

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

**2015/HPC/0449
2014/HPC/0183**

2 OCT 2020

BETWEEN:

ROGER MASAUSO ALIVAS CHONGWE

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

**CORAM : Hon. Mr. Justice B. C. Mbewe in Chambers on 17th
July, 2020.**

Marshall : Esther Nguni

Research Advocate : Mwiche Ntinda

For the Plaintiff : Mr. A. Hamir S.C.

*For the Defendant : Mr. F. Imasiku, Deputy Principal State
Advocate*

RULING

Cases Referred to:

1. *Stickrose (Pty) Limited v. The Permanent Secretary Ministry of Finance (SCZ Judgment No 30 of 1999)*
2. *Dora Siliya and Others v. The Attorney General and Others 2013 ZMHC 23/2013/HP/1159*
3. *Wynter Kabimba N.O. v. Attorney General and Richard Kachingwe 2011 ZMHC 83/2011/HP/744*
4. *Mumbuna v. The People (1984) Z.R. 66*
5. *Major Richard Kachingwe v. Dr. Nevers Mumba (sued in his capacity as Secretary for MMD) 2013 ZR Vol 3*

Other Authorities Referred to:

1. *Rules of the Supreme Court of England 1965, 1999 Edition (White Book)*
2. *High Court Act, Chapter 27 of the Laws of Zambia*
3. *State Proceedings Act, Chapter 71*
4. *Compensation Fund Act No. 43 of 2016*
5. *English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia*
6. *Constitution of Zambia Act No 2 of 2016*

INTRODUCTION

This is an application by the Defendant by way of Notice of Motion to Raise a Preliminary Issue pursuant to **Order 14A** read together with

Order 33 Rule 7 of the **Rules of the Supreme Court 1965 (White Book), 1999 Edition Volume 1**. The Plaintiff in its Motion, seeks the determination of the following preliminary issues:

*“(a) Whether this Court has jurisdiction to order satisfaction of judgment against the provisions of the **State Proceedings Act Chapter 71** as well as the **Compensation Fund Act No 43 of 2016**; and*

(b) That the application be dismissed”

BRIEF FACTS AND BACKGROUND

The Defendant’s claims in both causes, are as a result of a compromise or settlement agreement made in October 2009 between the parties. In the proceedings under Cause Number **2014/HPC/0183** which were commenced by Originating Summons, the Court held that: the compromise agreement subject of the proceedings was valid, subsisting and enforceable and that the Defendant had a legal obligation to discharge the agreement. The Certificate of this Judgment of the Court was issued on the 24th of March, 2016. The Defendant appealed against the decision of the High Court to the Supreme Court, which Court, on the 22nd of June, 2017 dismissed the appeal and upheld the decision of the High Court, additionally stating that, a monetary judgment would follow

an action commenced by writ of summons. Following the adjudication by the High and Supreme Courts on the matter; the Defendant made an application to the Court under the same cause on the 12th of September, 2018 for the enforcement of its Judgment pursuant to the provisions of the **State Proceedings Act** and also in the meantime commenced a different action by Writ (amended) dated 23rd October 2017 in the Commercial Division of the High Court.

During the subsistence of the said application for enforcement of judgment under Cause Number **2014/HPC/0183**, the Plaintiff's pending matter against the Defendant which had been commenced by Writ of the 23rd of October, 2017 under Cause Number **2015/HPC/0449** had Judgment delivered on the 22nd of February 2019 and its Certificate of Judgment issued on the 25th March, 2019. The said Certificate of Judgment provides that: the Plaintiff recover from the Defendant the sum of United States Dollars (USD)6,743,918.38 and interest on United States Dollars (USD)2,500,000.00 at the London Inter Bank Offered Rate (LIBOR) from 23rd October, 2009 until payment, the Defendant pay damages for breach of contract on United States Dollars (USD)3,500,000.00 from the date of the Writ, 21st October, 2015 until Judgment and thereafter interest shall accrue on the Judgment Debt at 10% per annum until payment and that all costs to the Plaintiff. At this stage of the proceedings the parties agreed via consent dated 3rd June, 2019 that it was right and proper that the proceedings under Cause

Numbers **2014/HPC/0183** and **2015/HPC/0449** between the same parties and arose from the obligations pursuant to the 2009 October agreement between the parties, be consolidated to enable the Plaintiff pursue its application for enforcement of both judgments in a single application.

