

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2024/HP/0416

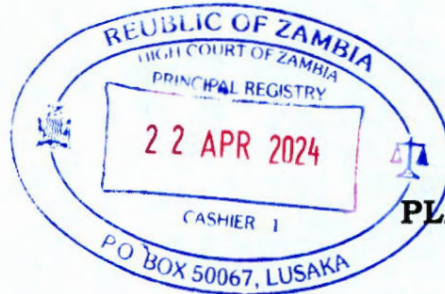
(Civil Jurisdiction)

BETWEEN:

ALICE MANDA & 11 OTHERS

AND

**INTERMARKET BANKING CORPORATION
ZAMBIA LIMITED (IN LIQUIDATION)**



PLAINTIFF

DEFENDANT

***Before Honourable Mr. Justice C. Kafunda In Chambers on the
22nd day of April, 2024***

For the Plaintiff: None

For the Defendant: None

RULING

LEGISLATION REFERRED TO:

- 1) High Court Rules Chapter 27 of the Laws of Zambia.**
- 2) Rules of the Supreme Court (White Book) 1999 Edition**
- 3) Section 66 of the Corporate Insolvency Act No. 9 of 2017**

The Plaintiff filed an *ex-parte* summons for leave to proceed with action against the Defendant, which is a company in liquidation. The application is made pursuant to **Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia** and **Section 66 of the Corporate Insolvency Act**.

Relevant to this Ruling is **Section 66 of the Corporate Insolvency Act**, which provides as follows;

“Where a winding up order is made or a provisional liquidator is appointed, an action or proceeding shall not be proceeded with, or commenced against, a company except by leave of the Court and subject to such terms and conditions as the Court may impose.”

Whereas the **Corporate Insolvency Act** prescribes as above, it does not prescribe the procedure by which a party, seeking leave to proceed against a company in liquidation, should employ. Where statute provides for an application before the High Court but does not provide for the procedure to be deployed in respect of that application, the procedure to be employed is as is set out under **Order 5 Rule 3 of the Rules of the Supreme Court (White Book) 1999 Edition** which provides that;

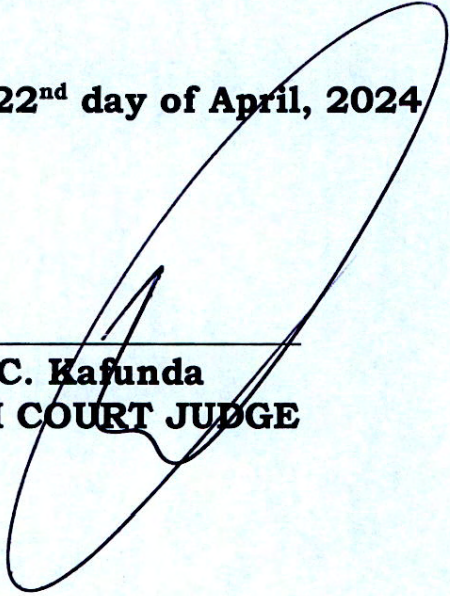
“Proceedings by which an application is to be made to the High Court or a Judge thereof under any Act must be begun by originating summons except where by these rules or by or under any Act the application in question is expressly required or authorized to be made by some other means.”

Given the above position of the law, it was erroneous on the part of the Plaintiff to commence these proceedings by way of *ex-parte* summons. *Ex-parte* summons and summons, can only be deployed in an existing action and cannot be used to found an originating action. Notwithstanding that an application for leave to proceed against a company in liquidation is a preliminary step to the main action i.e the action against a company in liquidation, it is still the case that the application is originating in nature because it is coming for the first time.

Thus, in an application that is coming to Court for the first time, a party moving the Court on such an application must do so by way of originating summons, if the application is one that can be disposed of in chambers as is the case with applications under **Section 66 of the Insolvency Act** and others listed under **Order 30 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

The application is therefore dismissed for want of procedure.

Dated this 22nd day of April, 2024



C. Kafunda
HIGH COURT JUDGE