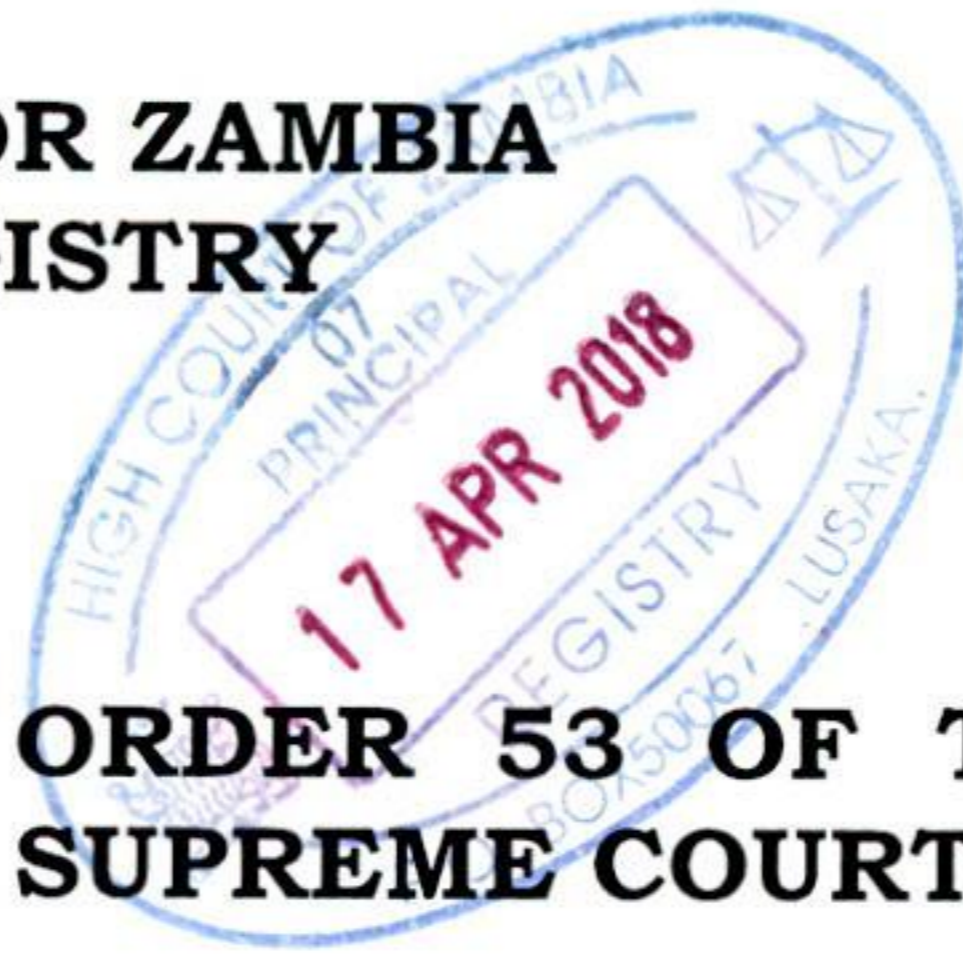


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/0582



IN THE MATTER OF: ORDER 53 OF THE RULES OF THE SUPREME COURT

IN THE MATTER OF: ARTICLE 16 OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: THE LANDS ACT CAP 184 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE LAND AND DEEDS REGISTRY ACT CAP 185 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE LOCAL GOVERNMENT ACT CAP 185 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: STAND NOS.10523, 10524, 10525, 10528 AND 10529, LUMUMBA ROAD LUSAKA

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW.

BETWEEN:

**PAUL MARCEL MONGE
CHANDANA M. FERNANDO
SUWICO PHARMACEUTICALS LIMITED
BHARUCHI GURAM
ROYAL FLOUR LIMITED**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT**

AND

**THE ATTORNEY GENERAL
THE COMMISSIONER OF LANDS
LUSAKA CITY COUNCIL
LUSAKA WATER AND SEWERAGE
COMPANY LIMITED
MIDLANDS BREWERIES LIMITED**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

INTENDED INTERVENOR

*Before Hon. Mr. Justice Mathew L. Zulu, at Lusaka the 17th day
of April, 2018*

<i>For the Applicants:</i>	<i>Mr. W. Mwenya, Messrs. Lukona Chambers</i>
<i>For the 1st Respondent:</i>	<i>N/A</i>
<i>For the 2nd Respondent:</i>	<i>N/A</i>
<i>For the 3rd Respondent:</i>	<i>Mrs. M. B. Mupeso, In house Counsel, LLC</i>
<i>For the 4th Respondent:</i>	<i>Mrs. C.K. Kabende, In house Counsel, L.W.S.C</i>
<i>Intended Intervenor:</i>	<i>Mr. L. Mulongoti, Mweemba and Company</i>

RULING

Cases referred to:

- 1. Dean Namulya Mungo'mba Bwalya Kanyanta Ng'andu & the Anti-Corruption Commission v. Peter Machungwa Golden Mandandi and the Attorney General (SCZ Judgment No.3 of 2003)**
- 2. Zambia wildlife Authority and Others v. Muteeta Community Resources Board Development Co-operative Society (2009) Z.R 159**

Legislation referred to:

**1. Order 53 of the Rules of the Supreme Court, 1999 edition
(White book)**

This is a ruling on the intended intervenor's application to be joined to the proceedings pursuant to Order 14 Rule 5 of the High court Rules, Chapter 27 of the Laws of Zambia and Order 15/6/8 of the Rules of the Supreme Court, 1999 edition (White book).

