

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

2013/HP/1600

BETWEEN:

PHILIP STUART WOOD

AND

**THE ATTORNEY GENERAL
NATIONAL PENSION SCHEME AUTHORITY**

**1ST RESPONDENT
2ND RESPONDENT**



APPLICANT

**Before the Hon. Mrs. Justice J. Z. Mulongoti, in Chambers
on the 25th day of July 2014**

For the PLAINTIFF : Mr. M. Z. Mwandenga, of M.Z. Mwandenga & Co

For the DEFENDANT : Ms. S. Chomba, Assistant Senior State Advocate

R U L I N G

The Ruling relates to an application by the 1st Respondent for misjoinder. The application was by summons pursuant to order 15 Rule 2 of the High Court Rules and affidavit in support deposed by the state advocate Major Nancy Chewe Mulenga. She deposed that the Applicant had not disclosed the course of action against the 1st Respondent. That the 1st Respondent was wrongly joined to the proceedings as the 2nd Respondent can sue and be sued in its own capacity.

Accordingly, an order of the court was sought for a misjoinder of the 1st Respondent.

The Plaintiff's filed an affidavit in opposition sworn by the Plaintiff to the effect that he was a Lawyer by training and that except where he says otherwise, all the facts deposed to are true to his own knowledge. And that where in the affidavit he states that he was informed or advised by a named informant or advisor of any fact, he verily believes such fact to be true. That in these proceedings he was challenging inter alia the validity of Regulation 3 of the National Pension Scheme Authority

(NAPSA) (Benefits and Eligibility) Regulations 2000, (Statutory Instrument No. 71 of 2000). That the Statutory Instrument was made by the Honourable Minister of Labour and that the Plaintiff believed she did so on behalf of the Government of which the 1st Respondent (Attorney-General) is the legal representative. And that the 1st Respondent was sued as the legal representative of the Government and was the proper party to represent the Government in these proceedings.

He further deposed that the 2nd Respondent was sued for payment of lump sum of his benefits pursuant to section 5 of the NAPSA Act No. 40 of 1996.

That by letter dated 3rd February 2014, his lawyer wrote to the 1st Respondent stating the reasons why the 1st Respondent has to be a party per exhibit 'PSW2'.

The learned state advocate Major Nancy Chewe filed an affidavit in Reply stating that according to paragraph 8 of the affidavit in opposition, the Plaintiff was challenging the validity of Regulation 3 of the NAPSA regulation 2000 (Statutory

Instrument No. 71 of 2000). That the Plaintiff did not clearly disclose the cause of action against the Attorney General (1st Respondent).

At the hearing of the application on 25th June 2014, the learned Assistant Senior State Advocate, Ms. S. Chomba, relied on the affidavit in support sworn by her colleague dated 6th March 2014 and the affidavit in reply dated 3rd June 2014, both sworn by the said Major Nancy Chewe Mulenga. She submitted that the Plaintiff does not reveal a cause of action against the 1st Respondent. I thus it be removed from the proceedings. The plaintiff's counsel, Mr. Mwandenga, opposed the application on grounds that it was misconceived. He also relied on the affidavit in opposition. He argued that validity of Statutory Instrument, which was made by the Minister on behalf of the government and thus Attorney – General was properly sued to answer on behalf of the Government regarding the Statutory Instrument and that the application was not only misconceived but an abuse of the Court's process and that it be dismissed with costs to the Plaintiff.

The learned Assistant Senior State Advocate in response reiterated that perusal of the originating process does not disclose a cause of action against the Attorney-General and that it was difficult to know what case the 1st Respondent would meet in court. She submitted in the alternative that the Applicant could amend process and state clearly what the 1st Respondent should respond to.

I wish to state from the outset that I am inclined to allow the application. I agree entirely with the arguments by the 1st Respondent. In addition I wish to add, at the risk of pre-empting the Judgment, that it is trite that where there is a conflict or inconsistency between the provisions of an Act and Statutory Instrument or Regulation, the provisions of the Act prevail. Further, the process of challenging an Act or Regulation is totally different altogether.

On the facts of this case there is no need for the Attorney General to be a party as canvassed by the learned Assistant Senior State Advocate. The 2nd Respondent is an autonomous

body capable of suing and being sued. Accordingly, the 1st Respondent is removed from the proceedings. I set the 1st day of October 2014 at 08:30hours for hearing of the main matter.

Costs to be borne by the Plaintiff.

Delivered this 25th day of July 2014.



J. Z. MULONGOTI
HIGH COURT JUDGE