

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

2020/HPC/0282

BETWEEN:

JAMES CHANSA



PLAINTIFF

AND

ALLIANCE STREAM LIMITED

DEFENDANT

Before the Hon Madam Justice Mrs. Irene Zeko Mbewe in Chambers

Appearances

For the Plaintiff: Mr. J. Tembo of Messrs Linus E. Eyaa & Partners

For the Defendant: Ms. L. Kapunga of Messrs Musa Dudhia & Company

RULING

Cases referred to:

- 1. Liuwa v Attorney General SCZ Judgment No.38 of 2014*
- 2. Development Bank of Zambia and Another v Sunset and Another (1995-1997) ZR 187*
- 3. Zambia Revenue Authority v Jayesh Shah (2001) ZR 60*

Legislation referred to:

- 1. Rules of the Supreme Court of England 1999 edition*

This is the Defendant's application to strike out writ of summons and dismiss action for abuse of court process pursuant to *Order 18 Rule (19) (1) (b) and (d)* of the *Rules of the Supreme Court of England 1999 Edition*.

The application is supported by an affidavit filed on 26th May 2020, deposed to by Mwila Edith Kaunda the human resources officer in the employ of the Defendant company. The Deponent outlined the genesis of the application in the said affidavit as follows. On 15th April 2020, the Plaintiff commenced this action by writ of summons and statement of claim seeking payment of the sum of US\$45,000.00 being purported consultancy fees for services rendered to the Defendant. That contrary to the Plaintiff's allegation that he was engaged as a human resource consultant of the Defendant between 28th June 2013 to April 2017, the affidavit in support filed under cause number App/IRCLK/128/2019 shows that the Plaintiff was employed by the Defendant as human resource manager from July 2013 to November 2018 and was owed US\$51,000.00 unpaid salaries and gratuity.

The Defendant denied the Plaintiff was its employee and further averred that the Plaintiff was engaged as an independent contractor pursuant to a consultancy agreement dated 1st April 2017 and the Defendant duly settled the Plaintiff's invoices.

It is further deposed that from June 2013 to March 2017 the Plaintiff was employed by Lions Group Quarries Limited as human resource manager as evidenced under cause number APP/IRCLK/129/2019.

On 26th December 2019, a Ruling was delivered by the Industrial Relations Division in which it was found that the Plaintiff was an independent contractor of the Defendant and an employee of Lions Group Quarries Limited. Following this Ruling, the Plaintiff commenced the present case claiming he was an independent

contractor from 28th June 2013 to March 2017 and that the Plaintiff did not render invoices to the Defendant for the services purportedly rendered neither did he claim for payment of the consultancy fees.

The deponent contends it is an abuse of court process for the Plaintiff to keep hauling the Defendant to Court over the same subject matter in scattered litigation.

The Plaintiff opposed the application by way of affidavit filed on 22nd June 2020 in which he stated there has never been a substantive employment action commenced in the Industrial Relations Division against the Defendant which contained the claims endorsed on the writ of summons herein.

The Plaintiff further stated that the only application before the Industrial Relations Division was for leave to file notice of complaint out of time which was not granted thus the Plaintiff did not commence any action against the Defendant. That the Court did not pronounce itself on whether or not the Plaintiff should be paid for the services rendered to the Defendant for the period June 2013 to March 2013.

The Plaintiff stated that the parties did not sign the consultancy agreement prepared by the Defendant due to pending negotiations in respect of payments for services which the agreement did not address.

The Plaintiff admitted being employed by Lions Group Limited between June 2013 and March 2017 alongside with offering his consultancy services relating to human resource to the Defendant.

The Plaintiff further stated that the invoices for June 2013 to March 2017 were only going to be presented after the conclusion of negotiations for payment, and the Defendant has not disputed that the Plaintiff provided services between June 2013 and March 2017. According to the Plaintiff, the Defendant deliberately refused and or neglected to engage in dialogue regarding the payment for the service rendered

and that this action was not an abuse of court process as the issue of non-payment was not determined.

In the affidavit in rejoinder filed on 10th July 2020 and deposed to by Juandre Hayton a manager of the Defendant Company, he averred that the factual basis of the Plaintiff's application in the employment action was that he was employed as human resource manager by the Defendant from July 2013 to November 2018 when his contract was terminated.

According to the deponent, the issue of alleged unpaid services could not at the time be pronounced on as the Plaintiff alleged he was an employee and not a consultant. The deponent stated that the relationship between the Plaintiff and Defendant was wholly governed by the terms of the consultancy agreement and the Plaintiff was duly paid for his services.

