

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2014/HPC/0213

BETWEEN:

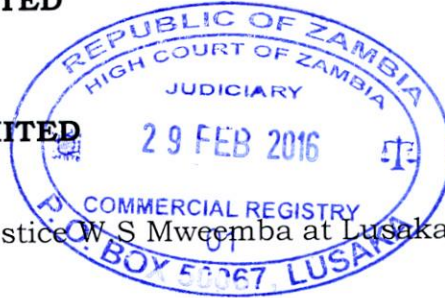
KOBS TRANSPORT LIMITED

PLAINTIFF

AND

POST NEWSPAPERS LIMITED

DEFENDANT



Before the Honourable Justice W. S. Mweemba at Lusaka in Chambers.

For the Plaintiff : Mr W. Mwenya- Messrs Lukona Chambers.

For the Defendant : Mr C. Hamwela- Messrs Nchito and Nchito.

R U L I N G

LEGISLATION REFERRED TO:

- 1. S.I No. 27 of the High Court Amendment Act Rules of 2012, Cap 27 of the Laws of Zambia.*

This is a ruling on an application by the Plaintiff for Judgment in Default of Appearance and Defence against the Defendant. It was averred by Counsel for the Plaintiff that an Affidavit of Service which showed that the Amended Writ of Summons and Amended Statement of Claim was filed into Court on 17th November, 2014. Counsel also contended that he had just been served with Conditional Memorandum of Appearance filed into Court on 3rd December, 2014 when the application ought to have been made within 14 days from 3rd December, 2014.

In response to this argument Counsel for the Defendant contended that the Conditional Memorandum of Appearance had a provision where the Deputy

Registrar is required to sign and that he only signed it on 10th December 2014 despite it having been filed on 3rd December, 2014. Moreover, that the matter had been brought within the period when the Notice of Intention to raise Preliminary Issues was filed. He also averred that the Conditional Memorandum of Appearance was on the Court's record and as a result, the Defendant had filed a full application which is before this Court for determination.

In reply, Counsel for the Plaintiff contended that the Conditional Appearance was only valid for 14 days and since nothing was done within 14 days it fell away together with the Defendant's application to raise a Preliminary Issue.

I have considered the application made before Court on the on 28th January, 2015. I have also considered the explanation given by Counsel for the Defendant in response to all the assertions raised by Counsel for the Plaintiff. I have found that the reasons for any delay on entering conditional appearance advanced by Counsel for the Defendant are sound.

Based on my discretion as a court and in the interest of delivering Justice I hereby dismiss the Plaintiff's application and order that the matter proceed to trial to be determined on its merits.

Leave to appeal is granted.

Costs in the cause.

Delivered in Chambers at Lusaka this 29th day of February, 2016.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE.