

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

2015/HP/1931

BETWEEN:

TRYWELL KATUKULA KASHAWA



PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

BEFORE HONORABLE MR JUSTICE MR. MWILA CHITABO, SC

For the Plaintiff: Mr. Trywell Katukula Kashawa – In person

For the Defendants: Lt. Mudenda

R U L I N G

Legislation referred

- 1. High Court Rules Chapter 27 of the Laws of Zambia*
- 2. Rules of the Supreme Court Rules of England*

This is an application launched by the Defendant to strike out pleadings in particular paragraphs 1, 6, 10, 13 and 15(d) of the Plaintiffs amended statement of claim anchored on Order 3 Rule 2 of the High Court Rules¹.

The application is supported by an affidavit, the essence of which is that the paragraphs complained against in the amended statement of claim and subsequent amendments are prejudicial and do not conform to the provisions under which the application is made.

The plaintiff did not file an opposing affidavit. He opted to leave it to the Court to determine the application and deliver Ruling in its discretion.

The starting point in resolving the application is Order 3 Rule 2 of the High Court Rules it is crafted in the following terms:-

“Subject to any particular rules, the Court or Judge may in all causes and matters make an interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not”

My understanding of this Rule in the manner it has been crafted is that this Rule cannot be resorted to if there is or are specific Rules dealing with the subject matter either in our own High Court Rules or in the default Rules of the Supreme Court Rules of England².

Order 18 Rule 19 of the Supreme Court Rules of England provides as follows:-

“19 – (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action or anything in any pleading or in the endorsement on the ground that

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious, or

(c) it may prejudice, embarrass or delay the fair trial of the action or defence as the case may be; or

(d) it is otherwise an abuse of the process of the Court and may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.

(2) No evidence shall be admissible on application under paragraph (1) (a).

(3) This rule shall so far as applicable, apply to an originating summons and a petition as if the summons or petition as the case may be, were a pleading”

It is stark clear the above order provides for striking out of pleadings and endorsements.

In the circumstances, anchoring a striking out of pleadings cannot be anchored under Order 3 Rule 2 of the High Court Rules, in the face of an available order under the Supreme Court Rules of England.

I was not invited by the Defendant to deem the application as having been premised under Order 18/19 of the Supreme Court Rules of England. The Plaintiff is unrepresented and it will be prejudicial to him for the Court to appear to rescue the Defendant in the self inflicting predicament it has found itself.

I will strike out the Defendants application on the grounds that there exists a proper order under which the application ought to have been launched.

This is however, no bar for the Defendant to re-launch its application anchored on a legitimate order and rule. The Plaintiff did not file an opposing affidavit and as such he has not been put to any costs.

The Defendants application has collapsed not at the industry of the Plaintiff but that of the Court.

The justice of the case is that I make no order as costs. Put differently, each party is to bear its own costs.

Leave to appeal to the superior Court of Appeal is grated.

Delivered under my hand and seal this 2nd day of January, 2018



Mwila Chitabo, SC
Judge