAINTIFF</b>
<b>MABLE HANKUMBA</b>	<b>35<sup>TH</sup> PLAINTIFF</b>

**AND**

<b>CHIKANKATA DISTRICT COUNCIL</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>THE ATTORNEY GENERAL</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**BEFORE : HON. JUDGE G.C. CHAWATAMA**

<i>For the Plaintiffs</i>	:	<i>Mr. Mushipe - Messrs Mushipe &amp; Associates</i>
<i>For the 1<sup>st</sup> Defendant</i>	:	<i>Mrs Ngosa Simwachela - Messrs Nchito &amp; Nchito</i>
<i>For the 2<sup>nd</sup> Defendant</i>	:	-

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## **RULING**

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CASES REFERRED TO:

1. *Baker V Midway Buildings and Supplies Limited 1988 AE LR page 590*
2. *Belamono V Ligure Hambard Limited 1976 ZLR at page 267.*

AUTHORITIES REFERRED TO:

1. *Order 18 Rule 19 (1) © of the Supreme Court Rules the 1999 Edition.*
2. *Halbury's law England Volume 36 paragraph 73*

On the 14<sup>th</sup> November, 2013 the Plaintiffs filed a writ of summons and statement of claim. The Plaintiffs thirty-four in number claim the following:

- 1) *An Order that the Defendant cannot displace the Plaintiffs from land which has already been allocated to them and surveyed awaiting issuance of Title Deeds.*
- 2) *An Order that the intended eviction and demolition of the Plaintiffs' properties is wrongful and unlawful.*
- 3) *An Order that the Plaintiffs have acquired rights over the said grazing land.*
- 4) *Compensation for loss of grazing land and demolition of property.*
- 5) *Damages for unlawful and wrongful acquisition and use of land.*
- 6) *Damages for deprivation of property.*
- 7) *An Order that all the Plaintiffs be issued with Certificates of Title for their respective properties which were surveyed in 1979.*
- 8) *Damages for inhuman and degrading treatment.*
- 9) *Damages for anguish and emotional turmoil.*
- 10) *Damages for trespass and unlawful encroachment on the Mugoto Settlement and or the Plaintiffs' respective properties and community grazing land.*
- 11) *In the alternative that the Plaintiffs be re-allocated to suitable farming and grazing land within the district.*
- 12) *Interest.*
- 13) *Order of interlocutory injunction restraining the 1<sup>st</sup> Defendant and that the 2<sup>nd</sup> Defendant or their servants or agents be restrained from interfering intermeddling fencing off, harassing, evicting, demolishing, displacing developing or illegally taking possession of the property being the Farm Number 106 Chikankata District Southern Province and or forming part of or known as "Mugoto Settlement" or any way dealing with the property until the final determination of the matter herein.*
- 14) *Costs of and incidental to the proceedings.*
- 15) *Any other relief the court might deem fit.*



Although the application for an ex-parte application for an order of interlocutory injunction was not heard which application was filed on the 14<sup>th</sup> November, 2013 the court went ahead to hear the first Defendant's preliminary issue to strike out pleadings pursuant to **Order 18 Rule 19 (1) © of the Supreme Court Rules the 1999 Edition.**

The gist of the application was that there were certain paragraphs in the statement of claim which offended the rules of pleadings and would prejudice and delay the trial of the matter.

The Plaintiffs filed an affidavit in opposition to the 1<sup>st</sup> Defendant's affidavit in support of summons to strike out pleadings. The Plaintiffs stated that the first Defendant did not disclose what rules have been offended in the statement of claim and were unable to reply in detail. However, Counsel for the Defendant in her submissions stated that the 1<sup>st</sup> Defendant application was to strike out paragraph **4,5,6,7,8,11,13,14,16,17,18 to 20** and paragraph 23 pursuant to **Order 18 Rule 19 (1) © of the RSC.**

According to Counsel the said paragraphs contain wholly immaterial matters that have been set out in a way that the Defendant preparing their defence must respond to them. This, Counsel stated that it would delay the fair trial of action and prejudice the first Defendant in answering the case that has been set out. Counsel drew the court's attention to what the learned editors of the White Book stated in their notes that pleadings such as the ones filed by the Plaintiffs are liable to be struck out and prayed that the court strikes out the paragraphs mentioned so that only material issues remain in the pleadings.

Mrs. Mushipe for the Plaintiffs reiterated that the rules that have been offended were not stated and as such did not understand what rights would be prejudiced. According to Mrs. Mushipe **Order 18 Rule 19 of the RSC 1999** stipulates grounds upon which a party can strike out pleadings.

It was Mrs. Mushipe understanding that pleadings disclose any reasonable cause of action or defence. Secondly that they are scandalous vexatious and frivolous. Thirdly that they may prejudice, embarrass or delay the fair trial of an action. The court was referred to **Order 18 Rule 19 (1) of the Rules of the Supreme Court** on the issue of abuse of court process.

Mrs. Mushipe pointed out that the first Defendant has not shown how they will be prejudiced by the paragraphs referred to by Counsel. The court was referred to **Halsbury's law of England Volume 36 paragraph 73** and the case of **Baker V Midway Buildings and Supplies Limited 1988 AE LR page 590** and **Belamono V Ligure Lambard Limited (1976) ZLR at page 267**.

Order 18 Rule 19 (1) in total and 19 (1) © specifically states:

***“The court may at any state of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action or anything in any pleading or in the endorsement, 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 abusive of the process of the court;*

The effect of the Rule is that the applicant must show that he is in some way prejudiced by the breach. In the matter before me the Applicant has been specific on the paragraphs in the affidavit in support which they felt would prejudice, embarrass or delay the fair trial of the action. Although it is not for the court to dictate to parties how they should frame their case the court is disposed to give a liberal interpretation to the meaning of the terms

***“Tend to prejudice, embarrass or delay the fair trial of the action”***

My understanding and what is always the court’s position is that parties are called upon not to offend against the rules of pleadings. If the Defendant does not make it clear how much the statement of claim he admits and how much he denies his pleading is embarrassing. The Defendant have expressed that fourteen paragraphs contain wholly material matters that the defence must respond to. It is no part of the Defendant’s duty to reform the Plaintiff’s pleadings, but if wholly immaterial matters be set out in such a way that the applicant must plead to it and so raise irrelevant issues which may involve expense, trouble and delay then the irrelevant matter will be struck out as it will prejudice the fair trial of the action. So a mass of evidence pleaded unnecessarily may be struck out.

Having looked at the paragraphs which the Defendants have referred to, it is the finding of the court that the same are wholly immaterial and have been set out in such a way that the Defendant must plead to them.

The paragraphs are thus struck out because leaving them in the statement of claim will prejudice a fair trial of the action. Delay may amount to abuse of process. Parties are called upon to ensure that the process of the court must be used bona fide and must not be abused.

**DELIVERED ON THIS <sup>1<sup>ST</sup></sup> DAY OF AUGUST.....2014**

  
**G.C.M CHAWATAMA**  
**JUDGE**