

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

2016/HP/304

BETWEEN:

LIBIAN AFRICAN INVESTMENT COMPANY ZAMBIA LIMITED **1ST PLAINTIFF**

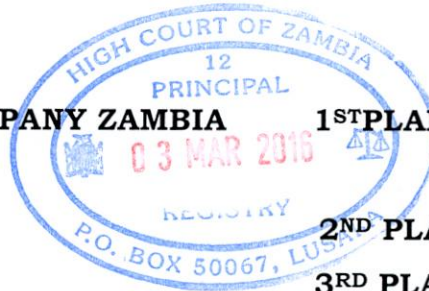
SHUKRI ESIDIEG AHMED ELJAIDI **2ND PLAINTIFF**

AHLAM HAMOUD **3RD PLAINTIFF**

AND

TAHER AMMAR MOHAMED KHALIL **1ST DEFENDANT**

CLEMENT WONANI **2ND DEFENDANT**



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

FOR THE PLAINTIFFS : MR M. MWANSA- MESSRS MAMBWE, SIWILA AND LISIMBA
FOR THE DEFENDANT: MR D. BWALYA- MESSRS LLOYD JONES AND COLLINS

R U L I N G

Cases referred to:

1. Lumus Agricultural Service Co Ltd v Gwembe Valley Development Ltd [1999] ZR 9,
2. National and Gridlays Bank Limited v Vallabhji and Others [1966] 2 ALL ER 626

Legislation referred to:

1. Authentication of Documents Act, Chapter 75 of the Laws of Zambia
2. Rules of the Supreme Court of England (1999) Edition

This is a Ruling in respect of a Preliminary issue raised by Learned Counsel for the Plaintiffs pertaining to the Affidavit in Opposition to Summons for an Order of Interlocutory Injunction filed by the Defendants on 24th February, 2016. Learned Counsel submitted that exhibits "TAMK3" to "TAMK11" were executed in Malta and are supposed to be authenticated in accordance with the Authentication of Documents Act. He thus applied that the Affidavit be expunged from the record due to the unauthenticated exhibits.

Learned Counsel for the Defendants submitted in response that a Notice to raise a Preliminary issue was supposed to be served on the Defendants before the preliminary issue was raised. That the Plaintiffs were thus estopped from raising the Preliminary issue as it deprived the Defendants the opportunity to make a meaningful response to the issue raised.

In reply, Learned Counsel for the Plaintiff stated that a Preliminary issue can be raised at any stage and that it was wrong for the Defendant to use a procedural argument to challenge a matter which was fundamentally wrong in the eyes of the Law.

I have carefully considered the submissions made on behalf of the parties. I hasten to state that **Order 14A of the Rules of the Supreme Court of England** allows a party to raise a preliminary issue orally without filing a motion. In particular, Order 14A (2) of the Rules provides that-

"An application under rule 1 may be made by summons or motion or(notwithstanding Order 32, rule 1) may be made orally in the course of any interlocutory application to the Court."

It is thus procedurally proper for the Plaintiffs to have raised the Preliminary issue orally despite not having filed the Notice of Intention to raise a Preliminary issue.

The Authentication of Documents Act, Chapter 75 of the Laws of Zambia stipulates the manner of authenticating documents executed outside Zambia. In the case of **Lumus Agricultural Service Co Ltd v Gwembe Valley Development Ltd [1999] ZR 9**, the Supreme Court of Zambia held as follows;

"if a document executed in Zambia is authenticated as provided by the Authentication of Documents Act, then it shall be deemed or presumed to be valid for use in this

Country and if it is not authenticated the converse is true that it is deemed not valid and cannot be used in this country."

The Supreme Court in the above cited case agreed with the English decided case of **National and Gridlays Bank Limited v Vallabhji and Others [1966] 2 ALL ER 626** and went on to hold that despite a Notice of Appointment of Receivers being executed outside Zambia and not having been authenticated in line with the Authentication of Documents Act, it was valid between the parties but ineffective against the third parties. The Supreme Court stated thus-

"we agree with the decision that an instrument which is not attested or registered is valid between the parties but ineffective against other persons and that it is precisely the position with the case presently before us. The notice of appointment can be said to be valid between DEG and the appointees, the joint Receivers and Managers but ineffective for purposes of receivership and management of the affairs of the Respondent, being the other person."

I have thoroughly perused through the subject exhibits in the Affidavit of 24th February, 2016 and it is noteworthy that "TAMK 3" is a resolution by the Plaintiff Company appointing the 1st Defendant as its General Manager. This document in my view falls within the exception set by the Supreme Court in that, while "TAMK3" is not valid as regards third parties, it is valid as between the parties, that is the 1st Plaintiff Company and the 1st Defendant as its appointed agent. Therefore, the 1st Defendant can rely on "TAMK3" and can accordingly so exhibit it in his Affidavit of 24th February, 2016.

As to the other exhibits, they comprise of correspondence from the Plaintiff Company to third parties and therefore the exception set in **Lumus Agricultural Service Co Ltd v Gwembe Valley Development Ltd** does not extend to them. Failure to have the exhibits authenticated as prescribed by the Authentication of Documents Act, renders them invalid for purposes of use in Zambia and therefore cannot be exhibited by the 1st Defendant in the Affidavit of 24th February, 2016. This position holds true for the Affidavit of 19th February, 2016 as well.

In the premises, I uphold the preliminary issue in part and expunge these exhibits from the said Affidavits with an exception of "TAMK3" in the Affidavit filed on 24th February, 2016 and "TAMK2" in the Affidavit filed on 19th February, 2016.

Costs to be in the Cause.

Dated this 3rd March, 2016



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P. C. M. NGULUBE
HIGH COURT JUDGE