

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

2017/HP/1554

BETWEEN:

MALEYA CHESWA KAMBWILI PHIRI

PLAINTIFF

AND

**PROFESSIONAL SECRETARIES ASSOCIATION
OF ZAMBIA**

1st DEFENDANT

CYLLER MWENYA

2nd DEFENDANT



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 3rd
DAY OF APRIL, 2018**

For the Plaintiff : Messrs Tutwa Ngulube and Company

For the Defendant : Mr P. Chileshe, Besa Legal Practitioners

R U L I N G

LEGISLATION REFERRED TO:

1. *The Rules of the Supreme Court of England, 1999 edition*

On 16th February, 2018, I delivered a ruling in which I directed that the Plaintiff should within fourteen days of that date file an affidavit in opposition to the Defendants' application to set aside the writ of summons for irregularity. I further directed that the Defendants file an affidavit in reply to the affidavit in opposition within fourteen days of the affidavit in opposition being filed, and that I would thereafter deliver my ruling on the application.

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To date none of the said affidavits have been filed. In the affidavit in support of the summons to set aside the writ of summons for irregularity filed on 6th October, 2017, the 2nd Defendant deposed that the action is irregular as the 1st Defendant is an association, and at law it has no capacity to sue or be sued in its own name. Further that the Plaintiff was suspended on 5th September, 2017 in order to pave way for investigations for alleged financial irregularities perpetrated by herself, after she failed to exculpate herself on the allegations levelled against her. That the Plaintiff only availed an exculpatory letter after she had been suspended, and she was due to appear before a disciplinary committee. Therefore her action was pre-mature, and irregular.

When the application was heard on 31st January, 2018, Counsel for the Plaintiffs stated that the action was premature as the Plaintiff was suspended for the purpose of investigations being conducted, after she failed to exculpate herself within the time given. Further, that the 1st Defendant being an association, it has no legal capacity to sue or be sued in its own name. Counsel invited the court, pursuant to Order 14A of the Rules of the Supreme Court of England, 1999 edition, to summarily deal with the matter, and set aside the writ of summons for irregularity, with costs to the Defendants.

I have considered the application. It was brought pursuant to Orders 14A and 33 Rule 7 of the Rules of the Supreme Court of England, 1999 edition. Order 14A provide as follows;

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either -

(a) had an opportunity of being heard on the question, or

(b) consented to an order or judgment on such determination.”

Order 33 Rule 7 of the said Rules of the Supreme Court of England, 1999 edition states that;

“If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.”

Order 14A of the Rules of the Supreme Court of England, 1999 edition empowers the court either on its own motion or on an application made by any party to consider any question of law, or the construction of any statute, if the same is suitable for consideration without a full trial of the action, and which when considered will dispose of the action, subject only to an appeal. Order 33 Rule 3 of the same rules also empowers the Court to order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

Under Order 33 Rule 7, the court upon considering an issue as provided in rule 3, may dispose of the cause, and dismiss the action without the need for a trial. In this application, the issues raised relate to the 1st Defendant lacking capacity at law to sue or be sued, as it is an association, and secondly that the action is premature as the Plaintiff was suspended to pave way for investigations and appear before a disciplinary tribunal.

With regard to the first issue, the irregularity in citing the 1st Defendant is curable by way of amendment. However as regards the second issue, the 1st Defendant is an association that is governed by rules. As such any member is subject to those rules, and the 2nd Defendant in the affidavit in support of the application deposed that the Plaintiff was suspended with a view to investigate irregularities alleged against her, after she failed to exculpate herself, and was supposed to appear before a disciplinary tribunal. The assertion by the 2nd Defendant was that the Plaintiff has come to court prematurely.

No affidavit in opposition was raised to the said assertion, and as I have already stated associations are governed by rules, and these provide for disciplinary procedures, and the court comes in to only look at the compliance with such procedures, and not the merits of the decisions made in pursuance of the procedures. That being the position, the Plaintiff has indeed come to court prematurely, and the court has no jurisdiction at this stage to hear the matter, and I find that this is a case where the provisions of Order 14A of the Rules of the Supreme Court of England, 1999 edition as read with Order 33 Rule 3 can be invoked, and I set aside the action for irregularity, with costs to the Defendants, to be taxed in default of agreement. Leave to appeal is granted.

DATED THE 3rd DAY OF APRIL, 2018


S. KAUNDA NEWA
HIGH COURT JUDGE