

MARIMBA RESIDENTIAL PROPERTIES LIMITED  
and  
JOSHUA M NKOMO HOUSING CO-OPERATIVE LTD SOCIETY  
and  
THE MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS  
AND NATIONAL HOUSING

HIGH COURT OF ZIMBABWE  
CHINAMORA J  
HARARE, 27 October 2021 & 22 August 2022

**Application for joinder of a party**

*Adv K Kachambwa*, for the applicant  
*Mr M Nkomo*, for the 1st respondent  
*Mr T Dzvettero*, for the 2<sup>nd</sup> respondent

CHINAMORA J:

**Introduction**

On 27 October 2021, the parties argued an application for a joinder before me, and I granted the order sought by the applicant. The brief background is that there is matter under HC 3170/18, which is before this court. On 3 October 2019, the parties appeared before Justice Tagu, who struck that matter (HC 3170/18) off the roll and ordered that an application for joinder of the applicant be filed. The dispute in HC 3170/18 concerns two properties, namely, Stand 48 Aspindale Park Township of Subdivision A of Aspindale Park of Subdivision A and B of Lochinivar, measuring 100,3134 hectares, and the Remaining Extent of Subdivision A of Aspindale Park of Subdivision A and B of Lochinivar, measuring 80,7875 hectares. The said properties are registered in the name of the applicant, as verified by the certificates of registered title attached to the application marked “B1” and “B2”, respectively. It is on that basis that the applicant argued that it has a direct and substantial interest in the application under HC 3170/18, and for seeking to be joined in those proceedings. The applicant’s case is that it needs to heard since it owns the aforesaid properties.

### **The law on joinder of parties to proceedings**

When this matter was heard, applications for joinder were brought in terms of rule 85 of the High Court Rules which provides that:

"Subject to rule 86 two or more persons may be joined together in one action as plaintiffs or defendants whether in convention or in reconvention where -

1. if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
2. all rights to relief claimed in the action, whether they are joint, several or alternative, are in respect of or arise out of the same transaction or series of transactions".

The joinder procedure was designed to prevent such multiplicities of actions which involve the same parties, issues or questions of law and fact. In *Building Electrical & Mechanical Corp (Salisbury) Ltd vs Johnson* 1950(4) SA 303 SR BEADLE J as he then was had this to say about the main object of this procedure at 308 C-D –

"It is to avoid multiplicity of actions dealing with substantially the same subject matter and involving much the same evidence. Its object is to combine such actions together in one trial and so save time and expense, particularly to save the defendant from the inconvenience of proving over again the same facts for the purpose of getting the remedy to which he is entitled ..."

The learned Chief Justice continued at 309 G:

"I think therefore that when the same facts have to be coned over in order to ascertain the liability and to give relief to one or other of the parties in such a case the rule now provides that it is unnecessary to have separate actions or separate proceedings but that a third party notice may be served."

### **Applying the law to the facts**

*In casu* applicant is the registered owner of the properties subject of the dispute in court. His interest in the dispute concerning properties that he holds title is obvious. If he were to be left out of the lawsuit, I do not see how he can protect his interest by placing his case before the court. Additionally, it is inconceivable how any judgment resulting from the litigation can be enforced against him if he was not a party. In this context, the rendering of a judgment in the absence of an interested party was criticized by the Supreme Court in *Indium Investments (Pvt) Ltd v Kingshaven (Pvt) Ltd & Ors* SC 40/15, when GOWORA JA pointedly stated:

“In *Hundah v Murauro* 1993 (2) ZLR 401 the point was made that for a party who has a real interest in the matter to be bound by a judgment of the court such party should be cited...If only to ensure that it is bound by whatever judgment is given. Such an order does not bind it if it was not a party”.

It is for the above reasons that I granted the application for joinder of the applicant to proceedings in HC 3170/18 in the following terms:

“IT IS ORDERED THAT:

1. The applicant be and is hereby joined as the 2<sup>nd</sup> respondent in Case No HC 3170/18
2. The 1<sup>st</sup> respondent is hereby directed to serve upon the applicant the court application and supporting papers filed in Case No. HC 3170/18 within 5 working days of service of this order.
3. The applicant be and is hereby granted to file its notice of opposition and opposing affidavit(s) in Case No HC 3170/18 within 10 days after the date on which it was served with the court application and other papers in terms of paragraph 2 hereof. The period of 10 days shall exclude Saturdays, Sundays and Public Holidays and the day on which the papers were served.
4. The costs of this application shall be paid on the ordinary scale by the 1<sup>st</sup> respondent”.

*Ahmed and Ziyambi*, applicant’s legal practitioners  
*DNM Attorneys*, 1<sup>st</sup> respondent’s legal practitioners  
*Antonio & Dzvetero*, 2<sup>nd</sup> respondent’s legal practitioners