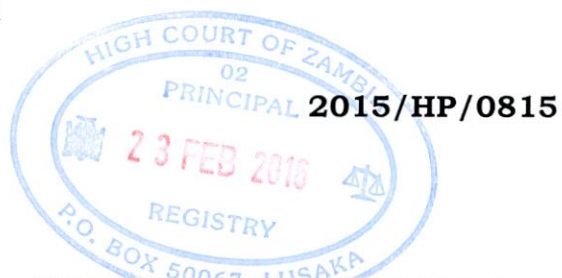


R1

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



IN THE MATTER OF:

**THE WINDING UP OF ANSON
ENTREPRISE ZAMBIA LIMITED**

BETWEEN:

SAMUEL CHITUNGU

PETITIONER

AND

ANSON ENTERPRISES LIMITED

RESPONDENT

BEFORE HONOURABLE MRS. JUSTICE P.C.M. NGULUBE IN CHAMBERS

FOR THE PETITIONER

: MR MWANSA – MESSRS MAMBWE, SIWILA
AND LISIMBA ADVOCATES

FOR THE RESPONDENT

: MR NGABA- MESSRS ISAAC AND PARTNERS

R U L I N G

Cases referred to:

1. **Lumus Agricultural Service Co. Ltd v Gwembe Valley Development Ltd (in receivership) (1999) Z.R. 1**

Legislation referred to:

1. **The Authentication of Documents Act, Chapter 75 of the Laws of Zambia**

This is a Ruling on the Preliminary issue raised by the Petitioner in relation to the Supplementary Affidavit in Opposition to the winding up petition dated 18th August, 2015. Learned Counsel for the Petitioner submitted that the Deponent

of the Affidavit in issue did not have authority to depose to the contents of the Affidavit because the Power of Attorney upon which he was relying on had not been notarized nor authenticated in line with the Authentication of Documents Act. That therefore, the entire Affidavit was defective in terms of Order 5 of the High Court Rules and ought to be expunged from the record.

In response, Learned Counsel for the Respondent submitted that the Power of Attorney was valid for the purposes of use in Zambia. Further that the facts which the Deponent deposed to were within his personal knowledge as he was the one who carried out the acts in question and that he was a competent witness. That therefore, the Affidavit was valid.

In reply, Learned Counsel for the Petitioner submitted that the Deponent had no authority to carry out acts on behalf of the Company as he was not an agent of the Company nor its employee. That the Power of Attorney relied on did not give the Deponent such authority save to represent the 2nd Respondent's interests in the cause.

I have carefully considered the submissions of Counsel on behalf of both parties. Neither party filed written submissions in time and therefore, this ruling shall be based on the oral submissions made. The Affidavit at the centre of this preliminary issue was deposed to by Davies Machemba Kangwa and filed on 18th August, 2015. It is worth noting that this Affidavit was filed after the Petitioner made an application for the Affidavit dated 26th June, 2015 to be expunged from the record and it was accordingly expunged vide a ruling dated

15th September, 2015. The Affidavit dated 18th August, 2015 exhibited a Power of Attorney executed by Anson Cai. It would appear that by the Affidavit dated 18th August, 2015, the Deponent sought to prove his authority to depose to the Affidavit of 26th June, 2015 on behalf of Anson Cai. The Affidavit of 18th August, 2015 thus came after the fact and served no purpose as the Affidavit of 26th June, 2015 had already been expunged on grounds of being hearsay. Albeit, it is important that the preliminary issue raised on the Power of Attorney is addressed.

The Authentication of Documents Act, Chapter 75 of the Laws of Zambia stipulates the different modes of authenticating documents executed out of Jurisdiction. While the Act is silent on the effect of non authenticated documents, the Supreme Court in **Lumus Agricultural Service Co. Ltd v Gwembe Valley Development Ltd (in receivership) (1999) Z.R. 1**, has stated as follows;

"it is quite clear from section 3 that if a document executed outside zambia is authenticated as provided, then it shall be deemed or presumed to be valid for use in this country, and if it is not authenticated then the converse is true that it is deemed not valid and cannot be used in the country...it cannot be used in this country for any purpose at all."

Authentication of documents is only necessary where documents have been executed outside Zambia. I have perused the Power of Attorney in issue, it

indicates that the residences of the donor as well as the donee are within Jurisdiction and it was accordingly witnessed within Zambia. There being no contrary evidence that the Power of Attorney was executed outside Zambia, I am of the view that authentication in line with the Authentication of Documents Act is not necessary and the document is fit for use within jurisdiction.

Based on the foregoing, I dismiss the Preliminary Issue raised by the Petitioner.

Costs to the Respondent.

Dated this 23rd February, 2016



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P. C. M. NGULUBE
HIGH COURT JUDGE