

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

2013/HP/0797

BETWEEN:

MWAPE KAPENDA CHLAMBWE



PLAINTIFF

AND

ELIAS TEMBO (Sued as an Attorney for
Kelvin Mwakoi)

1ST DEFENDANT

MARGARET CHIPILI

2ND DEFENDANT

LUSAKA CITY COUNCIL

3RD DEFENDANT

ATTORNEY GENERAL

4TH DEFENDANT

BEFORE THE HONORABLE MRS. JUSTICE P. C. M. NGULUBE IN CHAMBERS

FOR THE PLAINTIFF

: Mrs Zimba- National Legal Aid Clinic for
Women

FOR THE 1ST DEFENDANT

: Mr Mainza- Messrs Mainza and Company

FOR THE 3RD DEFENDANT

: Mr Moono- Director of Legal Services
Lusaka City Council

R U L I N G

Legislation referred to:

1. The High Court Act, Chapter 27 of the Laws of Zambia

Materials referred:

1. Odgers Principles of Pleading and Practice

This is a ruling on the 1st Defendant's application for leave to file further supplementary bundle of documents, made pursuant to **Order 3 Rule 2 of the High Court Rules**.

The Affidavit in Support of the Application was sworn by the 1st Defendant who deposed that he conducted a search at the High Court Principal Registry and the Lands and Deeds Registry where he found a Power of Attorney executed in his favor and the Application for Consent to Assign the subject property of these proceedings. Produced was a copy of a Power of Attorney. That from the second page of the Power of Attorney, the donor is correctly described as Kelvin Mwakoi.

He further deposed that he was availed with a copy of the Application for consent to Assign which described the Lessee as Kelvin Mwakoi Mwakoi. That the said documents were relevant to his defence and that he would be greatly prejudiced if the documents are not available before the Court.

No Affidavits in Opposition were filed.

When the application came up for hearing, Learned Counsel for the Defendant, Mr Mainza relied on the Affidavit in Support of the Application and prayed for leave to file the Supplementary Bundles of Documents.

In response, Learned Counsel for the Plaintiff submitted that there was no objection to the application save for the fact that the document dated back to

2006 and therefore was in the knowledge of the 1st Defendant. Therefore, Counsel prayed for costs.

Mr Moono, Learned Counsel for the 3rd Defendant further added that the Order for leave to file Supplementary Bundle of Documents be restricted to documents exhibited in the Affidavit in Support of the Application. It was prayed that since the Application for Consent to Assign referred to in the Affidavit in Support of the Application had not been exhibited, leave to file Supplementary Bundle of Documents should be limited to the documents exhibited. Counsel further prayed for costs.

In reply, Mr Mainza submitted that the 1st Defendant was desirous to produce the documents referred to in the Affidavit. He invited the Court to note that the Application for Consent to Assign was a public document and their omission to exhibit it would not prejudice the 3rd Defendants.

That the inclusion of all documents referred to in the Affidavit in support of the Application would avoid multiplicity of actions. Counsel further relied on Article 118 (e) of the Constitution Amendment Act, Number 2 of 2016 and submitted that the issue raised was a procedural technicality. That the other parties will be at liberty to cross examine the 1st Defendant on the document in question.

I have carefully considered the Affidavit evidence and the submissions made by Counsel for respective parties. The Application for leave is not opposed save for the issue raised by the 3rd Defendant in reference to the Application for

Consent to Assign which was referred to in the Affidavit in Support of the Application for leave to file Supplementary Bundles but was not so exhibited.

The Learned Authors of Odger's Principles of Pleading and Practice on page 215 have stated as follows;

"it is generally desirable for each party to see all material documents in the possession of his opponent, and to take copies of the more important ones. Such disclosure is obtained by the process called Discovery of Documents. Two stages are involved: the disclosure of what documents exist and the inspection of such of those documents as the opposite party is entitled to see."

In the usual course of a matter, discovery of documents is achieved by parties serving lists of documents on each other and later filing bundles of documents, in line with Orders of Directions before the matter proceeds to trial. Where a party wishes at a later stage to file additional documents, as is the case incasu, Leave of Court is needed so as to afford the other party chance to discover the documents sought to be produced. That is, precisely knowing what documents are sought to be produced as well as having a chance to scrutinize the documents. Generally and as accepted practice, the documents are exhibited in the Affidavit filed in Support of the Application for Leave to file Supplementary Bundle of Documents.


The 1st Defendant's Affidavit in Support rightly disclosed the documents sought to be produced but omitted to exhibit the Application for Consent to Assign. This is in direct defiance of the rules of discovery as it denies the other parties, the right to inspect the document for purposes of raising objections.

However, I note that the said document has been produced on page 9 of the 1st Defendant's Bundles of Documents filed on 8th January, 2014 and therefore, all the parties will be deemed to have had occasion to inspect the said Application for Consent to Assign.

In the premises, I hereby grant leave to the 1st Defendant to file a Supplementary Bundle of Documents for purposes of producing the sought documents.

Costs to be borne by the 1st Defendant and are to be recovered on determination of the matter.

Dated this 3rd March, 2016


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P. C. M. NGULUBE
HIGH COURT JUDGE