

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

2018/HP/1364



BETWEEN:

OLYPA CHISHA CHILEMBO

PLAINTIFF

AND

AIRTEL MOBILE COMMERCE ZAMBIA LIMITED

DEFENDANT

Before Honourable Mrs. Justice M. Mapani-Kawimbe at Lusaka on the 13th day of February 2020.

For the plaintiff: In Person

For the defendant: Ms. E. Chibambo, Messrs Mando & Pasi Advocates

R U L I N G

1.1 This is the defendant's application to strike out the plaintiff's response to defence, notice to produce, bundle of pleadings and documents. It was filed into Court on 11th February 2020. The application raises two limbs of issue against the plaintiff's suit: that is whether the bundles of pleadings and documents were filed in compliance with the Court's order for directions? In the second instance, the challenge concerns the propriety of the reply to the defence. I will

begin by stating that the High Court Rules are couched in such a way that they rigidly bind parties in litigation.

1.2 Accordingly, bundles of pleadings and documents can only be filed into Court after an opposing party has discovered and inspected them. The reason for the sequence is to allow a party who may have objection to the production of documents to raise their concern. Thus, a party's failure to afford another discovery and inspection renders them incompetent before Court.

1.3 In this case, the plaintiff has not shown that she served her list of documents on the defendants contrary to order 24 Rules 16(1) of the Rules of the Supreme Court on discovery and inspection. The Court's view therefore, is that they are incompetently on the record and are accordingly struck out. As for the defence, Order 18(7) of the Rules of the Supreme Court states that pleadings should only contain statements of fact and not evidence. The reply on record introduces new issues that do not in any way, respond to the defence. Further, it contains aspects of evidence contrary to the rules on pleadings. In fact, if one were to mirror the reply against the statement of claim or defence, it would not be too far-fetched to assume that the reply is

totally independent of the plaintiff's original claims. It suffers similar fate and is struck out.

- 1.4 Let me state that this matter has been ongoing since 10th August 2018 and without any real progress. The fact that the plaintiff is a lay person does not absolve her from abiding by the Court's rules or presenting properly drafted documents. Therefore, the Court orders the plaintiff to file a proper reply into Court by 18th February 2020. Thereafter discovery by exchange of list of documents should be conducted on 24th February 2020. The bundles of pleadings and documents should be filed into Court on 3rd March 2020. Should the plaintiff fail to comply with this order, the defendants will be at liberty to apply against her.
- 1.5 Today's costs are awarded to the defendants and I shall monitor this record on 4th March 2020.

Dated this 13th day of February 2020.


M. Mapani-Kawimbe
HIGH COURT JUDGE