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

2019/HP/1018



BETWEEN:

MURAN INVESTMENTS LIMITED

PLAINTIFF

AND

JB TRUCKING AND MINING EQUIPMENT LIMITED

DEFENDANT

***BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 8TH SEPTEMBER, 2020.***

For the Plaintiff: Mr. N. C. Kanga – Makebi Zulu Advocates

For the Defendant: N/A

EX TEMPORE RULING

I have heard and considered the Plaintiff's Application for an adjournment and Counsel's submissions. A perusal of the record reveals that the Defendant's Counsel withdraw from acting for the Defendant on 25th March, 2020. In fact, at a scheduled hearing on 26th March, 2020, the Defendant's Counsel who was in attendance, advised the Court that they no longer act for the Defendant. The Plaintiff's advocates were not in attendance at this hearing and no reason was advanced for their absence.

This matter was set down for trial on 26th May, 2020, which gave the parties three months to prepare for trial. The Plaintiff has had ample time within which to make the necessary application but waited until 4 days before trial. The High Court (Amendment) Rules No. 58 of 2020 came into effect in June, 2020 and Counsel is familiar with these rules. The rules are very clear that a party shall not lodge and a Judge shall not consider any interlocutory application 14 days before commencement of trial. The Plaintiff's Counsel knew and ought to have lodged the application for an order of substituted service in good time but did not do so. The application was only lodged on 4th September, 2020, which is 4 days before today's scheduled date from commencement of trial. The rules are couched in mandatory terms. I am alive to the fact that I may exercise discretion to entertain an interlocutory application as provided under Order XIX Rule 3 (4) of the High Court (Amendment) Rules, 2020, but I can only do so where there are compelling reasons advanced by the applicant.

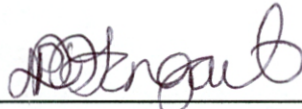
A perusal of the record shows that there has been some laxity exhibited by the Plaintiff in prosecuting this matter as can be seen by their absence at several hearings. In fact, when the Court issued an Order for Directions, the Plaintiff was not in attendance. Had the Plaintiff been in attendance at the last scheduled hearing on 26th March, 2020, they would have noted that Counsel for the Defendant had withdrawn from acting for the Defendant and would have made the necessary application, which they now seek albeit too late in the day. The manner which Counsel for the Plaintiff has exhibited before

this Court shows that the Plaintiff is not ready to prosecute this matter, which is now in backlog, having been commenced on 3rd July, 2019.

Further, I do not find the reasons advanced by Counsel, to be compelling enough for me to exercise my discretion. Accordingly, this matter is dismissed for want of prosecution. When Counsel is ready to prosecute an action against the Defendant, they are free to commence a fresh action.

I make no Order as costs.

Delivered at Lusaka this 8th day of September, 2020.



**P. K. YANGAILO
HIGH COURT JUDGE**