Following the consolidation of the cause via a Consent Order of 3rd June, 2019 signed by my brother his Lordship Hon Mr. Justice Sunday B. Nkonde SC, the said actions proceeded as one action for enforcement of judgments bearing Cause Numbers **2014/HPC/0183** and **2015/HPC/0449**.

THE APPLICATION AT HAND

On the 4th of December, 2019 the Defendant filed into Court a Notice of Motion to Raise Preliminary Issue pursuant to **Order 14A** and **Order 33 Rule 7** of the **Rules of the Supreme Court 1965 (White Book), 1999 Edition Volume 1** seeking determination of the following preliminary issues:

- (a) Whether this Court has jurisdiction to order satisfaction of judgment against the provisions of the **State Proceedings Act, Chapter 71** as well as the **Compensation Fund Act No. 43 of 2016**; and*

(b) That the application (of the Plaintiff for enforcement of judgment) be dismissed.

The Defendant also filed into Court an affidavit in support, of even date, and Skeleton Arguments and a List of Authorities dated 5th December, 2019.

By an Affidavit sworn by one Frederick Imasiku, the Defendant submits that, the Plaintiff obtained Judgment in the Supreme Court on the 6th of September 2016 and 23rd of June respectively, to which the Defendant takes note and cognizance of the Plaintiffs rights. The Defendant also notes, through its affidavit, that it was in receipt of and did peruse the Plaintiff's application of 12th September, 2018 to enforce his judgment as of right against the Defendant. It is submitted by the Defendant that it has taken steps to ensure the afore-stated Judgments are perfected. This perfection, according to the Defendant, is effected through certain procedure as the Defendant liquidates judgements to successful litigants through a Compensation Fund Committee, which receives funding through the Ministry of Finance. The deponent therefore deposes that in furtherance of its mandate to liquidate the Plaintiff's Judgments, the required documentation was prepared and submitted to the Compensation Fund Committee as exhibited in its Affidavit.

In its skeleton arguments in support of its Notice of Intention to Raise a Preliminary Issue, the Defendant submits that **Order 14A of the Rules of the Supreme Court (White Book)** provides that, the Court on application of a party or on its own motion, may determine a question of law at any stage of the proceedings where it appears that such question is suitable for determination without full trial of the action and that such determination will finally determine (subject only to possible appeal) the entire matter or **any claim or issue therein.**

In considering the question raised by the Defendant, as to whether this Court has jurisdiction to order satisfaction of judgment against the provisions of the **State Proceedings Act** and the **Compensation Fund Act**, the Defendant submits that such application of the Plaintiff is not tenable at law because it is apparent from the application that the Plaintiff seeks an order compelling the Defendant to liquidate the amount found due and owing, which action's legal backing has not been demonstrated. The Defendant further submits that according to its reading, **Section 21 of the State Proceedings Act** provides that payment of monies by enforcement against the State cannot be ordered. The Defendant also places its reliance on **The Public Finance Management Act of the laws of Zambia**, whose provisions are meant to regulate institutional and regulatory framework for the management of public funds. The Defendant therefore submits that the Plaintiff's only recourse lies under the

