

IN THE HIGH COURT FOR ZAMBIA

2016/HPC/0288

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

FMC FINANCE ZAMBIA LIMITED

APPLICANT

AND

BAPO BAKERY LIMITED

1ST RESPONDENT

MISHECK PHIRI

2ND RESPONDENT

IKBAL IBRAHIM PIRAWALA

3RD RESPONDENT

RULING

Legislation Referred to:

- 1. Order IV, Rule 1, High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia;*
- 2. Order 67, Rule 6 (1), Rules of the Supreme Court, 1965 (White Book);*
- 3. Order LIII, r.10 of the High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia*

By ex-parte summons dated 21st August, 2017, Counsel for the Respondents filed an application for an Order declaring that Messrs Isaac and Partners have ceased to be Advocates for the Respondents in this cause.

The application was stated to be made pursuant to **Order IV, r. 1 of the High Court Rules, High Court Act, Chapter, 27 of the Laws of Zambia** and **Order 67, r. 6(1) of the Rules of the Supreme Court of England, 1965 (White Book)**.

The application is supported by an Affidavit in Support deposed by Joyce Mulenga, an Advocate practising under the name and style of Messrs Isaac and Partners. The Affidavit was filed on 8th February, 2017. No Skeleton Arguments were filed with the application as is required by **Order LIII, r. 10 of the High Court Rules**.

According to the Affidavit in Support, Counsel were engaged by the Respondents to represent them, but they were unable to obtain instructions from the Respondents. As a result, they are or were not in a position to progress the matter. Consequently, they have ceased to act for the Respondents and seek a declaration to that effect.

In considering this application, it is important to note that the Originating Summons was heard on 30th January, 2017. On the date of hearing, Counsel for the Respondent, and in particular the deponent of the Affidavit in Support, were in attendance. Judgment was rendered on 27th February, 2017.

Bearing in mind the aforementioned background, I move to consider Order IV, r. 1 of the High Court Rules, upon which the application is premised. Order IV, r. 1 of the High Court Rules reads as follows:

"A party suing or defending by a barrister or advocate in any cause or matter shall be at liberty to change his advocate in such cause or matter, without an order for that purpose, upon notice of such change being filed in the office of the Registrar. But, until such notice is filed and a copy served, the former advocate shall be considered the advocate of the party until final judgment, unless allowed by the Court or a Judge, for any special reason, to cease from acting therein; but such advocate shall not be bound, except under express agreement or unless re-engaged, to take any proceedings in relation to any appeal from such judgment."

My interpretation of Order IV, r. 1 of the Rules is that it gives a litigant power to change his lawyers during the existence of that cause, upon the issuance of a notice of the change. According to the rule, the litigant is at liberty to change advocates without an order for that purpose.

Given my interpretation, I do not perceive Order IV, rule 1 to require a lawyer to apply to Court for an order for them to cease to be Advocates for a litigant. Nonetheless, I have taken heed of the mandate given to the Court, under the rule, to allow an advocate to cease from acting, before final judgment, where there are special reasons advanced.

I have also considered Order 67, rule 6(1) of the Rules of the Supreme Court, 1965. Order 67, rule 6(1) reads, in part, as follows:

"Where a solicitor who has acted for a party in a cause or matter has ceased so to act ... the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court ... may make an order accordingly, but unless and until the solicitor - (c)

leaves at that office a copy of the order and a certificate signed by him that the order has been duly served as aforesaid, he shall, subject to the foregoing

provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter..."

I am persuaded that Order 67, r 6 of the Rules of the Supreme Court aptly provides for the application, to Court, by an advocate who has ceased acting for a litigant, for an order declaring that the advocate has ceased acting for a party. However, Order 67, r 6 also aligns the process to final conclusion of the matter. Consequently, I take the view that an application under either Order IV, r. 1 of the High Court Rules or Order 67, r. 6 of the Rules of the Supreme Court, must be made before final conclusion of the matter.

In casu, the final Judgment of 27th February, 2017, preceded consideration of this application. As a result, the application is made outside the life-cycle of the cause, thereby rendering it redundant and irregular.

In view of the foregoing, the application is dismissed for irregularity.

Dated the 31st day of August, 2017



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Lady Justice B.G.Lungu
HIGH COURT JUDGE