

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

2014/HP/1389A

BETWEEN:

LIONS RESOURCES LIMITED

AND

ARVARMA MINING COMPANY LIMITED



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 9th DAY OF AUGUST,
2017**

For the Plaintiff : Messrs Charles Siamutwa Legal Practitioners

For the Defendant : Mr T. S. Ngulube, Messrs Tutwa S. Ngulube and Company

R U L I N G

CASES REFERRED TO:

1. ***Bank of Zambia V Jonas Tembo and Others 2002 ZR 103***
2. ***Finance Bank Zambia Limited V Dimitrios Monakandilos 2012 ZR***

LEGISLATION REFERRED TO:

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

When the matter came up for the trial of this action on 26th June, 2017, Counsel for the Defendant was before court, but neither the Plaintiff nor its advocates were. Counsel for the Defendant informed the court that the Plaintiff and its advocates were fully aware of the hearing date, and he went on to state that the matter had been struck off the active cause list on more than four occasions, due to the no appearance of the Plaintiff. That this court had early this year struck out the matter, and that after having the matter restored, the Plaintiff had taken no steps to prosecute it, and had been given the benefit of doubt on two occasions after that, to no avail.

Counsel further noted that the Plaintiff had not complied with the orders for directions issued by the court, as it has not requested to set down the matter for trial. It was Counsel's view there was want of prosecution of this matter, as there has been inordinate and inexcusable delay to do the same, resulting in the Defendants incurring unnecessary legal costs.

To this end Counsel with reference to Order 3/5/12, as well as Order 25 of the Rules of the Supreme Court, 1999 edition, and in reliance on the cases of ***BANK OF ZAMBIA V JONAS TEMBO AND OTHERS 2002 ZR 103*** and ***FINANCE BANK ZAMBIA LIMITED V DIMITRIOS MONAKANDILOS AND FILANDRIA KOURI 2012 VOL 1 ZR 484***, applied that the matter be dismissed for want of prosecution.

Counsel further prayed for costs, stating that Hon Mr Justice C.F.R. Mchenga who previously had conduct of the matter was also tasked to ensure the Plaintiff's compliance with the rules of the court, but the Plaintiff had ignored his directives. It was also stated that the Plaintiff should not be given another chance, as they had not complied with the orders for directions, so that the matter could be concluded.

When the application was made, I did note that there was a pending application for joinder before the Deputy Registrar, and adjourned the matter to 11th July, 2017, to enable the Deputy Registrar attend to the siad application. I awarded costs to the Defendant to be paid before the next hearing date. When the matter came up on 11th July, 2017, again the Plaintiff and its advocates were not before court. Counsel for the Defendant informed the court that the Plaintiff was aware of the hearing date, and they had not filed a notice to adjourn the matter.

Counsel had reiterated that the matter be dismissed for want of prosecution, adding that the Plaintiff had ignored the order granting the Defendant costs. I reserved ruling on the application to 9th August, 2017.

A perusal of the record shows that on 19th July, 2017, the application for joinder of parties came up before the Deputy Registrar, and Counsel for the intended 2nd Defendant informed the court that they had only filed the notice of

appointment as advocates the previous day, and that they could not file the affidavit in opposition to the application, due the two clear day rule provided for service of documents. Counsel had applied for an adjournment, and the Deputy Registrar had granted the same, and matter was adjourned to 2nd August, 2017.

When the matter came up on 2nd August 2017, Counsel for the Plaintiff informed the court that they had filed an affidavit in reply to the affidavit in opposition, but did not manage to serve it on the other parties. He also told the court that the intended 3rd Defendant, being the Attorney General was not aware of the hearing date.

Counsel had proposed as a way forward that the parties be allowed to file written submissions on the basis of which the court would deliver its ruling. That Counsel would inform the intended 3rd Defendant of the directions that the Deputy Registrar would give.

Counsel for the intended 2nd Defendant was agreeable to the proposal, and the Deputy Registrar gave directions on when the submissions would be filed, and the matter was adjourned to 25th August, 2017 for ruling. In view of the fact that the Deputy Registrar has reserved ruling to that date, I will deliver my ruling on the application after that date, so as not to preempt anything. Costs shall be in the cause.

DATED THE 9th DAY OF AUGUST, 2017

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE