

**IN THE HIGH COURT FOR ZAMBIA**

**2014/HP/1748**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**BETWEEN:**

**JOSIAH MUBUKWANU LITIA NYUMBU**

**PLAINTIFF**

*(Suing as Chief Chiyengele)*

**AND**

**TAWILA AKAPELWA** *(Induna Inete)*

**1<sup>ST</sup> DEFENDANT**

**MWANGELWA AKAPELWA** *(Induna Imandi)*

**2<sup>ND</sup> DEFENDANT**

**STEVEN NAWA MATONGO** *(Induna Namamba)*

**3<sup>RD</sup> DEFENDANT**

**SIMAKANDO SIYUNDA** *(Induna Mubonda)*

**4<sup>TH</sup> DEFENDANT**

**LUBOSI IMWIKO II** *(Litunga)*

**INTENDED 5<sup>TH</sup> DEFENDANT**

**CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Plaintiff : Mr. M. Sitali of Messrs Milner Katolo and Associates*

*For the Defendant : N/A*

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**RULING**

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**Legislation Referred to:**

1. Constitution Act No. 2 of 2016
2. Practice Direction No. 13

**Cases Referred to:**

1. *Twampane Co-operative Mining Society Ltd v. E.M Storti Mining Limited (2011) 3 ZR 67*

By Order of Directions granted in this matter, the matter was returnable for commencement of hearing. At time of hearing, Learned counsel for the Plaintiff in limine informed the Court that he was applying for an adjournment.

It should be immediately be observed that there was no motion to adjourn as dictated by Practice Direction No. 13.

It was submitted that the Advocates had difficulties in getting instructions from their clients which was compounded by the fact that the Advocates for the Defendants withdrew from the record so it was difficult to ascertain as to which address to communicate to the Defendants.

It was lastly submitted that in the interest of justice the Court should adjourn the matter.

The writ of summons launched on 12<sup>th</sup> November, 2014 by the Plaintiff with particular precision named the address of the Defendants as of The Barotse Royal Establishment, Limulunga Palace, Mongu. The claim that because the Defendants Advocates have withdrawn from acting for the Defendants and therefore they could not locate the Defendants address is destitute of any merit.

The record reveals that order for directions were given on 4<sup>th</sup> October, 2017.

There has been total disregard of the order for directions. Put simply there has been a conspicuous disobedience or non compliance with the order for directions. Advocates and litigants who chose to ignore court orders do so entirely at their own peril. This position was made clear in the case of ***Twampane Co-operative Mining Society Ltd v. E.M Storti Mining Limited (2011) 3 ZR 67<sup>1</sup>***.

Indeed, it is the duty of the Plaintiff to prosecute his or her claim. for 'equity assists the vigilante and not the indolent'.

There has been no attempt to apply for extension of order for directions pursuant to order XIX (2) of the High Court Rules Chapter 27 of the Laws of Zambia.

It is the Advocates and litigants who are orchestrating a misconception that Courts are to blame for delayed conclusion of matters. This case demonstrates that in fact this is not the position. This Court has neither the time nor propensity to allow litigants dictate the pace of the proceedings. The Court is firmly in control of the proceedings before it.

Indeed Article 118 (2) (b) of the Constitution Act No. 2 of 2016 provides as follows:-

*"In exercising judicial authority, the Court shall be guided by the following principles*

*2 (b) Justice shall not be delayed*

The Plaintiff appears not to be keen to prosecute his claim. The Court totally disassociates itself from being complicit in offending Article 118 (2) (b) which demands that justice should not be delayed.

To demonstrate its disapproval of the growing practice amongst some litigants and Advocates of not complying with order for directions, the Court is of the firm view that this is a fit and proper case to dismiss for want of prosecution. The action is so dismissed.

The interlocutory injunction I granted the Plaintiff on 19<sup>th</sup> December, 2014 and confirmed by the Supreme Court on 21<sup>st</sup> May, 2015 Appeal No. 0041/2015 is hereby discharged.

The dismissal of this matter has not been at the industry of the Defendants, but that of the Court. I will therefore leave the issue of costs to be determined on application.

Leave to appeal to the Court of Appeal is granted.

**Delivered under my hand and seal this 28<sup>th</sup> day of March, 2018**



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**Mwila Chitabo, SC**  
**Judge**