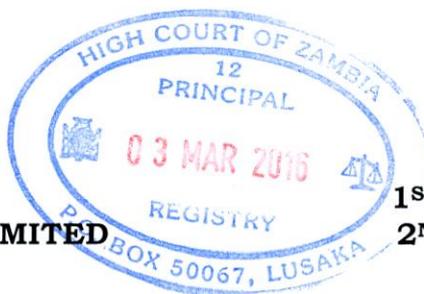


IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

2015/HP/0017

BETWEEN:

RADIAN STORES LIMITED  
RADIAN STORES RETAIL LIMITED



1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF

AND

DIPAK PARMAR  
PARMAR KANCHAN PRABHUDAS

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

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

FOR THE PLAINTIFFS : MR YOSA- MESSRS SIMEZA, SANGWA AND  
ASSOCIATES

FOR THE DEFENDANTS : MRS MARRIETTA- MESSRS SHARP AND  
HOWARD

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## R U L I N G

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**Cases referred to:**

1. *Jones v Curling* (1884) 13 Q.B.D. p 272

**Legislation referred to:**

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

This is a Ruling on the Defendant's application for costs in respect of an Application for leave to issue Subpoena Duces Tecum which was granted vide a

Ruling dated 10<sup>th</sup> September, 2015. When the Witness appeared before me to produce copies of the documents, it became apparent that the Witness had been in possession of the said documents from 2012. The Defendants' Counsel thus submitted that the application for the Subpoena Duces Tecum had been necessitated by the Plaintiff and therefore they ought to bear costs for the application.

Learned Counsel for the Plaintiff responded by stating that it would be unfair to condemn the Plaintiffs in costs.

I have carefully considered the submissions made by both counsel for the Plaintiffs and the Defendants. **Order 40 , rule 6 of the High Court Rules** clothes this Court with the discretion to award costs in the manner it deems just. There are several factors to be considered when exercising this discretion, Bowen L.J. put it as follows in **Jones v Curling (1884) 13 Q.B.D. p 272**, that-

**"the Judge should look, in the first place, at the result of the action itself, ....and he should look at the conduct of the parties to see whether either of them had in any way involved the other unnecessarily in the expense of litigation and beyond that he should consider all the facts of the case ..."**

In the case at hand, the costs sought are in respect of an interlocutory application and therefore the outcome of the suit is not one of the factors to be considered, thereby leaving me with the conduct of the parties.

While it is noted that the Witness was in possession of the particular document as far back as 2012, it is also clear that he was unaware that the documents contained information as alleged by the 1<sup>st</sup> Defendant. Therefore, the Plaintiffs initial position of refuting being in possession of the alleged "Redbooks" cannot warrant the Plaintiffs being condemned in costs and I am of the considered view that it is only just that the Costs be in the Cause.

**Dated this 3<sup>rd</sup> March, 2016**



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**P. C. M. NGULUBE**  
**HIGH COURT JUDGE**