

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

**2016/HP/2256**



**BETWEEN:**

**SAMSON PHIRI**

**PLAINTIFF**

**AND**

**GOODMAN CRUSH AND BLOCK MAKING  
LIMITED**

**DEFENDANT**

**Before the Honourable Mrs. Justice S. M Wanjelani this 8<sup>th</sup> day  
of May, 2018 in Chambers.**

***For the Plaintiff: Mr. N. Inambao, Messrs KN Legal  
Practitioners***

***For the Defendant: Mr. B. Gondwe, Messrs Buta Gondwe and  
Associates***

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## **RULING**

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**Cases referred to:**

1. *Omar V Zambia Airways Corporation Limited (1986) ZR 23 (SC)*
2. *Mwambazi V Morrester Farms Limited (1977) ZR 108,*
3. *Zambia Revenue Authority V Jayesh Shah, (SCZ Judgment No. 2011)*
4. *Fanny Muliango and Another V Namdou Magasa and Another (1988 – 1989) ZR 209*

**Legislation and other material referred to:**

1. *Companies Act, Chapter 388 of the Laws of Zambia*

The Defendant, filed a Notice of Appeal against the Deputy Registrars' Ruling dated 15<sup>th</sup> December, 2017, in which its application to set aside the Judgment in Default entered on 18<sup>th</sup> January, 2017 and the Charging Order of 2017, was declined.

The grounds of Appeal as they appear in the Notice filed on 21<sup>st</sup> December, 2017 are couched as follows:

- 1) *The Learned Deputy Registrar misdirected himself in law and fact when he ruled that he could not set aside the Default Judgment dated 30<sup>th</sup> December, 2016 for irregularity as the same would amount to reviewing subsequent Orders of execution of the said Judgment; and*
- 2) *That the Learned Deputy Registrar misdirected himself in law and fact when he found the application by the Defendant had not been done in a timely manner and that the Defendant was aware of the process.*

The Notice of Appeal is supported by an Affidavit sworn by the Defendant's Managing Director, in which he avers that the Defendant was not aware of the process as the Defendant has never had a Manager named **Ahmed** who purportedly received the process. The Deponent further alleges that the Affidavits of Service

were false as the alleged Manager was never accommodated at the said **Plot 31371, Chalala** and a complaint had been lodged at Chalala Police. He further contended that the matter ought to be decided on merits as the proceedings ought to be set aside due to being irregular.

The Defendant further filed skeleton arguments in support of the Appeal, the gist of which was that the Defendant was not served the process in accordance with the provisions of **Section 200 of the Companies Act**, and that the Defendant had a Defence to the claim as the Plaintiff was not known to it and that matters ought to be determined on merit.

The Plaintiff filed submissions arguing that the Deputy Registrar was on firm ground in his Ruling; that the Defendant was properly served; that the Defendant has not offered a Defence that raises triable issues and that the Judgment has already been executed thus the application has been overtaken by events.

I have carefully considered the Appeal before me as well as the respective Affidavits and submissions. I take cognisance of the guidance by the Supreme Court in the case of **Omar V Zambia Airways Corporation Limited**<sup>(1)</sup> that an appeal from the Deputy Registrar is a hearing de-novo. Thus, I have also taken into account the process filed before the Learned Deputy Registrar in support of the initial application to set aside the Judgment in Default and the Charging Order.

As alluded to, the Defendant contends that it was not aware of the process that led to the Court entering a Judgment in Default and a Charging Order being issued against its property. It was contended that it's registered office, as per PACRA print out marked "**ODH4**" exhibited to the Affidavit in Support of the application to set aside filed on 3<sup>rd</sup> August, 2017, is **Plot 17134, Heavy Industrial Area**.

However, according to the Affidavit in Opposition filed on 18<sup>th</sup> September, 2017, the Plaintiff contends that he did serve the process at the said registered office and it was received by a Mr. **Ahmed**, who said he was the Defendant's Manager, as exhibited "**SP1**" copy of the acknowledgment.

