

LASSIE SANDRA HUNYENYE
and
TOBIAS TOBAIWA KAMBANI

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 30 September & 8 November 2022

Pretrial Conference

Plaintiff, in person
Mr *J Mambara*, for the defendant

MUCHAWA J: This matter was referred to me as one ready for a pre-trial conference in terms of r 49 (8). I then instructed that the parties should appear before me for a pre-trial conference on 30 September 2022 at 10.30 am. Though such pre-trial conferences are usually held in chambers, I arranged for the holding of this pre-trial conference in court so that it could be recorded. This was because of the state of the record and the apparent history of the matter.

Upon my initial receipt of this record, I quickly noticed that it was in a muddled state. It was unclear, incoherent and confused. The plaintiff was called in to explain to her the need to attend to her record so that the court would be in a position to appreciate what the issues before it were so as to be able to conduct a proper pre-trial conference. The result of that was the whittling down of the record by about a third of its initial size and pagination of the record. When it was observed that the pagination and reorganizing of the record had still not made clear what the real issues before the court were, through the pleadings, I directed that the matter be set down, hoping that the defendant and his counsel could assist the court.

The plaintiff initially issued summons on 29 July 2020 under HC 4041/20. These appear on p 1-2 of the record. The declaration accompanying these summons is not on record. These summons were prepared by *T Pfigu* Attorneys who renounced agency on 14 September 2020. On 4 March 2021 the plaintiff proceeded, now as a self-actor, to file a notice of amendment to the

summons, supposedly on the strength of leave to amend granted at a pre-trial conference. This amendment addresses itself to the earlier declaration which is not on record and falls far short of clearly defining the issues so as to make clear to the court the issues which the defendant has to answer to.

The order by Honourable TAGU J which the plaintiff relies on as having given her leave to amend her summons is on p 7 of the record. It reflects the date of the order or result of the pre-trial conference as 23 March 2021 and it states; “Postponed sine die. Plaintiff to file amended summons. The notice of amendment had however been issued out on 4 March 2021, prior to the order by Honourable TAGU J.

As expected, the defendant opposed the plaintiff’s notice of amendment in that there was no court application with an affidavit clearly setting out the reasons for the amendment. Further that it was defective for want of a draft order. The amendment was further impugned for being inelegantly drafted, argumentative and vexatious. It was pointed out too that the plaintiff had so far filed 3 summons which she had been persuaded by the court to withdraw as the papers had been in shambles. What followed was a flurry of pleadings filed by the plaintiff. The plaintiff said she then filed two more amendments to the summons. Only the last one appears on p 16 of record. This too is inelegantly drafted, argumentative and vexatious.

On 11 May 2022 the plaintiff once again filed what she is calling, “Notice of filing in relation to effecting the summons cause of action substitute amendment, declaration substitute, effecting all other pleadings within the ten (10) day period in terms of High Court Rule 41”. This too is inelegantly drafted, argumentative and vexatious. It’s unclear what pleading this is.

What follows this on the same date of 11 May 2022 is what is called “Summon substitute cause of action amendment in terms of High Court Rule 41” together with “Plaintiff Declaration substitute in terms of High Court Rule 41”

Just to illustrate from the plaintiff’s index why I am unable to decipher what issue is before me, I wish to refer to the following items;

Item	Description	pages
1	Case 4041/20 Original Errored Cause of Action done by Mutsa of Pfigu Attorneys to leave only tacit universal partnership and exclude unjust enrichment	1-2
3	4 March Notice of Amendment to amend Summons and Declaration also reflected signed and stamped same day 04/04/21	4-6
7	Last Notice of Amendment Currently standing amendment of summons and declaration in addressing supposed to be matrimonial home issue	16-19
9	Summon substitute Cause of Action in terms of Rule HC 41	25
10	Declaration Substitute in terms of Rule HC 41	26-30
11	Notice of Filing on clarifying status of file	27-29

From the above, one is left wondering about the proper identity of the actual summons before the court. Plaintiff herself even said that there was another amendment to the summons which she had not included to the record.

The Plaintiff's pretrial conference issues as they appear on record p 40 further compound the issue. In order to illustrate this I will reproduce the issues:

- “1. Whether or not defendant is justified to challenge a granted oral application for leave to amend using a notice of opposition.
2. Whether or not failure by defendant and his lawyer to wait for judge who granted order for leave to amend to fix the times for defendants entry of appearance to defend to new cause of action and for filing all subsequent pleadings ahead of choosing to challenge a granted application using a Notice of Opposition in line with Rule 41(12) is not failure to appreciate the law by pair in disrespecting the court.
3. Whether or not behavior by defendant and his lawyer of offering 15 percent proposal from a property plaintiff later discovered was in somebody's name neither known to be dead or alive with the pair choosing to remain shady on whereabouts of the more than 250 cattle among other issues is justifiable behavior and whether or not its not a form of disrespecting court.
4. Whether or not general law ahead of customary law should be used in the property distribution.
5. With defendant and his lawyer Joel Mambara having chosen not to appear to defend to any new cause of action choosing to disrespect court whether or not matter still has any need to go for trial in continuous waste of court resources and time as well as plaintiff time.
6. Whether or not plaintiff does not deserve to be awarded items in paragraph 20 after defendant chose not to file any more proposal in finalization of matter.”

