

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

2015/HP/1139

BETWEEN:

**JULDAN MOTORS LIMITED
IBRAHIM NASSA
OLYPA DANOBO**

**1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF**



AND

**FIRST NATIONAL BANK ZAMBIA LIMITED
JULY DANOBO**

**DEFENDANT
INTERVENOR**

*Before Hon. Mr. Justice M. L. Zulu at Lusaka, the.....day
of....., 2017*

*For the Plaintiff: Mr. K. Mweemba with S. Mbewe of Messrs
Keith Mweemba Advocates, Mr. G. Phiri of
Messrs PNP Advocates*

*For the Defendant: Ms. G. Musiyani, Legal Counsel with M.
Moonga*

*For the Intervenor: Mr. H.H. Ndhlovu, SC of H.H. Ndhlovu and
Co, Mr. J. Zimba and Mrs M. M. Nkunika of
Messrs Makebi Zulu and Co.*

RULING

Cases referred to:

- 1. BP Zambia Plc v. Interland and Motors Ltd (2001) ZR P. 41.**
- 2. Prince Jefri Bolkiah v KPMG (1999) ZWLR 215.**

This Ruling arises from Preliminary Issues raised by the intervenor July Danobo, namely;

- 1) Whether this action is properly before court as the Plaintiff's advocates are conflicted in this matter; and***
- 2) Whether this action is properly before court without adherence to corporate governance.***

It is important to give a back ground of the matters in issue. The Plaintiff under the present action dated 17th July, 2015, represented by Messrs Keith Mweemba Advocates and Messrs PNP Advocates issued a Writ of Summons and a Statement of Claim.

In the pleadings, the 1st Plaintiff, Juldan Motors, is a company incorporated in Zambia under Chapter 388, of the Laws of Zambia.

It was averred that the 2nd Plaintiff Ibrahim Nassa is and was at material time a share holder and signatory to bank accounts held

with the Defendant, FNB, namely account no. 62280343098 and account no. 6234252441. And the 3rd Plaintiff Olypa Danobo was designated a shareholder and director in Juldan Motors.

In this present action, the Plaintiff alleged that the Defendant, First National Bank (FNB) has failed and or neglected to explain how Juldan Motors' money amounting to ZAR 2, 800, 000.00 and K 30, 060, 000 was transferred and or paid out without knowledge or signature of the 2nd Plaintiff, hence the claim for the repayment of the said sums of money.

On 27th July, 2015, the Intervenor July Danobo took out Summons before the Deputy Registrar to be joined to the present action, and in his supporting affidavit he stated he was the Managing Director, and head of management and majority shareholder in Juldan Motors.

The application was granted. It is also important to note that before the present action was commenced, there was another action subsisting filed in the Principal Registry under cause number **2015/HP/0678**, in which Juldan Motors Ltd is the first Plaintiff and Mr. July Danobo, the Intervenor (herein) is the 2nd Plaintiff represented by Messrs Tembo Mulengeshi and Chanda Legal

Practitioners. The said Plaintiffs sued Ibrahim Nassa as 1st Defendant and Olypa Danobo as 2nd Defendant, in which it was averred that the 2nd Plaintiff, Mr. July Danobo was at all material times, owner, founder and majority shareholder of Juldan Motors. It was also averred that the 1st Defendant Ibrahim Nassa and Olypa Sibongile Danobo the 2nd Defendant are son and daughter respectively of Mr. July Danobo.

Essentially, under cause number **2015/HP/0678**, the Plaintiffs, Juldan Motors and Mr. July Danobo allege that the allotment of 12, 000 shares in Juldan Motors to Olypa Danobo by Ibrahim Nassa was fraudulent and further that the increase in shares to Ibrahim Nassa in Juldan Motors from 20, 000 shares to 25, 000 was fraudulent and invalid.

The Plaintiff in that action also claimed inter alia;

“An Order compelling the 1st Defendant to disclose and or account for the source of the financing for his business, as the Plaintiff have reasonable cause to believe the same are proceeds from the embezzlement and fraud purported by the 1st Defendant against the Plaintiff’s company”.

It should be noted and stated that under cause no. **2015/HP/0678**, Ibrahim Nassa and Olypa Danobo filed a counter claim, in that action and are represented by the same advocates as in the present action.

In the counter claim it was inter alia averred that Mr. July Danobo as Co-signatory to bank accounts no. 62280343098 and bank account no. 62342526441 belonging to Juldan Motors Ltd held at FNB caused huge sums to be mysteriously transferred to unknown parallel accounts set up without the co-currence of Ibrahim Nassa and Olypa Danobo.

It is also worthy noting that on 27th July, 2015, in the present action the Intervenor had made an application for misjoinder of Juldan Motors before the Deputy Registrar, the Intervenor was unsuccessful and on 2nd October, 2015, FNB filed an application to dismiss the present action for abuse of court process, citing multiplicity of action given the substance of an earlier action under no. **2015/HP/0678**.

The Deputy Registrar refused to grant the application and in his opinion, he stated that the issues raised in the application for dismissal of action for abuse of court process were the same as those raised in the earlier application for misjoinder.

The purpose of the background in summary I have given is not to bring finality to the main triable issues but to give context as regards to present issues raised in the preliminary objection.

I am grateful to counsel for submissions made for and against issues raised in resolving the issues in controversy. I will make reference to some salient features of the submissions.

Firstly, Counsel for the Plaintiff raised an issue regarding the inappropriateness of relying on **Order 14A, Rules of the Supreme Court, (RSC)**, by the Intervenor to raise the preliminary objection.

