

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT KITWE
(Civil Jurisdiction)

2017/HKC/0004

BETWEEN:

JOHN SANTOS VELASQUEZ INCAQUIHUE
JENNIFER NKHOMA MAKUMBI

1st PETITIONER
2nd PETITIONER

AND

EDILFONSO DIAZ BURGA
PIO GIL ABDO MAMMI

1st RESPONDENT
2nd RESPONDENT

Before Lady Justice B.G Lunguon 14th August, 2017

For the Petitioner, Mr. J.N Mukaya, Messrs J.N Mukaya Legal Practitioners

RULING

Cases referred to:

1. *Leopold Walford (Z) Ltd v Unifreight*, (1985) Z.R 203 (S.C)

Legislation and Other Materials referred to:

1. Section 272 (f), Companies Act, Cap 388 of the Law of Zambia;
2. Rule 8, Companies (Winding Up) Rules, 2004;
3. Order 10, Rules 15 and 16, High Court Rules, High Court Act, Cap 27 of the Laws of Zambia.

On 21st June, 2017 the 1st Plaintiff took out a Summons for leave to serve originating process outside jurisdiction. The application is stated to made pursuant to **section 272(f) of the Companies Act, Cap 388 of the Laws of Zambia**, as read with **Rule 8 of the Companies (Winding Up) Rules, 2004**.

The application is supported by an Affidavit in Support, List of Authorities and Skeleton Arguments that were filed on 22nd June, 2017.

The Affidavit in Support was deposed by John Santos Velasquez Incaquihue, which Affidavit referenced the authority under which the application is being made as **Order 10, rules 15 and 16 of the High Court Rules**.

In considering the application, I visited all the provisions of law referenced by the 1st Petitioner, either in the Summons or Affidavit, as the basis upon which leave is sought. I also contemplated the case of **Leopold Walford (Z) Ltd v Unifreight, (1985) Z.R 203 (S.C)**¹ which was alluded to in the List of Authorities and Skeleton Arguments.

Firstly, I examined section 272(f) of the Companies Act which prescribes the circumstances in which a company may be wound up by the Court. I then studied Rule 8 of the Companies (Winding) Rules, 2004 which speaks to matters relating to the application and appointment of a provisional liquidator.

My combined analysis of section 272 (f) of the Companies Act, as read together with Rule 8 of the Companies (Winding Up) Rules concludes that the two sections do not contain any provision whose effect is to give the Court jurisdiction to grant leave to a party to serve a Winding Up Petition out of Jurisdiction.

Given that the Affidavit in Support cites Order 10, rules 16 and 15 (h) of the High Court Rules, I honoured the citation with a visit. I will not give a garrulous analysis of Order 10, rules 15 and 16. It will suffice to state that under those rules, the law expressly identifies the following types of originating process that may be subject to an application for service out of jurisdiction, namely: (i) a writ of summons; (ii) an originating summons; (iii) an originating notice of motion; (iv) concurrent writ of summons; (v) concurrent originating summons; or (vi) concurrent originating notice of motion. Clearly, no similar extension is afforded to a Winding Up Petition.

Lastly, I considered the case of *Leopold Walford (Z) Ltd v Unifreight*, (1985) Z.R 203 (S.C) wherein the Supreme Court held that "**before a writ can be issued out of the jurisdiction, leave of the court must be obtained**". This Supreme Court holding is consistent with my interpretation of Order 10, rules 15 and 16 in so far as it limits itself to leave relating to one of the types of originating processes expressly identified in the rules 15 and 16, namely, a writ of summons.

In view of the foregoing, I am of the settled mind that the Plaintiff's application for leave to serve the Winding Up Petition outside jurisdiction falls outside the ambit of Order 10, rules 15 and 16. Moreover, in the absence of any viable legal authority to support the

application, the application is, in my view, unsustainable.
Consequently, the application fails and is dismissed.

Leave to appeal is granted.

Dated the 15th day of August, 2017



Justice B.G.Lungu

HIGH COURT JUDGE