

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

**2014/HP/0621**



**BETWEEN:**

**RUTH MWELWA**

**PLAINTIFF**

**AND**

**ANNIE KAPAPULA LANDU  
PETRONELLA LANDU (Sued as Joint  
Administratrix of the Estate of the late  
Eugene Landu)**

**DEFENDANTS**

**Before the Hon. Mrs. Justice J. Z. Mulongoti, in Chambers  
on the *16<sup>th</sup>* day of *July*, 2014**

**For the PLAINTIFF : Mr. J. M. Chimembe of Messrs JMC & Associates**  
**For the DEFENDANTS : Mr. V. Kabonga of Paul Pandala Banda & Company**

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**R U L I N G**

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The Ruling relates to a preliminary issue raised by the Plaintiff's advocates to the effect that the Defendant's affidavit in opposition of summons for an Injunction filed into Court on 19<sup>th</sup> May 2014 in particular paragraph 13, alleges that exhibit 'RM3' of the affidavit in support, is a forgery. Further that paragraphs 11 and 16 it also alleged that the Plaintiff forged the documents 'RM3' and 'RM6' and that she has not come to Court with clean hands.

Learned counsel for the Plaintiff informed the Court that the preliminary issue was made pursuant to order 41 Rule (5) (1) of the Supreme Court Rules and also order 41 Rule (5) (4) and order 41 Rule (6) which allows the Court to order or struck out scandalous, irrelevant or oppressive matters. That the paragraphs 13, 14, 15, 16 and 19 of the affidavit in opposition contained certain scandalous, irrelevant and oppressive information which ought to be struck out.

Learned counsel for the Defendant filed a Reply to the Notice to Raise Preliminary Issue pursuant to order 3 of the Rules of the Supreme Court. It was contended that there are witnesses to prove the allegations of forgery and any other offence related to the facts. Order 45/5/2 of the Rules of the Supreme Court was cited as authority. It is the Defendant's argument that the cited order 45/5/2, did not imply that a deponent must bring before Court human sources of information. That the Respondent was prepared to call witnesses to prove forgery and any other references related to the case at hand at the trial of the main action, not at the interlocutory stage. And that it would be premature at this stage to give details of the allegation of forgery. That these witnesses interacted and lived with the deceased, there is no reason to doubt the veracity of things they heard the deceased say or do. That the Respondent's stand is that 'RM3' was forged and thus the assertion that the Applicant has not come to Court with clean hands.

It was further submitted that the preliminary issues be waived at this stage as they will only achieve one goal that of frustrating and embarrassing the trial of the case in the merits as against the technicalities. Further, that the Applicant will not be prejudiced by the waiver because if the Respondent do not make out their case in the main hearing the Applicant can sue for libel. For the foregoing, the Court has been urged to dismiss the application to raise preliminary issue or direct the Applicant to waive the preliminary issue.

I must state from the outset that I am inclined to dismiss the preliminary issue raised by the Plaintiff's advocates.

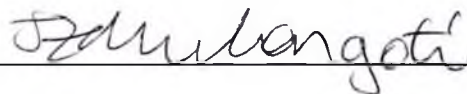
I have perused the submissions by the Defendant's counsel that witnesses shall be called to testify on the forgery issue, which as argued is not to be proved at this interlocutory stage.

In fact most of the issues raised in both the affidavit in support and also the opposing one are irrelevant at this stage, where I am concerned with whether to grant the injunction or not following

the well established principles. Accordingly, the preliminary issue is dismissed with costs in the cause.

I adjourn the matter to the 19<sup>th</sup> of August 2014 at 08:30hours for inter partes hearing of the application for interim injunction.

Delivered this 16<sup>th</sup> day of July, 2014.



**J. Z. MULONGOTI**  
**HIGH COURT JUDGE**