

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL DIVISION  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2017/HPC/474**



**BETWEEN:**

KONKOLA COPPER MINES PLC

PLAINTIFF

**AND**

REPHIDIM MINING AND

1<sup>ST</sup> DEFENDANT

TECHNICAL SUPPLIES LIMITED

MIMBULA MINERALS LIMITED

2<sup>ND</sup> DEFENDANT

MOXICO RESOURCES LIMITED

3<sup>RD</sup> DEFENDANT

**BEFORE HON. LADY JUSTICE IRENE. Z. MBEWE (In Chambers)**

*For the Plaintiff:*

*Mr. M. Ndalameta & Mr. A. Dudhia of Messrs  
Musa Dudhia & Company*

*For the Defendant:*

*Mr. Z. Muya & Ms. M. Kabwe of Messrs Muya  
and Company.*

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# RULING

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## **Legislation Referred to:**

1. *High Court Act Cap 27 of the Laws of Zambia*

By way of background, the Plaintiff commenced committal proceedings against the alleged Contemnors on the basis that they are in breach of an interim injunction Order granted by this Court on 10<sup>th</sup> November 2017 restraining the Defendants or their agents or servants from trespassing or otherwise entering on or conducting any mining, mining processing and exploration over the Plaintiff's mining licence number 7075-HQ-LML and Lot 694/M comprising what is termed as the Mimbula disputed area.

At the hearing of the committal proceedings, the Plaintiff through its Advocate Mr. Ndalameta made an application for leave to subpoena a Mr. Romanus Chungu in respect to how service of the interim injunction Order on the alleged Contemnors was effected. Further, that the Tolling Agency be subpoenaed for purposes of giving evidence relating to the toll gate records of 13<sup>th</sup> November,

2017. I take Judicial Notice that the National Road Fund Agency are responsible for tolling.

In opposing the application, Mr. Muya Counsel for the Defendant submitted that the issues before Court relate to contempt and that to subpoena Mr. Romanus Chungu will not add any color to the said proceedings as the role he played will not in any way make a difference to the proceedings. Counsel submitted that contempt proceedings are hinged on two elements namely, proof of service and compliance, and that in the present case Mr. Romanus Chungu has not been brought in relation to non-compliance. Counsel argued that there has to be finality to litigation, and that earlier on in these proceedings, the Applicant insisted on cross-examining the alleged Contemnors. Counsel argued that this present application is of no substance. Further that the application is marred with malice as the Plaintiff was and still is aware that there was compliance on the part of the Defendant with the injunction Order. In respect of the Tolling Agency, it was argued that it is irrelevant to subpoena them and that this Court should not entertain it.

In reply, Mr. Dudhia Counsel for the Plaintiff submitted that the Plaintiff wishes to subpoena Mr. Romanus Chungu so as clear the uncertainty with respect to service on 13<sup>th</sup> November, 2017 of the injunction Order. On the aspect of the tolling reports, it was contended that the information is needed to clarify as to whether the alleged Contemnors witnesses had travelled to Lusaka on 13<sup>th</sup> November, 2017.

I have considered the evidence on record, the concerns raised and the oral submissions advanced by both Counsel.

This application emanates from the evidence given by PW1 during the committal proceedings that he personally served the injunction Order on the three directors of the Defendant Company on 13<sup>th</sup> November, 2017 of which they acknowledged receipt. PW1 testified that he was meeting the three directors for the first time at Mimbula Open Pit Mine when he served the injunction Order and he proceeded to name the said directors as Fidelis Chanda, Marcel Desmond and Cosmos Tembo the alleged Contemnors herein.

The Contemnors on the other hand testified that on 13<sup>th</sup> November, 2017 they had travelled to Lusaka and they denied ever being

served with the injunction Order as alleged by PW1. During examination in chief, the trio testified that the injunction Order was served at the Defendant's registered office in Ndola and received by Mr. Romanus Chungu an office clerk who subsequently called them to inform them about the same.

