

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

2013/HPC/0481

**BETWEEN:**

PARMALAT AFRICA SpA  
PARMALAT ZAMBIA LIMITED

1<sup>ST</sup> PLAINTIFF

2<sup>ND</sup> PLAINTIFF

AND

ZAMBIA REVENUE AUTHORITY  
PATENTS AND COMPANIES REGISTRATION AGENCY

1<sup>ST</sup> DEFENDANT

2<sup>ND</sup> DEFENDANT

BEFORE HON. MADAM JUSTICE PRISCA MATIMBA NYAMBE, SC AT  
LUSAKA IN CHAMBERS

For the Plaintiffs:

Mr. M Chiteba  
*Messrs Mulenga Mundashi & Co.*

For the 1<sup>st</sup> Defendant:

*No appearance*

For the 2<sup>nd</sup> Defendant:

Mrs. Muma

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**RULING**

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**List of authorities referred to:**

1. Order 14 Rule 5(2) of the High Court Rules Cap 27 of the Laws of Zambia
2. Order 15 Rule 6 (2) of the Rules of the Supreme Court of England 1999 Edition
3. Companies Act Cap 288 of the Laws of Zambia

This is an application for Misjoinder brought by the 2<sup>nd</sup> Defendant pursuant to **Order 14 Rule 5(2) of the High Court Rules Cap 27 of the Laws of Zambia** as well as **Order 15 Rule 6 (2) of the Rules of the Supreme Court of England 1999 Edition**, stating that the facts herein do not disclose any Cause of action as against the 2<sup>nd</sup> Defendant. The application was accompanied by an affidavit, skelton arguments, list of authorities and further skelton arguments.

The 2<sup>nd</sup> Defendant's contention is that the essence of this matter is that the Cause of action in this matter is between the Plaintiffs and the 1<sup>st</sup> Defendant and therefore requested that the Court should strike off the 2<sup>nd</sup> Defendant from this matter.

The Plaintiffs opposed the application and relied on an affidavit sworn by one **WILCO WILKENS**, the Company Secretary of the 2<sup>nd</sup> Plaintiff, dated 23<sup>rd</sup> June, 2014 together with skelton arguments and list of authorities; contending that there is a Cause of action disclosed against the 2<sup>nd</sup> Defendant.

The brief facts are that the 1<sup>st</sup> Plaintiff is a Company having its registered office in the Republic of Italy and holder of 19,505,200 of issued shares of the 2<sup>nd</sup> Plaintiff. The 2<sup>nd</sup> Plaintiff is a registered Company in the Republic of Zambia pursuant to the **Companies Act Cap 288 of the Laws of Zambia**. As part of corporate re-organization within the **Global Parmalat Group**, sometime in April 2012 the 1<sup>st</sup> Plaintiff relocated its domicile and registered office from

Mauritius to the Republic of Italy. After the re-organization the 2<sup>nd</sup> Plaintiff wrote to the 2<sup>nd</sup> Defendant on or about 27<sup>th</sup> August, 2012 advising that the 1<sup>st</sup> Plaintiff had changed its domicile from Mauritius to Italy as permitted by both Mauritius and Italian Law, and requested that the change of the 1<sup>st</sup> Plaintiff's details to be reflected as appropriate on the Register of Companies kept by the 2<sup>nd</sup> Defendant.

The contention advanced by the Plaintiff is that the 2<sup>nd</sup> Defendant is in a position to act on the request of the Plaintiff without reference to the 1<sup>st</sup> Defendant as evidenced by Exhibit "WW1" a letter dated 17<sup>th</sup> May, 2013 to the Commissioner General, Zambia Revenue Authority (ZRA) from the Assistant Registrar Commercial Unit of the 2<sup>nd</sup> Defendant. The relevant part of Exhibit "WW1" reads as follows:-

*"We acknowledge with gratitude receipt of your letter dated 17<sup>th</sup> April, 2013, further to which you sought our opinion as to whether change of domicile of a Company results in transfer of shares and thus attracting Property Transfer Tax in view of the change in domicile by **Parmalat Africa Limited** a shareholder in **Parmalat Zambia Limited** from Mauritius to Italy and subsequent change of name to **Parmalat Africa Spa**.*

*In our considered opinion transfer of share occurs where shareholding changes from one entity to another. Mere change of domicile and name, entail change of registered office (or Corporate citizenship) and identity respectively. **We would as such concur with***

*Price Waterhouse that change of domicile per se does not result in transfer of shares. In the instant case therefore, the issue may be for Zambia Revenue Authority to satisfy itself that **Parmalat Africa Spa and Parmalat Africa Limited** are one and the same legal entity”.*

The 2<sup>nd</sup> Defendant's position is that until the Plaintiffs are exempted from paying tax by the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant is incapable of amending its register, and that the 2<sup>nd</sup> Defendant's action is contingent upon the 1<sup>st</sup> Defendant's decision. In the Affidavit in reply to affidavit in opposition to summons for misjoinder sworn by one **Christopher Mapani** he states that the letter dated 17<sup>th</sup> May, 2013 which he authored, does not in any way *categorically* indicate that a change of domicile *per se*, in and of itself does not necessarily entail that a transfer of shares has occurred. He stated further that it is misleading for the Plaintiffs to make the assertion that the 2<sup>nd</sup> Defendant was in a position to act on the request of the 1<sup>st</sup> Plaintiff without reference to the 1<sup>st</sup> Defendant. He then referred the Court to Exhibit “CM2” to the affidavit in reply to affidavit in opposition to summons for misjoinder “CM2” is a letter authored by **Mulenga Mundashi & Company** but not signed dated 16<sup>th</sup> October, 2012. The letter is titled: **Request for exemption from paying Property Transfer Tax for the change in name and domicile of Parmalat Africa Limited to the Republic of Italy**. In paragraph 2 of the said letter, it is stated as follows:-

*"Our client ("PZ") is a company registered in Zambia pursuant to the Companies Act having an allotted shareholding of 30,000,000 shares.*

*Further in this matter, 19,505,200.00 shares in PZ, are allotted to **Parmalat Africa Limited ("PA")**, a Company formerly being registered and having its domicile in Mauritius and 7,774,800.00 shares having been allotted to **Mukuku Dairies Limited ("MD")** a Company registered and having its domicile in the Republic of Zambia.*

*As part of the re-organization, PA has recently changed its name to **Parmalat Africa SPA (PAS)** and has since relocated its domicile and registered office to Italy. PA is still reflected at the Patents and Companies Registration Agency ("PACRA") as the holder of 18,502,200.00 shares in PZ and is desirous of reflecting the aforementioned changes.*

*We have recently concluded discussions with PACRA and PACRA has agreed to register PAS as the holder of 19,505,200.00 shares in PZ subject to your office granting tax clearance for change in domicile.*

*Kindly note that no transfer of shares has taken place and no consideration has been paid as part of the re-organization.*



*Kindly let us have your confirmation that there is no Property Transfer Tax payable”.*

From the above, it is clear that there are contentious issues raised. The documents on file clearly indicate that the 2<sup>nd</sup> Defendant has given impressions to the Plaintiffs upon which they have placed reliance in pursuing this matter. The 2<sup>nd</sup> Defendant will need to clarify these issues to enable the Court to make an informed conclusion in this matter. As stated by **Mr. Chiteba**, the issue is not only whether Tax Transfer Property is payable or not but also whether there has been a transfer of shares to necessitate the payment of Property Transfer Tax.

The issues raised in Exhibit “WW1” need further clarification that only the author of the same is in a position to explain. Clearly there are issues in contention requiring clarification which, if this application were allowed and the 2<sup>nd</sup> Defendant was struck out, the Court will not have the full benefit of full facts to determine the issues in contention.

In the event, I do not believe it would be in the interests of justice to strike out the 2<sup>nd</sup> Defendant from this matter.

Therefore the application for misjoinder is declined.

Costs in the Cause.

Dated this.....<sup>25<sup>th</sup></sup> day of .....<sup>July</sup>.....2014



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**Prisca M. Nyambe, SC**  
**JUDGE**