

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

2017/HP/651



**IN THE MATTER OF SECTION 8 (3) OF THE LAW ASSOCIATION
OF ZAMBIA (GENERAL RULES) STATUTORY INSTRUMENT
NUMBER 155 OF 1996**

**IN THE MATTER OF THE EXTRA ORDINARY GENERAL MEETING
TO BE HELD ON THE 29TH APRIL 2017 AT RADISSON BLUE
HOTEL LUSAKA**

**IN THE MATTER OF MEETING PROCEDURES FOR THE
EXTRAORDINARY GENERAL MEETING**

BETWEEN:

**KELVIN BWALYA FUBE
HOBDAY KABWE
RABSON MALIPENGA**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT**

AND

LAW ASSOCIATION OF ZAMBIA

RESPONDENT

*Before Hon. Mr. Justice M. L. Zulu in Chambers at Lusaka, the 28th day of
April, 2017*

For the Applicants: Mr. M. Lungu of Lungu Simwanza and Co.

*For the Respondent: Mr. J. Sangwa, SC, of Simeza Sangwa and
Associates*

RULING

Legislation referred to:

1. *High Court Rules, Chapter 27 of the Laws of Zambia.*
2. *The Supreme Court Rules – 1999 Edition.*

This action was commenced on 20th April, 2017, by way of Originating Summons accompanied by an Affidavit in Support pursuant to Order 6 Rule 2 of the High Court Rules.

The Applicants sought the orders:-

1. *That the time for commencement of the Extra Ordinary General Meeting be changed from 08:00 hours to 11:00 hours in the fore noon to enable members travelling from other towns to attend the meeting.*
2. *That the notice of the Extra Ordinary General Meeting be amended by providing for the registration of members attending in person and any proxies carried to the meeting;*
3. *That the Respondent issues proxies to members who are unable to attend the meeting atleast five (5) days before the meeting.*
4. *That the Extra Ordinary General Meeting Elects a Chairman from amongst the members of the Association to preside over the debate of the motion for No Confidence.*

5. *That the vote to determine the resolution be conducted by a poll presided over by Law Association Electoral Committee in substantial conformity with the Law Association of Zambia (Electoral) Rules.*
6. *That the results of the polls binds the Association and Members of the council to the Extent that if the motion is carried the members of the Council are obliged to resign;*
7. *That in default of any written rules, the meeting regulates its own procedures; and*
8. *Any other relief the Court may deem fit.*

On 26th April, 2017, the date I had set for the hearing, both parties appeared. The Respondents did not file any affidavit in opposition and applied that matter be adjourned to allow them appoint and instruct counsel. The Applicants opposed the adjournment. I proceeded to order that the matter be heard today, 28th April at 09:00 hours.

However, on 27th April, 2017, the Respondents filed summons to Dismiss Proceedings for Irregularity pursuant to the provisions of Order 2 Rule 2 and Order 28 Rule 10 of the Rules of the Supreme Court 1965 and all Enabling Provisions of the law.

I proceeded to hear the summons before the main proceeding. The summons to dismiss proceedings for irregularity were premised on the following grounds:

1. *That the said originating summons does not disclose the written law or Rules of court pursuant to which it is made contrary to the provisions of order 6 Rule 1 (2) of the Rules of the High Court;*
2. *The Originating summons in ultra-vires Order 30 Rule 11 of the High Court Rules in that it does not disclose any business that can be disposed of in Chambers;*
3. *The Originating Summons does not include a statement of the questions on which the Applicants seek the determination or direction of the Court neither does it contain a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause or causes of action in respect of which the Applicants claim the relief or remedy, contrary to the provisions of Order 7 Rule 2 of the Rules of the Supreme Court 1965;*
4. *The Originating Summons referred to the parties thereto as Applicants and Respondent as opposed to Plaintiffs and Defendant contrary to the provisions of Order 7 rule 2 (2) of the Rules of the Supreme Court 1965; and*

5. *The Originating Summons having been lodged with the Court on 20th April, 2017, the filing of the affidavit evidence by the Applicants on the same day; the appointment of the 26th day of April, 2017, at 14:45 hours as the date of hearing of the said Originating Summons and the adjournment of the same to Friday, 28th April, 2017, at 09:00 hours are contrary to the provisions of Order 28, Rules 1A, 2, and 3 of the Rules of the Supreme Court 1965.*

Mr. Sangwa, SC on ground 1, argued that the application before Court did not comply with order 6 rule 1 (2) as it was not pursuant to any written law or rule that authorizes you to commence by Originating Summons and in the absence of that, the general rule is that you move the Court by way of a Writ of Summons. He argued that it is mandatory for summons to state the law.

On the second ground, Mr. Sangwa argued, that the issues canvassed in the originating summons do not fall under Order 30 Rule 11 of the High Court Rules. He went on that the issues raised were reliefs sought and does not disclose business for determination, therefore lacked the basis and foundation or the cause which would entitle the applicant for remedies listed.

