

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

**2016/HP/2473**



**IN THE MATTER OF: ORDER XXX RULE 14 OF THE HIGH COURT RULES  
CHAPTER 27 OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: LEGAL MORTGAGE RELATING TO FARM NO 1877  
UNIT NOS CL/1 OF F/377a/45/27, CL/B/2 OF  
F/377a/45/27, CL/B/3 OF F/377a/45/27 CL/A/1  
OF F/377a/45/27**

BETWEEN:

**CITIZENS ECONOMIC EMPOWERMENT COMMISSION      PLAINTIFF**

AND

**KABAYI FARMS LIMITED      1<sup>st</sup> DEFENDANT**

**DAVIE AMON KAMBOYI      2<sup>nd</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 13<sup>th</sup> DAY OF MARCH,  
2018**

*For the Plaintiff      : Mrs M.M. Nkunika, In House Counsel*

*For the Defendants   : Mr Masauso Banda, George Kunda and Company*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. Munster V Cox 1884-1885 10 AC 680**
- 2. Zambia Seed Company Limited V Chartered International (PVT) Limited  
SCZ NO 20 OF 1999**
- 3. Maureen Simpamba V Abraham Kamalamba and Chibwe Mulenga 2013  
VOL 2 ZR 279**

LEGISLATION AND OTHER WORKS REFERRED TO:

1. ***The High Court Rules, Chapter 27 of the Laws of Zambia***
2. ***The Rules of the Supreme Court, 1999 edition***
3. ***Patrick Matibini: Zambian Civil Procedure Commentary and Cases VOL 2***

This is a ruling on an application made by the Plaintiff to set aside the affidavit filed by the Defendants for irregularity, pursuant to Order 2 Rule 2 of the Rules of the Supreme Court, 1999 edition. Counsel stated that they relied on the affidavit filed on 25<sup>th</sup> January, 2018, and sworn by Edna Mwansa, as well as the skeleton arguments filed. It was Counsel's submission that the law relating to the setting aside of consent orders is very clear.

She stated that consents judgments are governed by the ordinary principles of contract, and can only be set aside in circumstances that would afford a ground for varying or rescinding a contract between parties, such as on grounds of fraud, mistake or even misrepresentation. To this effect the case of ***MAUREEN SIMPAMBA V ABRAHAM KAMALAMBA AND CHIBWE MULENGA 2013 VOL 2 ZR 279*** was relied on.

That in that case reliance was placed on the case of ***MUNSTER V COX 1884-1885 10 AC 680*** where Lord Fitzgerald stated that "***I have always understood it as a settled rule that where parties withdraw the answers from the jurisdiction and do not wish to obtain a judgment according to the law, but to substitute it for a judgment by their own consent, the court has no power to alter that consent. If a consent has been obtained by fraud or surprise it may be set aside. And if proceedings upon it have been improvident, it may vacate the proceedings***".

