

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

2014/HPC/0077

(Civil Jurisdiction)

BETWEEN:

MUVI TV LIMITED

PLAINTIFF

STEVEN NYIRENDA

INTENDED 2ND PLAINTIFF

AND

ZAMBIA INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY

1ST DEFENDANT

ZAMBIA NATIONAL BROADCASTING CORPORATION

2ND DEFENDANT

ROBAM MWAPE

3RD DEFENDANT

WEBSTER CHILUBA

4TH DEFENDANT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN CHAMBERS ON THE
1ST DAY OF APRIL, 2015**

For the Plaintiff: L M Chikuta, Messrs Milner Katolo and Associates

For the 1st Defendant: M Chisha (Mrs), Legal Officer

For the 2nd Defendant: W Luwabelwa, Operations Secretary

For the 3rd and 4th Defendants: T Chali, Messrs H Ndhlovu and Company

R U L I N G

Cases referred to:

1. Simbeye Enterprises Limited and Investrust Merchant Bank (Z) limited v Ibrahim Yousuf (2000) ZR 159
2. Mike Hamusonde Mweemba v Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (2006) ZR 101.

Legislation referred to:

- 3 The High Court Act, Chapter 27 of The laws of Zambia.
- 4 The Supreme Court Practice (White Book) 1999

This is an application by the **3rd** and **4th** Defendants for **joinder of Steven Nyirenda the Intended 2nd Plaintiff.**

The Application is made pursuant to **Order 14 of The High Court Rules³** as read with **Order 15 of The Supreme Court Practice⁴.**

The application is supported by an affidavit deposed to by the 3rd and 4th Defendants and Skeleton arguments.

The gist of the affidavit in support is that the Intended **2nd Plaintiff as Chief Executive Officer** for the Plaintiff generated an interest in the “**mwine mushi** and **Kasaka**” episodes (hereinafter referred to as the Project) and as a result did from time to time from his own personal resources pay for production of some episodes.

That the Intended 2nd Plaintiff was influential in the relationship between the Plaintiff and the 3rd and 4th Defendants and to that

extent influenced the Plaintiff to offer the 3rd and 4th Defendants employment, although the Contract did not last long.

Further that the 3rd and 4th Defendants did various works with other Companies and that therefore the Intended 2nd Plaintiff knew that the Project was the concept of the 3rd and 4th Defendants, which was born ten (10) years prior to the incorporation of the Plaintiff.

It is on the basis of the aforestated that the 3rd and 4th Defendants are contending that the Intended 2nd Plaintiff be joined as such to these proceedings to help the Court reach justice especially in light of the contents of the 3rd and 4th Defendants Counter Claim.

In the Skeleton arguments, it is submitted that the dispute between the Plaintiff and the Defendants was caused by the Intended 2nd Plaintiff and it can only be properly settled once he is made a Party to the proceedings and he will be cardinal to this matter and will assist the Court to deliver justice in the matter. Various authorities have been cited by the Applicants herein.

However, for purposes of this application, the relevant one is the case of **Simbeye Enterprises Limited and investrust Merchant Bank (Z) Limited v Ibrahim Yousuf¹** where it was held inter alia that:

“it has been the practice of the Supreme Court to join any person to the appeal if the decision of the Court would affect the person or his interest. The purpose

of the rule is to bring all parties to disputes relating to one subject matter before the Court at the same time so that disputes may be determined without delay, inconvenience and trials”.

In opposing the application, the Intended 2nd Plaintiff filed an affidavit in opposition in which he asserted that he is a Shareholder and Chief Executive Officer of the Plaintiff and as such he never dealt with the 3rd and 4th Defendants in his own personal capacity nor has an Individual.

It is further asserted that he cannot be joined to these proceedings as a Plaintiff without his Consent especially considering that he can still come to Court and testify as a witness without necessarily being joined as a Plaintiff.

In determining this application, I have taken into consideration the affidavit evidence before this Court as well as the parties respective arguments. I have also had recourse to the pleadings on the record and in particular the 3rd and 4th Defendants Counter Claim as in their view, this application is mainly premised on the contents of the said Counter Claim.

