

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

2017/HP/0463

(Civil Jurisdiction)

BETWEEN:

JULIUS MUYINGA

AND

MATTHEWS SWETA

(Senior Chief Kanongesha)

ATTORNEY GENERAL



PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC

*For the Plaintiff: Mr. M. Lisimba of Messrs Mambwe Siwila
and Lisimba Advocates*

*For the 1st Defendant: Mr. A. Mbambara of Messrs Mbambara
Legal Practitioners*

For the 2nd Defendant: N/A

RULING



Cases referred to:

- 1. B.P. Zambia Plc and Interland Motors Limited SCZ No. 5 of 2001*
- 2. Kelvin Hang'andu and Company (a Firm) v Webby Mulubisha S.C.Z. Judgment No. 39 of 2008*
- 3. Zambia Breweries v Central and Provincial Agencies (1983) Z.R. 152 (H.C.)*

Legislation referred to:

1. The White Book

This is the 1st Defendant's application by a notice to raise a preliminary issue citing that this action amounts to an abuse of Court process and the injunction granted by this Court to the Plaintiff ought not to have been granted as the Plaintiff had not come to Court with clean hands as equity demands. The notice was supported by an affidavit in support deposed to by one **Anock Mbambara**, the advocate for the 1st Defendant.

He deposed that on 29th June, 2015 a matter was commenced in the High Court at Kabwe under cause number **2015/HP/56** by the Plaintiff's brother one **Gabriel Muyinda** as 1st Plaintiff and another relative **Jesphane Mukanda** as the 2nd Plaintiff on behalf of the Plaintiff against the 1st Defendant herein by way of Writ of Summons and Statement of Claim. The said Writ of Summons and Statement of Claim were exhibited and marked "**AM1**" and "**AM2**".

He averred that on 9th February, 2017 the said matter was dismissed by the honourable Court on ground that the Plaintiffs had no locus standi in the matter and a copy of the ruling was exhibited and marked "**AM3**". In the said Ruling the Court made an order for costs to the 1st Defendant which have not been paid to date. He stated that in the same Ruling the Court made reference to another Order for Costs to the 1st Defendant that had not been complied with. He asserted that by a Ruling dated 2nd June, 2017, the Plaintiffs in that matter were found guilty of

