

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

2017/HP/2079

BETWEEN:

ELYWIN HAMONGA AND 10 OTHERS



PLAINTIFFS

AND

AUTOFORCE ZAMBIA LIMITED

1st DEFENDANT

NKOMBO MALAMBO

2nd DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 23rd DAY OF
FEBRUARY, 2018**

For the Plaintiffs : Mr H.M. Munsanje, H.M. Munsanje and Company

For the Defendants : Mr J. Kalokoni, Kalokoni and Company

R U L I N G

CASES REFERRED TO:

- 1. ZCCM and Ndola Lime Company Limited V Emmanuel Sikanyika 2000 ZR 105**
- 2. Lubunda Ngala and Jason Chulu V The Anti Corruption Commission SCZ No 4 of 2018**

The Defendants on 10th January, 2018, filed an application raising preliminary issues, pursuant to Order 14A and Order 33 Rule 3 of the Rules of the Supreme Court, 1999 edition. The preliminary issue raised was;

- 1. Whether serving employees can claim terminal benefits without proof of a terminating event?*

Counsel relied on the affidavit filed in support of the notice as well as the list of authorities. It was stated that paragraph 1 of the statement of claim filed on 28th November, 2017 states that the Plaintiffs are employees of the 1st Defendant, and are therefore on its' payroll. Counsel referred the court to the case of **ZCCM AND NDOLA LIME COMPANY LIMITED V EMMANUEL SIKANYIKA 2000 ZR 105**, stating that the case held that terminal benefits cannot be paid for employment which has not terminated. Therefore, the litigation in this matter based on future misapprehension was premature, in the absence of a terminating event.

Further reference was made to the case of **LUBUNDA NGALA AND JASON CHULU V THE ANTI CORRUPTION COMMISSION SCZ No 4 of 2018**, and it was Counsel's submission that in that case the court interpreted Articles 187, 188, and 189 of the amended Constitution, and it was stated in that case that terminal benefits are paid at the end of one's employment. That in this case, the Plaintiffs are still in employment, and the 1st Defendant is a legal person at law with perpetual succession, and is not affected by the death of the majority shareholder, no matter how powerful he was when he was alive. Counsel prayed that the action be dismissed with costs as it was premature.

In response, Counsel for the Plaintiff asked to be heard on the notice to amend the writ of summons and statement of claim that they had filed, on the premise that court actions should not be defeated by technicalities, and that the said application be heard before Counsel could respond to the preliminary issue raised by the Defendant, as the court has power to order amendment at any stage of the proceedings.

I note that the Plaintiffs filed the application to amend the writ of summons and statement of claim on 31st January, 2018. Indeed this

court has power to order amendment at any stage of the proceedings, as provided in Order 18 of the High Court Rules, 1999 edition. In this case the application to amend was made after the Defendant's raised a preliminary issue with regard to whether this action can be sustained. While it can be said that the Plaintiff's application to amend is meant to pre-empt the notice raised by the Defendants, it would be in the interests of justice to allow the application for amendment to be heard before the notice raised by the Defendants can be determined.

I accordingly order that the application for leave to amend the writ of summons and statement of claim shall be heard before the notice raised by the Defendant's is heard. The said application to amend the writ of summons and statement of claim shall be heard on 28th March, 2018 at 08:30 hours. Costs shall be in the cause.

DATED THE 23rd DAY OF FEBRUARY, 2018



S. KAUNDA NEWA
HIGH COURT JUDGE