

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

2019/HP/0333



BETWEEN:

**CONFIDENCE CHATIKA**

(Suing as interim Chairman of the Small  
Live Stock Association of Zambia)

**PLAINTIFF**

AND

**CHARLES MALAMA AND TWELVE OTHERS**

(Sued as former office bearers of the organs  
Of the Small Live Stock Association of Zambia)

**DEFENDANT**

**DENNIS MAMBWE AND 362 OTHERS**

**2<sup>nd</sup> INTENDED DEFENDANTS**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 10<sup>th</sup>  
DAY OF MARCH, 2020**

*For the Plaintiff*

: *Mr Anthony Mkanda, H.H. Ndhovu &  
Company*

*For the intended 2<sup>nd</sup> Defendants : Mr N.S Choonga, GDC Chambers*

---

## **R U L I N G**

---

CASES REFERRED TO:

1. ***R v Inland Revenue Commissioner, Ex-parte National Federation of Self Employed and Small Business Limited 1932 AC 617***
2. ***Kearney and Company Limited v Agip (Z) Limited and Ashalt and Tarmac 1985 ZR 7***
3. ***Mohamed A. Omar v Zambia Airways Corporation Ltd. 1986 ZR 23***
4. ***Arthur Lubinda Wina, Fredrick Titus Jacob Chiluba, Vernon Johnson Mwaanga, Akashambatwa Mbikusita Lewanika, Levy Patrick Mwanawasa, Ephraim Chibwe and Andrew Kashita v***

- The Attorney General 1990- 1992 ZR 95***
5. ***London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza v LCM Company Limited and United Bus Company of Zambia Ltd (liquidator) 1999 ZR 95***
  6. ***Simbeye Enterprises Limited and Investrust Merchant Bank (Z) Limited v Ibrahim Yousuf SCZ No 36 of 2000***
  7. ***Abel Mulenga and Others v Mabvuto Adan Avuta Chikumbi and others v The Attorney General 2006 ZR 33***
  8. ***Mike Hamusonde Mweemba v Kamfwa Obote Kasongo Zambia State Insurance Corporation Limited (intended joinder) 2006 ZR 101***
  9. ***Kelvin Hang'andu and Company (a firm) v Webby Mulubisha SCZ No 39 of 2008***
  10. ***Banda and others v Finance Bank Zambia Limited 2008/HP/1012***
  11. ***Hope Foundation for Women v Munalula Linyati SCZ/8/54/2013***
  12. ***Muvi Television Limited v Zambia Information Communication and Telecommunication Authority and others 2014/HPC/007***
  13. ***Sahyal Dudhia v Samir Karia and others SCZ Appeal No 107/2015***

LEGISLATION REFERRED TO:

1. ***The High Court Rules, Chapter 27 of the Laws of Zambia***
2. ***The Rules of the Supreme Court of England, 1999, edition***

OTHER WORKS REFERRED TO:

1. ***Murphy on Evidence, 5<sup>th</sup> Edition (1995) Universal Law Publishing***

This matter comes by way of appeal against the decision of the District Registrar which was delivered on 14<sup>th</sup> November, 2019, declining to grant an application made by the intended defendants to be joined to the proceedings. When the matter came up on 21<sup>st</sup> January, 2020, the parties applied to file skeleton arguments in support of the application, and thereafter for the court to deliver its ruling. The application was accordingly granted.

It is trite that an appeal from the Registrar proceeds by way of rehearing, as it was held in the case of *Mohamed A. Omar v Zambia Airways Corporation Ltd* <sup>(3)</sup> that;

***“An appeal to a judge in Chambers is treated as an actual rehearing of the application and the judge should have regard to the contents of supplementary affidavits”.***

Therefore, in this appeal, I will consider the affidavits that were filed before the District Registrar, as well as the skeleton arguments that have been filed. In the affidavit filed in support of the summons for joinder on 15<sup>th</sup> May, 2019, the deponent, Dennis Mambwe, deposes that the plaintiffs commenced this action on 4<sup>th</sup> March, 2019, by writ of summons, claiming that the defendants are illegally holding themselves out as office bearers of the Small Livestock Association of Zambia, hereinafter referred to as the Association.

It is deposed that the intended 2<sup>nd</sup> defendants are all bona fide legitimate and fully paid up members of the Association, as shown on exhibit ‘DM2’ to the affidavit, being the official receipts and identification cards of some of the intended 2<sup>nd</sup> defendants. That the intended 2<sup>nd</sup> defendants have an interest in the matter, and they are likely to be affected by the outcome of the suit.

