

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2015/HP/329

BETWEEN:

PAUL NYAMBE

AND

GOLDEN BRIDGE HOTEL



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 9th DAY OF JUNE,
2017.**

For the Plaintiff : In person

For the Defendant : Ms C.M. Mwansa EBM Chambers

R U L I N G

LEGISLATION AND OTHER WORKS REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia**
- 2. The Rules of the Supreme Court, 1999 edition**
- 3. Atkins Court Forms 2nd Edition Volume 15, 1998 re-issue**

On 3rd May, 2017 when the matter came up for trial, Counsel for the Defendant informed the court that they had a preliminary issue to raise, which had been filed by way of summons and supporting affidavit on 27th April, 2017. The matter was adjourned to 26th May, 2017 to enable the Plaintiff who was served the application a day before hearing of the matter, to respond to it.

The application was heard on 26th May, 2017, and Counsel for the Defendant stated to the court that they relied on the affidavit filed in support of the application, and further stated that they had taken note of the affidavit in opposition that had been filed. That in paragraph 5 of the said affidavit in opposition, the Plaintiff had conceded that his advocates had not followed procedure, by following the orders for directions.

Thus it was their argument that the Plaintiffs bundle of pleadings and bundle of documents should be expunged from the record, as the Defendant was not given opportunity to inspect the same, and object to any of the documents. That if the documents were not expunged great injustice would be caused to the Defendant, as during the trial they would not be allowed to raise any objection, as filing of bundles of documents implied agreement by both parties on production of the said documents.

Counsel prayed that the bundle of documents as well as the bundle of pleadings be expunged for failure to comply with the orders for directions, with costs.

In response the Plaintiff relied on the affidavit in opposition, and conceded that his advocates did not comply with the orders for directions. He however stated that he did not have sight of the documents including 'CMM1'. He prayed that the application be denied, and that the Defendant be given opportunity to discover the documents before the trial.

I have considered the application. The application has been made pursuant to Order 14A of the Rules of the Supreme Court, 1999 edition, as well as Order 3 Rule 2 of the High Court Act, Chapter 27 of the Laws of Zambia. Order 14A of the Rules of the Supreme Court, 1999 edition provides that;

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein”.

Order 3 Rule 2 of the High Court Rules on the other hand states that;

“2. Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not”.

In my view the question of whether the bundle of documents should be expunged from the court record is not a question that would determine this action without a full trial of the action, and the bringing of the application pursuant to Order 14A of the Rules of the Supreme Court, was therefore inappropriate. However as Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia which allows the court to make any interlocutory orders necessary for doing justice is also relied, which is wide in scope, the application is properly before me.

The issue for determination is whether the bundle of documents, as well as the bundle of pleadings should be expunged from the court record as they were filed in disobedience of the orders for directions issued by the court. That as a result the Defendant did not have opportunity to

discover the same, and be availed opportunity to object to the production of the documents.

The Plaintiff does not dispute that the bundle of documents and bundle of pleadings were filed in disregard of the orders for directions, but asked that they not be expunged from the court record, and that the Defendant be given time to discover the same. Therefore the question is whether the documents filed by the Plaintiff without there being discovery and inspection of the same should be expunged from the record?


Discovery of documents is a process designed to enable the parties obtain, as far as possible, full knowledge of the existence and contents of all relevant documents relating to the matters in question between them. It operates generally before the trial, though it may be granted at or even subsequent to the trial. Its basis is to provide for the fair trial of the action, and prevent surprises at trial as the parties would have known what documents each will use at the trial.

Atkins Court Forms 2nd Edition Volume 15, 1998 re-issue at page 123 provides that the court has undoubted jurisdiction to make an order for discovery at any stage of the action. The purpose of discovery is to enable the parties in the matter know what documents each has either in their possession, custody or power in relation to the proceedings, and as rightly stated by Counsel for the Defendant, this enables a party who wishes to object to any of the documents do so, and also to claim privilege from their being produced.

The Plaintiffs bundle of documents is before the court and, in the application Counsel for the Defendant has not demonstrated what prejudice if any it will suffer by the documents contained in the Plaintiff's bundle being produced or indeed that they claim privilege to any of the documents so filed by the Plaintiff in the bundle of documents.

Therefore while the bundle of documents was filed in defiance of the orders for directions, this is not fatal, as no demonstration has been made of any prejudice likely to be suffered as a result of the same. In the interests of justice I will allow the Defendant time to discover the documents, and raise any objections to any of the documents, and also that it files its bundle of documents and pleadings so that the matter can proceed for trial. To this end I order that the matter will come up for a status conference on 12th July 2017 at 08:30 hours and it is expected that by then the Defendant would have done discovery and inspection, and filed its bundle of documents and pleadings. Costs shall be in the cause.

DATED THE 9th DAY OF JUNE, 2017.



S. KAUNDA NEWA
HIGH COURT JUDGE