

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Commercial Division)

2020/HPC/0012

BETWEEN:

ACME INFORMATION TECHNOLOGIES LIMITED

PLAINTIFF

AND

ELIAS PARASKEVA SPYRON
MARY A LANGLEY SPYRON
(T/A AGRILINK FARMING)



DEFENDANT

Before Lady Justice B.G. Shonga this 15th day of June 2020

For the Plaintiff, Mr. M. K. Sambo, Messrs Sambo Kayukwa & Co.

For the Respondent, Mr. K. Daka, Messrs Solly Patel Hamir and Lawrence

RULING

Cases Referred to:

- 1. Finance Bank Zambia Limited v. Noel Nkhoma, SCZ/8/2015.**
- 2. Development Bank of Zambia and Another V Sunvest Limited (1995-1997) Z.R. 187.**

3. *BP Zambia Plc v. Interland Motors Limited (2001) Z.R. 37.*
4. *Beatrice Muimi v. Sylvia Chunda, Appeal No. 50/2000.*
5. *Wimpey's case ([1953] 1 All ER 583.*

Legislation and Other Material Referred To:

1. *Order 14A, as read with Order 33, rules 3 and 7, Rules of the Supreme Court, 1965, Supreme Court Practice 1999 edition (The White Book).*
2. *Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia.*
3. *The Subordinate Courts (Amendment) Act, 2018*
4. *Order LIII, rule 6 (1) of the High Court Rules, Chapter 27 of the Laws of Zambia.*

1.0 INTRODUCTION

- 1.1 In the main, the plaintiff commenced this action against the defendant by dint of a writ of summons filed on 20th January, 2020. The plaintiff's claim is for: (i) payment of US\$19, 151.03 allegedly owed by the defendant in respect of unsettled invoices for services provided by the plaintiff to the defendant; (ii) interest; (iii) and costs.
- 2.2 The defendant entered appearance and filed a defence on 10th March, 2020. On the same date it filed a summons moving the Court to consider a preliminary issue on a point of law pursuant to *Order 14A, as read with Order 33, rules 3 and 7 of the Rules of*

the Supreme Court, 1965, Supreme Court Practice 1999 edition (The White Book) and Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia. The preliminary issue was expressed as follows:

“Whether the plaintiff’s action against the defendant constitutes an abuse of process on account of multiplicity of actions or forum shopping given that there is currently another action being litigated upon in the Subordinate Court under cause number 2018/CRMP/2002 between Heather Anne Chalcraft and ACME Information Technologies v Elias A. Paraskeva Spyron and Mary A. Langley Spyron (T/A Agrilink Farming).

2.0 SUMMARY OF THE FACTS

2.1 The affidavit evidence before Court reveals that on 21st November, 2018 proceedings were commenced against the defendant herein in the Subordinate Court under cause number 2018/CRMP/2002. The action was instituted at the instance of Heather Anne Chalcraft, the 1st plaintiff and ACME Information Technologies Ltd (the plaintiff herein) as the 2nd plaintiff. In that cause, the plaintiffs claimed the sum of US7, 642.08 or its kwacha equivalent in respect of monies allegedly owed and arising out of equipment and internet services rendered to the defendants at their own instance and interest at the current bank lending rate. The claim in the Subordinate Court was founded upon an agreement between the parties made sometime in 2006 and in 2014.

2.3 In so far as the material facts upon which the claims under this cause are premised, they are contained in a three paragraphed statement of claim. Paragraph 1 of the statement of claim describes the plaintiff. Paragraph 2 contains two sentences: the first describes the defendants and the second reads as follows:

"The plaintiff was contracted by the defendants to provide IT services. The plaintiff provided the services as contracted."

The last paragraph reads as follows:

"The defendant has since refused or neglected to pay the money owed."

3.0 THE ISSUES AND THE LAW

3.1 In my view, there are two questions of law to be determined. Firstly, whether by instituting these proceedings after commencing proceedings in the Subordinate Court, the plaintiff birthed the type of multiplicity of actions which is regarded as an abuse of court process? Secondly, whether the plaintiff has come into conflict with the court's processes by forum shopping?

3.2 The case of *Finance Bank Zambia Limited v. Noel Nkhoma, SCZ/8/2015*¹ seems to be an appropriate latchkey to considering multiplicity of actions. In that case, the Supreme elaborated as follows:

“multiplicity of actions refers to commencement of more than one action on the same facts or transaction.”

The Court also equated multiplicity of actions to piece meal litigation or litigation split and instituted in chapters.

