

IN THE HIGH COURT FOR ZAMBIA

2004/HP/1174

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



BETWEEN:

AMANDO CHISEKE

APPLICANT

AND

SEVENTH DAY ADVENTIST ASSOCIATION

IN ZAMBIA REGISTERED TRUSTEES

DEFENDANT

Before The Honourable Mrs. Justice P.C.M. Ngulube in Chambers.

For the Applicant: No Appearance

For the Defendant: Mr. Ngóna, Messrs I.C. Ngóna and Company

For the Intended 2nd Defendant: Mrs E. M. Bupe, Legal Officer, Lusaka City Council.

R U L I N G

CASES REFERRED TO:

1. *Abel Mulenga and Others vs. Chikumbi and Others (2006) ZR 33*
2. *Gouriet vs. Union of Post Office Workers (1982) AC 617 at 629 and 631*

This is the Defendant's application to join Lusaka City Council as a party to the action, pursuant to Order XIV Rule 5, Cap 27 of the Laws of Zambia. It is supported by an affidavit that was sworn by Felix Smit, the administrative church elder-in-charge of

Chunga Central Seventh Day Adventist Church, a congregation affected by the Plaintiff's action. The said Felix Smit averred that the property, namely Stand Number CH55/7398, Chunga is under Housing (Statutory and Improvement Areas) directly administered by the Lusaka City Council. He further averred that immediately the area in dispute was surveyed and designated as an area for church plots by the Lusaka City Council, the Defendant applied and was allocated Stand Number CH55/7398, Chunga, now in dispute.

He further averred that since Lusaka City Council was and is the principal administrator of the properties in the area it is better that it be joined to the action. He prayed that the Lusaka City Council be accordingly joined to the proceedings as a Second Defendant.

The Learned Advocates for the Defendant, Messrs I.C. Ng'onga and Company filed a list of authorities in support of their application. They submitted that Order 14 sub rule 4 provides that –

“Where a Defendant claims contribution, indemnity or other remedy or relief over against any other person, he may apply to have such person made a party to the suit.”

Order 14 sub rule 5 provides that –

“If it shall appear to the court or a Judge at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in the subject matter of the suit, or who may be affected by the result have not been

made parties, the court or a Judge may adjourn the hearing of the suit to a further day to be fixed by the court or a Judge, and direct that such persons shall be made either Plaintiff or Defendant in the suit as the case may be. In such case, the court shall issue such notice to such persons which shall be served in the manner provided by the rules for the service of Writ of Summons or in such manner as the court or a Judge thinks fit to direct...

The Learned Advocates for the Defendant also referred to Order 15/6(2)(b)(i) and (ii) of the Rules of the Supreme Court, 1999 Edition, which provides that – “subject to the provisions of this Rule, at any stage of proceedings in any cause or matter, the court may on such terms as it thinks just and either on its own motion or on application -

(b) order any of the following persons to be added as a party, namely

(i) any person who ought to have been joined as a in party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined or adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine and that party as well as between the parties to cause or matter.

At the hearing of the matter, the Learned Counsel for the Defendant Mr. Ng'onga submitted that the Plaintiff was duly served with process and the affidavit of service was filed on the 25th of August, 2015. Following the service, the Defendant's Advocates received a notice of appointment meaning that the Plaintiff's Advocates were fully aware of the date of hearing. The Court granted the Defendant's Counsel leave to proceed with the application.

Mr. Ng'onga then submitted that the Defendant's application is to join the Lusaka City Council as a party to these proceedings. This is supported by an affidavit that was filed on the 9th of July, 2015 as well as a number of authorities that were cited in a list that was filed on the 13th of August, 2015.

Mr. Ng'onga submitted that he seeks the court's determination whether the Lusaka City Council has an interest in the matter and whether the outcome of the matter will affect the Council. Mr. Ng'onga submitted that according to the authorities, the Lusaka City Council will be affected by any decision that the court may make as it is the authority which gave the plot in dispute to the Applicant. He prayed that the application be granted. Mrs Bupe, the Legal Officer at the Lusaka City Council opposed the application and submitted that an affidavit in opposition was filed on the 14th of August, 2015. She submitted that she would rely on the said affidavit in opposition and further submitted that the Applicant is at liberty to invite the Lusaka City Council as a witness in the matter rather than joining the Council as a party to the suit. The affidavit in opposition was

sworn by one Gabriel Phiri, a legal assistant at the Council. He averred that the Defendant had not show any cause of action of against the intended party entitling him to join it the matter. The intended party has no interest in the subject matter of this suit and may incur unnecessary costs by being joined as a party when it has no interest and is not likely to be affected by the result. Mr. Ng'onga responded by stating that showing the interest or cause of action can only be revealed if the party is joined. He further submitted that that the party might have the option of calling someone as a witness. That option has disadvantages. The witness called can put in conditionalities which might hamper the outcome of the case.

Mr. Ng'onga therefore prayed that the order be granted.

I have considered the affidavit evidence, the skeleton arguments and the arguments by counsel. The issue that requires determination by this court is whether the Lusaka City Council ought to be joined to the proceedings as an interested party which is likely to be affected by the decision of the court. I have considered Order 14 of the High Court Act. It makes provision for joining a person to the proceedings where it appears to the court that the person is likely to be affected by the outcome of the proceedings.

The said order serves to ensure that all persons who are interested in a dispute or may be affected by it are heard. It gives them an opportunity to be heard and bring finality to proceedings once and for all to avoid a multiplicity of actions. Order 15 Rule 6, Sub Rule 4 of the White Book states that –

“subject to the provisions of this rule, at any stage of the proceedings in any cause or matter, the court may on such terms as it thinks fit and either of its own motion or on application -

(b) Order any of the following persons to be added as a party namely –

(i) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon or

(ii) any person between whom any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy deemed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter .

In the case of ***Abel Mulenga and Others vs. Chikumbi and Others¹ (2006) ZR 33***, the court held that –

“in order for a party to be joined in an action, the party ought to show that they have an interest in the subject matter of the action.”

In order for this court to be satisfied that there is sufficient reason to warrant the joining of the Lusaka City Council to these proceedings, the Defendant must show the Lusaka City Council’s interest in the matter and state the question or issue to be

determined between him and any party to the cause or matter. None of these conditions has been adequately satisfied by the Defendant.

In the case of **Gouriet vs. Union of Post Office Workers² (1982) A.C. 617 at 629 and 631**, it was stated that the question of sufficient interest is one that has to be objectively determined considering the subject matter at hand.

I find that the reliefs sought have no direct effect or material bearing on the Lusaka City council. Having found that the Defendant has not demonstrated reason to warrant to the joining of the Lusaka City Council to these proceedings, I hereby decline to grant the application for joinder to these proceedings. I dismiss the application as being misconceived and lacking merit.

I will however make no order for costs.

Leave to appeal is granted.

Dated this 8th day of October, 2015.



**P.C.M. NGULUBE
HIGH COURT JUDGE**