

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

2016/HPC/0400

BETWEEN:

MTN (ZAMBIA) LIMITED



PLAINTIFF

AND

DIAMOND GENERAL INSURANCE LIMITED
MEANWOOD GENERAL INSURANCE LIMITED

1st DEFENDANT
2nd DEFENDANT

Before Lady Justice B.G Lungu on 6th March, 2017

For the Plaintiff, Mr. M. Chitambala, Messrs Lukona Chambers

For the 1st Defendant, Mr. M Bwalya, Messrs Mweenye & Mwitwa Advocates

For the 2nd Defendant, Mrs M. Banda Mutuna, Messrs Mweshi Banda & Associates

RULING

Cases referred to:

- 1. *Mwambazi vs Morester Farms Limited (1977) Z.R 108;***
- 2. *Water Wells Limited vs. Wilson Jackson (1984) Z.R 98 (SC);***
- 3. *Govindbhai Baghibhai and Vallabhai Baghibhai Patel vs. Monile Holding Company Limited (1993-1994) Z.R 20 (SC);***
- 4. *Setrec Steel and Wood and Others vs. Zambia National Commercial Bank, Appeal No. 39/2007 (unreported);***
- 5. *Ratnam v. Cumarasany and Another [1964] 3 ALL. E.R 933 at p. 935***
- 6. *Access Bank (Zambia) Limited v. Group Five/ ZCON Business Park Joint Venture (SCZ/8/52/2014) [2016];***

- 7. *Post Newspapers and others v CBU Council and others (Appeal No. 84 of 1997);***
- 8. *Twampane Mining Co-Operative Society Limited vs. E And M Storti Mining Limited, (2011) Z.L.R, vol. 3***

Legislation and Other Materials referred to:

- 1. *Order 20, rule 3, High Court Rules, CAP 27 of the Laws of Zambia;***
- 2. *Order 41, rule 4, High Court Rules, CAP 27 of the Laws of Zambia;***
- 3. *Order 53, rule 10 (8) of the High Court Rules;***
- 4. *Judge Thomas A Zonay, Judicial Discretion, Ten Guidelines For Its Use, (2015) National Judicial College, Reno, Nevada, USA***

This is an application brought forth by the 2nd Defendant for an order to set aside Judgment by Default entered against it through the Court's Ruling of on 4th May 2016.

On the one hand, the application enjoyed the support of an Affidavit deposed to by Tobias Haanyimbo Milambo, the Managing Director of the 2nd Defendant and Skeleton Arguments filed together with the Summons on 25th January, 2017.

On the other hand, the application incited opposition from the Plaintiff. The opposition was expressed by way of an Affidavit in Opposition, underpinned by Skeleton Arguments and Combined List of Authorities filed on 1st March, 2017.