provisions of **Section 17 of the Compensation Fund Act**, which states that a person who receives an award of compensation by a court, tribunal or under an agreement shall be paid compensation from the Fund subject to; the Attorney General submitting necessary documents relating to the award to The Committee and the verification of the necessary documents by The Committee, and in addition to any compensation payable under the **Act**, interest from the date of the judgment or agreement shall be payable out of the Fund on the amount of the compensation less any costs and disbursements calculated in accordance with the **State Proceedings Act**. The Defendant in its submissions further cited the Supreme Court Judgment in **Stickrose (Pty) Limited v. The Permanent Secretary Ministry of Finance (1)** wherein his Lordship Hon. Mr. Justice Sakala (as he then was), delivering the judgment of the Court made the observation that **Order 45** of the **White Book** groups together methods of enforcement of judgments and orders of the court and in England those methods do not apply against the Crown. It is the Defendants submission that the Plaintiff's application is misconceived and should not be sustained but dismissed by the Court with costs to the Defendant.

In his Affidavit, the Plaintiff deposes that he instituted the actions under Cause Numbers **2014/HPC/0183** and **2015/HPC/0449**, for sums of money agreed to be paid by the Defendant to the Plaintiff and not to compel the Defendant to submit the "required

documentation” to the Compensation Fund Committee as the same was neither ordered by the Court nor requested by the Plaintiff. The Plaintiff adds in his affidavit the said suggestion by the Plaintiff to “furnish the copies of the required documentation” to the Compensation Fund Committee is to him relatively new and unique to the Zambian law and practice. The deponent submits that contemporaneous with the agreement of compromise of October 2009 aforementioned, between the parties herein, the Attorney General at the time, Mr. Mumba Malila SC instructed the Secretary to the Treasury to find monies and settle the Defendants indebtedness to the Plaintiff and that there is on record communication from the Secretary to the Treasury informing the Attorney General that at the time there had been budgetary constraints and other options to ensure payment of the Plaintiff would be explored. It is the deponent’s submission that since the said communication, he has not received any of the monies owed to him by the state despite the Judgments of the Court of 24th March, 2016 and 22nd February, 2019. The deponent further submits that what would’ve have been a more convincing and plausible act by the Defendant, would have been to obtain comprehensive affidavits from the individuals upon whom the Statute has imposed a duty to pay judgment creditors: the Minister of Finance, Secretary to the Treasury and the Permanent Secretary concerning the Plaintiffs claims as opposed to the communication referred to by the Defendant. It is the deponent’s submission that the Plaintiff similarly filed applications to raise preliminary issues in Cause Numbers **2014/HPC/0183** and **2015/HPC/0449** specifying

different issues though entirely aimed at delaying the matter as both preliminary applications totaled an excess of 550 days. It is the Plaintiff's assertion that the actions of the Defendant are devised to cause him further frustration by denying him his constitutional rights to the monies awarded to him and that the only consequence of such act is to undermine the administration of justice. The Plaintiff states that such inordinate delay prejudices the Plaintiff and not the Defendant as the Plaintiff is presently 81 years old with a heart ailment. The deponent contends that the Defendant's application is one that is frivolous vexatious and an abuse of court process as the proceedings under Cause Numbers **2014/HPC/0183** and **2015/HPC/0449** have been concluded. The Plaintiff therefore urges the Court to dismiss the Defendant's application which it is submitted is ill conceived and entirely without merit.

In the Plaintiff's skeleton arguments, the Plaintiff cites **Order 14A** of the **Rules of the Supreme Court 1965 (White Book), 1999 Edition Volume 1** upon which the Defendant relies and states that the manner in which the Defendant intends to use the Order is out of context as the Order demands that an application to raise preliminary issue should be raised before trial of the action. The Plaintiff further contends that the Defendant cannot disregard the fact that the trials in cases **2014/HPC/0183** and **2015/HPC/0449** were concluded a while back, therefore causing the Defendant's application to be devoid of merit. The Defendant citing **Order**

14A/2/3 and Order 14A/2/7 emphasizes that the **Order 14A** procedure to raise preliminary issues can only be employed before trial as the law recommends that the question of law or construction raised for determination must be suitable for determination without full trial of the action and that such determination will finally determine the matter and bring an end to the action without the need for trial. The Plaintiff concludes his argument by stating that **Order 14A** does not give the Defendant an option to disregard the fact that trial in the preceding causes under cause numbers **2014/HPC/0183** and **2015/HPC/0449** has already been concluded. The Plaintiff submits that that the current application as well as prior preliminary issues raised by the Defendant proves the Defendants its strategy to delay proceedings in violation of **Article 118 (2) of the Constitution**.

