**IN THE HIGH COURT FOR ZAMBIA 2014/HPC/0323**

**AT THE COMMERCIAL REGISTRY**

**HOLDEN AT LUSAKA**

(Commercial Jurisdiction)

**BETWEEN:**

ANNET SOKO (FEMALE) **PLAINTIFF**

**and**

DONHOOD INVESTMENTS LIMITED **1ST DEFENDANT** MARTHA MUSHIPE **2ND** **DEFENDANT**

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN CHAMBERS ON THE 13TH DAY OF MAY 2015**

*For the Plaintiff: D. Jere, Messrs Mvunga Associates*

*For the 1st Defendant: M. Chelo, Messrs Muleya Mwiimbu and Company*

*For the 2nd Defendant: E B Mwansa, SC, Messrs EBM Chambers*

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**RULING *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**Cases referred to:**

1. Associated Chemicals Limited v Hill & Delamain and Ellis & Co (1998) ZR 9

**Legislation referred to:**

1. The High Court Act, Chapter 27 of The Laws of Zambia
2. The Commissioners For Oaths Act, Chapter 33 of the Laws of Zambia.

This is an application by the 2nd Defendant for misjoinder pursuant to **Order XIV Rule 5 (2)** of **The High Court Rules2**. The application is by Summons and is accompanied by an affidavit deposed to by the 2nd Defendant and Skeleton arguments.

According to the 2nd Defendant, the 1st Defendant is a limited liability Company with a separate legal persona and as such capable of being sued in its name. That the 2nd Defendant is neither a shareholder nor Director in the 1st Defendant and therefore has been improperly and irregularly joined as a party to the proceedings.

The 2nd Defendant has further deposed that she was merely a legal representative on a contractual basis, representing the 1st Defendant. That the Plaintiff entered in an Investment agreement with the 1st Defendant which is exhibited a “MMI”.

In the Skeleton arguments, the 2nd Defendant places reliance on the case of **Associated Chemicals Limited v Hill and Delamain and Ellis and Co1.**

In opposing the application, the Plaintiff filed an affidavit in opposition deposed to by the Plaintiff together with the Skeleton arguments. Unfortunately, the aforestated affidavit affronts the mandatory provisions and requirements of **Order 5 Rule 20 (g**) of **The High Court Rules2** as well as **The Commissioners for Oath Act3** as it is not Commissioned. The said affidavit is therefore expunged from the record.

In determining the 2nd Defendant’s application’s application. I have taken into consideration the Summons and the 2nd Defendant’s affidavit evidence as well as the Skeleton arguments.

I have gone further to take a careful look at the Statement of Claim. Paragraphs 3, 5, 6 and 7 in my view seems to suggest that the 2nd Defendant as a legal Practitioner in addition to the Investment arrangement between the Plaintiff and the 1st Defendant, gave an independent professional undertaking.

This is an issue which cannot be determined at this stage prior to the adducing of evidence at the trial.

In the view that I have taken this is not a proper case for misjoinder of a party. The 2nd Defendant’s application is therefore dismissed with costs to the Plaintiff.

**Delivered at Lusaka on the 13th day of May 2015.**

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Justin Chashi

**HIGH COURT JUDGE**