Therefore, their presence before this court is necessary to ensure that all the matters in dispute or controversy are resolved, to avoid a multiplicity of actions.

In the affidavit in opposition that was filed on 17<sup>th</sup> June, 2019, the 1<sup>st</sup> plaintiff, Confidence Chatika, avers that the Association held elections on 12<sup>th</sup> October, 2018, which elected the new office bearers. That none of

the intended 2<sup>nd</sup> defendants vied for the positions for which the elections were held, but were just voters. However, the elections were disputed, and a petition was presented to the Chief Registrar of Societies.

It is deposed that none of the intended 2<sup>nd</sup> defendants took part in the petition, and neither did they oppose the said petition, as shown on exhibit 'CC1' to the affidavit in opposition. The deponent further states that the elections were nullified on 19<sup>th</sup> February, 2019, as shown on exhibit 'CC2', and by minutes dated 22<sup>nd</sup> February, 2010, the 1<sup>st</sup> plaintiff was nominated as interim Chairperson of the Association. The minutes of the meeting nominating the 1<sup>st</sup> plaintiff, as interim Chairperson are exhibited as 'CC3' to the affidavit.

The 1<sup>st</sup> plaintiff further deposes that by virtue of that nomination, he commenced these proceedings. He further avers that the dispute in casu relates to the leadership of the Association, and not to membership of the said Association. He also deposes that the intended 2<sup>nd</sup> defendants have not disclosed sufficient interest warranting them to be joined to the proceedings.

In the affidavit in reply that was filed on 6<sup>th</sup> August, 2019, the deponent, Dennis Mambwe, states that the gist of their application, is that the 1<sup>st</sup> plaintiff participated in the elections that were held by the Association, to elect office bearers, as Vice Secretary, but he lost the election to Moses Kazimba. This is shown on the elections record exhibited as 'DM1', to the affidavit in reply.

Further, that other people like Lucas Mukali participated in the elections as shown on exhibit 'DM1'. It is also deposed that contrary to the 1<sup>st</sup> plaintiff's assertions that the elections were disputed, the plaintiffs by the

letter exhibited as 'DM2' acknowledged the elected executive of the Association on 23<sup>rd</sup> January, 2019, and they demanded payment of allowances for conducting the elections.

It is averred that exhibit 'CC1' to the affidavit in opposition is misleading, as it does not reflect that the intended 2<sup>nd</sup> defendants disputed the election of the 1<sup>st</sup> defendants. It is reiterated that the intended 2<sup>nd</sup> defendants have an interest in the suit, and they are likely to be affected by its outcome.

The intended 2<sup>nd</sup> defendants filed skeleton arguments on 6<sup>th</sup> February, 2020. In those skeleton arguments, they reiterate that an appeal to a Judge at chambers is a rehearing of the actual application, and reliance is placed on the case of ***Kearney and Company Limited v Agip (Z) Limited and Ashalt and Tarmac*** <sup>(2)</sup> in that regard. It is argued that it was held in that case that;

***“An appeal from deputy registrar to a judge in chambers is an entirely fresh application and it is not improper to lodge further affidavits which should be taken note of by the appellate judge”.***

Reference is also made to the case of ***Mohamed A. Omar v Zambia Airways Corporation Ltd*** <sup>(3)</sup> which I have already referred to. It is argued that the application is made pursuant to Order XIV Rule 5 (1) of the ***High Court Rules, Chapter 27 of the Laws of Zambia***. Further that Order 15 Rule 6 (2) (b) (i) and (ii) of the ***Rules of the Supreme Court of England, 1999 edition*** also provides for joinder of parties to suits.

