

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

**2016/HP/1807**

**BETWEEN:**

**AUSTIN CHISUPA**



**PLAINTIFF**

**AND**

**BORNIFACE MVULA a.k.a CHISUPA**

**DEFENDANT**

***BEFORE HONOURABLE JUSTICE MR. MWILA CHITABO, SC***

*For the Plaintiff: Mr. J.M Chimembe of Messrs JMC & Associates*

*For the Defendant: Mr. N. Mulemba of Messrs Andrew Msukwa & Co.*

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**R U L I N G**

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***Legislation referred to:***

*1. High Court Rules Chapter 27 of the Laws of Zambia*

***Cases referred to:***

*1. Tillesley v. Harper (1878) 10 ch D 390*

*2. Cropper v. smith (1884) 26 QB*

*3. Zambia Consolidated Copper Mines Limited v. Joseph David Chileshe SCZ Judgment No. 21 of 2002*

*4. Jacobs v. Schumalz (1880) 62 LT 121 at page 122*

This is an application by the Plaintiff to amend the statement of claim pursuant to Order XVIII of the High Court Rules<sup>1</sup>. The application is supported by affidavit in support deposed to by one **Joseph Mwila Chimembe**, the Plaintiffs Attorney.

The essence of the affidavit is that it has become necessary for the Plaintiff to amend the statement of claim to specifically plead duress as a prospective defence to a document reputedly authored by the Plaintiff which he now seeks to denounce and disown.

It was finally deposed that the proposed amendment will not in any way prejudice the Defendant's position.

The application was countered by the Defendant who filed in an affidavit in opposition deposed to by one **Andrew Musukwa**, the Defendant's Attorney.

The gravamen of the affidavit was that trial here in this matter commenced on 23<sup>rd</sup> May, 2017. That midway trial, the Plaintiff is now seeking to introduce matters which were not pleaded initially. That the matters sought to be introduced are completely new and ought to have been anticipated at the time of setting the pleadings.

That contrary to the Plaintiffs position that the Defendant will not be prejudiced by the amendment, it was deposed that infact the defendant will suffer prejudice as trial had commenced. It was further deposed that in the event that the amendments were allowed, then the Plaintiff ought to suffer the costs occasioned by the application.

