

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

**2019/HP/0343**

**BETWEEN**

**AFRICAN TRADING SUPPLIES**



**PLAINTIFF**

**AND**

**AVOX MINING LIMITED**

**DEFENDANT**

**BEFORE THE HON. MR. JUSTICE W.G.K MUMA IN CHAMBERS ON THE 27<sup>TH</sup> DAY  
OF FEBRUARY, 2020.**

For the Plaintiff : Mr. M. Sinyangwe, Messrs. Willa Mutofwe & Associates

For the Defendant: S.T Harawa, Messrs. G.M Legal Practitioners

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## **RULING**

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### **CASES REFERRED TO:**

- 1. Zulu v Avondale Housing Project (1982) ZR 172 (SC)**

### **LEGISLATION REFERRED TO:**

- 1. Order 30 Rule 10 of the High Court Act Cap 27 of the Laws of Zambia.**
- 2. Order 14 Rule 5 of the High Court Rules Cap 27**
- 3. Order 15 Rule 6 (b) (2) of the Rules of the Supreme Court 1999 Edition**

This is an appeal by the Defendant from the decision of the Registrar in the Ruling dated 3<sup>rd</sup> December, 2019;

This follows an action commenced by the Plaintiff by way of writ of summons accompanied by a statement of claim.

The endorsement in the writ of summons was for;

- i. Payment of the sum of **ZMW 614,010.68** being the value of goods supplied by the Plaintiff to the Defendant;
- ii. Interest accrued on the overdue account in the sum of **ZMW 146,913.89**;
- iii. Damages for breach of contract entered in between the Plaintiff and Defendant for the supply of boots and gloves to the Defendant;
- iv. An order for an interim injunction for the preservation of property and to restrain the defendant, their servants or agents from disposing off the collateral pledged for the debt;
- v. Interest pursuant to Section 2 of Judgment Act Chapter 81 of the Laws of the Republic of Zambia;
- vi. Costs of and incidental to these proceedings;
- vii. Any other relief the Court may deem fit and just in the circumstances.

The learned Deputy Registrar made an Order joining the intended 2<sup>nd</sup> Defendant to this cause. This now is the subject of the appeal herein;

The appeal is made pursuant to **Order 30 Rule 10 of the High Court Act Cap 27 of the Laws of Zambia**. In their appeal the applicant advanced (3) grounds of appeal but however opted to abandon the 3<sup>rd</sup> ground.

In ground 1 the applicant contends that the learned Registrar erred in law and fact when she granted the application to join the 2<sup>nd</sup> Defendant when he is just a Director and shareholder in the 1<sup>st</sup> Defendant Company which is a separate legal entity.

In ground 2, the Defendant contended that the learned Registrar erred in law and fact when she added the 2<sup>nd</sup> Defendant without following the law on the principles of piercing the corporate veil.

Counsel for the applicant relied on the affidavit evidence and further contended that the 2<sup>nd</sup> Defendant in this case is only a Director working as an agent of the company. That the Plaintiff was aware of the Defendant's corporate existence and it was for this reason that the contract that is at the Centre of this action is expressly between the Plaintiff and the 1<sup>st</sup> Defendant.

On ground 2 counsel for the applicant argued that company law recognizes the separate identity of the company duly incorporated from its shareholders and other officers such as Directors. That it is trite law that sacred doctrine of corporate existence can only be derogated from if expressly provided by the statute or under judicial interpretation.

That **Order 14 Rule 5 of the High Court Rules Cap 27**, together with **Order 15 Rule 6 (b) (2) of the Rules of the Supreme Court 1999 Edition** which the Plaintiff relied on in joining the 2<sup>nd</sup> Defendant into this action does not provide the learned Registrar with authority to pierce the 1<sup>st</sup> Defendant corporate personality. Further that the test for lifting the veil must be proof of fraudulent conduct of the company business carried as well as

knowledge on the part of the person that the business carried out was for a fraudulent purpose.

Counsel for the Respondent relied on the affidavit in support for joinder dated 15<sup>th</sup> December, 2019. That the 2<sup>nd</sup> Defendant was the one who was trading and binding the company to a debt.

That the 2<sup>nd</sup> Defendant was a contact person for the Defendant Company, in this transaction and all invoices for goods supplied to the Defendant Company on credit were directed to him in the total sum of **ZMW 63,253.93** that the 2<sup>nd</sup> Defendant may be liable in his personal capacity as director of the Defendant Company for contracting a debt that he was aware was well above the Defendant company's capacity.

That the 2<sup>nd</sup> Defendant stands to be affected by the outcome of these proceedings and as such the 2<sup>nd</sup> Defendant has the requisite interest to be joined to the proceedings.

I have fully applied my mind to the arguments before me.

**Order 14 Rule 5 enacts;**

**“if it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may entitled to, or claim some share or interest in, the subject matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either Plaintiffs or Defendants in the suit as the case**

**may be. In such case the Court shall issue a notice to such persons.....”**

The question is whether the 2<sup>nd</sup> Defendant falls within the ambit of **Order 14 Rule 5 of the Cap 27.**

A perusal of the exhibit **“WM4”** which is a collection of invoices ranging from **P1** to **P7** generated by the Plaintiff were entirely addressed to Avox Mining Limited 1<sup>st</sup> Defendant and Calvin Kapombe the 2<sup>nd</sup> Defendant.

Given the circumstances I do not think that this is a case requiring the lifting of the corporate veil with a view of knowing the 2<sup>nd</sup> Defendant namely Calvin Kapombe, because the 2<sup>nd</sup> Defendant is very conspicuous in invoices **WM4 P1 to P7**. The documents clearly indicates

**“ invoice to Avox Mining Limited Calvin Kapombe  
P. O. Box 110284 Solwezi: Zambia Tpin  
14002236673.”**

Therefore removing the 2<sup>nd</sup> Defendant from this action shall be prejudicial to the Plaintiff's case.

In the case of **ZULU V AVONDALE HOUSING PROJECT (1982) ZR 172 (SC)**

The Court held;

**“I would express hope that trial Courts will always bear in mind that it is their duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined with finality. A decision which because of uncertainty or want of finality, leaves a door open for further**

**litigation on the same issue between the same parties can and should be avoided.”**

The learned Registrar therefore was on a firm ground to have joined the now 2<sup>nd</sup> Defendant to this suit.

The Appeal is therefore dismissed.

I make no order as to costs.

**DELIVERED AT LUSAKA THIS 27 DAY OF FEBRUARY 2020.**

A handwritten signature in black ink, appearing to be 'W.G.K. Muma', written over a horizontal line.

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**W.G.K MUMA  
HIGH COURT JUDGE**