

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

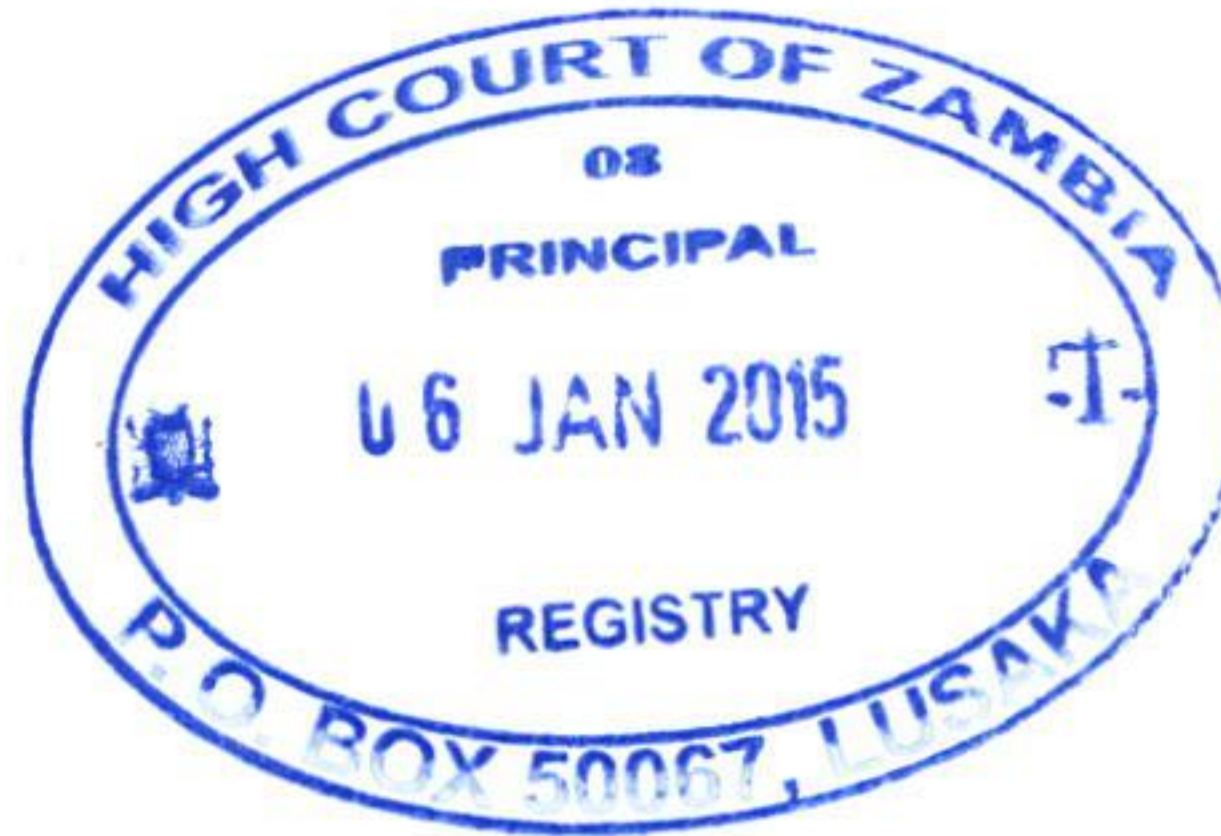
**2014/HP/0370**

**BETWEEN:**

**ANGEL MUSONDA**

AND

**PULSE FINANCIAL SERVICES LTD**



**PLAINTIFF**

**DEFENDANT**

*Before the Hon. Mrs. Justice A. M. Banda-Bobo on.....day of....., 2015.*

**FOR THE PLAINTIFF:**

In person

**FOR THE DEFENDANT:**

Capt. J.M. Chooka of Musa  
Mwenye Advocates, Lusaka

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**R U L I N G**

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***Case referred to:***

1. Lieutenant General G.R.C. Musengule vs. Attorney General [2004] HP/0589

***Legislation referred to:***

- Rules of the High Court, Cap 27 of the Laws of Zambia
- The Rules of the Supreme Court, 1965 RSC, The White Book (1999) Edition.

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The plaintiff herein took out a Notice of Motion for leave to commence committal proceedings against the defendant for

contempt of Court pursuant to **Order 52 (1) (2) Rules of the Supreme Court 1965 RSC, White Book (1999) edition**. The same was accompanied by an affidavit in support sworn by one Angel Musonda (the plaintiff herein) who deposed as follows:

That on 9<sup>th</sup> March, 2014 he commenced an action against the defendant wherein among other things, he sought the indulgence of this Court to declare the unlawful seizure of his Mercedes Benz Atego truck registration No. ABT 5027 illegal, null and void which matter was preceded by an interim preservation of the said truck.