Also relied on is the case of ***Hope Foundation for Women v Munalula Linyati*** <sup>(11)</sup> where it was stated inter alia that;

***“In our respectful view, the learned trial Judge had no basis for holding that Order 14 Rule 5 of the High Court Rules was inapplicable. We accept, therefore, the appellant’s submission that this was a misdirection on the part of the learned Judge. Joinder of a party to an action or cause, where it can be justified, can be done at any stage of the proceedings, and may be done upon the application by a party to the litigation or non-party thereto, intending to be joined. Moreover, joinder can be ordered at any time, even after judgment has been passed in an action. The case of London Ngoma and others v LCM Company Limited referred to by both learned Counsel, remains good authority for this position.....”***

Other cases relied on in support of the application for joinder are ***London Ngoma, Joseph Biyela, Richard Ng’ombe, Friday Simwanza v LCM Company Limited and United Bus Company of Zambia Ltd (liquidator)*** <sup>(5)</sup>, which held that joinder could be made after judgment, and ***Mike Hamusonde Mweemba v Kamfwa Obote Kasongo Zambia State Insurance Corporation Limited (intended joinder)*** <sup>(8)</sup> where it was held that a court can order joinder of a party, if it appears that all persons who may be entitled to, or claim some share interest in the subject matter of the suit, may be affected by the result.

It is argued that all the intended 2<sup>nd</sup> defendants are fully paid up members of the Association, and are likely to be directly affected by the outcome of the proceedings, or the results of the action. That in as much as the dispute relates to the leadership of the association, the authority

inbued in the leaders is inherently drawn from the paid up members, who are the intended 2<sup>nd</sup> defendants, who are challenging the legitimacy of the plaintiff as interim Chairperson.

Therefore, the District Registrar misdirected herself both in fact and in law, when she ruled that the dispute does not involve the general membership of the Association, and that they are adequately represented, when they do not recognize the 1<sup>st</sup> plaintiff. It is further argued that the intended 2<sup>nd</sup> defendants being fully paid up members have locus standi or sufficient connection to the matter, thereby entitling them to be joined to the action.

As authority for this position, reliance is placed on the case of ***R v Inland Revenue Commissioner, Ex-parte National Federation of Self Employed and Small Business Limited*** <sup>(1)</sup>, and it is argued, that it was held in that case that;

***“Locus standi is the ability of the party to demonstrate to the court sufficient connection to and harm from the law and actions challenged to support that party’s participation in the case”.***

Still on the argument that the intended 2<sup>nd</sup> defendants as fully paid up members, should be joined, it is argued that if the application is not granted, they will not only be prejudiced by the outcome of the proceedings, but they will be deprived of the rights that they have within the association.

The case of ***Arthur Lubinda Wina, Fredrick Titus Jacob Chiluba, Vernon Johnson Mwaanga, Akashambatwa Mbikusita Lewanika, Levy Patrick Mwanawasa, Ephraim Chibwe and Andrew Kashita v***

**The Attorney General** <sup>(4)</sup> is relied on, and the argument is that it was stated in that case that;

**“To be "legally aggrieved" a person must be not merely dissatisfied with or even prejudiced by an action or decision. He must also have been deprived of or refused something to which he was legally entitled..... He must be able to point to some 'encroachment or vested rights.....'”**

On the finding by the District Registrar that the intended 2<sup>nd</sup> defendants had not demonstrated what interest that they seek to represent in the proceedings, the argument is that being fully paid up members of the Association, gives them legitimate and sufficient interest, especially that they do not recognize the 1<sup>st</sup> plaintiff as interim Chairperson of the Association, and are challenging his nomination.

The intended 2<sup>nd</sup> defendants also argue that the decision by the District Registrar that it would be a procedural inconvenience, and against the interests of justice to add all the members of the association to the action, and that there was no merit in the argument that the intended 2<sup>nd</sup> defendants were likely to be affected by the outcome of the action, it is reiterated that the presence of the intended 2<sup>nd</sup> defendant's in this action is necessary, so that all the issues in controversy can be effectually and completely determined by this honourable court.

The intended 2<sup>nd</sup> defendants reiterate that the purpose of joining parties to suits is to ensure that all the issues in controversy can be effectually and completely determined, and the case of **Simbeye Enterprises Limited and Investrust Merchant Bank (Z) Limited v Ibrahim Yousuf** <sup>(6)</sup> is relied on.



The intended 2<sup>nd</sup> defendants also argue citing the case of ***Kelvin Hang'andu and Company (a firm) v Webby Mulubisha*** <sup>(9)</sup>, that once a matter is before court in whatever place, if that process is properly before it, the court should be the sole court to adjudicate all the issues involved, and that all the interested parties have an obligation to bring all the issues in that matter before that particular court. Further, that forum shopping is abuse of process, which is unacceptable.

In the skeleton arguments that were filed by the plaintiff on 12<sup>th</sup> February, 2020, it is argued that the provisions of Order 14 Rule 1 of the ***High Court Rules***, as well as Order 15 (6) (2) of the ***Rules of the Supreme Court of England, 1999 edition*** empower a court to join an interested party to any proceedings, if they demonstrate that they have sufficient locus standi in the matter.

