



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

2017/HP/0689

BETWEEN:

MARGARET KATUBILA

*(Suing as Administratrix of the estate of the
Late EMMA CHIBAMBA)*

PLAINTIFF

AND

AINESS SHIFWANKULA

1st DEFENDANT

SAMASON KACHEPA

2nd DEFENDANT

McBRIDE BRIAN KAITE

INTENDED PARTY

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 2nd DAY OF
FEBRUARY, 2018**

For the Plaintiff : Mrs M.M. Siansima, TMN Legal Practitioners

For the Defendants : Mr H. Mulenga, Philsong and Partners

R U L I N G

CASES REFERRED TO:

1. **NFC Africa Mining PLC V Techno Zambia Limited Appeal No 22 of 2009**
2. **Chama Chipli and another V Wellington Kashimike 2012 3 ZR 483**

LEGISLATION REFERRED TO:

1. **The High Court Rules, Chapter 27 of the Laws of Zambia**
2. **The Rules of the Supreme Court, 1999 edition.**

This is a ruling on an application, made by the Defendants pursuant to Order 11 Rule 4 (1) of the High Court Rules, and the court's ruling dated 21st July, 2017, as well as the court's inherent jurisdiction to set aside and or dismiss the amended writ of summons.

Counsel stated that they relied on the affidavit filed in support of the application on 13th October, 2017, whose main gist is that the Plaintiff was granted leave to amend the irregular writ of summons. However the amended writ of summons filed into court it shows that it is addressed to the Defendants advocates, which is irregular. It was Counsel's submission that Order 7 of the High Court Rules is instructive on what should be endorsed on a writ of summons, and the address of the Defendant's advocates is not one of them.

He went on to submit that a writ of summons is a prescribed document, and the one filed before the court does not comply. Counsel also submitted that Order 10 (5) of the High Court Rules deals with service of a writ of summons where the advocates for the Defendant have undertaken to be served the writ. That where this is the position, the name of the advocates should not be endorsed on the writ of summons. The case of **NFC AFRICA MINING PLC V TECHNO ZAMBIA LIMITED Appeal No 22 of 2009** was referred to stating that in that case it was held that the rules of the court are intended to be obeyed.

Therefore failure to obey the said rules by the Plaintiff for a second time was inexcusable, and the writ of summons should be set aside and or dismissed. Further that an examination of the writ of summons shows that it flies in the face of the court's ruling dated 21st July, 2017, as the court in that ruling misjoined the 2nd Defendant from the proceedings, and the intended party was joined as the 2nd Defendant. That filing a writ of summons that defied the court's ruling, was not only contemptuous of the court's order, but could not stand as the court could not reverse its order. Counsel prayed that the amended writ of summons be dismissed with costs.

In response, Counsel for the Plaintiff stated that they opposed the application and relied on the affidavit in opposition filed on 22nd November, 2017, especially paragraphs 5 to 10 of the said affidavit. That further reliance was placed on the case of **CHAMA CHIPLI AND ANOTHER V WELLINGTON KASHIMIKE 2012 3 ZR 483** which held that a procedural irregularity is not

