

OLYMPIA FARM PRIVATE LIMITED  
and  
CHIEF REGISTRAR OF DEEDS  
and  
THE SHERIFF OF ZIMBABWE  
versus  
RELEASE POWER INVESTMENTS (PRIVATE) LIMITED  
and  
ASSETFIN (PRIVATE) LIMITED  
and  
SHOPEX (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
**KATIYO J**  
HARARE, and 9 September 2024

**Pre-trial hearing**

*B Mtetwa*, for the applicant

*Adv T Mpofu*, for the respondent

KATIYO J: On the 12th of October 2023 I granted an order in H5397/21 in the following terms;

1. The point of law raised by the First Defendant be and is hereby dismissed
2. The application for amendment be and is hereby granted.
3. The Plaintiff summons and pleadings be and are hereby amended to read Olympia Farm (Private) Limited.
4. No other amendments are permissible without the leave of the court
5. No order as to costs.

The reasons for the order I granted are found in the Judgment Number HH551/23. The Applicant was aggrieved by the decision to grant the amendment aforesaid and has approached this court with an application for leave to appeal the judgment at the Supreme Court.

The grounds of the intended appeal can be summarized as follows: -

- a) That the court erred and grossly misdirected itself by dealing with and granting an application to amend under the cover of HC7058/22 which was not placed before it.
- b) Court erred and grossly misdirected itself on a point of law by granting the application to amend under HC7058/22, without dealing with the points *in*

*limine* raised by Applicant.

- c) The court erred and grossly misdirected itself by failing to find that the mis-citation is incapable of amendment.
- d) The court erred and misdirected itself in law in finding that the citation of Olympia (Private) Limited amendment. was a misdescription capable of Before I delve into the merits of the case, I observe that the Applicant raises allegations that the court determined a matter which was not placed before it and was therefore on a frolic of its own. The Applicant and Respondent through counsel agreed to the application being determined on the papers filed of record.

Applicant has decided to launch unrestrained attack aided by its legal practitioner, a Senior Officer of the court whose duty is firstly to the court. Allegations by the Applicant apart from being untrue appear to be actuated by malice and meant to arm twist the court into acceding to the relief sought there is suggestion in the founding affidavit of impropriety on my part for the Appellant. Can only be a Thus is persisted product of ingenuity of the legal practitioner for the Applicant who is an officer the court, I decided to be a colorless judicial officer and will not penalize the officer of Min colin.

Suffice to say this is an expression of disquiet at the conduct of the 1 am aware that a litigant who predicates relief on a false premise is not entitled to that relief. There is merit in this because a court has no mechanism to ascertain when such a litigant has decided to tell the truth. It is only safe to discard all that is said by such a witness as I proceed to do.

See *Trinity Engineering v Karimazondo and Others* HH 672/15, *Leader Tread Zimbabwe (Pt) Limited v Smith* HH 131/03, *Kufandada v Zinwa* HH469/15. The sentiments of the Supreme Court in *Matsika v Chingwena* and 4 Others SC 144/21 apply with equal force *in casu* wherein the court held; - "a false affidavit at any time is bad enough, but when it is presented in a judicial matter in order to mislead the court then it is quite inexcusable "The doctrine of stare decisis binds me.

On the merits of the appeal courts are generally loath to entertain piecemeal appeals see- *Gilespies Monumental Works (Pvt) Limited v Zimbabwe Granite Quarries (Pvt) Limited* 1997 (2) ZLR (S).

My view in dismissing the *point in limine* taken and sought to be challenged on appeal, was that the parties had engaged with each other on the substance of the dispute and that the matter had been set down for trial to determine the merits

No prejudice could be occasioned to the Applicant by correcting a misdescription of a party in order to allow the merits of the matter to be dealt with in this regard the sentiments of MATHONSI J (as he then was) in *Potraz v Telecel Zimbabwe* and Ors HH 446/12 thus;

"Invariably when one opens a notice of opposition these days, he is confronted by a *point in limine* ... which does not have the remotest chance of success at the expense of the substance

of the dispute. Legal practitioners should be reminded that it is an exercise in futility to raise points *in limine* simply as a matter of fashion. A preliminary point should be taken only where firstly it is meritable and secondly it is likely to dispose of the matter. The time has come to discourage such a waste of court time by making endless points *in limine* by litigants afraid of the merits of the matter or legal practitioners who have no confidence in their client's defence viz-a-viz the substance of the dispute. As points *in limine* are usually raised on points of law and procedure, they are the product of indemnity of legal practitioners. In future, it may be necessary to reign in legal practitioners who abuse the court in that way, by ordering them to pay costs *de bonis propriis*" (underlining is for emphasis) I fully associate myself with the above reasoning and it was on the basis that the point taken *in limine* was not dispositive of the main dispute that I dismissed it. This was in keeping with the law that a misdirection of a party is not fatal. A legal entity existed as cited save for the misdirection whose amendment I allowed."

*Tinashe Muzenda v Emirates Airlines* and Ors HH 775/15 and *JDM Agro Consult and Marketing (Pvt) Limited v Editor of the Herald Newspaper & Anor* 2007 (2) R 171. same approach has been followed in *The Footwear v Hwange Colliery Company* HH 791/15 the court said;

"In the present case it cannot be said by any stretch of imagination that the defendant does not exist because there is no entity answering to that name. The only omission is that the word "Limited" which is an expression of its limited liability status than anything. The amendment ought to relate to completeness of the name as opposed to introducing a new persona to a summons originally without a defendant" holds a true in the present case where the words "farm" were 'or completeness an amendment to include the word does not with introduce a legal persona to a summons originally without a defendant The amendment granted was consistent with the object of the court to do justice between the parties. This is because litigation is not a game where mistake necessarily results in a forfeit. A court sits to determine the real dispute between the parties. I decline an invitation to play games in litigation of a serious dispute. The decision to allow the amendment was informed by the fact that the party existed and the mis-description was in my estimation inconsequential as no prejudice could result. The proceedings before me were thus valid. I also point out that the order that issued allowing the amendment was an exercise of discretion which by law is not appealable - *Chiwenga v Mubaiwa* SC 42/23.

I take judicial notice that this matter has taken long owing to delays which have nothing to do with the merits. Having heard counsel for the applicant and taking into account the case of *Mahembe v Matambo* HB 13-03. I come to the inescapable conclusion that the Applicant ought to be mulcted with costs on a higher scale between legal practitioner and own client.

The application is an abuse of the process of the court and calculated to delay the determination of the merits. Costs on a higher scale are in the circumstances merited.

In the result; -

**IT BE AND IS HEREBY ORDERED THAT: -**

1. The application for leave to appeal to the Supreme Court in case number HCH

7007/23 is hereby refused.

2. The Registrar is directed to set down the main matter Case Number 5397/21 for trial on the next available date in consultation with parties.
3. Costs of the application shall be borne by the applicant on an ordinary scale.

KATIYO J:

*Mtetwa and Nyambirai legal Practitioners*, applicant's legal practitioners  
*Tabana and Marwa legal practitioner*, respondents' legal practitioners