

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

2014/HPC/0182

(Commercial Jurisdiction)

BETWEEN:

VICTORIA FINDLEY HUWILER

PLAINTIFF

AND

CPD PROPERTIES LIMITED

1ST DEFENDANT

CPD INVESTMENTS LIMITED

2ND DEFENDANT

CHARLES DAVY

3RD DEFENDANT

SHAUN DONALD DAVEY

4TH DEFENDANT

ANDREW GUY HOWARD

5TH DEFENDANT

MUNAKUYA HANTUBA

6TH DEFENDANT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN
CHAMBERS ON THE 27TH DAY OF APRIL, 2015**

For the Plaintiff: K Nchito, Messrs N Makayi and Company

For the 1st, 2nd, 3rd, 4th, 5th

*and 6th Respondent: M.M.Mundashi SC and C Salati, Messrs Mulenga Mundashi
Kasonde and Company*

:

R U L I N G

Legislation referred to:

- The Supreme Court Practice, (White Book) 1999

This is an application by the Plaintiff for disposal of the case on a point of law and to determine a question of law and the construction of documents pursuant to **Order 14 A of the Rules of the Supreme Court.**

The summons in that respect is accompanied by an affidavit in support and Skeleton arguments of even date.

The application is opposed by the Defendants and in doing so, they filed an affidavit in opposition and Skeleton arguments. The Defendants have taken issue with the application as in their view it is irregular and misconceived as there is no issue that is clear that needs to be determined whose results will lead to the matter being fully determined without a full trial. Further that the documents which have been produced by the Plaintiff for determination are matters of evidence that cannot be construed in isolation without a full trial in the context of clearly pleaded issues.

In determining this matter, I have taken into consideration the summons, the affidavit evidence and the Parties respective Skeleton arguments. I have deliberately avoided making reference to any contents of the Plaintiff affidavit in support of the application as in my view it is a clear reproduction of what is contained in the Statement of Claim.

I do however note that the Plaintiff has in its Skeleton arguments raised several issues which it wishes this Court to determine.

As earlier alluded to, the application has been brought pursuant to **Order 14 A of The Rules of The Supreme Court** which states as follows:

“1-(i) The Court may upon the application of a party or of its own motion determine any question of law or construction of any documents arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

- (a) Such question is suitable for determination without a full trial of the action and**
- (b) Such determination will finally determined (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.**

The aforesaid provision indeed deals strictly with determination of questions of law or construction of documents. However, this provision should only be engaged if the issues being raised are suitable for determination without a full trial of the action and if such determination will finally determine the entire cause or matter or any claim or issue at hand.

Let me accentuate by stating that the application by the Plaintiff is being made at a time when there are still issues to be settled in terms of further and better particulars which when provided in full, may lead to the amendment of the defence. This application would therefore in my view seem to be premature.

Secondly, a lot of issues have been raised by the Plaintiff for determination by the Court. The said issues are of mixed facts and law. A close look at the said issues reveal that there are matters which cannot be resolved at this stage without the adducing of evidence at the trial. In my view this is not a matter which can be settled through determination of affidavit evidence, determination of the law and construction of documents. A full trial is unavoidable.

This is therefore is not a proper case for determination under **Order 14 A of The Supreme Court Practice** and the same is accordingly dismissed with costs to the Defendants.

Leave to appeal is hereby granted.

Delivered at Lusaka this 27th day of April 2015.

Justin Chashi
HIGH COURT JUDGE