At the hearing of the pre-trial conference the plaintiff continued insisting that the defendant was barred and she insisted that her pre-trial issues were clear. On the other hand, Mr *Mambara* submitted that the parties were appearing before the seventh judge. He said they had filed all their PTC papers but the record was in disarray as the plaintiff was in the business of filing papers which were irrelevant. He also pointed out that the plaintiff's pre-trial conference minute clearly showed that she had no appreciation of what this was about and that she needed help in order to have this matter proceed to finalization. Of all the seven judges, it was said all had advised the plaintiff to seek legal assistance but she was adamant in refusing. Of the seven judges, he said three had been reported by the plaintiff to the Constitutional Court only because they had advised her to get help as they too could not understand her. He too, professed that he was having difficulties figuring out the issues they have to answer to, now. He said too that referring the matter to trial in its current state would be a huge disservice to the trial judge.

In reply, the plaintiff accused Mr *Mambara* of having paid a lawyer who previously represented her to work against her interests. Most of her submissions were complains against the conduct of Mr *Mambara* in this matter and in a labour matter in which he was her legal practitioner. She insisted that the court should proceed to enter default judgment in her favour. Upon being advised that the pre-trial conference was not the correct forum for that given the state of the pleadings, she indicated she had a pending application for default judgment.

Mr *Mambara* indicated that they had filed all their pre-trial conference papers, and the issues in their opinion were as follows,

1. Whether or not there was tacit universal partnership between the parties
2. Whether or not the movable and immovable assets should be distributed between the parties, and if so, in what proportion.

I pointed out that there was another issue regarding what constituted that assets of the parties. Despite our efforts to fish out the emerging issues from the sea of papers, the plaintiff did not appreciate these issues as laid out by the defendant's counsel and the court and insisted there was a customary law union. This issue does not appear to be contested by the defendant. She went back to insisting that the defendant was in contempt of court and was not persuaded to adopt the issues proposed. She insisted that the matter be referred to trial in its current state.

A perusal of the record shows that only the defendant's plea and summary of evidence appear on pp 68-77 and 78-85. The defendant's pre-trial conference minute is not on record. This may be a result of plaintiff's whittling down of the record.

On pp 83, 84 and 85, the plaintiff has inscribed the flipside of those pages with copious notes. This is unacceptable.

I have the following observations to make following the holding of the pretrial conference and a perusal of the record;

1. The purpose of pleadings is to define the issues and to enable the other party to know what case he has to meet. The plaintiff has failed to do this by filing numerous amendments to the summons which are generally inelegantly drafted, argumentative and vexatious.
2. Some pleadings are missing from the record such as the initial declaration and an alleged amendment to the summons. Some of the defendant's pre-trial conference documents are also missing from the record as pointed above.
3. The initial amendment to the summons was done on 4 March 2021, well before 23 March when Honourable TAGU J allowed the plaintiff leave to file amended summons.
4. The plaintiff is in the habit of filing all manner of documents which are not prescribed by the Rules of the court, some of which are complaints against the conduct of anyone who has dealt with this file. The result is a confused mass of documents leading to the loss of the real issue before the court.
5. The plaintiff seems to have no capacity to prosecute her matter on her own though she is adamant that she has such capacity. The pleadings on record speak for themselves. Though she refers to the rules of this court, she is unable to apply them and place before the court the real issues for determination. A lot of the pleadings filed by the plaintiff simply show that she rambles on and on in a mass of confused and irrelevant facts.
6. This matter seems to have clogged the court as it has done the rounds through seven judges resulting in wasting the court's time. There is need to bring finality to litigation.
7. It would be irresponsible for me to refer this matter to trial in its current state.

I believe that the following order and directions would serve the interests of justice;

- a. This matter be and is hereby removed from the roll to enable the plaintiff to do the following;
 - i. Engage the services of a legal practitioner of her choice, if she so wishes;

- ii. Within thirty days, prepare, issue out and serve a new set of amended summons and declaration incorporating all the issues to be determined by the court which meet the standards set out in the High Court Rules, 2021.
 - iii. Thereafter the matter to proceed in terms of the Rules.
- b. The plaintiff is barred, with immediate effect, from filing any other pleadings or documents outside those specifically provided for by the Rules, except as directed in paragraph a (ii) and (iii). By copy of this ruling, the Registrar is directed not to accept any pleadings or documents which are not specifically provided for by the Rules and this ruling.**

J Mambara & Partners, defendant's legal practitioners