

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

2020/HPC/0169

**BETWEEN:**

**CHRISTINE KANGWA**  
**(Suing as Attorney of Mary Kapampa)**

**PLAINTIFF**

**AND**

**JENNIFER SIWAWA KALUMBA**  
**(Sued in her capacity as widow and beneficiary  
of the Estate of the late Wilson Chisaka Kalumba)**

**FIRST DEFENDANT**

**NSOMBOSHI KALUMBA**  
**(Sued in his capacity as co-administrator of the  
Estate of the late Wilson Chisaka Kalumba)**

**SECOND DEFENDANT**

**YORAM KAPAI**  
**(Sued in his capacity as co-administrator of the  
Estate of the late Wilson Chisaka Kalumba)**

**THIRD DEFENDANT**

**MARGARET SIBONGILE KALUMBA**  
**(Sued as beneficiary to the Trust Land)**

**FOURTH DEFENDANT**

**NELLY MUONGA KALUMBA**  
**(Sued as beneficiary to the Trust Land)**

**FIFTH DEFENDANT**

**MUKOBE KALUMBA**  
**(Sued as beneficiary to the Trust Land)**

**SIXTH DEFENDANT**

**Before the Honourable Mr Justice K. Chenda on 30<sup>th</sup> April 2020**

*For the Plaintiff* : *Ms. M. Mwansa, Reagan Blankfein  
Legal Practitioners*

*For the Fourth, Fifth, and  
Sixth Defendant* : *Ms. A. Muma, national Legal Aid  
Clinic for Women*

*For the Second and Third  
Defendant* : *Mrs. C. S. Mwamba, SCM  
Legal Practitioners*

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**RULING**

*On Preliminary Issue on a Point of Law*

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## 1 INTRODUCTION

1.1 This action was commenced by writ of summons and statement of claim filed on 10<sup>th</sup> March 2020 whereby the Plaintiff is suing as attorney for Mary Kapampa. The affidavit evidence in the Plaintiff's pending application for an injunction shows that Mary Kapampa is the Plaintiff's sister based outside jurisdiction in the United States of America.

1.2 Upon discovery of the aforesaid, I invoked the provisions of Order 14A Rule 1(1) of the Rules of the Supreme Court of England<sup>1</sup> ("**RSC**") to raise the following preliminary issue:

*"Whether the power of attorney between Mary Kapampa and the Plaintiff constitutes the Plaintiff as a legal representative of Mary Kapampa with locus standi to bring a representative suit within the meaning of Order 14 Rule 1 of the High Court Rules<sup>2</sup> ("**HCR**)."*

1.3 I invited the parties to make written submissions in respect of the said issue and set the matter down for *viva voce* hearing on 30 March 2020, which was adjourned to 30 April 2020 at the parties' instance.

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<sup>1</sup> 1965 contained in the White Book 1999 Edition

<sup>2</sup> Chapter 27 of the Laws of Zambia

1.4 The matter proceeded to hearing with the Plaintiff electing to make *viva voce* submissions whilst the Defendants' respective Advocates indicated that they would leave the determination to the Court.

1.5 After careful consideration, my decision is as set out hereunder.

## **2 THE REPRESENTATIVE SUIT ISSUE**

2.1 Order 14 Rule 1 of the HCR provides:

*"If any plaintiff sues, or any defendant is sued, in any representative capacity, it shall be expressed on the writ. The Court or a Judge may order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties."* (Emphasis added)

2.2 Quite clearly, Order 14 Rule 1 of the HCR allows for a party to sue as a representative on behalf of another.

2.3 However, perusal of the rest of the provisions of Order 14 and indeed the HCR as a whole does not state whether a power of attorney suffices at law to entitle a party to sue in its own name in a representative capacity on behalf of another.

2.4 Section 10(1) of the High Court Act<sup>3</sup> stipulates that where the domestic rules of Court are deficient in any particular point of practice and procedure then recourse, in a civil matter, is to be had to the RSC.

2.5 A review of the RSC reveals that the lacuna is filled by Order 6 Rule 1 thereof, particularly explanatory note 6/1/10 which provides:

“6/1/10

*Attorney plaintiff*

**If one person sues as attorney for another or others under power of attorney, he should sue in the name of the principal.** See *Jones v. Gurney* [1913] W.N. 72.”  
(Emphasis added)

2.6 Owing to the compulsive wording of section 10(1) of the High Court Act, I cannot ignore the express provision under 6/1/10 of the RSC.

2.7 It follows therefore that in the case before Court, the power of attorney does not, at law, entitle the Plaintiff to take out this action in her own name purportedly as a representative suit on behalf of Mary Kapampa. The preliminary issue is thus resolved in the negative.

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<sup>3</sup> Chapter 27 of the Laws of Zambia

### 3 CONCLUSION AND ORDERS

3.1 Where a party creates a power of attorney in favour of another, the donee of the power does not thereby acquire a right (under Order 14 Rule 1 of the HCR) to take out a representative suit in the donee's name on behalf of the donor.

3.2 The most that the donee can do in such circumstances is to be the mover, behind the scenes, of an action in the name of the donor.

3.3 In the case before Court, the power of attorney between Mary Kapampa and the Plaintiff did not suffice at law to entitle the latter to bring a representative suit. Consequently the Plaintiff is deprived of locus standi to bring and maintain this action.

3.4 The Plaintiff's action is accordingly dismissed *in limine*. However, there will be no order for costs, since:

- (i) the terminal issue emanated from the Bench and not the litigants; and
- (ii) the Defendants did not pray for the same.

Dated at Lusaka this 30<sup>th</sup> day of April 2020

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**K. CHENDA**  
**Judge of the High Court**