

**IN THE HIGH COURT OF ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**

**2013/HP/0609**  
**2013/HP/0633**

(Civil Jurisdiction)

**BETWEEN:**

**SHELAGH MARGARET BROWN**

**AND**

**CLAYDON LIMITED**



**PLAINTIFF**

**DEFENDANT**

**Before the Hon. Mrs. Justice A. M. Sitali on the 7<sup>th</sup> day of May, 2015.**

*For the Plaintiff* : *Mr V. K. Mwewa of  
Messrs V. K. Mwewa and Company*

*For the Defendant* : *Messrs A. M. Wood and Company*

---

**R U L I N G**

---

**Cases referred to:**

1. Cropper vs. Smith [1884] 26 Ch. D. 700
2. Tildesley vs. Harper [1878-79] 10 Ch. D 393 at 396-397

**Legislation referred to:**

**The High Court Rules, Chapter 27 of the Laws of Zambia, Orders XIV and XVIII**

This is an application by the plaintiff for an order for leave to substitute a party, an order for leave to amend the writ of summons and statement of claim and an order for these proceedings to be transferred to the Ndola High Court. The application is made by summons pursuant to Order XIV and Order XVIII, respectively, of the High Court Rules, Chapter 27 of the Laws of Zambia and is supported by an affidavit deposed to by Katrina Boswell Brown.

In the affidavit in support of the application, Katrina Boswell Brown deposed that after the consolidation of the two matters under cause No. 2013/HP/0609 and cause No. 2013/HP/0633 she was advised by her advocates and believes that it has become imperative to amend the writ of summons and statement of claim so that the parties and matters can be put in their right perspective. The proposed amendments are produced and marked "KBB1". The deponent further stated that she holds a power of attorney on behalf of the plaintiff who is ordinarily resident in the United Kingdom. A copy of the said power of attorney is exhibited marked "KBB2". The deponent asserts that by virtue of being a daughter of the plaintiff and the late Richard A.B Brown she is an interested party in these proceedings and that she would, therefore, like to be substituted as a party suing in her own capacity as well as a lawful attorney of the plaintiff in this action.

The deponent further asserted that the substitution of the plaintiff and the proposed amendments to the writ of summons and statement of claim will not prejudice the defendant in anyway. She further requested for an order to transfer the matter to Ndola on the ground that the

parties are all based in Ndola and that the disputed property is situated in Ndola and that it would be expedient to so do. The deponent stated that during the proceedings it would become imperative for the court to visit the disputed areas and that it would be easier for the High Court sitting at Ndola to visit the site in terms of expense and time than a High Court travelling from Lusaka. She asserted that the transfer of this matter to Ndola will not prejudice any of the parties in anyway.

The defendant filed an affidavit in opposition on 26<sup>th</sup> March, 2015 which was deposed to by William Burdett who described himself as a director in the defendant company. In opposing the application William Burdett stated that the consolidated matters herein were freely commenced by the parties at the principal registry at Lusaka and further that the applicant Katrina Brown has not advanced any valid or legal grounds for the court to order substitution of parties. He further stated that this court has already set a date for trial herein being 6<sup>th</sup> May, 2015 at 14:30 hours.

At the hearing of the application Mr. Mwewa, counsel for the plaintiff relied on the affidavit in support of the application deposed to by Katrina Bosewell Brown and filed into Court on 24<sup>th</sup> March, 2015. Counsel submitted that the plaintiff seeks an order for leave to substitute a party, an order for leave to amend the writ of summons and statement of claim and an order that the proceedings be transferred to Ndola High Court.

With regard to the application to amend the writ and statement of claim, counsel submitted that an amendment can be applied for and effected at

any stage before the close of proceedings. Counsel further submitted that the amendment will put matters in perspective and that no prejudice will be caused to the defendant if the court allows an amendment at this stage.

Counsel went on to submit, with regard to the application for the matter to be transferred to Ndola, that although both actions were commenced in Lusaka, the parties are based in Ndola and that the disputed property is situated in Ndola. Counsel stated that he is certain that the court will have to move at least three times in the course of the trial to view the disputed property and that it is, therefore, expedient that the court in Ndola deals with the matter. He prayed that the plaintiff be granted the orders she seeks.

Counsel for the defendant was not present at the hearing. The reason advanced by a learner legal practitioner from Messrs A.M. Wood and Company for counsel's absence was that he had travelled to Livingstone for the Law Association of Zambia Annual General Meeting. No notice of motion of intention to adjourn the matter was filed before court. As counsel for the plaintiff Mr. V. K. Mwewa had travelled from Ndola for the hearing and as the defendant had filed an affidavit in opposition on 26<sup>th</sup> March, 2015, which affidavit states the defendant's position regarding the application, I permitted counsel for the plaintiff to proceed with the application.

I have considered the affidavit evidence on both sides.

The plaintiff seeks an order for leave to be substituted as a party in the place of the plaintiff Shelagh Margaret Brown. The grounds stated for making the application are that the applicant is an interested party in these proceedings, that she holds a power of attorney conferred upon her by the plaintiff to litigate on her behalf and that the plaintiff ordinarily resides in the United Kingdom. Order XIV of the High Court Rules, Cap. 27 confers power on the Court to substitute a party in any proceedings if sufficient ground is shown for doing so. In the present case, the applicant has given sufficient reasons to warrant the grant of leave to substitute the plaintiff. Leave to substitute the plaintiff Shelagh Margaret Brown with the applicant Katrina Boswell Brown is accordingly granted.

The plaintiff further seeks an order to amend the writ of summons and statement of claim pursuant to Order XVIII of the High Court Rules, Cap. 27. The relevant part of Order XVIII for purposes of this application provides that:

*“The Court or a Judge may, at any stage of the proceedings, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not, and all such amendments as may be necessary or proper ... for the purpose of determining in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just”.*

A consideration of Order XVIII which is set out above reveals that the court or a judge has power, inter alia, to allow any proceedings to be amended at any stage of such proceedings in order to allow the real question in controversy between the parties to an action to be determined. In Cropper vs. Smith (1) Bowen L. J. observed that:

*“It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made “for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings”.*

Further in Tildesley vs. Harper (2) Bramwell L. J. observed as follows:

*“My practice has always been to give leave to amend unless I have been satisfied that a plaintiff applying was acting malafide or that by his blunder he has done some injury to his opponent which could not be compensated for by costs or otherwise.”*

Based on the foregoing authorities, I find that it is necessary to allow the plaintiff to amend the writ and statement of claim so that the real question in controversy between the parties to this action can be determined. Allowing the amendments will not prejudice the defendant in any way. Leave to amend the writ of summons and statement of claim is granted. The plaintiff shall file the amended writ of summons and statement of claim within 14 days of the date of this Ruling. The

defendant is at liberty to file an amended defence within 14 days after service of the writ and statement of claim.

With regard to the application to transfer the matter to Ndola, I note that the reasons advanced by the plaintiff for making the application in her affidavit evidence are that all the parties to the proceedings are based in Ndola and that the disputed property is situated in Ndola. I agree with Mr Mwewa that since the parties and the disputed property are situated in Ndola, it is expedient that the court in Ndola should hear and determine the matter. This is because given the nature of the action it will be necessary for the court to move to view the disputed property in the course of the trial.

For that reason the application to transfer the matter to the Ndola High Court is granted as prayed. Costs will be in the cause. Leave to appeal is granted.

Dated the 7<sup>th</sup> day of May, 2015.



.....  
**A. M. SITALI**  
**JUDGE**