Reference is made to the case of ***Sahyal Dudhia v Samir Karia and others*** <sup>(13)</sup> where the Supreme Court pronounced that;

***“Our reading of both Order XIV Rule (1) of the High Court Rules and Order 15 Rule 6(2) shows that for an application to be made pursuant to these two rules, the following basic conditions must be met:***

***(iii) The affidavit in support or the pleadings must establish a nexus between the person sought to be joined to the pleadings”.***

That a perusal of the affidavit filed in support of the application does not in the slightest manner disclose or establish any nexus or connection between the 362 marketeers who are the intended 2<sup>nd</sup> defendants, and the leadership at hand. It is argued that the only thing that the affidavit

does, is to show that the intended 2<sup>nd</sup> defendants are cognizant of the proceedings before this court. Therefore, the District Registrar was on firm ground when she dismissed the application for joinder.

The plaintiffs also submit that the issue of sufficient interest is very critical to an application for joinder of a party to a suit, and the issue in dispute in this matter, is a leadership wrangle, and not a membership dispute. That while the intended 2<sup>nd</sup> defendants have adduced evidence to show that they are members of the Association, that in itself does not clothe them with the requisite degree of interest to warrant them being joined to the proceedings, where the interim Chairperson of the Association is seeking to effectuate the decision of the Registrar of Societies, who nullified the elections.

That there is nothing common between the 362 marketeers, and the 13, intended 1<sup>st</sup> defendants whose election was nullified, and further, the plaintiffs have issue with the 13, 1<sup>st</sup> defendants, and none of the intended 2<sup>nd</sup> defendants. Recognising that joinder of parties is to ensure that there is avoidance of multiplicity of actions, and reliance placed on the case of ***Banda and others v Finance Bank Zambia Limited*** <sup>(10)</sup>, the plaintiffs argue they have demonstrated that the 362 marketeers are not similarly circumstanced with the 13, 1<sup>st</sup> defendants.

Thus, no multiplicity of actions would ensue even if the 362 intended 2<sup>nd</sup> defendants were not joined to the proceedings, as they have no locus standi in the matter. It is also argued that joining the 362 to the proceedings would lead to absurdity in the judicial process, and an abuse of it. The plaintiffs rely on the case of ***Abel Mulenga and Others v Mabvuto Adan Avuta Chikumbi and others v The Attorney General*** <sup>(7)</sup>, which held inter alia that;

***“In order for the appellants to be joined as parties in the action, the appellants ought to have shown that they have an interest in the subject matter of the action. The mere fact that the appellants may have been affected by the decision of the court below does not clothe them with sufficient interest or locus standi entitling them to be joined in the dispute”.***

It is argued that there is no possibility that the 362 intended 2<sup>nd</sup> defendants will be affected either positively or negatively by the outcome of the proceedings, because in the main matter, the court will be called upon to determine the leadership wrangle, and the intended 2<sup>nd</sup> defendants are not among those whose election was nullified, and neither are they among the nominated interim committee members. As such, they have not established their locus standi for them to be joined to the proceedings.

With reference to the case of ***R v Inland Revenue Commissioner, Ex-parte National Federation of Self Employed and Small Business Limited*** <sup>(1)</sup> relied on by the intended defendants, it is argued that in that case, the court held that locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law and actions challenged to support that party's participation in a case.

Reliance is also placed on the case of ***Arthur Lubinda Wina, Fredrick Titus Jacob Chiluba, Vernon Johnson Mwaanga, Akashambatwa Mbikusita Lewanika, Levy Patrick Mwanawasa, Ephraim Chibwe and Andrew Kashita v The Attorney General*** <sup>(4)</sup> relied on by the intended defendants. The argument is further that the intended defendants will not be prejudiced by the outcome of the main matter,

which seeks to compel the 1<sup>st</sup> defendants to comply with the decision of the Registrar of Societies. Further, the intended defendants are not entitled to the reliefs being sought in the main matter, and the plaintiffs' claims will not encroach on their rights in any way.