Notwithstanding the aforesaid, the defendant failed and or neglected to appear before this Court either in person or by counsel whereby the Court proceeded and heard the plaintiff *ex parte* and consequently rendered a Ruling dated 9<sup>th</sup> May, 2014 and directed the defendant to return the said truck to him.

There was also filed into court a Statement for Contempt of Court Proceedings for Committal. Suffice to say it added nothing material to what was deposed in the affidavit in support.

Additionally, it was deposed that the Ruling was served on the defendant and that despite being aware of the said Ruling, the defendant connived with the intended contemnor Adris Consultants

and proceeded to auction the said truck. Further, that the intended contemnors (CEO of the defendant and the Controlling Officer-Adris Consultants) acted in total disregard of this Court's Ruling with impunity and therefore in serious contempt of this Court. That in view of the foregoing, this Court should commence contempt proceedings for committal in the interest of justice.

In the affidavit in opposition sworn by defence counsel Captain Ignatius Milimo Chooka it was deposed as follows:

That on 18<sup>th</sup> June, 2014, the plaintiff served on him his Summons for Leave to Issue Contempt Proceedings as well as an affidavit in support. Further, that the firm of Musa Mwenye Advocates was retained by the defendant company in relation to this matter on 17<sup>th</sup> March, 2014. The defendant company accordingly emailed a scanned copy of the plaintiff's originating process on the same day. Going on, that while the deponent was attending to settling the defendant's defence, the same forwarded him an email bearing an attachment of the plaintiff's *ex parte* summons for an Order for interim preservation of property, with instructions that he should attend to opposing the application on behalf of the defendant company.

The deponent further stated that he accordingly proceeded to promptly draw up a draft affidavit in Opposition to the plaintiff's

Summons for interim preservation of property and forwarded it to the defendant company for its review, same was reviewed and readied for filing on 28<sup>th</sup> April, 2014 along with the defendant company's defence.

That regrettably, the defendant company's affidavit in opposition was not filed in time nor was there any appearance on behalf of the defendant company when the plaintiff's application for an order for interim preservation of property came up for hearing. Accordingly, the Court proceeded to hear the plaintiff's application and gave a Ruling in the absence of the defendant company.

That upon receipt of this Court's Ruling dated 9<sup>th</sup> May, 2014, the defendant company once again instructed the firm of Musa Mwenye Advocates to apply to this Court to set aside the Ruling and to allow the defendant Company to be heard on the plaintiff's application for interim preservation of property.

Further, that the defendant was still desirous of having this Court's Ruling of 9<sup>th</sup> May, 2014 set aside so that this Court may consider the defendant company's affidavit in opposition and make a determination on the propriety of an order for Interim Preservation of Property and certainly before the Ruling delivered by this Court on 9<sup>th</sup> May, 2014.

That an order for committal against the intended contemnors will be unjust as the security pledged was sold before the order for Interim preservation was made by this Court. It was therefore deposed that in view of the foregoing, the Summons for leave to Issue Contempt Proceedings against the two intended Contemnors is incompetent and thus lacks merit and should be dismissed.

When the matter came up on 30<sup>th</sup> June, 2014, the plaintiff submitted that this Court issued a Ruling in which there was granted preservation of property. The same according to the plaintiff was not adhered to even though the said Ruling was served in good time. Rather curiously, it was contended that while the Ruling was issued on 9<sup>th</sup> May, 2014 and served on the same day, the defendant went ahead and sold the truck on 26<sup>th</sup> April, 2014. Further and earlier, that Summons not to dispose of the vehicle had been served on the defendant on 7<sup>th</sup> March, 2014. The plaintiff reasoned that this showed beyond doubt that the defendant ignored this Court's order. The defendant's conduct according to the plaintiff smacked of crookedness given that it was aware of these proceedings.

In response, defence counsel Captain I.M. Chooka sought to and relied on the affidavit in opposition to the plaintiff's application. Further, counsel drew my attention to the case of **Lieutenant**

**General G.R.C. Musengule vs. Attorney General**<sup>1</sup> and submitted that by the time this Court had rendered an Order of Preservation, the defendant had already disposed of the asset in the previous month. That it was clear from the plaintiff's own exhibits that there was no order to disobey. Counsel prayed that this Court should consider hearing the defendant on the Order of preservation even though this was *ex post facto* as upon hearing the other side, the Court may revoke its earlier order or vary it. In sum, counsel prayed that this Court dismisses the application and that costs be in the cause.