On the third ground, the Respondent Originating Summons lacked the statement of questions on which the Applicants seek determination and where you seek remedies. It was argued that the Applicants needed to provide sufficient particulars which identify the cause of action which entitle you to the remedies as per Order 7 Rule 3 of the Supreme Court Rules and cited HCC6 in the High Court Rules as a precedence, and that in the absence of the state the questions, there Originating Summons would not disclose a Cause of Action.

On the fourth ground, the Respondent argued that Originating Summons is referring to the parties as Applicants and Respondents against Order 7 Rule 2 (2) of the Supreme Court that states that the parties to an Originating Summons are plaintiffs and defendants.

Mr. Sangwa, SC submitted to the Court that these proceedings ought to be dismissed for none compliance to the procedure as outlined in Order 28 Rule 1A, 2, and 3 of the Supreme Court. He argued that the proceedings ought to be dismissed as they are improperly before Court and lack any cause of action.

Mr. Lungu in opposing the application stated that the application had been predicated on a misapprehension of the proceedings. He argued that the Applicants as paid up members of the LAZ they were granted rights under

the Act as well as the statutory instruments published under the Act, and one such right was for the Requisition of an extra ordinary General Meeting under section 8 (3) of Statutory Instrument No. 55 of 1996 and had come to Court to enforce these rights, including enforcing of these rights or a determination of these rights depends upon the construction of the Statutory Instrument No. 55 of 1996, and this qualified under Order 30 Rule 11 as a matter to be determined in Chambers.

On ground one, Mr. Lungu conceded that the proper title in the summons ought to have been Order 6, Rule 1 (2) of the High Court Rules alleging that it was a typo graphical error.

Mr. Lungu submitted that HCC 6 the precedent cited by the Respondent was one of the forms an Originating Summons can take, and cited HCC 10 in the High Court Rules, which required that Reliefs sought had to be stated and not the questions to be determined. Mr. Lungu further stated that Order 7, Rule 3 of the Supreme Court in the alternative allowed a plaintiff to state a concise statement of relief or remedy claimed in the proceedings.

On the last ground, Mr. Lungu argued that Order 3, Rule 5 of the rules of the Supreme Court allows the Court to extend or abridge the period of time in which anything required or authorized to be done by these Rules.

Further, he stated that the Applicants are entitled to a fair, transparent and orderly meeting which observes the Rules of Natural Justice both in Conduct and Procedure which can only be granted on the construction of Statutory Instrument No. 55 of 1996. He stated that the alleged irregularities are not fatal as the Applicants have not disclosed any prejudice that can be occasioned to them by virtue of the irregularities. He stated that the affidavit filed sets out the foundation upon which the three Applicants are seeking to enforce their rights.

Mr. Sangwa in his reply stated that the suggestions that there had been none compliance with Rule 8 (3) is not there, as the Originating Summons is not suggesting that these rights have been violated and therefore enforcement cannot be under taken in a vacuum.

Mr. Sangwa added that the defect in the Originating Summons cannot be cured by an Affidavit. Further, he said there had been no application for abridgment.

I have considered the evidence on record and oral submissions of both parties on the application. I will not dwell on ground one as the Applicants have conceded. Besides, this is a matter that under the circumstances would be curable, even if the Applicants had not conceded.

Oder 7, Rule 3 of the Rules of the Supreme Court states:

“Every Originating Summons must include a statement of the questions which the Plaintiffs seek the determination on direction of the High court or as the case may be, a concise statement of the relief or remedy claimed in the proceedings begin by the originating summons with sufficient particulars to identify the case or causes of action in respect of which the plaintiff claims that relief or remedy.”

The above is very instructive and does not give an option. It therefore follows that it is a requirement for Originating Summons to include a statement of questions for determination by the Courts. The alternative is that the Originating Summons ought to contain a concise statement of the relief or remedy claimed in the proceedings with sufficient particulars to identify the cause or causes of action.

The proceedings before Court today do not disclose the above requirement and therefore, I find that they lack the cause of action.

Because of the above finding that these particular proceedings do not disclose any cause of action, Order 30, Rule 11 of the High Court would also not apply. This is because while the Applicants have argued that they seek to have their rights protected under Statutory Instrument 55 of 1996,

they have not shown what the Court ought to look into in order to protect their rights.

The Courts cannot be invited to make Orders and grant reliefs which are not supported by a claim of action for determination. The Applicants ought to show how their rights under Statutory Instrument N. 55 of 1996 have been violated.

It is the view of the Court that the reliefs sought in the Originating Summons could have been properly been addressed to the Respondent in accordance with the prescribed rules governing the Association. Only when LAZ refused to abide by its own rules would the Courts be invited to protect the rights of its fully paid up members like the Applicants.

For the reasons given above, I do not feel it is necessary to discuss the other grounds relied upon to dismiss this action.

I accordingly allow the application and dismiss the proceedings commenced by way of Originating Summons. Because of the nature of this application, I make no orders to costs.

Leave to Appeal is granted.

Dated the 28th day of April 2017



M. L. ZULU
HIGH COURT JUDGE