Citing the case of ***Hope Foundation for Women v Munalula Linyati*** <sup>(11)</sup> relied on by the intended defendants, the plaintiffs argue that it was held in that case that;

***“The well settled position of the law for joining a person to an action is that he should be bound or otherwise affected by the results of the action. The issues to be settled in the action cannot be effectually and completely settled unless he is a party”.***

It is argued that the portions of the decisions in the cases of ***Hope Foundation for Women v Munalula Linyati*** <sup>(11)</sup> and ***London Ngoma, Joseph Biyela, Richard Ng’ombe, Friday Simwanza v LCM Company Limited and United Bus Company of Zambia Ltd (liquidator)*** <sup>(5)</sup> relied on by the intended defendants are misplaced, and have done nothing to advance the intended defendants' arguments, because the portions of the rulings that they have relied upon, addressed the issue of joinder of parties in relation to the stage of the proceedings, and not necessarily with regard to the principles applicable for joinder of parties.

On the case of ***Simbeye Enterprises Limited and Investrust Merchant Bank (Z) Limited v Ibrahim Yousuf*** <sup>(6)</sup> relied on by the intended defendants, the plaintiffs argue that this case is distinguishable from the case in casu, because in the ***Simbeye*** case, the issue for determination

***“In this case, and having found that the deponent did not lay before court proof of consent by the other 245 to be joined to the proceedings, Mr R. Simata, will bear the costs of this application”.***

It is also stated that the case of ***Muvi Television Limited v Zambia Information Communication and Telecommunication Authority and others*** <sup>(12)</sup> discussed the issue of similarity in circumstance, in order for one to be joined to the proceedings. The argument is that intended 2<sup>nd</sup> defendants have not discharged the burden of proof that they are similarly circumstanced, and that they have sufficient interest in the main matter. ***Murphy on Evidence, 5<sup>th</sup> edition (1995) Universal Law Publishing*** at page 89 is relied on with regard to the burden of proof.

That it states therein that;

***“The legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue, and to whose claim or defence, proof of fact in issue is essential”.***

The application for joinder was made pursuant to Order XIV Rule 5 (1) of the ***High Court Rules, Chapter 27 of the Laws of Zambia*** as read together with Order 15 Rules 6 (2) of the ***Rules of the Supreme Court of England, 1999 edition***. Order XIV Rule 5 (1) of ***the High Court Rules*** provides as follows;

***“5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result,***

*have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:*

*Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may, at any time before judgment in the suit, apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms (if any) as the Court or a Judge shall think fit. The Court or a Judge upon the application of any party may give directions for service upon a new party of copies of any writ of summons or other document or process and also may give such other directions in relation to the adding of such new party as justice and the circumstances of the case may require.*

Order 15 Rule 6 (2) of the *Rules of the Supreme Court of England* on the hand states that;

*“(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such*

*terms as it thinks just and either of its own motion or on application -*

*(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*

*(b) order any of the following persons to be added as a party, namely -*

*(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or*

*(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter”.*

It is clear from these provisions that in order for a party to be joined to the proceedings, they must demonstrate that they have sufficient interest in the subject matter of the suit, and that their presence in the action will enable the court to effectually and completely determine the matter. This position has been elucidated in the authorities that have been cited by both parties.

Cardinal is the holding in the case of *Hope Foundation for Women v Munalula Linyati* <sup>(11)</sup> that;

***“The well settled position of the law for joining a person to an action is that he should be bound or otherwise affected by the results of the action. The issues to be settled in the action cannot be effectually and completely settled unless he is a party”.***

The basis of the application by the intended 2<sup>nd</sup> defendants is that they are fully paid up members of the Small Livestock Association of Zambia, hence their interest in the matter. As rightly argued by the plaintiffs, the issue in contention in this matter relates to the leadership of the Association, and not membership thereto. Being a matter that involves leadership, while the intended 2<sup>nd</sup> defendants are fully paid up members of the Association, that alone is not sufficient to clothe them with sufficient interest to join the proceedings.

This is because once the issue of the leadership of the Association is resolved by this court, the intended 2<sup>nd</sup> defendants will not be bound by the decision, in the sense of complying with it, as the outcome will not be directed at them, but at the 1<sup>st</sup> defendants, who are alleged to be holding themselves out, as leaders of the association.

Further, even if the intended 2<sup>nd</sup> defendants are not parties to the action, this court will not fail to effectually and completely adjudicate on the dispute, as the parties who are in contention over the leadership of the Association, being the plaintiffs and the 1<sup>st</sup> defendants will be there to each prosecute their sides of the story. The role of the intended 2<sup>nd</sup>



