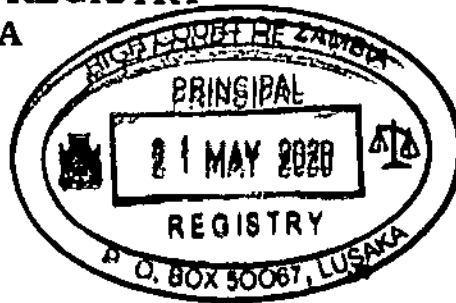


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2012/HP/1215

BETWEEN:

LEWIS MOSHO



PLAINTIFF

AND

SHOPRITE HOLDINGS LIMITED
SHOPRITE CHECKERS (PTY) LIMITED
DRUG ENFORCEMENT COMMISSION

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT

Before Honourable Mrs. Justice S. M. Wanjelani on the 21st
day, May, 2020.

For the Plaintiff: Not applicable
For the Defendants: Not applicable

RULING ON APPLICATION TO VARY ORDERS FOR DIRECTION

Cases referred:

1. *Newplast Industries V Commissioner of Lands (2001) ZR 51*
2. *Access Bank (Z) Ltd v Group Five Zcon Business Park Joint Venture (suing as Firm) SCZ/8/52/2014.*
3. *Twampane Mining Cooperative Society Limited v E and M Storti Mining Limited SCZ Judgment No. 20 of 2011.*

Legislation and other materials referred to:

1. *The High Court Act, Cap 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court, 1999.*

On 11th May, 2020, the Plaintiff filed this *ex-parte* application to vary the Order for Directions issued on 25th March 2020 pursuant to **Order 19 Rule 2 of the High Court Rules.**

The application is supported by an Affidavit sworn by **Paul Chola**, Counsel seized with conduct of the matter in which he averred that the Court granted the Plaintiff Leave to Amend the Writ and Statement of Claim on 25th March 2020 within seven days, that is on or before 3rd April, 2020.

The Deponent averred that the Plaintiff was unable to comply with the Order within the stipulated time due to the Covid-19 pandemic which necessitated the closure of the Firm representing the Plaintiff in Order to effectively help fight the further spread of the deadly pandemic and to observe social distancing measures. The Deponent vied that the Court has the jurisdiction to vary the Order it had earlier granted and no prejudice would be occasioned to the Parties and the interests of justice would be served.

I have proceeded to consider the application based on the Affidavit in Support and the whole record of this matter. I have dispensed with a hearing based on the holding in the case of **Newplast Industries V Commissioner of Lands**⁽¹⁾ where it was held, *inter alia*, that:

"The content of what amounts to the hearing of the parties in any proceedings can take either the form of oral or written evidence. Where the evidence in support of an application is by way of affidavit, the deponent cannot be heard to say that he was denied the right of a hearing simply because he had not adduced oral evidence."

This matter was commenced on 15th October, 2012, and adjourned *sine die* with liberty to restore on 14th January, 2013,

pending the conclusion of criminal proceedings against the Plaintiff in the Subordinate Court.

According to the Affidavit in Opposition to the Application by the Defendants to Dismiss the Matter for Want of Prosecution sworn by the Plaintiff and filed into Court on 21st March, 2019, the criminal proceedings ended in the last half of the year 2016.

On 13th May 2019, this Court delivered a Ruling dismissing the Defendant's application to dismiss the matter for want of prosecution and an Order for Directions was issued on the same day, indicating the matter should come up for a Status Conference on 8th July, 2019.

On 31st May 2019, the Plaintiff filed a Notice of Discontinuance against the 3rd Defendant and on 8th July 2019, there was no compliance with the Order for Direction. The Plaintiff's Counsel informed the Court that they wanted to file an amended Writ and Statement of Claim and the Court directed that a formal application should be made, and the matter would come up for a Status Conference on 9th August, 2019.

On that date, Counsel for the Plaintiff informed the Court that the application to Amend the Writ and Statement of Claim had not been done as the client had been out of jurisdiction for about 2 weeks. Not being satisfied with the reason advanced, the Court struck out the matter with liberty to restore within 14 days and application to restore was done on the same day and restored by the Court on 16th August 2019, and a Notice of Hearing for 3rd October, 2019 was issued on the same day.

The Plaintiff then filed the application to Amend the Writ and Statement of Claim on 2nd October, 2019, such that the Defendant was obviously not served when the matter came up the next day on 3rd October, 2019.

The application was then rescheduled to 9th December, 2019, on which date the Defendants indicated that they intended to raise a Preliminary Issue, *viva voce* pursuant to **Order 14 (A) (2) of the Rules of the Supreme Court** and the matter was rescheduled to 27th January 2020 for that application. This application was withdrawn on that date and the application to amend the Writ and Statement of Claim was then set for 25th March, 2020.

During the hearing on 25th March, 2020, both Counsel were present when the Order was granted to the Plaintiff to file the Amended Writ and Statement of Claim within 7 days.

The above narration of proceedings in this matter shows that the Plaintiff has exhibited a lax attitude in prosecuting this matter which was commenced in 2012. There has been consistent non-compliance with the Orders of this Court.

I take judicial notice of the Covid-19 pandemic and the measures that have been put in place to help fight it, including social distancing. However, the High Court Registry was not closed and if anything, people were merely encouraged to work from home not to stop working.

Furthermore, the Amended Writ and Statement of Claim had been exhibited to the application and should have been filed almost immediately.

I further take cognisance of the fact that matters need to be disposed off on merit as alluded to in various authorities including **Access Bank (Z) Ltd v Group Five Zcon Business Park Joint Venture (suing as firm)**⁽²⁾. However, I also take note of the fact that the Rules of Court and the associated rules of practice are devised in the public interest to promote the expeditious dispatch of litigation and avoid prejudice to the Parties (see **Order 3 (5)(6) of the Rules of the Supreme Court**). This position was re-affirmed in the case of **Twampane Mining Cooperative Society Limited v E and M Storti Mining Limited**⁽³⁾, where the Supreme Court held, *inter alia*, that:


“It is important to adhere to the rules of Court in Order to ensure that matters are heard in an Orderly and expeditious manner. Those who choose to ignore Rules of Court do so at their own peril.”

Based on the foregoing, I find the reason advanced for the non-compliance unsatisfactory and merely adds to the fact that the Plaintiff is not serious with prosecuting this matter.

Consequently, this matter is hereby dismissed for want of prosecution for non-compliance with Orders of the Court pursuant to **Order 25/L/1 Rules of the Supreme Court, 1999**, with costs to the Defendants.

Leave to appeal is granted.

Delivered at Lusaka this 21st day of May, 2020.

.....

S.M. WANJELANI
JUDGE