The parties filed skeleton arguments which I have taken note of.

I have given due consideration to the application before me, the affidavit evidence, skeleton arguments, list of authorities availed to the Court.

At the hearing of the application both Counsel relied on the respective affidavits, skeleton arguments and oral submissions.

The Defendant's contention is that the writ of summons and statement of claim are frivolous and vexatious and an abuse of Court process. Reference was made to Order 18 Rule (19) (1) (b) and (d) of the *Rules of the Supreme Court of England 1999 Edition*, which states that:

“(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

(b) *it is scandalous, frivolous or vexatious; or*

(d) *it is otherwise an abuse of the process of the Court;*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

According to the Defendant, the Plaintiff had commenced an action by originating summons in the Industrial Relations Division of the High Court under cause number App/IRCLK/128/2019 for leave to file a Complaint against the Defendant out of time. In the said action the Plaintiff claimed he was employed by the Defendant from July 2013 to November 2018 and was not paid for his services, and a Ruling was rendered dismissing the Plaintiff’s application for inordinate delay and stated that the Plaintiff was not an employee of the Defendant but an independent contractor.

Premised on this, the Defendant argues it is an abuse of Court process for the Plaintiff to bring the current action in which he claims to have been engaged as an independent contractor of the Defendant from 28 June 2013.

My attention was drawn to *Liuwa v Attorney General SCZ Judgment No.38 of 2014* where the Supreme Court cited the case of *Owens Bank Ltd v Bracco and Others (1992) 2 ALL ER 193, 203* in which Lord Bridge, stated as follows:

“Moreover, this Court has inherent jurisdiction not only to prevent abuses of Court process; but also to protect its authority and dignity. We have said it before, that a party in a dispute with another over a particular subject cannot be allowed to deploy his grievances piecemeal in scattered litigation and keep on hauling the same opponent over the same matter.”

The Defendant submits that the subject matter under cause App/IRCLK/128/2019 is substantially the same as the present action which amounts to multiplicity of actions and an abuse of court process.

A perusal of the record under cause number App/IRCLK/128/2019 shows that the Plaintiff (Complainant therein) indeed filed originating summons to file a complaint out of time which was accompanied by a supporting affidavit on 15th August 2019 in the Industrial Relations Division of the High Court. The averments were that the Plaintiff was employed as human resource manager of the Defendant (Respondent therein) and was not paid his salary after termination of the contract.

In a Ruling dated 26th December 2019, the Honourable Registrar dismissed the application as there was an inordinate delay and that the complainant was an independent contractor and not an employee of the Respondent.

In contrast, the evidence on record under cause number 2020/HPC/0282 which is the present case, indicates that the Plaintiff by way of writ of summons filed on 15th April 2020 claims against the Defendant, inter alia, for the payment of the sum of US\$45,000.00 being monies owed to the Plaintiff for the human resource consultancy services rendered to the Defendant from July 2013 to March 2017.

I am alive to the fact that the Court frowns upon multiplicity of actions as stated by the Supreme Court in the case of *Development Bank of Zambia and Another v Sunset and Another (1995-1997) ZR 187*, that:

“We disapprove of parties commencing a multiplicity of procedures and proceedings and indeed a multiplicity of actions over the same subject matter.”

All Courts take a firm stand against an established abuse of court process. However, before a party is admonished, it must be established that the erring party has abused the court process and the efficient and effective administration of justice.

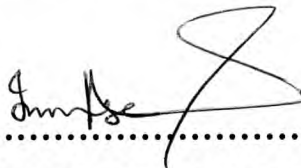
However, the issue that was ruled upon by the Honourable Registrar is whether or not the Plaintiff should be granted leave to file the Complaint out of time and not the substantive issues that were intended to be raised in the Complaint. A perusal of the said Ruling shows that the Honourable Registrar went as far as stating that the Complainant (Plaintiff herein) in the current matter was an independent contractor and an employee of the Respondent (Defendant) which to me was beyond what the Plaintiff requested for in his summons for leave to file the Complaint out of time.

I am of the considered view that it would a great injustice for this Court to strike out the writ of summons on the premise that the action is an abuse of Court process when the Plaintiff was not given an opportunity to be heard on the substantive issues. I am fortified by the guidance of the Supreme Court in the case of *Zambia Revenue Authority v Jayesh Shah (2001) ZR 60* that cases should be decided on their substance and merit.

In sum, the Defendant's application is dismissed for lack of merit.

Costs to the Plaintiff to be taxed in default of agreement.

Delivered at Lusaka this 26th day of August, 2020.



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IRENE ZEKO MBEWE
HIGH COURT JUDGE