The Plaintiff submits in the alternative, that the Court is of the view that there is any merit whatsoever in the Defendant's argument; the Plaintiff will then rely on its affidavit and skeleton arguments filed in opposition to the Defendants action. The Plaintiff in relation to the **Stickrose (PTY) Limited (1)** Judgment cited by the Defendant, contends that the said Judgment and the current case are entirely different or distinct for the reasons that:

- a. The appellant in the **Stickrose (PTY) Limited (1)** case had brought a separate action for Judicial Review against the State which is why the Supreme Court held that **Order 45 of the**

Rules of the Supreme Court did not include judicial review as one of the methods of enforcement of judgments and orders of the court, whilst the Plaintiff herein did not attempt to enforce its judgment through judicial review but instead made its application specifically pursuant to **Section 3 of the State Proceedings Act**.

- b. The appellant in the case being distinguished moved the Court pursuant to **Section 24** of the **Debtors Act** to commit the Permanent Secretary Ministry of Finance to jail for failure to pay the judgment debt and no court can entertain such an absurd application. The current case does not make such application under the **Debtors Act** but instead demands, as a citizen, the right to be treated equally before the law which law under the **State Proceedings Act** prescribes execution by way of service of the Certificate after Judgment upon the Attorney General considering which payment would be made in settlement of (the certificate).

The Plaintiff emphasizes in its skeleton arguments, that the argument brought forth by the Defendant is one which the Defendant suggests that once the Attorney General furnishes the Compensation Fund Committee with the certificate after judgment, then it has complied with the judgment and the Attorney General may divest itself of all responsibility and the Plaintiff may not seek assistance of the Court in securing any order whatsoever to obtain the satisfaction

of the Court Judgment , which suggestion is erroneous. The Plaintiff maintains that the Compensation Fund Committee is merely an extension of the Attorney General's office, whose sole purpose is to manage and administer the Compensation Fund. It is the Plaintiff's submission that such procedure would then suggest that the Court is powerless and without any Jurisdiction to act to secure the satisfaction of its own judgments. The Plaintiff maintains in its submission that the **State Proceedings Act** is still the law and that **Section 20** of the said Act has not been repealed and as already submitted; the Plaintiff's claim was due for payment to him long before the enactment of the **Compensation Fund Act**. The Plaintiff further submits that in pursuance of the action, it furnished a request to Counsel for the Defendant to make discovery of documents for which the Defendant is reluctant as the said request necessitated the current application before the Court which will result in further and needless delay of the current proceedings. The Plaintiff seeks an order of the court to compel the Defendant should settle its contractual liability and its judgment debt promptly because **The Constitution** under **Article 118 (2)** demands that justice shall be done to all without discrimination, justice shall not be delayed, adequate compensation shall be awarded where payable and the values of **The Constitution** shall be protected and promoted.

The Plaintiff also cites **Article 119** of the **Constitution of Zambia** stating that judicial authority vests in the Courts and not in

Compensation Fund Committee and the law demands that only the Courts may order suspension of payment of judgment debts and not internal committees as no internal committee has such power. The Plaintiff refers the Court to **Section 21 of the State Proceedings Act** stating that the same is complemented by **Section 13 of the Compensation Fund Act** as the Compensation Fund is not the sole source of funds to pay judgment creditors or claimants and would cater for relatively small claims budgeted for that purpose whereas general revenue would be the source of funds to pay relatively large claims like that of the Plaintiff. The Plaintiff therefore submits that the Court dismisses the Defendants application with costs for being devoid of merit and an abuse of the process of the law.

