

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

**2014/HPC/0323**

(Commercial Jurisdiction)

**BETWEEN:**

ANNET SOKO (FEMALE)

**PLAINTIFF**

**and**

DONHOOD INVESTMENTS LIMITED  
MARTHA MUSHIPE

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

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

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

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

*For the 2<sup>nd</sup> Defendant: E B Mwansa, SC, Messrs EBM Chambers*

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**RULING**

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**Cases referred to:**

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

**Legislation referred to:**

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

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

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

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

In the Skeleton arguments, the 2<sup>nd</sup> Defendant places reliance on the case of **Associated Chemicals Limited v Hill and Delamain and Ellis and Co<sup>1</sup>**.

In opposing the application, the Plaintiff filed an affidavit in opposition deposed to by the Plaintiff together with the Skeleton arguments. Unfortunately, the aforesaid affidavit affronts the mandatory provisions and requirements of **Order 5 Rule 20 (g) of The High Court Rules<sup>2</sup>** as well as **The Commissioners for Oath Act<sup>3</sup>** as it is not Commissioned. The said affidavit is therefore expunged from the record.

In determining the 2<sup>nd</sup> Defendant's application's application. I have taken into consideration the Summons and the 2<sup>nd</sup> 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 2<sup>nd</sup> Defendant as a legal Practitioner in addition to the Investment arrangement between the Plaintiff and the 1<sup>st</sup> 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 2<sup>nd</sup> Defendant's application is therefore dismissed with costs to the Plaintiff.

**Delivered at Lusaka on the 13<sup>th</sup> day of May 2015.**

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Justin Chashi  
**HIGH COURT JUDGE**