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**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**

2014/HP/316

*(Civil Jurisdiction)*

**Between:**

**LANGTON ROSCO SEKELANI LUNGU**

**PLAINTIFF**

**AND**

**YAKUB PATEL**

**DEFENDANT**



**BEFORE : HON. G.C. CHAWATAMA - IN CHAMBERS**

*For the Plaintiff : Mr. K. Mulenga - Kumasonde Chambers*

*For the Defendant : Mrs. A. Chungu - Solly Patel Hamir & Lawrence*

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***RULING***

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Authorities Referred to:

1. ***Order VII rule 1 of the High Court Rules as amended by High Court (amendment) Rules Statutory Instrument No. 27 of 2012.***

This is a matter in which the Plaintiff seeks the following against the Defendant:

1. *An order that the Defendant constructs a similar-like house to replace the one destroyed by the defendant and or in the alternative for an order that the defendant pays the Plaintiff the sum of K44,000.00 compensation for the same.*
2. *An order that the Defendant pays the Plaintiff the sum of K500.00 monthly rentals that have been realized from renting out the same house from 31<sup>st</sup> December, 2012 to date.*
3. *An order that the Defendant pays the Plaintiff the sum of K200.00 each for the five (5) orange and four (4) mango trees that were uprooted by the Defendant.*
4. *Interest at the current Bank of Zambia lending rate.*

5. Costs

6. Further or any other relief the court may deem fit.

The Plaintiff applied to have Judgment in default of defence entered, the Defendant having not entered appearance and defence. However, before the application to enter Judgment in Default of Defence could be heard, the Defendant entered Conditional Appearance and made an application to set aside process for being irregular as it did not have the electronic address of the Defendant in accordance with **Order VII rule 1 of the High Court Rules as amended by High Court (amendment) Rules Statutory Instrument No. 27 of 2012.**

The court record shows that the Learned District Registrar heard the application for setting aside originating process, however, there is no ruling on file, save for what seems to be a draft.

The record also shows that there were summons filed on 9<sup>th</sup> June, 2014 for an application to set aside service of originating process for irregularity, before me.

On the date set for hearing this application, Mr. Mulenga, Counsel for the Plaintiff raised two preliminary issues:

1. *For an order that the defendant's application be dismissed with costs since the same application was raised and determined before the Honourable Chief District Registrar Mr. J. Banda on 19<sup>th</sup> June, 2014 and was therefore res judicata.*
2. *For an order that since the same application was made before the Chief District Registrar Mr. J. Banda it cannot be brought again before this court because it constitutes abuse of the court process.*

Mr. Mulenga relied on the list of authorities filed on the 23<sup>rd</sup> July, 2014.

In reply, Mrs. Chungu, Counsel for the Defendant contended that the application that was heard by the District Registrar was one for setting aside originating process. Counsel submitted that it was necessary for the Deputy Registrar to state whether the process was properly served on the Defendant.

It was obvious that Counsel for the Defendant did not bother to check that it was her application to set aside originating process that was being heard on this day in according to the Defendant's summons filed on 9<sup>th</sup> June, 2014.

I, therefore, agree with Mr. Mulenga that this application was res judicata, and if the issue was one of the Deputy Registrar not addressing the issue of whether or not the Defendant was properly served and then it should have come by way of appeal.

I order the file be sent back to the District Registrar for hearing the applications pending before him.

The costs for this hearing are awarded to the Plaintiff.

**DELIVERED AT THIS 15<sup>TH</sup> DAY OF AUGUST 2014.**

  
**G.C.M CHAWATAMA**  
**JUDGE**