The Defendant in its Affidavit in Reply of 24th January, 2020, the Defendant argues that contrary to the Defendants assertions, the Plaintiff did furnish the Defendant its banking details and did also acknowledge receipt of (Zambian Kwacha) ZMW250,000.00 as part payment in satisfaction of the Judgment of the Court and makes no comment as to any of the Plaintiffs other assertions contained in its Affidavit in Opposition.

On the 13th of February, 2020 a status conference in the matter was held on account of the transfer of the file to me, and I set the 17th of July, 2020 as the date to hear the application. At the hearing of the

Defendant's application, it was submitted by Counsel for the Defendant that the Defendant placed its reliance on the documents filed into Court in support of its application. Counsel for the Defendant highlighted the fact that both parties indeed understand that the Defendant is party to the proceedings herein by virtue of the **State Proceedings Act**, he further highlighted that any liability arising from a Judgment of the Court against the Defendant can only be satisfied under the provisions of the **State Proceedings Act** and added that in 2016 the **Compensation Fund Act** was enacted which provided the precise documentation as well as the procedure through which the State would pay out funds and therefore the intended action of the Plaintiff to seek an enforcement of the Judgment as a matter of right was misapplied. The Defendant further urged the Court to take cognizance of the fact that the Defendant has begun to issue payments to the Plaintiff in accordance with the provisions of the law and because the Defendant has already begun to dismantle its indebtedness toward the Plaintiff, the application to move the Court to compel the Plaintiff to produce documents in the matter herein is of no gain to the party. The Defendant's Counsel reiterated the Defendant's prayer to grant the application in its favour.

The Plaintiff similarly placed its reliance on the documents filed into Court in opposition to the Defendant's application to raise preliminary issues and briefly augmented its arguments with oral submissions. In submission the Defendants Counsel highlighted four

distinct grounds on which it believes the Defendant's application is misconceived and should be dismissed with costs.

The first ground as highlighted by Counsel for the Defendant being that **Order 14 A, Rule 2 paragraph 2 and paragraph 4** (which order also cites **Order 77 Rule 7 paragraph 1) of the Rules of the Supreme Court 1965 (White Book), 1999 Edition** does not permit either party in action against the state to raise Preliminary Issues; to restrain litigants from cutting corners, obtaining default rulings and judgments against the state without leave of the court. The preference of the law, according to the Defendant, is that matters should proceed to trial and be determined on all the evidence before the court and to avoid delay.

The second ground upon which, according to the Defendant, the application cannot succeed as highlighted is that even where the State or party was allowed to make such application, the Court must be satisfied that the question raised to be decided should be decided without a full trial of the action. The Plaintiff therefore submits that there is no provision that allows a party to raise a preliminary issue to an application of the other party and that in this instance the application of the Plaintiff to enforce its judgment is as a matter of right.

The third ground on which the Plaintiff submits that the Defendants application cannot succeed, is the ground that the summons to raise Preliminary issues should state in clear and precise terms the question of law which the court is required to determine according to **Order 14A /2/7**; and by the wording of the Plaintiffs summons the same is neither clear nor precise for that purpose and is extremely vague.

Finally, the Plaintiff emphasizes that through the preliminary issues raised by the Defendant; there now being three in total on record, the Defendant has succeeded in delaying this matter extra-ordinarily resulting in pain and torture to the Plaintiff. The Plaintiff's contention on the overall view of the case that the purpose of the Defendant's application is *mala fides* as there hasn't been payment of any significance for the last twenty-three (23) years which therefore results in the only irrefutable, indisputable conclusion that the state has no intention to pay the Plaintiff. The Plaintiff therefore maintains its prayer that the Defendant's application be dismissed on account of its lack of merit.

In response, Counsel for the Plaintiff emphasized that the **State Proceedings Act** can be applied in isolation of the **Compensation Fund Act** and that both ought to be considered together and maintained its prayer in application.

