

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

**2007/HPC/0343**

(Civil Jurisdiction)

**BETWEEN:**

**CHONGO COREEN MUSONDA (suing as Administrator  
of the Estate of Late Brian Stanslous Musonda) 1<sup>ST</sup> PLAINTIFF**

**IREEN CHIWALA (Suing as Administrator  
of the Estate of Late Brian Stanislaus  
Musonda) 2<sup>ND</sup> PLAINTIFF**

AND

**ZIMCO LIMITED (IN LIQUIDATION) DEFENDANT**



**Before the Hon. Lady Justice Irene Zeko Mbewe**

*For the Plaintiffs :* N/A

*For the Defendant :* Mr. L. Mwamba of Messrs Simeza Sangwa & Co.

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**R U L I N G**

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**Cases Referred To:**

1. *Abdul Kadir Asafa v Greenwell Shimukonga 2006/HP/0719*
2. *Isaac Lungu v Mbewe Kalikeka Appeal No. 14/2013*

**Legislation Referred to:**

1. *High Court Act, Cap 27 of the Laws of Zambia*
2. *English Law (Extent of Application) (Amendment) Act No. 6 of 2011*
3. *British Acts Extension Act, Cap 10 of the Laws of Zambia*
4. *Rules of the Supreme Court, 1999 Edition*
5. *English Charging Orders Act 1979*

This is a Ruling on the Defendant's application to discharge the Charging Order made pursuant to *Order 50 Rule 7 (1) Rules of the Supreme Court, 1999 Edition* on the basis that this mode is not available as a mode of enforcement of Judgments in Zambia.

In its skeleton arguments, it is submitted that on 11<sup>th</sup> December 2015 a Charging Order Absolute was entered against the Defendant's properties specified in the schedule to the Charging Order for payment of:

- (a) USD537,049.93
- (b) K800,000.00; and
- (c) Interest.

It is submitted that on 9<sup>th</sup> November 2016 the Court entered Judgment for the Plaintiffs and ordered that the Defendant's properties be sold subject to the Charging Order Absolute dated 11<sup>th</sup> December 2015. That the Defendant filed an application to discharge the Charging Order on grounds that the *Charging Orders Act 1979 of England* pursuant to which the Court exercised its authority in granting the said Charging Order is inapplicable to this jurisdiction.

Counsel for the Defendant relied on *Order 50 Rule 1 Rules of the Supreme Court 1999 Edition* and argued that the Court can discharge a Charging Order on the application of a Judgment debtor. The case of **Abdul Kadir Asafa v Greenwell Shikukonga**<sup>1</sup> was cited in support of the proposition that *Order 50 Rule 1 of the Supreme Court, 1999 Edition* is not part of the *Charging Order Act, 1979 of England* and merely outlines the procedure to be followed in applying for a Charging Order. Counsel for the Defendant contended that the *Charging Order Act 1979 of England* is inapplicable in Zambia by virtue of the *English Law (Extent of Application Act) Cap 11 of the Laws of Zambia* and the *British Acts*

*Extension Act, Cap 10 of the Laws of Zambia.* That the *Charging Order Act 1979 of England* cannot be the basis of the exercise of any power contained therein by a *Zambian Court*. That therefore the *Charging Order Absolute* dated 14<sup>th</sup> December 2015 granted in favour of the Plaintiff was unlawful and therefore ought to be discharged.

The Plaintiffs were not present in Court, but I proceeded to hear the matter pursuant to *Order 35 Rule 1 (2) Rules of the Supreme Court 1999 Edition* and *Order 35 Rule 2 High Court Rules, Cap 27 of the Laws of Zambia* as there was proof of service that the Plaintiffs herein were aware of the hearing and there was no explanation as to their non-attendance.

I have considered the skeleton arguments, list of authorities and oral submissions by Counsel for the Defendant.

The issue for determination is whether the *Charging Order Absolute* granted pursuant to *Order 50 Rule 7 (1) Rules of the Supreme Court, 1999 Edition* is unlawful and ought to be discharged on the basis that this Court has no jurisdiction to grant a *Charging Order* under *Order 50 Rule 1 Rules of the Supreme Court 1999 Edition*.