In reply, the plaintiff said he found it shocking and difficult to understand how the defendant could not appreciate the concept of months. He argued that the receipt for the sale of the truck in question is dated 26<sup>th</sup> April, 2014; the affidavit to preserve the sale of the said truck was served on 7<sup>th</sup> March, 2014. In view of the foregoing or so the plaintiff reasoned, it was erroneous for the defendant to claim that the truck was sold before 7<sup>th</sup> March, 2014. Other than the foregoing, the plaintiff relied on his affidavit in support and reply.

I have anxiously considered the affidavit evidence and the oral submissions from both parties and fully applied my mind to the issues arising out of this application.

This to me is an application which is predicated on a lack of appreciation by the plaintiff of the difference of service of process and its effect as distinguished from an Order of the Court. By his own admission, the receipt for the sale of the truck in question is dated 26<sup>th</sup>April, 2014; Summons not to dispose of the vehicle and affidavit in support had been served on the defendant on 7<sup>th</sup>March, 2014. The record will show that the Ruling which the plaintiff claims was disobeyed by the defendants and the intended contemnors was only delivered on 9<sup>th</sup>May, 2014. Therefore even if the same was delivered on the same day, the truck, as the evidence on record shows, had already been sold.

It follows from the foregoing that the defendant could not have been aware of the said Ruling or connived with the intended contemnor Adris Consultants to auction the said truck. Nor can it be said that the intended contemnors (CEO of the defendant and the Controlling Officer- Adris Consultants ) acted in total disregard of this Court's Ruling. As defence counsel correctly observed, it was clear from the plaintiff's own exhibits that there was no order to disobey at the time the truck was sold off.

That however does not end the matter. There is still a valid Order granting relief of an Order of preservation of a truck to the plaintiff that the defendant is expected to obey or risk being in contempt. I

have noted that defence counsel prayed that this Court hears the defendant on the application leading to the Ruling in question *ex post facto*. This is something I am unable to do for several reasons. The defendant was aware that on 9<sup>th</sup> March, 2014 the plaintiff commenced an action against the defendant wherein among other things, he sought an order from this Court to declare the unlawful seizure of his Mercedes Benz Atego truck registration No. ABT 5027 illegal, null and void which matter was preceded by an interim preservation of the said truck. The record will show that the above notwithstanding, the defendant failed and or neglected to appear before this Court. This Court was not informed of the reasons why the defendant decided to absent itself. It is under the said circumstances that this Court proceeded to hear the plaintiff *ex parte* and consequently rendered a Ruling dated 9<sup>th</sup> May, 2014 and directed the defendant to return the said truck to him.

Having considered submissions by defence counsel, I am not convinced that this would be a proper case in which I should allow the defendant to be heard on the application for preservation of the truck. On 9<sup>th</sup> May, 2014, I ruled on page R5 of my Ruling as follows:

**"I have found that the seizure was not valid as there was no Court Order authorising the seizure of the truck"**

**Further, even if the seizure had been valid, which it was not, it still would not stand as the truck seized**



*is a tool of trade as per Order 42 of the Rules of the Supreme Court and Order 45 of the Rules of the Supreme Court, 1999 Edition*

*I order that the seizure of the Benz Atego Registration No. ABT 527 truck is null and void, and order the same to be returned to the plaintiff until further order of the Court"* (emphasis added)

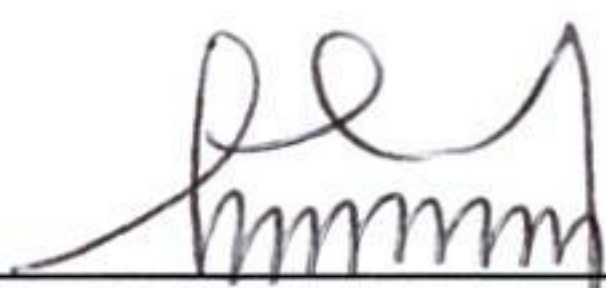
The above order still stands. It is clear to me that the defendant took the law into its own hands and neglected to follow legal procedures and the same cannot now be remedied by a reopening of the application in question.

In view of the foregoing and for the avoidance of doubt leave on application for committal for contempt of Court is declined. Further, my Ruling of 9<sup>th</sup> May, 2014 still remains valid and shall not be reopened till further Order of this Court.

Leave to appeal is granted

Costs in the cause.

**DELIVERED AT LUSAKA THIS ..... DAY OF....., 2015.**



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**MRS. JUSTICE A. M. BANDA-BOBO  
HIGH COURT JUDGE**