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

2020/HPC/0329



**BETWEEN:**

**TRANSQUIC SERVICES LIMITED**

**PLAINTIFF**

**AND**

**AFCL ZAMBIA LIMITED**

**DEFENDANT**

**Before Hon. Mr. Justice Bonaventure C. Mbewe in Chambers.**

*For the Plaintiff* :

*For the Defendant* :

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**RULING EX -TEMPORE**

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**CASES AND AUTHORITIES REFERED TO:**

1. *Seed Company Limited v. Chartered International (Pvt) Limited (1999) ZR;*
2. *Magnum (Zambia) Limited v. Basif Quadri (Receiver Manager) and Grindlays Bank International Zambia Limited (1981) Z.R 141;*
3. *The Corporate Insolvency Act No. 9 of 2017;*
4. *Halsbury's Laws of England, Volume 23 Third Edition.*

This is an action commenced by Writ of Summons filed on 30<sup>th</sup> April, 2020. The Endorsement in the Writ states that the Plaintiff's claim is for:

1. *An Order to set aside Consent Judgment entered in cause number 2020/HPC/0010 between the Plaintiff and Defendant;*
2. *Any other relief that the Court may deem just and fair;*
3. *Costs.*

In Paragraphs 9 and 10 the Plaintiff asserts that it seeks an Order setting aside the Consent Judgment as its then advocates proceeded to settle the said Consent Judgment with the defendant under a mistaken understanding by its Advocates of its instructions leading to the said Consent Judgment being executed without its authority.

The action commenced to try and overturn the Consent Judgment in the Cause No. 2020/HPC/0010 between the same parties is correctly brought in so far as it seeks an Order to set aside the Consent Judgment as held in Zambia **Seed Company Limited v. Chartered International (Pvt) Limited (1999) Z.R** in which the Court held that;

***“By law the only way to challenge a Judgment by Consent would be to start an action specifically to challenge that consent.”***



**Paragraph 1672 of Halsburys' Laws of England** on the same subject of setting aside consent judgments or orders states that;

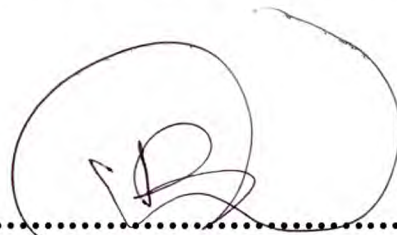
***“A judgment given or an order made by consent may on fresh action brought for the purpose be set aside on any ground that would invalidate a compromise not contained in a judgment or order. Compromises have been set aside on the ground that the agreement was illegal as against public policy, or was obtained by fraud or misrepresentation or non-disclosure of a material fact which there was an obligation to disclose or by duress or was concluded under a mutual mistake of fact, ignorance of a material fact or without authority.”***

That said, this Court however, questions the capacity of the Plaintiff to commence this action as the said Plaintiff is cited as Transquic Services Limited without stating that it is in liquidation or that the action is being brought by the Liquidator. The Directors and/or shareholders of the said Plaintiff Company are aware or ought to be aware that this Court on 25<sup>th</sup> February, 2020 handed down a Ruling in the matter under Cause Number **2019/HPC/0515** in a Winding Up Petition between Stanbic Bank Zambia Limited and Transquic Services Limited, which Ruling Ordered that the Respondent therein Transquic Services Limited, be wound up in accordance with the provisions of the **Corporate Insolvency Act No. 9 of 2017** and appointed the Official Receiver as Liquidator of Transquic Services Limited. This Court takes judicial notice of those winding up proceedings.

In **Magnum (Zambia) Limited v. Basif Quadri (Receiver Manager) and Grindlays Bank International Zambia Limited (1981) Z.R. 141** which held, inter alia, that a company under receivership has no *locus standii* independent of its Receiver and as long as a company continues to be subject to receivership, it is the receiver alone who can sue or defend in the name of the company. This principle applies to liquidations as well.

For the reasons stated above, this action cannot therefore be sustained and having been commenced on 30<sup>th</sup> April, 2020, a date occurring after the Winding Up Order issued on 25<sup>th</sup> February 2020 by this Court, which Order has not been set aside or overturned and is therefore valid and in full force, this action is accordingly dismissed with costs to the Defendant.

**Delivered at Lusaka this 29<sup>th</sup> day of June, 2020.**

A handwritten signature in black ink, consisting of a large, stylized 'B' and 'M' intertwined, positioned above a horizontal dotted line.

**Bonaventure C. Mbewe**  
**HIGH COURT JUDGE**