DW1 testified that on 13<sup>th</sup> November 2017, he was on his way to Lusaka with DW2 and DW3 when Mr. Romanus Chungu called to inform them that the Plaintiff had served an injunction Order at their Ndola office. He further stated that Mr. Romanus Chungu sent a scanned copy of the said injunction Order via WhatsApp messenger and that the following day on 14<sup>th</sup> November 2017, Mr. Romanus Chungu travelled to Lusaka to personally avail the injunction Order to the three directors. It was DW1's testimony that upon receipt of the injunction Order they all signed the acknowledgment of receipt and backdated the acknowledgment to 13<sup>th</sup> November, 2017 as instructed by their lawyer.

DW2 testified that on 13<sup>th</sup> November, 2017 whilst on his way to Lusaka with DW1 and DW3, Mr. Chungu telephoned them in the afternoon stating that the Defendant Company had been served

with an injunction Order. He testified that Mr. Romanus Chungu sent a scanned copy of the said Order via email on 13<sup>th</sup> November, 2017 and on the 14<sup>th</sup> of November, 2017 he sent someone to deliver the said injunction Order to the directors in Lusaka. That upon receipt of the injunction Order he acknowledged the same by signing it and backdated the acknowledgment to 13<sup>th</sup> November, 2017.

DW3 gave evidence that he was enroute to Lusaka on 13<sup>th</sup> November, 2017 with DW1 and DW2 when Mr. Romanus Chungu called to inform them that the Defendant Company had been served with an injunction Order at its Ndola office. That a driver came to Lusaka on 14<sup>th</sup> November 2017 and gave him a copy of the injunction Order.

It is against this background that the Plaintiff made an application to subpoena Mr. Romanus Chungu whom the alleged Contemnors submitted as the recipient of the injunction Order at the Ndola office. Further, that the Plaintiff intends to subpoena the Tolling Agency for purposes of having a record of the 13<sup>th</sup> November, 2017

to prove that the alleged Contemnors had actually travelled to Lusaka on the named date.

In assessing what is reasonably required to resolve these committal proceedings justly, I am guided by Section 27 (1) of the **High Court Act Cap 27 of the Laws of Zambia** that reads as follows:

*“In any suit or matter, and at any stage thereof, the Court, either of its own motion or on the application of any party, may summon any person within the jurisdiction to give evidence, or to produce any document in his possession or power, and may examine such person as a witness and require him to produce any document in his possession or power, subject to just exceptions.”*

The evidence submitted by the witnesses clearly shows that there is need for clarity as to who was served with the injunction Order by PW1, when and where the injunction Order was served. The issue of service is a pre-condition to liability in committal proceedings. It is important for the Court to satisfy itself that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the injunction Order. In the present

case, the alleged Contemnors testified that the injunction Order was served at their Ndola office on a person known as Mr. Romanus Chungu whilst PW1 testified that he personally served the injunction Order on DW1, DW2 and DW3. I am therefore of the considered view that the calling of Mr. Romanus Chungu is necessary as his evidence is relevant in assisting me to determine the issue of service of the injunction Order in question. With respect to the Tolling Agency, in light of PW1's testimony that he personally effected service on the alleged Contemnors, whilst conversely the alleged Contemnors contend that they had travelled to Lusaka on the material date, I opine that it is necessary to subpoena the Tolling Agency records of 13<sup>th</sup> November 2017. This will assist the Court to ascertain the correct position as to where and how service of the injunction Order was effected on the alleged Contemnors.

In summation, I find that the Plaintiff's application has merit. I invoke the provisions of **Section 27** of the **High Court Act** and **Order 3 Rule 2 of the High Court Rules, Cap 27 of the Laws of Zambia** and grant leave to the Plaintiff to subpoena Mr. Romanus



Chungu and the Tolling Agency for purposes of giving evidence in these committal proceedings.

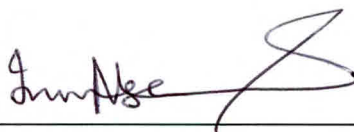
The costs associated with the calling of these witnesses shall be borne by the Plaintiff herein.

This matter shall be heard on 9<sup>th</sup> April 2018 at 14.30 hours.

Costs for this application are in the cause.

Leave to appeal is hereby granted.

Delivered at Lusaka this 27<sup>th</sup> day of February, 2018.



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**HON IRENE ZEKO MBEWE**  
**HIGH COURT JUDGE**