RULING

I have read all the pleadings filed before Court in support of and against the application, and also heard all the *viva voce* submissions made on behalf of the parties.

It is necessary to make mention of the practice observed by our Courts in consideration of the contention that a preliminary issue cannot be raised in matters to which the State is a party. Such submission as provided by Counsel for the Plaintiff is made on the strength of the provisions of **Order 14/A/2/2** the **Rules of the Supreme Court 1965 (White Book) (5)** which among other directives provides:

“..This Order does not apply to any proceedings by or against the Crown..”

Section 10 of the High Court Act (6) that governs this Court provides that:

“The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the Criminal Procedure Code, or by any other written law, or by such rules, order or

directions of the Court as may be made under this Act, or the said Code, or such written law, and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.”

It is trite law that **Section 10 of the High Court Act** prescribes that the jurisdiction vested in the Courts shall be exercised in a manner that takes into consideration our current laws and in the event of deficiency, incapacity or a *lacuna* thereof, the court’s jurisdiction will be exercised in substantial conformity with the law and practice observed in the English Courts. The Extent of Application of the English law in our jurisdiction is provided under **Section 2** of the **English Law (Extent of Application) Act (7)**, which states:

“2. Subject to the provisions of the Constitution of Zambia and to any other written law-

(a) the common law; and

(b) the doctrines of equity; and

(c) the statutes which were in force in England on the 17th August, 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911); and

(d) any statutes of later date than that mentioned in paragraph (c) in force in England, now applied to the Republic, or which hereafter shall be applied thereto by any Act or otherwise; shall be in force in the Republic.”

The above Zambian Statute therefore limits the extent to which the Laws of England such as those within the **Rules of the Supreme Court of England 1965 (White Book)** will be in force in the Republic i.e. will be subject to the Zambian jurisdictions Constitution, other statutes, common law, doctrines of equity. Needless to mention the practical and effective application of the said law is that English law is applicable to the extent of its consistency with Zambian law and practice and therefore inapplicable where inconsistent. The same is only proper as the Zambian and English systems have a few unique variances here and there. The practice in Zambia has allowed for preliminary questions to be raised in causes in which the State is a party thereto and this is demonstrated by among other cases, the case of **Dora Siliya and Others v. The Attorney General and Others (2)** in which the State itself had raised a preliminary issue that was later dismissed as well as the case of **Kabimba N.O. v. Attorney General and Richard Kachingwe (3)** in which the 2nd Defendant party to the proceedings that involved the State raised a preliminary issue that was upheld. Aside civil proceedings, the Courts have been known to hear preliminary questions raised also in

criminal proceedings involving the State, such as in the case of **Mumbuna v. The People (4)**.

The Courts in determining such preliminary issues, in which the State is a party, do indeed strongly consider the need to restrain litigants from; cutting corners and obtaining default rulings and summary judgments against the State without allowing the all necessary evidence in the matter to be properly presented before the court so as to arrive at a well and informed decision and weighs these considerations against the constitutional directive accorded to the judicial authorities under **Article 118** to dispense justice without discrimination, undue delay and in consideration of the promoting the values and principals of our constitution. In exercise of judicial authority vested herein, it is therefore in order that the preliminary application raised before this court be considered and ruled upon to avoid the Court not determining all pertinent issues before it.

THE PRELIMINARY APPLICATION BEFORE ME

In considering whether or not the preliminary application by the Defendant under **Order 14A** of the **Rules of the Supreme Court 1965 (White Book), 1999 Edition** is properly before me, it is necessary to consider the precise law and the requirements for application of the said law o. **Order 14A** of the **Rules of the Supreme**

Court allows for a party in a suit to raise a preliminary issue and prescribes:

“1. - Determination of questions of law or construction

(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.”

The intent of the Court in considering a preliminary issue or question raised by a party, which question may determine the entire cause or matter without full trial of the action, is to summarily determine, conclude or dispose of the matter. Such summary conclusion which is preferred, serves to act as a time and cost saving procedure given the valuable nature of judicial time and the costs involved in pursuing an action in litigation especially in the Commercial Division of the High Court.

