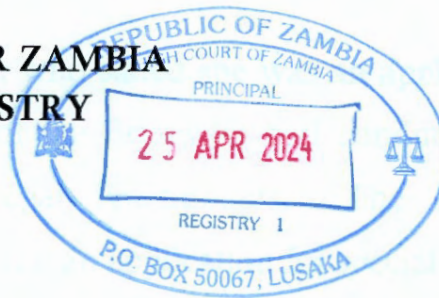


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)



2019/HP/0172

BETWEEN

CHERISE KIDS PLAY PARK LIMITED
LUMUNO NURSERY AND PRIMARY SCHOOL
F.B. HARA (T/A AMUSEMENT PARK)
ROSAIAH INVESTMENTS LIMITED
NSIMBI YANGA LIMITED

1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT

AND

LUSAKA CITY COUNCIL

RESPONDENT

Before the Hon. Lady Justice C. Lombe Phiri in Chambers

For the 1st Applicant: Mr Ngoma – Messrs Chris & Partners

For the Respondent: N/A

**RULING ON PRELIMINARY ISSUE AND APPLICATION TO
REVIEW THE DECISION OF THE COURT**

The brief background to this matter is that it was commenced by way of originating summons on 1st February 2019. Among the applications made in furtherance of the matter was an application for injunction. Following several failed hearings of the main application, as is set out on the record, the matter was dismissed for want of prosecution on 19th April, 2022. Thereafter, on 22nd

was made. In arguing in support of the application reliance was placed on Order 39 rules 2 and 3 of the High Court Rules, Chapter 27 of the Laws of Zambia.

Before this application could be heard the Respondent filed a notice of intention to raise a preliminary issue pursuant to Order 14A. It is this application that is the subject of the ruling before the Court. Now when this Notice was brought before the Court the parties were guided that the issues raised in the Order 14A Notice were issues that should have been contained in the Affidavit in opposition of the Application for Review filed by the 1st Applicant. The court therefore directed that in considering the Order 14A application it would deal with it together with the Application to review filed by the 1st Applicant. The approach was to avoid a multiplicity of applications.

Now the issues raised in the Notice to Raise Preliminary issues were couched as follows:

- 1) Whether this action has rightly been brought before the Honourable Court by way of Summons for Special Leave to Review the Order against the Respondent.*

- 2) Whether the Applicant is on terra firma in bringing this action against the Respondent using Order 39 rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia. And whether or not the application was properly before the Court.*

The Notice to raise Preliminary issues was supported by an affidavit and skeleton arguments. The 1st Applicant filed arguments in Reply.

The gist of the Respondent's position was premised mainly on the fact that the Applicant had delayed in moving the Court and no reasonable cause was shown. It was argued that the 1st Applicant could not rely on Order 39 rule 2 as it capped the time within which the application could be made. I deliberately make no reference to the Affidavit in support of the Notice as it was not commissioned thereby making it irregular.

Now in response to the Notice, the Applicant filed what it couched as arguments in reply. It was argued that while there was a time limit with regard the filing of an application for leave to review Order 39 also provided for the Court's exercise of its discretion in deserving circumstances, where the application is made out of time. Various authorities were cited in order to support the proposition in response to the preliminary issue raised.

Now even though the entirety of the arguments by both parties have not been regurgitated here, I have anxiously and dutifully considered them. From what I perceive the main grievance of the Respondent is that the Applicant has not properly approached the Court in launching its application for special review as they are out of time. Further, that no comfort may be drawn from the provisions of Order 39. Now as earlier stated, the means by which the Respondent sought to deal with the issue of the application by the Applicant for special review gives rise to a convoluted path of resolving what is otherwise a straightforward issue before the Court. From my understanding, there is nothing odd in the manner that the Applicant moved the Court. It is trite that

where a party seeks to move the Court on an application as the one the Applicant had they ought to do so by way of Summons and affidavit. The so called preliminary issue raised pursuant to Order 14A should really have just formed the arguments in response to the application. Counsel is guided to avoid bombarding the Court with unnecessary procedures and applications that otherwise just tend to prolong the disposal of matters. Be that as it may I will proceed to consider the issue at hand.

Now from the background of this case and indeed the averments by the 1st Applicant it is clear that the issue of the injunction in this matter died when the court discharged the interim injunction and subsequently dismissed the entire matter for want of prosecution by an order dated 19th April, 2022. Further, on 28th September, 2022 the Court dismissed an application to review its order to dismiss the matter for want of prosecution, that was launched by the 4th Applicant. The question that therefore begs an answer is whether an injunction can stand alone without an active matter? The status quo of the matter is that it is dead. The matter having died by way of dismissal for want of prosecution, whether expressly or by implication, any order that was associated with it equally died. In this regard, as there is really no matter to talk about, there can be no injunction relating to it. The application is therefore irregular before the court as it is not supported by any active cause. In that regard it would be otiose to even consider whether there are any grounds available for review of the discharged injunctions as any limbs the said injunction could have stood on were severed when the matter was dismissed in its entirety.

In view of the foregoing, the application for review of the discharge of the injunction is found to be lacking in merit and is accordingly dismissed.

Cost are ordered for the Respondent, to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka this 25th day of APRIL 2024.



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C. LOMBE PHIRI
JUDGE