The brief background to this application is that the applicants on 15th April 2014 applied for Judicial Review of the decision of the 3rd Respondent to cancel the extensions to stands 10523, 10524, 10525, 10528 and 10529 Lusaka.

On 9th August 2017, the intended intervenor made an application to be joined to the proceedings. The application was supported by an Affidavit deposed by Bates Namuyamba, the Managing Director in the Intended Intervenor's Company. The deponent avers that the applicant was allocated a portion of the land subject of the cancelled extensions as shown by exhibits "**BN1**" and "**BN2**" and that as such, it will be affected by any decision that will be made.

The application was opposed by the applicants by way of an Affidavit dated 27th September, 2017 deposed by Susan Lumbi, the Operations Manager in the 5th applicant's Company for and on behalf of the applicants. She deposed that the applicants' lands does not form part of the intended intervenor's land and that the extension of the applicants' stands have not encroached on the intended intervenor's land. Exhibit marked "**SL2**" was produced to show the position of the applicants' and the intended intervenor's plots. It is deposed that the intended intervenor has failed to show how it will be affected by these proceedings.

The 4th Respondent on 28th September 2017 also filed into Court an Affidavit in Opposition to the intended intervener's application deposed by Nyonge Phiri, the Manager Sewerage Services in the 4th respondent Company. The deponent deposed that the 4th Respondent's involvement in this matter arises on account of the construction of a way leave required to accommodate the existing sewer facilities proposed to be built by the intended intervenor. It was deposed that the intended intervener should be made a party to the suit as it alleges that it was offered the land in dispute in 2011.

The intended intervenor in response filed an Affidavit in Reply on 10th October 2017 deposed by Bates Namuyamba. The deponent asserts that the cancelled extensions have an effect on the intended intervenor's stand as a proposed sewer line is supposed to be constructed through the applicants' cancelled stands without which cancellation, the sewer line will not be built.

When the matter came up for the *inter partes* hearing of the application on 2nd and 13th October 2017 respectively, the intended intervenor, the applicants and the 4th Respondent relied on their respective affidavits which evidence I have considered in rendering this Ruling.

The issue for determination is whether the intended intervenor has sufficient interest to be joined to this suit as an intervenor. However, before I delve into a determination of the issue, I must address the issue of the rules pursuant to which the application was made. The application for joinder was made pursuant to Order 14 Rule 5 of the High Court Rules, and Order 15/6/8 of the Rules of the Supreme Court. The applicability of our rules as well as other rules but Order 53 in judicial review proceedings was canvassed by

the Supreme Court in the **Dean Mungo'mba Bwalya Kanyanta Ngandu & another v. Peter Machungwa, Golden Mandandi and another**. The Supreme Court stated the following:

It is accepted that there is no rule under the High Court Rules under which judicial review proceedings can be instituted and conducted and by virtue of section 10 of the High Court Act, Cap 27, the court is guided as to procedure and practice to be adopted. Having accepted that there is no practice and procedure prescribed under our Rules, we follow the practice and procedure for the time being observed in England in the High Court of Justice. The practice and procedure in England is provided for in Order 53 of the Rules of the Supreme Court (RSC). Order 53 is very detailed. In it one will find the law as on what basis judicial review is founded; the parties; how to seek the remedies and what remedies are available. Under the parties, care is taken not only as to who can initially commence the proceedings, but also who can possibly join or be joined....

Once it is accepted that our Rules do not provide for the practice and procedure on judicial review and we adopt the practice and procedure followed in England, our Rules for the purposes of judicial review are completely discarded and there is strict following of the procedure and practice in Order 53 of RSC.

The Supreme Court in the above case consequently upheld the decision of the trial judge in the lower court dismissing an

application for joinder of a party to judicial review proceedings that was made pursuant to Order 14 and 18 of the High Court Rules.

In the light of the foregoing, I find that the application for joinder of party in this matter is procedurally irregular on the basis that it was made pursuant to rules that are inapplicable and therefore liable for dismissal on that basis. I am however of the considered view that the irregularity in this matter is procedural and as this court nonetheless has the authority to grant the order sought under Order 53, I shall proceed to consider the application on its merits under Order 53.

