

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



2017/HP/2204

IN THE MATTER OF:

**THE INTERPRETATION OF ARTICLE
7(a) OF THE PROFESSIONS TEACHERS
UNION OF ZAMBIA**

B E T W E E N :

MATTHEWS NKHATA

APPLICANT

AND

KANGWA MUSENGA

RESPONDENT

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 6th day of
February, 2018**

For the Applicant : *No Appearance*

For the Respondent : *Mr. K. Kanswata, Messrs Kanswata & Company*

R U L I N G

Legislation Referred To:

1. *High Court, Chapter 27*
2. *Commissioner for Oaths Act, Chapter 33*

By Notice dated 24th January, 2018, the Respondent raises the following issue *in limine*:

- “1. *That the Affidavit in Support of Originating Summons offends the mandatory provisions of Order 5 Rule 20(g) of the High Court Rules and section 6 of the Commissioners*

for Oaths Act, Chapter 33 of the Laws of Zambia and is incurably defective and thus should be expunged from the record and as a consequence, Applicant's application mentioned above has no leg to stand on and should be accordingly dismissed. (sic)

Order 5 Rule 20(g) of the High Court Rules on Affidavit states as follows:

"The jurat shall be written, without interlineations, alterations or erasure (unless the same be initiated by the Commissioner) immediately at the foot of the affidavit and towards the left side of the paper and shall be signed by the Commissioner. It shall state the date of the swearing and the place where sworn."

Equally, section 6 of the Commissioners for Oaths Act provides that:

"Every Commissioner for Oaths before whom any oath or affirmation is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made."

The Notice is supported by an Affidavit sworn by **Kabwita Kanswata**, Counsel for the Respondent. He deposes that the Applicant commenced this action against the Respondent on 15th December, 2017, seeking an interpretation of Article 7(a) of the Zambian Professional Teachers Union constitution. That his examination of the originating summons and supporting affidavit reveal that the affidavit does not state the place of execution. This is shown in the exhibit marked "**KK1**." Further, that the

Commissioner for Oath's signature appears on the next page and not at the foot of the *jurat*.

I have carefully considered the application together with the affidavit complained of. As rightly stated by Counsel, the Applicant's affidavit does not state the place where it was executed. Further, the Commissioner for Oath's signature appears on another page and in a different font size from the one used in the body of the affidavit. This is very perplexing.

Order 5 Rule 20(g) of the High Court Rules and section 6 of the Commissioner for Oaths Act, are mandatory and require among others that the place of swearing or affirmation must be shown on an affidavit, failure to which the affidavit becomes defective.

In consequence, I find that the Applicant's affidavit is defective and I expunge it from the record. The Applicant's claim has no leg to stand on and is accordingly dismissed. Costs are for the Respondent to be taxed in default of agreement.

R4

Dated this 6th day of February, 2018.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE