

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

2018/HP/0064

BETWEEN:

FRED M'MEMBE

POST NEWSPAPERS LIMITED (IN LIQUIDATION)

AND

ABEL MBOOZI

ROY HABAALU

ANDREW CHIWENDA

MWENDALUBI MWEENE

BONAVENTURE BWALYA

ZAMBIA REVENUE AUTHORITY



PLAINTIFF

1st DEFENDANT

2nd DEFENDANT

3rd DEFENDANT

4th DEFENDANT

5th DEFENDANT

6th DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 29th DAY OF
JANUARY, 2018**

For the Plaintiffs : Mr N. Nchito, SC and Mr C. Hamwela, Messrs
Nchito and Nchito

For the 1st to 5th Defendants : Mr B. Mosha and, Mosha and Company and Mr
K. Mambwe, Ferd Jere and Company

For the 6th Defendants : Mr M. Lungu, Lungu Simwanza and Company

R U L I N G

CASES REFERRED TO:

1. *Development Bank of Zambia and Kpmg Peat Marwick V Sunvst Limited and Sun Pharmaceuticals Limited 1997 SJ 10*

The Plaintiffs commenced this action by way of writ of summons on 15th January, 2018 claiming;

- i. An order setting aside the consent order in Cause No 2016/HPC/0518 dated 10th January, 2018 for being illegal and obtained by fraud.*
- ii. An order staying the proceedings and orders granted by Mr Justice Nkonde in cause number 2016/HPC/0518*
- iii. Any other reliefs that the court may deem fit; and*
- iv. Costs*

On the same date that the process was filed, an ex-parte summons to stay execution of the consent order and other orders obtained in cause number 2106/HPC/0518 was filed, which was accompanied by a certificate of urgency. My learned colleague who had conduct of the matter then directed that the application be heard inter partes. When I assumed conduct of the matter, and the parties appeared before me on 18th January, 2018, the matter was adjourned to 24th January, 2018 to allow Counsel for the 6th Defendant to be served the application, and also because Counsel for the 1st to 5th Defendants indicated that they wished to raise issue with the 2nd Plaintiff continuing with the action when a notice of discontinuance had been filed.

The matter was also adjourned on account of the fact that Counsel for the Plaintiffs wished to challenge the notice of discontinuance. Prior to the parties appearing before me Messrs Lewis Nathan Advocates and Messrs Palan and George Advocates had on 16th January, 2018 filed a notice of change of advocates stating that pursuant to the Consent judgment dated 10th January, 2018 they had been appointed advocates for the purported 2nd Plaintiff in place of Messrs Nchito and Nchito Advocates. The two law firms on the same date filed a notice of discontinuance of the proceedings by the 2nd Plaintiff against all the Defendants. This is the notice that Messrs Nchito and Nchito wish to set aside.