As the Supreme Court has guided in the case of **Dean Mungo'mba Bwalya Kanyanta Ngandu & Another v. Peter Machungwa, Golden Mandandi and Another**¹, Order 53 not only provides for who may apply for judicial review but also who may be joined to the proceedings. Order 53/9/1 of the Rules of the Supreme Court in relation to who may be heard on a motion for judicial review provides-

On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the

motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

Further, the Supreme Court in the case of **Dean Mungo'mba Bwalya Kanyanta Ngandu & another v. Peter Machungwa, Golden Mandandi and another**¹ stated the following:

Counsel for the respondents concedes that the court has power to hear any person who shows sufficient interest in the proceedings. How does one get a hearing without becoming a party to the proceedings. The nomenclature of "respondent", "third party" or "interested party" is immaterial but once one has shown sufficient interest in the proceedings the court can hear that person under whatever name he is clothed in.

From the foregoing, I will now consider whether the intended intervenor has sufficient interest to be joined to the proceedings as such. To begin with, the decision of the Supreme Court in **Zambia wildlife Authority and others v. Muteeta Community Resources Board Development Co-operative Society**² is instructive that the issue of whether one has sufficient interest excerpt in simple cases is not appropriate for determination at an early or preliminary stage

and that this inquiry may be done at a later stage after leave for judicial review has been granted and where affidavit evidence may be adduced to resolve the issue. It is further stated that the issue of sufficiency of interest is one of mixed fact and law. I am therefore accordingly guided.

As to what amounts to sufficient interest, the learned authors of the White Book in paragraph 53/14/24 espouse that an applicant has sufficient interest in a matter if they have a direct personal interest in the relief which they seek. They espouse that the court must consider the relationship between the applicant and the matter to which the application relates having regard to all the circumstances. The rationale being to proscribe actions by what are termed "private attorney-general", who seeks to champion public interests, in which they themselves are not directly or personally concerned, under the guise of applying for judicial review.

From the originating process filed in this matter in particular the affidavit verifying facts dated 15th April, 2014 at paragraphs 33 to 36, the applicants are challenging the decision of the 3rd Respondent cancelling the extensions to their stands to pave way

for the construction of a sewer line which is allegedly intended to serve as a sewerage waste pipe line for discharge from the intended intervenor's property as confirmed by paragraph 14 and 38 (viii) of the Affidavit verifying facts. It has been argued by the intended intervenor that the construction of the sewer line is not only for its benefit but also other commercial land owners along Lumumba Road and that the sewer line can only be constructed if the extensions to the applicant's stands are cancelled. A perusal of the Exhibit marked "**BN3**" in the Affidavit in Support also shows that there was an appeal pertaining to the cancellation of the applicants' extensions by the intended intervener. I, therefore, find that the intended intervenor has shown sufficient interest and connection to the matter and the reliefs being sought by the applicants.

Further, the intended intervenor contends that it will be affected by the decision in this matter as it was allocated a portion of the same land subject of the cancelled extension which argument I find would also confer on the intended intervenor a direct personal interest in this matter. However, the applicants contend that the intended intervenor has not shown that the land it was allocated is part of

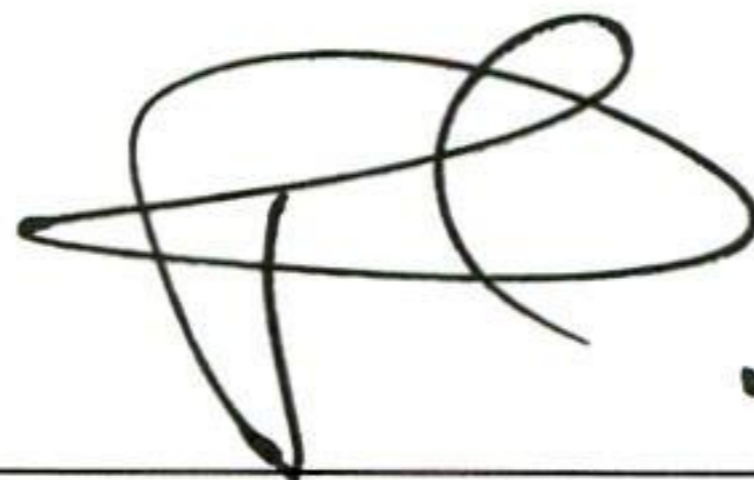
the stands subject of the cancellation. I am of the considered view that this issue ought to be probed further and I am of the view that it would be inappropriate for me to delve into a determination of the same at this stage of the proceedings. I am guided the Supreme Court in the **Zambia wildlife Authority and others v. Muteeta Community Resources Board Development Co-operative Society²**.

I accordingly find that the intended intervenor has shown that it has sufficient interest in this matter and I join it to these proceedings as such so that all the issues among the parties may be conclusively determined.

I order that the costs be in the cause.

Leave to appeal is granted.

Delivered at Lusaka the ^{17th} day of ^{April} 2018.



**MATHEW. L. ZULU
HIGH COURT JUDGE**