

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

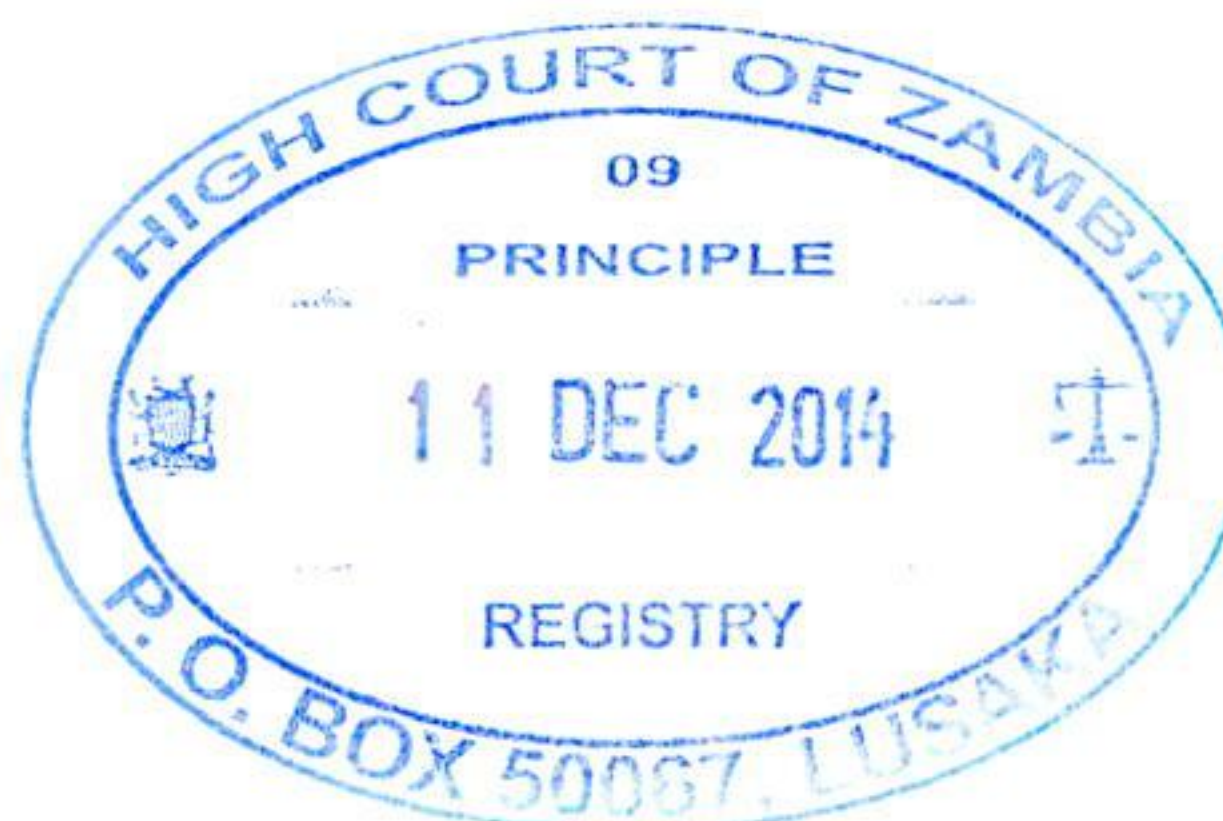
2014/HP/1039

Between:

DESMOND BANDA AND 12 OTHERS

AND

PHESTINA CHISUWA



PLAINTIFFS

DEFENDANT

Before Hon. Mr. Justice C.F.R. Mchenga, SC in Chambers.

For the Plaintiff: E. Khosa with R. Lubinda, Nganga Yalenga & Associates

For the Defendant: L. Zulu, Tembo Ngulube & Associates

RULING

On 23rd September 2014, the plaintiffs, pursuant to Order XXX Rule (10) (1) of the High Court Rules of the High Court Act, Chapter 27 of Zambia, filed in their notice of appeal against the learned Deputy Register's order delivered on 17th September 2014, directing that they pay into court security for costs in the sum K30,000.00.

Two grounds of appeal were filed and they read as follows:

1. *The Learned Deputy Registrar erred in law and fact when he ordered the plaintiffs pay security for costs in the sum of K30,000.00 and not ordering that the originating process be amended as the defect was arable;*
2. *That the Learned Deputy Registrar erred both in law and that when he did not consider that the defects in the originating process were curable and that the same were not made with any intention to deceive the court or with a view of evading any consequences of litigation, and that they could therefore be rectified upon ordering that the defects be remedied.*

In support of the first ground of appeal, counsel referred to **Order VII Rule 5 of the High Court Rules, of the High Court Act, Order 20 Rules 1 and 3 of the Rules of the Supreme Court, 1999 Edition**, the case of **Ministry of Works, Transport and Communications and Rinceau Consultants (sued as a firm previously T/A K2 Architects v Mitre Limited [1955-1997] ZR 113** and submitted that since pleadings have not closed and the defect complained of does not go to the root of the claim, the plaintiffs should have been allowed to amend the writ.

Coming to the second ground of appeal, he referred to **Order 23 Rule 1/C of the Rules of the Supreme Court** and submitted that the learned

Deputy Registrar should not have required the plaintiffs to give security for costs because their failure to give the address or give the full names of one of them in the absence of evidence that it was intended to deceive.

In opposing the appeal, it was submitted that the learned Deputy Registrar did not misdirect himself when he ordered that plaintiffs pay into court security for costs. The plaintiffs who were squatters used the same residential address and the name of one of them was not given in full. He was entitled to conclude that the omission was not innocent.

I am indebted to Counsel for their submission and I have taken into account in arriving at any decision. The learned Deputy Registrar found that this was an appropriate case to order for security of costs but he did not specifically find that the failure to give their addresses or full names was with the intention to deceive. In the absence of such a finding, **Order 23 Rule 1/C of the Rules of the Supreme Court** should not have been invoked.

R4

Consequently, the appeal is allowed and the order for security of costs is set aside. That the plaintiffs must within 14 days of this order rectify the defects in the writ, failure to which the defendant be at liberty to apply for the writ to be dismissed. Costs shall be in the cause.

Delivered in Chambers at Lusaka this 11th day of December, 2014



C. F. R. MCHENGA SC
JUDGE

Library

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

2009/HP/1332

Between:



JESSY CHABINGA AND 12 OTHERS

PLAINTIFFS

AND

LUSAKA CITY COUNCIL

DEFENDANT

Before Hon. Mr. Justice C.F.R. Mchenga SC in Chambers.

For the Plaintiff: L. Mwanabo, LM Chambers

For the Defendant: M. Moono, Acting Director of Legal Services, Lusaka
City Council

RULING

The delay in delivering this short ruling is regretted. This matter was until 17th March 2014, being handled by Hamaundu, J. On 30th January 2013, the plaintiff moved the court to enter Judgment on Admission pursuant to the provisions of Order XX1 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia.

R2

On 30th June 2014, believing that the application had not been heard, I directed the parties to file in skeleton arguments within 14 days and reserved my ruling to date to be notified.

It has since come to my knowledge that Hamaundu J heard the application on 13th March 2013, and ruled that since pleadings had closed, **Order XX1 of the High Court Rules** could not be invoked. Consequently, I will not proceed to deliberate on the issue again but proceed with the main trial.

The case will come up for trial on a date to be advised and costs will be in the cause.

Delivered in Chambers at Lusaka this 10th day of December, 2014


C. F. R. MCHENGA SC
JUDGE