

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

2018/HPC/0282



BETWEEN:

ELYWIN HAMOONGA AND 27 OTHERS

APPLICANTS

AND

**LUCK ONE ENTERPRISE
AND PROPERTY LIMITED**

RESPONDENT

IKANUKE MUTANEKELWA NOYOO

ALLEGED CONTEMNOR

**CORAM: Before Hon. Mr. Justice Bonaventure C. Mbewe in
Chambers.**

RESEARCHER : Mwiche Ntinda
MARSHAL : Esther Ng'uni

For the Applicants : N/A

For the Respondent : N/A

For the Alleged Contemnor : N/A

RULING EX TEMPORE

Authorities cited:

1. *Order 52, Rule 2 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition, Volume 1;*
2. *Atkins Court Forms and Precedents, Lexis Nexis.*

The Applicants in this application, are Elywin Hamoonga and 27 others who I granted an Order joining them to these proceedings on 10th February, 2020. The Applicants have brought this application under **Order 52, Rule 2 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition, Vol. 1** seeking an order granting them leave of this Court to issue contempt proceedings against the Alleged Contemnor, one Ikanuke Mutanekelwa Noyoo who is the Plaintiff in the main proceedings and in favour of whom this Court granted Judgment on Admission on 31st August, 2018.

The current application for an order for leave to issue committal proceedings is being sought to bring the Alleged Contemnor to book for allegedly disobeying an order of this Court in the Judgment on Admission granted in his favour, as Orders;

“2. IT IS ALSO HEREBY ORDERED that the Plaintiff shall surrender to the Defendant the original Certificate of Title upon the Defendant making payment.”

The Applicants filed *ex parte* summons supported by affidavit and skeleton arguments.

The *ex parte* summons filed before Court reads;

“LET THE PARTY concerned attend before the Honourable Mr. Justice B. C MBEWE in chambers on theday of2020 atHours at the hearing of an Application for Leave to Commence Contempt proceedings against the Plaintiff, the alleged contemnor herein for reasons set out in the Affidavit in Support filed herewith.

Dated at Lusaka this....day of.....2020”

The *ex -parte* order reads:

“UPON HEARING COUNSEL for the Applicants

AND UPON READING the Affidavit in support filed herein

IT IS HEREBY ORDERED and DDIRECTED that leave BE and is HEREBY granted for the Applicants to issue committal proceedings for contempt of Court against the alleged contemnor IKANUKE MUTANEKELWA NOYOO and that costs be in the cause.

Dated the.....day of2020

HON. JUSTICE B.C.MBEWE”

RULING

Upon the Courts perusal of the *ex parte* Summons and Order before it, I have come to the firm conclusion that the said Summons and Order laid before Court are defective as they do not comply with the requirements of **Order 52, Rule 2 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition, Vol. 1.** The Order states;

“(2) An application for such leave must be made *ex parte* to a Divisional Court,....., and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be Committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant.....and must at the same time lodge in that office copies of the statement and affidavit.”

The defect in the Applicants application lies in the absence of a supporting statement as required by the order when it reads **“and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be Committed and the grounds on which his committal is sought”**

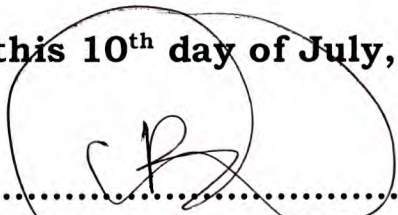
The supporting statement is required to be filed into Court at the time that the rest of the application is filed as per **Rule 2 (3)**.

Committal proceedings are of a very serious nature and the end result could be the imprisonment of the alleged contemnor i.e. he may be seized and taken to prison. The need to follow the letter of the law at every stage, is therefore of utmost importance to ensure that justice is done in the manner provided for in the law.

I would implore Counsel to read widely and if possible have recourse to **Atkins Court Forms And Precedents, Lexis Nexis** which has the precedents required to make an application for committal in the correct format as well as the format of the order granting leave which needs to clearly state that leave is being granted to make the application for an order for committal to prison and not only contain the alleged contemnor's names, but also the alleged contemnor's address and state the contemptuous act that he is accused of.

I therefore hereby set aside the *ex parte* application for an order for leave to commence contempt proceedings. I make no order as to costs.

Delivered at Lusaka this 10th day of July, 2020.


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Bonaventure C. Mbewe
HIGH COURT JUDGE