

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

2006/HP/1152



BETWEEN:

ALEX SILOYA MULIOKELA (trading as
A. S. Muliokela's Industry, Commercial
and Namatanda Village Bank)

PLAINTIFF

AND

MR. DAKA AND COMPANY

DEFENDANT

**Before the Honorable Mr. Justice I. C. T. Chali in Open Court, the
31st day of July, 2014.**

FOR THE PLAINTIFF : IN PERSON

FOR THE DEFENDANT : NO APPEARANCE

JUDGMENT

Legislation referred to:

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

According to the writ of summons, the Plaintiff had sued the Defendant claiming:

- (a) Damages for libel committed against the Plaintiff by the Defendant on 22nd November, 2006 at Kanyama, Lusaka.
- (b) Damages for trespass committed by the Defendant at the business premises occupied by the Plaintiff at Kanyama.

- (c) Loss of business suffered by the Plaintiff as a result of the disruption of the Plaintiff's business by the Defendant from 23rd November, 2006.

According to the summary of the document which purported to be a statement of claim which was filed with the writ of summons on 14th December, 2006, the Plaintiff was seeking, for all the above claims as well as for the attempted assassination and assault which were omitted from the endorsement on the writ, a total of K1,662,000,000 (old currency).

I must observe that the Plaintiff, who was unrepresented, had drawn up a document which, as I have stated, purported to be a statement of claim, which did not qualify to be called as such and which, in my considered opinion, ought to have been rejected outright by the Registry staff at the time the Plaintiff wanted to file it. The document appeared to me to offend all the rules of practice relating to pleadings. For example, Order 18 Rule 6 of the Rules of the Supreme Court (White Book), 1999 Edition provides:

“ (2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.”

It is, therefore, provided further that a pleading (and a statement of claim is one) which does conform with any of the requirements prescribed by the rules is irregular, and a party who has served an irregular pleading

Further still, the Plaintiff attempted to obtain judgment in default of appearance and defence. However, the Court did not deal with that matter, but instead granted the request to have the matter set down for trial. Hence the matter now before me.

The Defendant did not attend at the trial of the action. However, since there was proof of service of the notice of hearing, I proceeded with the trial in terms of Order 35 Rule 3 of the High Court rules because the Defendant had not sufficiently excused his absence.

The only evidence adduced was from the Plaintiff, which, I must state, was at variance with his purported statement of claim. The Plaintiff stated that he had brought the action because the Defendant had made him lose billions of Kwacha in commissions which he would have earned each year in commodities which he was going to be trading in for which his company was to be an agent of another manufacturer based in Pakistan. He further stated that for that business, he had registered his business by the name of A. S. MULIOKELA INDUSTRIAL AND COMMERCIAL SERVICES under the Registration of Business Names Act, Chapter 389 of the Laws of Zambia on 26th August 2004. Earlier on 29th October 2003, he had also registered another business by the name of NAMATANDA VILLAGE BANK which was to operate financial services. Both businesses had not started operating because he had just recently acquired business premises in Kanyama from the Defendant which the Plaintiff was still in the process of renovating when the Defendant decided to retake the premises.

will be acting at his own risk, for example, in entering judgment in default of pleading by the appropriate party.

Further, Order 18 Rule 7 of the White Book provides:

“ (1)...every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim... but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits”.

The rule requires that the pleading must state the relevant matter briefly, succinctly, and in strict chronological order. A prolix pleading will therefore not be allowed.

However, the Plaintiff in the instant case did not abide by any of the rules of pleading in the document he filed with the writ of summons. That is the reason I stated that it ought to have been outrightly rejected.

However, be that as it may, the matter still proceeded to the grant of an order for directions on mere proof of service of the writ of summons without the Defendant having filed any Defence. According to Order 19 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia directions are only given by the Court or trial Judge after appearance and defence have been filed.

What emerged from the Plaintiff's evidence was that, although he had registered the two businesses, he had not yet started trading. He did not produce any trading licence, books of accounts or any other document which could have proved that he had been lawfully trading at the time the Defendant allegedly disrupted the business. Neither was there any proof of tenancy between the Plaintiff and the Defendant which the latter unlawfully disrupted.

As for the alleged assault, there was no evidence that there was any such assault either. The same goes for the alleged libel. Libel being generally a form of defamation of a more or less permanent nature, the Plaintiff did not produce any document to show what defamatory words the Defendant had published of him. Even if I were to consider that the words uttered by the Defendant were only verbal to the effect that the Plaintiff was a thief who wanted to unlawfully obtain money from people, the Plaintiff did not still show that those words were uttered by the Defendant to persons other than the Plaintiff himself.

In the circumstances, and even though the Defendant did not file any appearance or defence and did not appear at the trial, I find that the Plaintiff has failed to prove his case against the Defendant to the required standard of balance of probabilities. The onus was on the Plaintiff to prove each of his claims to the said standard. Therefore, I find the Plaintiff's action to be without merit and it is accordingly dismissed. I make no order as to costs.

J6

The Plaintiff is granted leave to appeal.

Delivered in Open Court the 31st day of July, 2014.



**I. C. T. Chali
JUDGE**