

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

(Civil Jurisdiction)

2018/HP/1201

BETWEEN:

CHILESHE NSHUMFWA
IVES NSAMA NSHUMFWA



1ST PLAINTIFF

2ND PLAINTIFF

AND

LUSAKA CITY COUNCIL
PHILIMON MWAPE
OTHERS UNKNOWN *(Collectively)*

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

BEFORE THE HON. LADY JUSTICE C. LOMBE PHIRI IN CHAMBERS

For the Plaintiffs: Messrs Mushota & Associates (Exparte)

R U L I N G

Legislation referred to:

1. *Order 39 rule 1 of the High Court Rules*

CASES REFERRED TO:

1. **Access Bank (Z) Limited v Group Five / ZCON Business Part Joint Venture (SCZ/8/52/2014)**
2. **Twampane Mining Co-operative Society Limited V E and M Storiti Mining Limited (2011) ZR Vol 3**

The Plaintiff in this matter applied to the Court for review of the Court's Order to dismiss the action for non-compliance with an Order to file Orders for Directions pursuant to Order 39 rule 1 of the High Court Rules. The application was supported by an affidavit deposed to by Counsel seized with conduct of the matter. It was deposed to that Counsel omitted to file the Orders for Directions having filed the Plaintiff's Reply. Further, that Counsel only realized the omission upon receiving the Court Order dismissing the matter. It was deposed to that the Plaintiff was desirous to prosecute the matter and that Counsel's omission is regretted.

Counsel for the Plaintiff also made viva voce submissions basically relying on the affidavit in support of the application.

Order 39 rule 1 of the High Court Rules provides that:

“Any Judge may, upon such grounds as he shall consider sufficient, review any Judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn) and upon such review, it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous Judgment or decision.”

The foregoing provision of the law, provides, in general terms the powers of the Judge to review its decision. The purpose of Order 39 is to allow a Judge to put matters right. However, this discretionary power of the Court is not meant to allow a litigant a second chance at correcting some wrong that they committed. In this case the reason for the matter being dismissed was the failure by the Plaintiff to comply with the Court's Orders for Directions issued

in the presence of the Plaintiff's Counsel on 6th November, 2018. The matter was dismissed pursuant to Order 41 rule 3 of the High Court Rules.

The Affidavit in support of the Application has shown that the only reason this matter was dismissed was non-compliance of the Plaintiff to the Orders for Directions.

In the case of Access Bank (Z) Limited v Group Five / ZCON Business Part Joint Venture (SCZ/8/52/2014)⁽¹⁾ the Supreme Court stated as follows:

“Justice also requires that this Court, indeed all Court, must never provide succor to litigants and their Counsel who exhibit scant respect for rules of procedure. Rules of procedure and timelines serve to make the process of adjudication fair, just, certain and even-handed”

In this case there is nothing new that has arisen or facts presented before the Court that were not known at the time the case was dismissed to warrant this Court to review its decision. This Court merely applied a sanction provided for in law. Time and again the Courts have frowned upon litigants and their lawyers who omit to follow Orders of the Court thereby delaying the disposal of matters.

In the case of Twampane Mining Co-operative Society Limited v E and M Storiti Mining Limited (2011) ZR Vol 3⁽²⁾ the Supreme Court held inter alia that:

“5) It is important to adhere to Rules of Court in order to ensure that matters are heard in an orderly and expeditious manner.


6) Those who choose to ignore Rules of Court do so at their own peril”

In this case the Plaintiff had from 6th November, 2018 to 5th March, 2019 when, the Status Conference was called up to comply with the Orders for Directions. It must be mentioned that even this status conference was a rescheduled one from 16th January, 2019.

The Plaintiff has not demonstrated any grounds for this Court to review its decision.

The Application is accordingly dismissed.

Delivered at Lusaka this 21st day of May, 2020.



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C. LOMBE PHIRI
JUDGE

