

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

**2013/HP/0893**

BETWEEN:



**PEONY ZAMBIA LIMITED**

Plaintiff

AND

**SHALOM BUS SERVICES LIMITED**

1st Defendant

**THE ATTORNEY GENERAL**

2nd Defendant

**Coram:** Honourable Lady Justice F. M. Lengalenga in chambers at Lusaka.

For the plaintiff: Mr. M. Chitundu – Messrs Barnaby & Chitundu Associates

For the 1st defendant: Mr. N. Yalenga – Messrs Nganga Yalenga & Associates

For the 2nd defendant: Major Nambote – State Advocate

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**R U L I N G**

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**Legislation referred to:**

- 1. THE HIGH COURT RULES, CHAPTER 27 OF THE LAWS OF ZAMBIA – Order 22, Rule 1**
- 2. RULES OF THE SUPREME COURT, 1999 EDITION – Order 16, Rule 10(2) and Order 62, Rule 9(1)**

This application for settlement of issues is made pursuant to Order 22, Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia. It is supported by an affidavit sworn by one Mwamba Chitundu, an advocate of the High Court who deposed therein that the parties hereto have resolved the dispute by the 2nd defendant offering the plaintiff Stand Nos LUS/LN-385/13 and LUS/LN-385/14 respectively in place of the disputed land which will vest in the 1st defendant. He deposed further that the 1st defendant has demanded that its costs be borne by the plaintiff who should in return be indemnified by the State. He exhibited "**MC1**" a copy of a letter dated 29<sup>th</sup> August, 2014 to that effect. He prayed that this court makes an order endorsing the agreed position that the 2nd defendant offers Stand Nos. LUS/LN-385/13 and LUS/LN-385/14 respectively to the plaintiff and the 1st defendant remains on the disputed Stand No. 38569, Lusaka with each party bearing its own costs.

The 1st defendant filed an affidavit in opposition sworn by one Nganga Yalenga, Counsel for the 1st defendant who deposed therein that this action by the plaintiff escalated the 1st defendant's costs as further consultation follow-ups had to be made between the plaintiff and the 2nd defendant's Counsel. He deposed further that when the plaintiff was advised that due to the aforementioned, the Consent Judgment would have to stipulate that "**costs were to be agreed and in default taxed,**" the plaintiff opted to return to court to have the issue settled. He further deposed that after reflection and in a bid to end the matter, the 1st defendant opted to accept the offer of K50 000.00 but the plaintiff reduced the figure to K25 000.00.

In his oral submissions to the court, Mr. Yalenga challenged the application brought pursuant to Order 22, Rule 1 of the High Court Rules as being defective in that no statement of questions of law on admitted facts was presented. He also submitted that the dispute was between the plaintiff and the 1st defendant as the plaintiff's pleadings disclose no cause of action against the 2nd defendant. Mr. Yalenga submitted that, therefore, the plaintiff cannot be made to bear the costs of its ill-conceived law suit or to seek that each party bears its own costs.

State Advocate, Major Nambote did not oppose the plaintiff's application but he submitted that Order 4, Rule 6 of the High Court Rules gives the court full power to award and apportion costs. He also drew this court's attention to Order 62, Rule 9 of the Rules of the Supreme Court, 1999 edition regarding matters to be taken into account in exercising the court's discretion with respect to costs. He submitted further that as the plaintiff and the 1st defendant had exchanged offers and counter-offers on settlement of costs, this court should take the same into consideration. In concluding his submissions, Major Nambote prayed that each party bears its own costs as the matter had been resolved.

I have carefully considered the plaintiff's application, affidavit evidence, submissions and authorities cited.

I also had an opportunity to look at Order 62, Rule 9(1) and Order 16, Rule 10(2) of the Rules of the Supreme Court, 1999 for guidance on what to

consider in exercising my discretion as to costs. As the learned State Advocate rightly submitted, Order 4, Rule 6 of the High Court Rules empowers this court to award and apportion costs.

With respect to Mr. Yalenga's attack on the manner in which the application has been brought pursuant to Order 22, Rule 1 of the High Court Rules, I accept that it is defective based on the reasons stated. However, I will concentrate on the other issues raised. I also accept his submission that the dispute was between the plaintiff and the 1st defendant and that the 2nd defendant cannot be made to bear the costs of the plaintiff's action. I accordingly, find as a fact that the plaintiff's pleadings do not disclose a cause of action against the 2nd defendant.

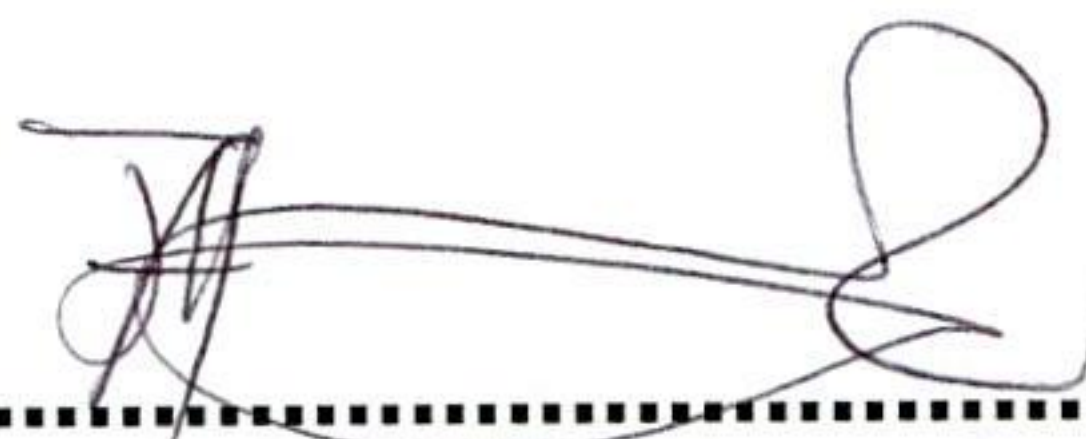
From the affidavit evidence and the submissions before this court, I am satisfied that the dispute has since been resolved by the plaintiff being allocated alternative properties as aforesaid. I, however, acknowledge that the plaintiff's suit against the 1st defendant was ill-conceived and that unnecessary costs were incurred by the other parties. I am of the considered view that the plaintiff should not be allowed to escape liability in terms of costs by hiding behind a purported win-win situation.

I have also taken into consideration the issue of the offer and counter-offer alluded to in affidavit in opposition. I also noted that at paragraph 12 of the affidavit in reply, Mr. Mwamba Chitundu averred that the offer of K50 000.00 for costs had been rejected by the 1st defendant. Therefore, in view

of the aforestated and my considered view that the plaintiff should bear the costs, I decline to order that each party bears its own costs.

I, accordingly, order that the plaintiff pays to the 1st defendant the sum of K50 000.00 as costs. I further order that the plaintiff also pays costs to the 2nd defendant, and in default of agreement to be taxed.

DATED this .....<sup>27<sup>th</sup></sup>..... day of January, 2015 at Lusaka.



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**F. M. Lengalenga**  
**JUDGE**