

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

2014/HP/0491

BETWEEN:

**CHRISTOPH MUTEMWA**



**PLAINTIFF**

**AND**

**GENESIS FINANCE LIMITED**

**1<sup>ST</sup> DEFENDANT**

**HAZELS FARMERS LIMITED**

**2<sup>ND</sup> DEFENDANT**

**BEFORE : HON. G.C. CHAWATAMA**

*For the Plaintiff* : *Mr. Sinyangwe – Messrs Douglas & Partners*  
*For the 1<sup>st</sup> Defendant* : *Mr. Kawan – Messrs D. Findlay & Associates*  
*For the 2<sup>nd</sup> Defendant* : *Ms Kasonde -*

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**RULING**

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By way of writ of summons filed on the 28<sup>th</sup> March, 2014, the Plaintiff claims the following:-

- 1. An order to set aside the consent judgment dated 1<sup>st</sup> March, 2014 for fraud.*
- 2. Costs*
- 3. Damages to be assessed by the Deputy Registrar*

4. *Any other relief the court may deem fit.*

On the 23<sup>rd</sup> April, 2014 the Defendant filed a conditional memorandum of appearance.

Summons for an order to strike out statement of claim pursuant to order 18 Rule 19 of the Rules of the Supreme Court of England (1999) Edition and an affidavit in support of the same was filed on the 20<sup>th</sup> April, 2014. Exhibited was a consent Judgment signed on the 1<sup>st</sup> March by my brother Hon. Mr. Justice A.M Wood and Advocates for the Applicant Messrs D Findlay and Associates and Messrs L M Chambers Advocates for the Respondent. Also exhibited is an order of the court dated 24<sup>th</sup> January, 2014 by my brother Honourable Mr. Justice A.M Wood. Having heard Counsel for the Applicant and Counsel for the first and second Respondent leave to issue writ of possession of Lot No. 3997/M Lusaka following the first and second Respondent's failure to make payment of the agreed monthly installments and comply with the consent Judgment.

On the 30<sup>th</sup> July, 2014 an inter-parte summons for an Order of an interim injunction pursuant to ***Order 27 of the High Court Rules and Order 29 Rule 1 of the Rules of the Supreme Court (1999) Edition*** and affidavit in support of the same was filed by the Plaintiff.

On the 14<sup>th</sup> October, 2014 a ruling was delivered by the learned District Registrar Mrs Mwaaka Chigali Mikalile related to the application for an order to strike out statement of claim pursuant to Order 18 Rule 19 of the Rules of the Supreme Court. The District Registrar was correct when she stated that the particulars of fraud as against the first Defendant have not been laid out in the statement of claim contrary to the law requiring that allegations of fraud must be particularized. The District Registrar was on firm ground when she stated that the statement of claim in not having particularized fraud against the first Defendant has not disclosed any reasonable cause of action against it. The statement of claim was struck out against the first Defendant with costs. The same to be taxed in default.

On the 24<sup>th</sup> November, 2014, Mr. Sinyangwe wanted to be heard on the application for an injunction. Mr. Kawana pointed out that since the statement of claim has been struck out the injunction being sought cannot stand because the Plaintiff has no cause of action against the first Defendant. Mr. Sinyangwe informed the court that they were availed with the decision of the Registrar and noted that the writ and statement of claim were struck out. He submitted that this matter is against two Defendants the same application was in regard to the second Defendant. According to Counsel it follows the injunction application stands and cannot be dismissed in relation to the second Defendant.

In response Mr. Kawana informed the court that the injunction was meant to prevent the first Defendant from selling the property which was charged by the Plaintiff in a mortgage. He stated that the record will show that the statement of claim was specifically for that very same purpose. Secondly the Defendant does not have anything to do with the selling of the property. He brought to the court's attention that the second Defendant was the first Respondent; the Plaintiff being the second Respondent. Therefore the mortgage with the first Respondent was between the three parties to the action. It was assumed that the second Defendant was included in these proceedings.

Having agreed that the District Registrar was correct when she stated that the particulars of fraud as against the first Defendant have not been laid out in the statement of claim contrary to the law requiring that allegations of fraud must be particularized, further agreeing that the District Registrar was on firm ground when she stated that the statement of claim in not having particularized fraud against the first Defendant has not disclosed any reasonable cause of action. The District Registrar was correct to strike out the statement of claim as against the first Defendant.

It follows that since the statement of claim has been struck out the injunction sought cannot stand because the Plaintiff has no cause of action against the first Defendant.

I can only sympathize with the Plaintiff. Mr. Kawana wants the court to rely on a statement of claim that has been struck out meaning there is no purpose that the same will serve.

The application is denied, costs to the first Defendant to be taxed in default of agreement.

**DELIVERED AT LUSAKA THIS <sup>23<sup>rd</sup></sup> DAY OF <sup>JUNE</sup> 2015**

  
**G.C.M CHAWATAMA**  
**JUDGE**