- 3.3 As regards the type of multiplicity which is frowned upon by the courts and regarded as an abuse of court process, this can be discerned from the seminal case of ***Development Bank of Zambia and Another V Sunvest Limited (1995-1997) Z.R. 187²***. There, the Supreme Court held as follows:

“The Court does not approve of the commencement of a multiplicity of procedures, proceedings and actions, in different Courts, which may result in the Courts making contradictory decisions on the same matter.”

- 3.4 The Supreme Court firmly stood by and adopted its decision in ***DBZ v. Sunvest*** when it determined the case of ***BP Zambia Plc v. Interland Motors Limited (2001) Z.R. 37³*** where the Court reasoned as follows:

“A party in dispute with another over a particular subject should not be allowed to deploy his grievances piece meal in scattered litigation and keep on hauling the same opponent, over the same matter before various Courts.

- 3.5 The ratiocination illuminated by the Court in the ***BP Zambia Plc v. Interland*** case was, in the words of the Court, that:

“The administration of justice would be brought into disrepute if a party managed to get conflicting decisions which undermine each other, from two or more different judges over the same subject matter”.

3.6 On the aspect of forum shopping, I draw attention to the case of **Beatrice Muimi v. Sylvia Chunda, Appeal No. 50/2000⁴** where the Supreme Court had this to say:

“Once a matter is before the court in whatever place it is that process if properly before that court should be the sole court to adjudicate all issues involved. All interested parties have an obligation to bring all issues in that matter before that particular court without resorting to shopping for forum in other parts of Zambia. This is an abuse of process which should not be accepted”

3.6 Riding on the pronouncement of the Court, I conclude that the answer to the question whether the plaintiff is forum shopping turns on whether the plaintiff could have brought the issues raised in this case before the Subordinate Court that is presiding over the first mentioned case. If the plaintiff could have done so, then, in line with the finding in the **Beatrice Muimi** case, it ought to have done so, failure of which would support a finding that it was forum shopping.

4.0 APPLICATION OF THE LAW

4.1 Beginning with the issue of forum shopping, I observe that according to **the Subordinate Courts (Amendment) Act, 2018**, the highest level of jurisdiction that the Subordinate Court enjoys in civil causes of this nature is One Hundred Thousand Kwacha

(K100, 000.00). *In casu*, it is not disputed that the sum claimed in this action, being USD\$ 19, 151.03 was, as at 20th January, 2020 when the action commenced, equivalent to a sum in excess of the jurisdiction of the Subordinate Court. That being the case, I cannot conclude that the plaintiff is forum shopping. That is because it simply does not have the liberty to take this claim before the aid Subordinate Court. I have considered that the plaintiff could have discontinued the action in the Subordinate Court. However, there is no affidavit evidence before me which illuminates the stage of those proceedings to enable me to consider whether that could have been a viable option.

4.2 With respect to multiplicity, having carefully considered the law, I opine that this Court can only conclude that the plaintiff has triggered a multiplicity of actions if I am satisfied that this cause is founded upon the same facts or transaction which ground the case in the Subordinate Court.

4.2 In that regard, I interrogated the facts presented through the affidavit evidence before me and the statement of claim herein. In so doing, I discovered that there is a dearth of material facts upon which this case relies on. The statement of claim does not state, in clear terms, material facts such as when the parties entered the contract nor the value of the contract, nor any material terms. In the absence of such facts, the Court is not in a position to assess whether there is in fact any multiplicity.

- 4.3 However, the absence of material facts prompted me to consider **Order LIII, rule 6 (1) of the High Court Rules, Chapter 27 of the Laws of Zambia**, which reads as follows:

“A statement of claim or counter-claim, as the case may be, shall state in clear terms the material facts upon which a party relies and shall show a clear cause of action, failing which the statement of claim or counterclaim may be struck out or set aside or the action dismissed by the Court, on its own motion or on application by a party”

Given the failure by the plaintiff to clearly set out, in its statement of claim, the material facts upon which it relies, I, in exercise of the power vested under **rule 6(1) of Order LIII of the High Court Rules** dismiss this action, with costs. The plaintiff is at liberty to commence fresh proceedings upon payment of costs.

- 4.4 My decision to expressly articulate the plaintiff's right to commence a fresh action is rooted in the principle that a procedural dismissal is not a final determination on the merits. The principle was succinctly explained by Morris LJ in **Wimpey's case** ([1953] 1 All ER 583⁵ where he stated:

“When an action has been dismissed for want of prosecution, the defendant has not been “sued to judgment” at all. There has been no finding on the merits. There has been no judgment that the defendant is not liable. It is only an interlocutory order—a matter of procedure—which does not affect substantive rights.”

Thus, the plaintiff is not put out of his right to adjudicate its claim.

Date at Lusaka this 15th day of June, 2020



JUDGE B.G. SHONGA
HIGH COURT