IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 107/2015**

HOLDEN AT NDOLA

(Civil Jurisdiction)

BETWEEN:

SUHAYL DUDHIA **APPELLANT**

AND

SAMIR KARIA **1ST RESPONDENT**

CITIBANK ZAMBIA LIMITED **2ND RESPONDENT**

Coram: Mwanamwambwa, DCJ., Wood and Kajimanga JJS.

On 6th March, 2018 and 13th March, 2018.

For the Appellant: *No Appearance*

For the Respondents: *Ms. S. Kaingu – Messrs Chibesakunda and Company*

JUDGMENT

Wood, JS, delivered the judgment of the Court.

Cases Referred to:

1. *Mike Hamusonde Mweemba v. Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited (2006) ZR 101*
2. *Attorney General v. Aboubacar Tall and another (SCZ) Appeal No. 77 of 1994*
3. *Khalid Mohamed v. Attorney General (1982) Z.R. 49*

4. *Tilling v. Whiteman [1979] 1 ALL ER 737*

Legislation referred to:

1. Order XIV rule 5(1) of the High Court Rules, Cap 27 of the Laws of Zambia.
2. Order 15 rule 6 (2) of the Rules of the Supreme Court 1999 Edition

This is an appeal against a decision of the High Court dismissing the appellant's application for joinder.

The appellant commenced proceedings against the 1st respondent on 6th August, 2013 claiming damages for slander, an injunction restraining the 1st respondent whether by himself, his servants or agents or otherwise from publishing or causing to be published the same or similar slander upon the appellant, damages for mental anguish occasioned by the 1st respondent's utterances, aggravated consequential damages for loss of employment occasioned by the 1st respondent's utterances, any other relief and interest.

A defence was filed by the 1st appellant on 22nd August, 2013. On 20th May, 2014, the appellant filed a summons for an order for

joinder pursuant to Order XIV rule 5(1) of the High Court rules, Cap 27 of the Laws of Zambia read together with Order 15 rule 6 of the Rules of the Supreme Court, 1999 edition. In his application in support of the application for joinder, he contended that on account of the 1st respondent's utterances, and on account of the constant harassment and ridicule of him perpetuated by the 1st respondent during the course of his employment, his reputation was lowered in the perception of his superiors to such an extent that the intended joinder and its senior officers became hostile to him. According to him, this culminated into the wrongful and unlawful termination of his employment with the 2nd respondent (hereinafter referred to as the intended joinder). He stated that he was advised by his advocates that the intended joinder should have been joined to these proceedings on account of being vicariously liable for the defamatory utterances of the 1st appellant that were made during the course of his employment as the Corporate Bank Head of the intended joinder.

The application was opposed on the ground that the principles governing joinder of parties and those governing the principle of

vicarious liability are not the same. Counsel submitted in the court below that in considering the application for joinder, it was not the issue of vicarious liability that needed to be proved but rather the issue of whether the joinder was appropriate. Counsel cited the case of *Mike Hamusonde Mweemba v. Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited*[1] in support of his submission.

The learned judge held that the appellant had not established any connection between the 1st respondent's alleged words and the intended joinder to warrant joining the intended joinder to the proceedings. She added that the appellant had not placed any evidence before her to show that the 1st respondent's utterances were approved by the intended joinder. The learned judge further held that the appellant had not produced any evidence to support his assertion that the intended joinder relied on the 1st respondent's utterances to terminate his employment. In terms of Order XIV rule 5(1) of the High Court Rules, Cap 27, a person will not be joined to the proceedings unless he has an interest in the subject matter of the action or will be affected by any decision made in the action.

The appellant had not shown how the intended joinder will be affected by the suit. In the event that the appellant succeeded in his claim against the 1st respondent, the 1st respondent would be the one who would be liable for any damages for the slander of the appellant. The intended joinder would not be affected in any way by the outcome of the suit as claimed by the appellant. In the circumstances the learned judge agreed with the deputy registrar who had earlier dismissed the appellant's application for joinder.

The appellant has appealed against the decision of the High Court on four grounds.

The first ground of appeal is that the learned judge erred in law and in fact by holding that this is not a fit and proper case to order joinder of the intended joinder as a party to the proceedings.

The second ground of appeal is that the learned judge erred in both law and fact when she held that although the words by the 1st respondent were uttered in the course of employment there was no connection between the 1st respondent's alleged words and the intended joinder herein.

The third ground of appeal is that the learned judge erred in both law and fact in failing to distinguish the case of *Mike Hamusonde Mweemba v. Kamfwa Obote Kasongo and Zambia State Insurance Corporation Limited*[1] from the current case and in particular, in the *Hamusonde* case, there was express denial of the decision/and or action of the employee by the employer, which is not the case in this matter.

The fourth ground of appeal is that the learned judge erred in law in failing to appreciate that where an opponent fails to file an affidavit in opposition to an affidavit alleging certain facts, then the facts alleged in the supporting affidavit are deemed to be unchallenged and uncontested, and as such admitted by the other party.

The appellant has submitted in support of the first ground that it was pertinent for the intended joinder to be joined to the proceedings, as the intended joinder was likely to be affected by the result of the suit. Furthermore, in terms of Order 15 rule 6 (2) of the Rules of the Supreme Court, the court must add any person or

all persons who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. The appellant argued that the learned judge failed to take cognizance of Order 15 rule 6 (2) of the Rules of the Supreme Court and proceeded to restrict the application of the rules concerning joinder of parties hereto. The appellant has cited our decision in *Attorney General v. Aboubacar Tall and another*[2] in support of his argument. He argued that in that case we took cognizance of the fact that our Order 14 rule (5) as regards joinder of parties is too abbreviated and restrictive as it only related to *"all persons who may be entitled, or claim some share or interest in the subject matter of the suit, or who may likely be affected by the results... and have not been made parties"* who could be added to proceedings. Such an abbreviated and restrictive interpretation of Order XIV rule 5 of the High Court Rules is bound to bring absurdities to the fore. We had however pronounced in the *Tall* case cited above that the answer to such a problem lay in any case in section 13 of Cap 50 (now section 13 of Cap 27 of the Laws of Zambia), which section gives jurisdiction to the court to