It was argued that the points of law raised by the Intervenor do not determine the entire cause or matter. But Counsel for the Intervenor argued that the preliminary issues raised in the objections go to the route of the matter. I agree with the Plaintiff's Counsel that the preliminary objection raised does not lead to finality of the whole claims raised in the Writ of Summons, therefore, the sore reliance on **Order 14A RSC** was not sufficient unless cited together with **Order 33 Rule 3, Rules of the Supreme Court (1999)**.

However, I do not think this is fatal on the part of the Intervenor given the fact that the application was substantively heard on its merit and both Counsel for the Plaintiff and Intervenor adequately addressed their minds to the issues at hand; to which I have been called upon to completely resolve.

It is my considered opinion that the issue of conflict of interest raised in this application is to a large extent related to whether the present action is an abuse of Court action in terms of abuse of Court process.

The position Counsel for the Plaintiff took was that the issue of Court abuse of Court process was ***Res Judicata*** because according to him the learned Deputy Registrar determined the matter in the Rulings dated 8th September, 2015 and 17th March, 2016. But Counsel for the Intervenor submitted that the issues raised were not ***Res Judicata*** because they were not the same as those raised before the Deputy Registrar.

I agree that the issue of professional conflict of interest was not raised before the Deputy Registrar. In any event, the entire control of proceedings, in any civil action before the High Court is vested in the Trial Judge having conduct of the Action. As such there is nothing

that stops a Trial Judge to consider whether this action is an abuse of court process or not, given the fact that the issue of conflict of interest is also connected to the issue of abuse of court process as I shall demonstrate in the proceedings paragraphs.

Having regard to cause no. **2015/HP/0678**, which was commenced earlier than the present action, I have no doubt that the present action is an abuse of court process in terms of multiplicity of actions. I discern that the issues raised in the present Writ of Summons and Statement of Claim and are not different from issues raised in cause no. **2015/HP/0678** which matter is before another Judge. In particular, the issues raised in the counter claim by Ibrahim Nassa and Olypa Danobo to which I have made reference in my introductory background.

Multiplicity of actions in our courts system cannot be condoned and should be frowned upon. In saying so, am fortified by making reference to remarks expressed by **Mr. Justice Ngulube, CJ.**, as he was then in the case of **BP Zambia Plc v. Interland and Motors Ltd**, when he stated:

“for our part, we are satisfied that, as a general rule, it would be regarded as an abuse of court process if the same parties re-litigate the same subject matter from the action to another or from one judge to another judge. This will be so especially when the issues would have become Res judicata or when there are issues which should have been resolved once and in enjoined by section 13 of the High Court Act.....

In terms of the same section and in conformity with the courts inherent power to prevent abuses of its processes, a party in dispute with another over a particular subject should not be allowed to deploy his grievances piecemeal in scattered litigation and keep on honling the same opponent over the same matter before various courts. The administration of justice would be brought into dispute if a party managed to get conflicts decisions or decisions which under mind each other from two or more judges over the same subject matter”.

It is my opinion that it is this multiplicity of actions in this case over the same subject matter involving the same parties from one action to another and from Judge to Judge that had brought about the issue

of conflict of interest on the part of the Plaintiff's Counsel, Messrs. Keith Mweemba and Messrs. PNP Advocates given their multiple engagements in the first action and the present action.

Counsel for the intervenor made extensive reference to a number of case law on the subject of conflict of interest among them is the celebrated case of **Prince Jefri Bolkiah v KPMG**. And reference was also made to **Statutory Instrument no. 51, the Legal Practitioners Rules 2002, Rule 33.**

1. g provides: -

“A practitioner shall not accept any brief if to do so would cause the practitioner to be professionally embarrassed under the following circumstances.

(g)the matter is one in which there is a risk of breach of confidence entrusted to the practitioner, or to any partner or associate by another client or where the knowledge which the practitioner possesses of the affairs of another client would give undue advantage to the new client.”

For the avoidance of doubt the issue or an inquiry into conflict of interest is within the jurisdiction of this court to deal with at any stage at which it is raised. (See **Section 29 of Legal Practitioner Act Chapter 30 of the Laws of Zambia**).

Counsel for the intervenor also observed that Advocates representing Juldan Motors Ltd in the present action are the same apparently acting against Juldan Motors Ltd in cause **No. 2015/HP/0678** over the same subject matter.

I have no doubt that given the foregoing, there is a real risk of conflict of interest and a risk of breach of confidence where by the same advocate/s is allowed on one hand to advocate against Juldan Motors Ltd and on the other hand appear to champion the interests of Juldan Motors in two different actions over the same subject matter, certainly this cannot be allowed, therefore, there is merit in this application raised by way of Preliminary Objection.

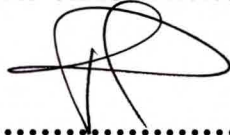
In conclusions this Court is duty bound to prevent abuse of court process so as to ensure the proper administration of justice by properly supervising its officers, in particular Advocates, to properly

conduct and discharge their professional duties, without a taunt of conflict of interest.

In view of the foregoing, it is inevitable to dismiss this present action under cause no. **2015/HP/1139** for multiplicity of actions. Accordingly, the preliminary objection is upheld.

However, I make no orders to costs. Leave to appeal is granted.

Delivered at Lusaka this ^{16th}.....day of January, 2018



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M. L. ZULU
HIGH COURT JUDGE