

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



2017/HP/1554

BETWEEN:

MALEYA CHESWA KAMBWILI PHIRI

PLAINTIFF

AND

**PROFESSIONAL SECRETARIES ASSOCIATION
OF ZAMBIA**

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 16th DAY OF
FEBRUARY, 2018**

For the Plaintiff : Messrs Tutwa Ngulube and Company

For the Defendant : Mr P. Chileshe, Besa Legal Practitioners

R U L I N G

This is a ruling on an application made by the Defendant to set aside the writ of summons and statement of claim for irregularity, pursuant to Order 14A and Order 33 Rule 7 of the Rules of the Supreme Court, 1999 edition. When the matter came up for hearing on 31st January, 2018, only Counsel for the Defendants was before the court.

He told the court that when the matter came up on 22nd November, 2017, both parties were before the court, and they had asked for an adjournment of the matter to enable them explore an excuria settlement, and the matter was adjourned to 31st January, 2018. Counsel informed the court that there had not been any negotiations, and he applied that

they proceed with the application on behalf of the Defendants. The application was granted.

In the submissions, Counsel stated that the Plaintiff commenced the action on 12th September, 2017 seeking among other reliefs an order of interim injunction restraining the Defendant from suspending her. The Defendants filed an affidavit in opposition to that application on 6th October, 2017.

With regard to the application to set aside the writ of summons for irregularity, Counsel stated that it was made pursuant to Orders 14A and 33 of the Rules of the Supreme Court, 1999 edition. That as could be seen from the affidavit in support the application, it was their contention that the action is premature as the suspension of the Plaintiff was for purposes of paving way for investigations, after she failed to exculpate herself in the time given. Further and most importantly, the Defendant is an association without legal capacity to sue and be sued in its own name.

Therefore on the basis of Order 14A of the Rules of the Supreme Court, 1999 edition, this court was invited to summarily deal with the matter, and grant the application to set aside the writ for irregularity.

It is true that when the matter came up for the hearing on 22nd November, 2017, both Counsel were before the court, and asked that the matter adjourns again to enable them explore an excuria settlement of the matter, a similar application having been made on 13th October, 2017. The matter was adjourned on that basis to 31st January, 2018, and that on that date only Counsel for the Defendants was before court, and applied to proceed with the Defendants application.

I note while an affidavit in opposition to the application for an order of injunction was filed, no affidavit in opposition was filed to the summons to set aside the writ of summons and statement of claim for irregularity. I also note that the summons to set aside the writ of summons for irregularity were not given a return date. It is trite that all parties to proceedings must be heard on any applications filed.

Therefore in keeping with that, I order that the Plaintiff shall within fourteen days from today file an affidavit in opposition if any, and the Defendants will file their reply if any to the affidavit in opposition within fourteen days thereafter, and I will deliver my ruling on 28th March, 2018. The parties are at liberty to file skeleton arguments in support of their positions if they so desire.

DATED THE 16th DAY OF FEBRUARY, 2018

S. Kaunda

S. KAUNDA NEWA
HIGH COURT JUDGE