**Section 200 of the Companies Act** on service of documents on companies states:

***(1) A document may be served on a company by:-***

***(a) Leaving it at the registered office of the company; or***

***(b) Personal service on a director or secretary.***

***(2) A document sent by post to the postal address of the Company shall be deemed to have been served on the Company if it is proved, by a receipt issued or otherwise, that the document or a post office notification of the document was delivered to the registered postal address."***

A perusal of the Writ of Summons and the Statement of Claim; the Affidavit of Service for the originating process filed on 29<sup>th</sup>

November, 2016 and the Affidavit of Service with respect to Summons for Interparte hearing of the Charging Order all have the Defendant's address as **Plot No. 31371, Chalala.**

In addition, the person who received the process, **A. Ahmed** does not state his designation in the Defendant Company nor is there any indication that he received the said process/documents at the Defendants registered office as alluded to by the Plaintiff in Paragraph 7 of his Affidavit in Opposition to the Notice of Appeal filed on 18<sup>th</sup> September, 2017, and which acknowledgment is not attached thereto.

In addition, the Plaintiff gives his address as **Stand No. 31371, Lusaka**, which address appears as the Defendant's in all the court process herein. The assertion that the Plaintiff resides at that address has been denied by the Defendant in Paragraph 4 of the Affidavit in Reply filed 26<sup>th</sup> September, 2017 and the Affidavit in Support of the Notice of Appeal filed on 21<sup>st</sup> December, 2017.

Given the above facts, I find that the Defendant was not properly served the process, let alone in accordance with the provisions of the Companies' Act, that require that documents for a company should be served at its registered office or on a director, a secretary of the Company which **Ahmed** was clearly neither.

I have also perused Intended Defence and note that, as alluded to, the Defendant denies knowing the Plaintiff or engaging him to carry out works on its property. In addition, the Plaintiff in his Affidavit

in Opposition filed on 18<sup>th</sup> September, 2017, insists that there was a verbal contract; that he had been a resident of the property for over 10 years and further craves *“the Court’s indulgence to compel the said Omar Dirie Hirsi to avail himself before Court for cross examination”*.

In my view, these facts show that there are triable issues revealed by the intended Defence and even the response of the Plaintiff himself, shows that the matter is contentious.

As alluded by the Supreme Court in the cases of **Mwambazi V Morrester Farms Limited**<sup>(2)</sup>, and **Zambia Revenue Authority V Jayesh Shah**<sup>(3)</sup>, matters should be determined on their merits and further in the case of **Fanny Muliango and Another V Namdou Magasa and Another**<sup>(3)</sup> where it was stated that:

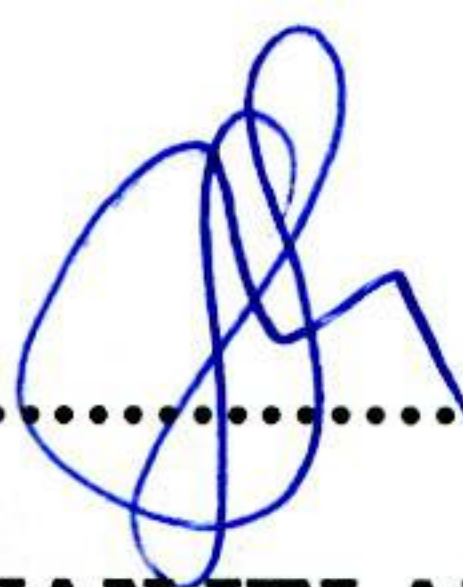
***“Where there is a defence to an action, it is preferable that a case should go for trial rather than be prevented from so doing by procedural irregularities”.***

In the case in casu, I find that the Defendant was not properly served, that there were no procedural irregularities on the part of the Defendant and that the intended Defence discloses triable issues. I therefore find that there is merit in the Defendant’s appeal and consequently set aside the Deputy Registrar’s Ruling dated 15<sup>th</sup> December, 2017. This entails that the Judgment in Default as well as the Charging Order issued pursuant to the said Judgment in

Default are hereby set aside and the matter shall proceed to trial on merit.

I direct the Defendant to file its Defence within fourteen days of this Ruling. Costs of this application are in the cause.

**Dated at Lusaka this 8<sup>th</sup> day of May, 2018.**



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**S.M. WANJELANI**  
**JUDGE**