Before I can go any further in my determination, I need to comment on the 3rd and 4th Defendants Defence and Counter Claim which was filed into Court on the 25th day of March 2014.

A perusal of the Counter Claim in particular my view reveals that the same is couched in a manner reflecting an affidavit. In fact

there is no difference between the Counter Claim and the affidavit in support of the application by the 3rd and 4th Defendants for joinder of the intended 2nd Plaintiff.

A Counter Claim, in the same manner as the Statement of Claim should only state the material facts upon which one relies and then claim the relief he desires, as pleadings are to be merely concise statement of facts which the party pleading deems material to his case. it is therefore not a forum for adducing of evidence on which facts are to be proved.

The lack of skill in drafting of the Counter Claim on the part of Counsel for the 3rd and 4th Defendants is quite evident and I am at a loss as to why the Plaintiff did not apply to strike out the same.

Getting back to the application before this Court, it is indeed trite law that no party can be joined to any proceedings as a Plaintiff without his Consent. The Intended 2nd Plaintiff has not consented , but has in fact gone on to oppose the application.

That despite, the provisions of **Order 14 Rule 5 (1) of The High Court Rules**³ clearly states as follows:

“if it shall appear to the Court or a Judge at or before the hearing of the suit that all persons who may be entailed to or claim some share of interest in, subject matter of the suit or who may likely be affected by the result have not been made parties the Court or a Judge may adjourn the hearing of the suit to a future

day to be fixed by the Court or a Judge and direct that such persons shall be made either Plaintiffs or Defendants in the suit as the case may be.....”

The case of **Simbeye Enterprises Limited and Investrust Merchant Bank (Z) Limited v Ibrahim Yousuf¹** cited by the 3rd and 4th Defendants is highly supportive of the aforestated Order.

It is also indeed within the Court’s powers to so exercise its jurisdiction in every cause or matter before it as to secure that as far as possible all matters in dispute between the parties are completely and finally determined and all duplicity or multiplicity of legal proceedings to any of the matters is avoided.

The Supreme Court summarized the effect of **Order 14 Rule 5 (1) of the High Court Rules³** in the case of **Mike Hamusonde Mweemba v Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited²** where it held that:

“A Court can order a Joinder if it appears to the Court or a Judge that all persons who may be entitled to or claim some share of interest in the subject matter of the suit or who may be likely to be affected by the result require to be joined”.

Looking at the Cause of action herein as averred in the Statement of Claim and the Counter Claim, there are two competing parties over the alleged trade mark, that is the Plaintiff, a Corporate entity on one hand and the 3rd and 4th Defendants on the other

hand. There is no material of fact which tends to point to the fact that the intended 2nd Plaintiff as an individual has any interest in the alleged trade mark. Neither has the 3rd and 4th Defendant's shown or demonstrated that the intended 2nd Plaintiff is definitely bound or likely to be affected by the outcome of the proceedings in this cause or what adverse effect the non granting of the application would have on the Intended 2nd Plaintiff.

It is clear from the affidavit evidence that the 3rd and 4th Defendants intend to join the Intended 2nd Plaintiff to come and assist the Court in arriving at a just decision. That is not the purpose of **Order 14 Rule 5 (1) of The High Court Rules**³.

The 3rd and 4th Defendants intentions will be adequately covered as they will have the opportunity to cross examine the Intended 2nd Plaintiff when he is called as the witness for the Plaintiff. If the Plaintiff does not call him as a witness, the 3rd and 4th Defendants would be at liberty to **sub poena** him.

In the view that I have taken, this is not a proper case granting the application being sought and the same is therefore accordingly dismissed with costs to the Plaintiff.

The matter will come up for a Scheduling Conference on the 23rd day of April 2015 at 09:00 hours.

Leave to appeal is hereby granted.

Delivered at Lusaka this 1st day of April 2015.

Justin Chashi
HIGH COURT JUDGE