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

2011/HPC/0746

Between:

CHIAWA INVESTMENT AND DEVELOPMENT LTD  
T/A ROYAL ZAMBEZI LODGE

PLAINTIFF

AND

G & G SAFARIS LIMITED  
CHONGWE RIVER LODGE LIMITED  
CHONGWE RIVER HOUSE LIMITED  
TSIKA ISLAND LIMITED  
NYAMANGWE SAFARI LIMITED



1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT  
4<sup>TH</sup> DEFENDANT  
5<sup>TH</sup> DEFENDANT

CORAM: Before the Hon. Lady Justice Dr. W. S. Mwenda in Chambers at Lusaka the 15<sup>th</sup> day of August, 2017.

For the Plaintiff:

Mr. C. Siamutwa of Messrs Charles Siamutwa Legal Practitioners appearing with Mr. M. Nkulukusa.

For the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant:

Mr. K. Wishimanga of Messrs A. M. Wood and Company appearing with Mr. Macheleta

For the 1<sup>st</sup>, 4<sup>th</sup> & 5<sup>th</sup> Defendant:

No Appearance

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## RULING

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Legislation referred to:

*Order 14A rules 1 and 2 of the Rules of the Supreme Court, 1999 edition (white Book).*

At the sitting of 14<sup>th</sup> August, 2017 which was scheduled for *inter-partes* hearing of the Summons to Discharge Injunction filed by the Plaintiff herein, Mr. Wishimanga, learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants put it on

record that earlier that day he had filed a Notice of Motion to Raise Preliminary Issues with regard to the application to discharge the injunction granted to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants *ex-parte* on 9<sup>th</sup> June, 2017.

Mr. Siamutwa, learned Counsel for the Plaintiff, objected to the endeavour by his colleague to have the Court hear the Notice of Motion before the application to discharge the injunction is heard on the grounds that the issues raised therein could be raised when the Defendants are opposing the application to discharge the injunction.

Counsel submitted that fundamentally, a perusal of the Affidavit in Support of Notice of Motion shows that the issues being deposed to go to the core of the Plaintiff's application to discharge the injunction and raises some of the issues that will be considered by the Court in determining the Plaintiff's application. For these reasons, Counsel submitted that the Court should not deal with the Notice of Motion but instead proceed to hear the application to discharge the injunction. It was Counsel's further submission that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Notice of Motion does not raise any point of law for the Court to decide.

Further, that in terms of Order 14A rules 1 and 2 of the Rules of the Supreme Court, 1999 Edition a preliminary issue raised in the manner his colleague had done must be one of which the Court's decision would dispose of the entire case on a point of law and therefore, the Notice of Motion itself is not properly before Court. Counsel submitted that the Notice of Intention to Raise Preliminary Issues is no more than a well calculated ploy to delay the Plaintiff's application and therefore, prayed that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's application be denied.

In response, Mr. Wishimanga apologised to the Court for the late filing and service of the Notice of Motion and Supporting Affidavit, a situation which he attributed to the fact that they were only served with the Summons to Discharge Injunction on 11<sup>th</sup> August, 2017 while the supporting affidavit was

served on them a day earlier on Thursday 10<sup>th</sup> August, 2017. That it was upon perusal of the said documents that the preliminary issues were conceived.

It was Counsel's further submission that the preliminary issues challenge the application to discharge the injunction because the said application does not meet the requirements of the law. Counsel contended that determination of the preliminary issue would in fact dispose of the Plaintiff's application to discharge the injunction and therefore, falls within the ambit of Order 14A of the Rules of the Supreme Court 1999.

Counsel submitted in addition that as the documents before Courts will show, the question that is being asked by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is whether or not the Plaintiff has satisfied the provisions of the law and that, is a legal question. He further submitted that to proceed as suggested by his colleague, to hear the application to discharge the injunction and use the affidavit in support of the preliminary issue as the opposing affidavit to the application to discharge injunction would be detrimental to the Defendants. That the simple question the Defendants are asking is whether the Court can proceed to hear the Plaintiff's application to discharge the injunction when the said application offends a well-established rule of law.

It was Counsel's view that the Court ought to determine that question before the Plaintiff can be heard. He therefore, urged the Court to order that the preliminary issue be heard first since its only then that it would be known whether the Plaintiff's application is competent. Counsel assured the Court that the Defendants had no ploys to delay the proceedings but were only asking a legitimate question. Counsel prayed that the Court hears the application.

I have considered both arguments in support of and in opposition to the application to consider the Notice of Motion to Raise Preliminary Issues before the application to discharge injunction. The issues I need to consider in this application is not whether the grounds raised by the Defendants in the Notice

of Motion can be raised when the Defendants oppose the application to discharge the injunction but, whether the preliminary issues which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants want to be considered satisfy the requirements of the law, namely, Order 14A, rules 1 and 2 of the White Book.

Order 14A rule 1 of the White Book provides as follows: -

*"1 - (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -*

*(a) such question is suitable for determination without a full trial of the action, and*

*(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.*

*(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just..."*  
(underlining the Court's for emphasis only)

Order 14A rule 2 stipulates as follows: -

*"2. An application under rule 1 may be made by summons or motion or (notwithstanding Order 32, rule 1) may be made orally in the cause of any interlocutory application to the Court."*

Order 14A quoted above clearly shows that an application can be made by a party to proceedings at any stage by summons or motion but the said application must satisfy the conditions listed in rule 1. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein filed a Notice of Motion to Raise Preliminary Issues which was supported by an affidavit, thereby satisfying the requirements of Order 14A rule 2.

As submitted by learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, the preliminary issues challenge the application to discharge the injunction on the

ground that it does not meet the requirements of the law. In my view, in order to satisfy the requirements of Order 14A of the White Book, the point of law needing determination need not finally determine the entire cause or matter; determination of any claim or issue therein suffices.

I am of the view that the determination of whether the application for discharge of injunction is properly before the Court would, depending on the outcome, dispose of the Plaintiff's application and therefore, the application must be heard and determined before the application for discharge of injunction is dealt with. From my observations above, it goes without saying that contrary to the submission by learned Counsel for the Plaintiff that the preliminary issues raise no point of law for the Court to decide, the preliminary issues do raise a serious point of law, namely, whether the application is properly before the Court.

For the reasons indicated above, I am of the view that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' application for the Court to consider the Notice of Motion to Raise Preliminary Issues before the Summons to Discharge Injunction is heard, has merit. The Notice of Motion to Raise Preliminary Issue shall, therefore, be heard and disposed of before the application to discharge injunction.

Delivered at Lusaka the 15<sup>th</sup> day of August, 2017.

  
W. S. Mwenda (Dr)  
**HIGH COURT JUDGE**