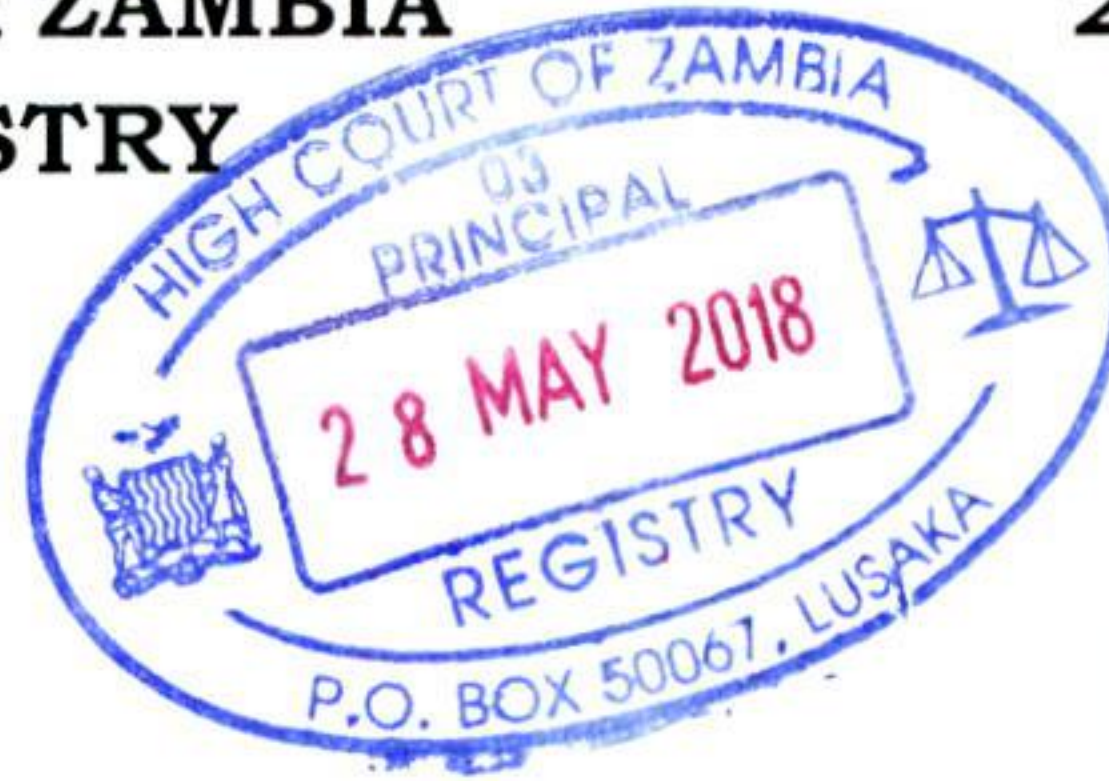


**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2018/HP/0283**



**BETWEEN:**

**ROBSON KATOKA MALIPENGA**  
*(Trading as Robson Malipenga and Company)*

**PLAINTIFF**

**AND**

**SYACHOKE EDSON SIMEMEZA**

**DEFENDANT**

**CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Plaintiff:* N/A

*For the Defendant:* N/A

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**R U L I N G**

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**Legislation referred to:**

- 1. High Court Rules chapter 27 of the Laws of Zambia*

This is an application by the Plaintiff for review of the Ruling of this Court pronounced on 1<sup>st</sup> March, 2018 striking out the Plaintiffs application for interim injunction directed against the defendant and discharging the *exparte* interim injunction granted on 14<sup>th</sup>

February, 2018 for non appearance of the parties pursuant to Order XXXV (1) of the High Court Rules.

The plaintiff's application is anchored under Order XXXIX (1) of THE High Court Rules.

The relief sought is for the restoration of the application which was struck off the active cause list with liberty to restore within 14 days from the 1<sup>st</sup> of March, 2018 and in default the application to stand dismissed for want of prosecution.

The Plaintiff has chosen to anchor his application under Order XXXIX (1) of the High Court Rules in respect of an application which was struck off from the active cause list with liberty to restore.

In my view the order relied upon is inappropriate. The application ought to have been anchored under Order XXX(6) of the High Court Rules which provides as follows:-

*“Any civil cause struck out may by leave of the Court be replaced on the cause list on such terms as to the Court may deem fit”*

No such application having been made under Order XXXV (6) within 14 days from 1<sup>st</sup> March, 2018, the application stands dismissed and cannot be rescued by resorting to Order XXXIX (2) which is a review order.

The application having stood dismissed after 14 days, there is nothing to review in the first place. I cannot put something on nothing and expect it to stand.

There is no merit in the application and I dismiss it accordingly.

Since the application was made ex parte, I will not condemn the plaintiff in costs.

There shall be no order as to costs.

Leave to appeal granted.

**Delivered under my hand and seal this 28<sup>th</sup> day of May, 2018**



**Mwila Chitabo, SC**

**Judge**