

TAMI LOVEMORE JERERA  
and  
THE TRUSTEES FOR THE TIME BEING FOR OS FAMILY TRUST  
and  
CAROLINE MAPANZURE  
and  
MUSEKIWA CHIWOFFA  
and  
TAWANDA VERA  
and  
ELTON CHIGUMBURA  
and  
CHARLES REGIS MAKOTORE  
and  
HOPEWELL MUNGANI  
versus  
MADOKERO APARTMENTS (PRIVATE) LIMITED  
and  
COYANT INVESTMENTS (PRIVATE) LIMITED  
and  
EXODUS & COMPANY (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE, 15 January 2020 & 24 February 2020

**Opposed application**

*E.T. Moyo* and *R. Magundani*, for the applicants  
*S. Siyakurima*, for the respondents

PHIRI J: This was an opposed application in respect of which this court upheld points *in limine* which were raised for and on behalf of the respondents.

A request for a written judgment in respect of this ruling has been made these are the reasons for that ruling.

In this application there were eight applicants cited.

They were all seeking a declaratory order that;

“Recalculation of the monthly repayments for properties in Madokero estates for the applicants’ accounts using the United States Dollar and payable at the prevailing monthly interbank rate is in contravention of s 21 of the Finance Act (No.2, 2019 and therefore unlawful and null and void.”

Additionally, applicants seek that the respondents be compelled to redenominate the account balances in Zimbabwe Dollars at the rate of one to one with the United States Dollar. For the avoidance of doubt all payments by applicants made at the interbank rate must be accordingly credited to the applicants account at the rate of one to one with the United States Dollars.

See p 4 paragraph 4 of the application and the Draft Order at pp 147 to 148 of the court record.

#### FOUNDING AFFIDAVIT

The founding affidavit was deposed to by one Tami Lovemore Jerera who stated that;

“(a) THE PARTIES

I am the applicant in this matter and the facts I depose to herein are within my personal knowledge and belief are true and correct....”

(2) The first respondent is Madokero Apartments (Private) Limited a company registered in terms of the laws of Zimbabwe and whose address for service is number 7 Dangarvan Close, Borrowdale Harare.

(3) The second respondent is Coyant Investments (Private) Limited a company registered in terms of the Laws of Zimbabwe and whose address for service is Number 7Dangarvan Close Borrowdale, Harare.”

Not the fact that on the face of the court application there are eight (8) applicants, and, there are three (3) Respondents. The third respondent “Exodus and Company (Private) Limited” is not incorporated in the founding affidavit.

Similarly in the main founding affidavit applicant refers to the cause of action affecting only himself, and does not refer to incorporate the other seven applicants.

Supporting affidavits were deposed to on behalf of the second to eight applicants, and in the main, all these affidavits, in their paragraph 2 therein, states the following standard statement;

“2. I have read the affidavit of the 1<sup>st</sup> applicant, Tami Lovemore Jerera and I adopt and endorse the contents made therein. I simply wish to add my statement of accounts and agreement of sale attached herein and marked “E....(etc)”

Respondent’s opposing papers

It is not surprising, in this court’s view, that the respondents raised a preliminary issue!

In the opposing affidavit deposed to on behalf of the first, second and third respondents it was stated that;

“Deponent does not identify the 3<sup>rd</sup> respondent yet it had been cited in this application, neither is there proper citation of the 2<sup>nd</sup> to the 7<sup>th</sup> applicants making the application fatally defective.

Further, there appears no reason for the citation of the 3<sup>rd</sup> respondent as no averments have been made against it to justify its suit herein.”

#### COURT’S FINDING ON THE POINTS *IN LIMINE*

It is this court’s view that the points *in limine* raised for and on behalf of the respondents have been properly taken.

#### THIRD RESPONDENT

This court holds that the third respondent has not been cited in the founding affidavit and no allegations have been made against it.

The applicants admitted, both in their papers, and when this matter was argued that the third respondent is not before this court.

A belated attempt was made to make an oral application for joinder, at the hearing, but sadly this was too late, as the “Proverbial Horse had already Bolted”. The applicants’ case stood or fell by its founding affidavit.

Similarly the applicants failed to rectify this issue when this issue was raised in the respondents opposing papers, by either making an application for joinder or withdrawing their case against the third respondent.

#### ONLY FIRST APPLICANT BEFORE THE COURT

The next point *in limine* is that only the first applicant is the one properly before the court and that the rest have no proper place in this matter.

The aforesaid founding affidavit of the applicant establishes no nexus between the first applicant’s case and that of the rest of them.

There was an attempt to cure this short coming in the answering affidavit of both the first applicant and the rest of the applicants. The affidavits of the second to the rest of the applicants simply “adopt and endorse” the contents of the founding affidavit and attach their statement of accounts and join the first applicants in seeking the relief of the draft order.

Their affidavits do not support the case made for them but that made for the first applicant”

In the cited case of *Prosser & Ors v Zisco Steel Company Limited* HH 201/93 this court said the following:

“The first point which arise to be considered is whether the application is properly before this court in respect of all the applicants. The papers describe the application as Barry Thomas and 35 others against the respondent the Zimbabwe Iron and Steel Company. The basis on which the other 35 are sought to be mad part of the application is found in the affidavit by Barry Thomas Posser. In paragraph 1 he refers to the full names of all the other applicants set out in an annexure and then states in paragraph 3 that he has been duly authorised to act for an on behalf of all applicants in this matter. I am of the view that it would have been necessary to have gone further than that in order to properly make the other 35 persons applicants in this matter. I am satisfied that an affidavit from each of other 35, which would have been done in simple terms simply stating that they had authorised Barry Thomas Prosser to act a their behalf and confirming that they had read the papers, would have been necessary ... Accordingly I am of the view that the papers as filed make only Barry Thomas Prosser an applicant and accordingly any order made can only relate to Barry Thomas Prosser.”

In the present matter:

“... we have a scenario where the persons not mentioned in the founding affidavit as parties to the matter impose themselves as co-applicants. That is not permissible outside the procedure of formal joinder of the parties provided in the rules of court – See *Meda & Anor v S. Banda & Ors* HH 650/2016.”

The supporting affidavits of the co-applicants are accordingly not properly before the court and ought to be struck out with costs.

There is only one applicant before their court and, accordingly the points *in limine* raised for and on behalf of the respondents are properly made and upheld with costs.

*Scanlen & Holderness*, applicant’s legal practitioners  
*Sawyer & Mkushi*, respondent’s legal practitioners