A narration of *Order 50 Rule 7 (1) Rules of the Supreme Court 1999 Edition* provides as follows:

*“Subject to paragraph 2, on the application of the Judgment debtor or any other person interested in the subject matter of the charges, the Court may at any time whether before or after the Order is made absolute, discharge or vary the Order on such terms (if any) as to costs or otherwise as it thinks just”.*

The cited Order clearly forms part of the *Rules of the Supreme Court, 1999 Edition* and prescribes the practice and procedure to be followed in the Supreme Court of England. It further outlines the procedure to be followed in applying for a Charging Order. It is trite that all statutes which were in force in England on 17<sup>th</sup> August 1911 being the commencement of the Northern Rhodesia Order in Council of 1911 are applicable to the Zambian jurisdiction by virtue of the *British Acts Extension Act, Cap 10 of the Laws of Zambia* and the *English Law (Extent of Application) (Amendment) Act No. 6 of 2011*. Importantly, section 2 of the *English Law (Extent of Application) (Amendment) Act* provides as follows:

*“Subject to the provisions of the Constitution and to any other written law -*

- (a) the Common Law;*
- (b) the doctrines of equity;*
- (c) the Statutes which were in force in England on 17<sup>th</sup> August 1911 being the commencement of the Northern Rhodesia Order In Council 1911; and*
- (d) any statute of a later date than that mentioned in (c) in force in England, now applied to the Republic or which shall apply to the Republic by an Act of Parliament or otherwise,*

*shall be in force in Zambia.”*

In the Zambian jurisdiction, resort to the *Rules of the Supreme Court 1999 Edition* is provided under Section 10 (1) of the *High Court Act, Cap 27 of the Laws of Zambia* as amended by Act No 7 of 2011 which states as follows:

*" 10. (1) The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by*

*this Act, the Criminal Procedure Code, the Matrimonial Causes Act, 2007, or any other written law, or by such rules, orders or directions of the Court as may be made under this Act, the Criminal Procedure Act, the Matrimonial Causes Act, 2007, or such written law, and in default thereof in substantial conformity with the Supreme Court Practice, 1999 (White Book) of England and subject to subsection (2), the law and practice applicable in England in the High Court of Justice up to 31<sup>st</sup> December, 1999."*

*(2) The Civil Court Practice 1999 (Green Book) of England and any civil Court practice rules issues in England after 31<sup>st</sup> December, 1999, shall not apply to Zambia."*

In terms of the applicability of English practice and procedure rules, this position was articulated by the Supreme Court in the case of **Isaac Mbewe Lungu v Kalikeka**<sup>2</sup> where it held that :

*"English practice and procedure rules only apply in so far as there is a lacuna in our rules, practice and procedure."*

Arising from the above, I opine that *Order 50 Rules of the Supreme Court, 1999 Edition* is procedural and auxiliary to the substantive

law, and as such, a litigant cannot import or call in aid the *Charging Order Act 1979 of England*. It follows that the *Charging Orders Act, 1979 of England* does not fall under the statutes contemplated in paragraph (c) of the *English Law (Extent of Application) Act* and Section 10 of the *High Court Act, Cap 27 of the Laws of Zambia*. Of persuasive value is the case of **Abdul Kadir Asafa v Greenwell Shimukonga**<sup>1</sup>, where it was held as follows:

*"....it is incorrect to say that one can apply the provisions of Order 50 Rules of the Supreme Court in a vacuum, when that Order is premised on the Charging Orders Act, 1979 of England. This is especially in light of the fact that a charging order cannot be recourse at common law, in equity, by statute, or by English Acts extended to Zambia."*

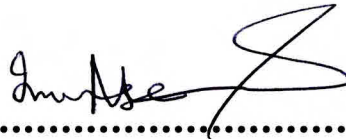
I concur with the principles stated in the cited case and adopt them. Equally, I concur that the substantive law on which a Charging Order is obtainable under the *Charging Order Act, 1979 of England* is inapplicable to Zambia. This therefore leaves me with the inescapable conclusion that the Charging Order granted on 14<sup>th</sup> December 2015 has no legal basis and is accordingly discharged.



Costs to the Defendant to be taxed in default of agreement.

Leave to appeal granted.

Dated this 29<sup>th</sup> day of December 2017.



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**HON. IRENE ZEKO MBEWE**  
**HIGH COURT JUDGE**