Order 14A/2/3 of the **Rules of the Supreme Court** provides the requirements for employing the procedure under **Order 14A** stating the following:

“Requirements of Order 14A

The requirements for employing the procedure under this Order are the following:

- (a) the Defendant must have given notice of intention to defend;**
- (b) the question of law or construction is suitable for determination without a full trial of the action**
- (c) such determination will be final as to the entire cause or matter or any claim or issue therein and**
- (d) the parties had an opportunity of being heard on the question of law or have consented to an order or judgment being made on such determination.”**

It is clear from the wording of the law under **Order 14A/2/3**, that the preliminary issue must be raised after the memorandum of appearance and defence has been filed in the matter and before full trial of the action as its determination may dispense with the need for trial because the question(s) raised could result in the settlement or conclusion of any claims or issues in the suit. The draftsman places such requirements for reasons that: the parties in the suit

having both outlined their arguments through their filed pleadings and the court having properly considered them, may result in summary determination of the cause between the parties. This determination in finality resulting in the dispensation of the need for trial which if adopted could be lengthy, costly and indeed pointless. The persuasive authority of **Major Richard Kachingwe v. Dr. Nevers Mumba (5)** reiterates the conditions precedent for raising a preliminary issue under **Order 14A** as outlined by the Statute. Where the three pre-requisite requirements under the law are not met, the only conclusion one can arrive at is that the said issues/questions raised are not suitable for determination under **Order 14A**.

Further, **Order 14A/2/3** of the **Rules of the Supreme Court** provides:

Mode of application

“.... The application may be made at any time after the Defendant has given notice of intention to defend and before the full trial of the action has begun.”

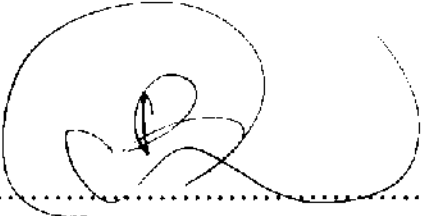
The above makes it mandatory for applications made pursuant to **Order 14A** of the **Rules of the Supreme Court** to be made any time after the filing and service of the memorandum of appearance and defence and before full trial of the action. The cause before me which

is a consolidation of causes **2014/HPC/0183** and **2015/HPC/0449** currently stands at the stage of an application for enforcement of judgments by the Plaintiff which Judgments were rendered after trial and conclusion of the issues in both matters. As a matter of fact, the matter under Cause Number **2014/HPC/0183** ascended to the Court of 'final say' in this jurisdiction, the Supreme Court, which made its determination and brought the matter to its conclusion. It would be absurd to treat the proceedings herein as if they were ongoing by determining a preliminary issue at this stage of the matter. There is no need to employ cost or time saving measures by summarily determining the issues raised between the parties when the issues in contention have already been determined and time and costs have already been incurred on the part of the parties. Needless to say, concerning time passed, that the Court has already spent a considerable amount of time determining preliminary issues raised by the Defendant in the duration of the proceedings and another such application cannot be entertained considering the stage and length of the proceedings as well as the fact that the Plaintiff is of advanced age.

Where the Defendant wishes to oppose the Plaintiff's application, for *enforcement of judgment as a matter of right* – such opposition cannot be raised by way of preliminary application given the status of proceedings and the requirements of the law. It would be diligent to employ the necessary and lawful measures granted under the law to

oppose such application as opposed to causing further delay in proceedings within which the Court has already rendered judgment. I therefore dismiss this application for being frivolous and improperly before me and award costs to the Plaintiff to be taxed in default of agreement.

Delivered at Lusaka this 30th day of September, 2020.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a flourish that loops back to the left. The signature is positioned above a horizontal dotted line.

**Bonaventure C. Mbewe
HIGH COURT JUDGE**