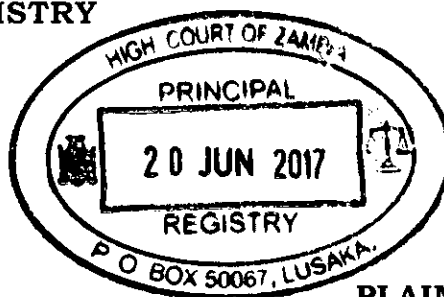


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2016/HP/0796



BETWEEN:

WILLARD MULOPA

PLAINTIFF

AND

**MILLION HAMUNG'ANDE
NELSON CHIDAKWA
FRANK MULILALILA
ESTHER CHIYUNI
FAIDESS MAKIYI
SELINA MOONGA
SOFIA HAMUNGANDE**

**1st DEFENDANT
2nd DEFENDANT
INTENDED 1st INTERVENER
INTENDED 2nd INTERVENER
INTENDED 3rd INTERVENER
INTENDED 4th INTERVENER
INTENDED 5th INTERVENER**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 20th DAY OF JUNE,
2017**

For the Plaintiff

*: Ms M. Siansumo, Malambo and
Company*

*For the Defendants and intended interveners: Mr B. A. Sitali, Butler and
Company*

R U L I N G

LEGISLATION REFERRED TO:

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

This is a ruling on application made by the intended interveners, for an order for joinder pursuant to Order 14 Rule 5 of the High Court Rules, and Order 15/6/8 of the Rules of the Supreme Court, 1999 edition.

Counsel relied on the composite affidavit sworn by the intended interveners, stating that they had shown that they have interest in the subject matter of these proceedings, and that they are likely to be affected by the decision of the court. He added that this is all they need to prove, and that the rules are categorical that even if a plaintiff objects to the joinder, the court can still go ahead and join a person as a defendant against the wishes of the plaintiff, as provided in Order 15/6/8 of the Rules of the Supreme Court, 1999 edition.

That this submission was in view of the affidavit in opposition that had been filed, and Counsel noted that the issues raised in the affidavit in opposition can only be determined after the interveners have been heard. Counsel prayed that the application be granted.

In response Counsel for the Plaintiff opposed the application, and relied on the affidavit in opposition filed on 30th May, 2017. She prayed that the application be dismissed.

In reply Counsel for the intended interveners stated that in order to avoid a multiplicity of actions, where the intended interveners would have to commence a fresh action over the same issue, and risk the courts arriving at different decisions, it is in the interests of justice and good administration, and in view of the commonality of issues, that the intended interveners should be joined to the proceedings.

I have considered the application. The application has been brought pursuant to Order 14 Rule 5 of the High Court Rules, and Order 15/6/8 of the Rules of the Supreme Court, 1999 edition. Order 14 Rule 5 of the High Court Rules states that;

“5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of

the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:

Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may, at any time before judgment in the suit, apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms (if any) as the Court or a Judge shall think fit. The Court or a Judge upon the application of any party may give directions for service upon a new party of copies of any writ of summons or other document or process and also may give such other directions in relation to the adding of such new party as justice and the circumstances of the case may require”.

Order 15/6/8 of the Rules of the Supreme Court, 1999 edition on the other hand provides that;

“Generally in common law and Chancery matters a plaintiff who conceives that he has a cause of action against a defendant is entitled to pursue his remedy against that

defendant alone. He cannot be compelled to proceed against other persons whom he has no desire to sue.

Under this rule, however, a person who is not a party may be added as defendant against the wishes of the plaintiff either on the application of the defendant or on his own intervention, or in rare cases by the Court of its own motion. The jurisdiction of the court under this rule is entirely discretionary”.

The gist of the application for joinder by the interveners is that the land claimed by the Plaintiff as belonging to him, is part of the land that the intended interveners have cultivated on, and houses their homesteads, graves, and fish ponds for the intended 3rd intervener, as well as shrines for the intended 5th intervener.

In objecting to the application for joinder, the Plaintiff in the affidavit in opposition states that the 1st intervener's fields are five kilometres from the land in question, while the 2nd, 3rd, 4th and 5th interveners live in Bakasa area, about seven kilometres from the land that the Plaintiff claims. Further that the 5th intended intervener had testified in the case where the Plaintiff had sued Isaac Mwanja over the subject piece of land, and at no point during those proceedings, did she claim an interest in the said land.

The rationale for joinder of interested parties is explained in Order 15/6/8 of the rules of the Supreme Court, 1999 edition as;

“(a) to prevent multiplicity of actions and to enable the Court to determine disputes between all parties to them in one action, and

(b) to prevent the same or substantially the same questions or issues being tried twice with possibly different results, these objects are achieved by enabling a person not a party to be joined as a third party; under para (2) of this rule these objects are achieved by enabling a person not a party to be added as a party. One important difference is that a non-party can himself apply under para (2) of the rule to be added as a party, but he cannot apply under O.16, r.1, to be joined as a third party.

The said Order 15/6/8 of the said Rules of the Supreme Court also states that;

“generally in common law and Chancery matters a plaintiff who conceives that he has a cause of action against a defendant is entitled to pursue his remedy against that defendant alone. He cannot be compelled to proceed against other persons whom he has no desire to sue.

Under this rule, however, a person who is not a party may be added as defendant against the wishes of the plaintiff either on the application of the defendant or on his own intervention, or in rare cases by the Court of its own motion. The jurisdiction of the court under this rule is entirely discretionary”.


The interveners have raised a claim that their fields, homesteads, fish ponds and shrines form part of land claimed by the Plaintiff as his, and it would therefore be in the interests of justice that they are heard, and also to avoid a multiplicity of actions over the same subject matter, that may lead to different courts, passing conflicting decisions.

It is on that basis that I allow the joinder of the intended interveners, even though the Plaintiff has objected to the said joinder. To this end I direct that the Plaintiff is granted leave to amend the writ and statement of claim to address the interests of the intended interveners if any within fourteen days from today, and the Defendants and the intended interveners shall within 14 days thereafter file their defence and counterclaim if any, and a reply shall be settled within fourteen days after the defence and counterclaim are filed.

Discovery and inspection shall be done within fourteen days after the reply, if any, and the Plaintiff and Defendant shall file their respective supplementary bundle of documents if any and the interveners shall file their bundle of pleadings and documents if any, within fourteen days of the discovery and inspection.

The matter shall come up for status conference on 13th September, 2017 at 08:30 hours for status conference. Costs shall be in the cause.

DATED THE 20th DAY OF JUNE, 2017



S. KAUNDA NEWA
HIGH COURT JUDGE