

GRADUATE SCHOOL OF MANAGEMENT DESIGN TEAM (GSM)

Composed of the following duly incorporated companies and duly established partnerships: Manyara Design Architects; Marsden Consultants Africa; Sirston Consultants (Pvt) Ltd; Vanguard Engineering Services

versus

UNIVERSITY OF ZIMBABWE

HIGH COURT OF ZIMBABWE

MUSHORE J

HARARE, 18 May 2018 & 31 October 2018

Civil trial: *locus standi in judicio*

B Mataruka, for the plaintiff

N Chiuta, for the defendant

MUSHORE J: This is a court action in which the plaintiff is claiming the sum of US\$1. 824 478.80, for professional services rendered by it to the defendant. The professional services concerned were allegedly rendered to the defendant over a period of ten years, from 2002 to 2012. Defendant filed a plea in which aside from denying that it is liable in contract, it raised in point *in limine*, challenging the plaintiff's *locus standi in judicio* to file suit, alleging that because plaintiff cited itself as an association, when it is neither an association nor a partnership, defendant is therefore disqualified from instituting action in terms of Order 2A of the High Court Rules, 1971.

At the trial hearing, the parties advanced their oral arguments on the preliminary point. Defendant argued that by the plaintiff having congregated itself into an association for the purposes of bringing the present litigation, any claim which the plaintiff alleges it has previous to filing suit is not claimable. In the same point defendant also placed on doubt the plaintiff's partnership status; submitting that such a partnership does not exist and that even if such a partnership had been formed; the partner who is acting on behalf of the plaintiff has not been identified in the papers before the court. Arising from those submissions, defendant

surmised that the plaintiff does not exist, and that in the circumstances the present suit is null and void. Defendant cited the case of *Stewart Scott Kennedy v Mazongoro Syringes (Pvt) Ltd* 1996 (2) ZLR 565 as authority for the latter submission.

Plaintiff specifically replied to the point taken *in limine* by the defendant, in its replication, stating that there was nothing offensive about the citation to the extent of rendering the suit null and void. Plaintiff submitted that it was properly before the court *per* Order 2A r 7. In its Heads of Argument, plaintiff directed my attention to r 8C as support for its proposition that plaintiff can sue and be sued in its present description and that the defendant's point on locus standi should be dismissed entirely. This is how the rules read:-

ORDER 2A
PROCEEDINGS BY OR AGAINST ASSOCIATIONS ETC.
7. Interpretation in Order 2A

“In this Order—

“associate”, in relation to—

- (a) a trust, means a trustee;
- (b) an association other than a trust, means a member of the association;

“association” includes —

- (a) a trust; and
- (b) a partnership, a syndicate, a club or any other association of persons which is not a body corporate.”

The plaintiff has styled itself as being a team and not a partnership. Team means a group, association, club etc. The plaintiff has been an association or a team for the purposes of performing the task given to it by the defendant as far back as 2002 when the project commenced. It therefore makes no sense for the defendant to believe that the association was formed for the purpose of litigation only. Plaintiff falls within the description found in r 7.

Rule 8 provides plaintiff with the right to sue or be sued. It reads:-

8. Proceedings by or against associations

Subject to this Order, associates may sue and be sued in the name of their association”

Thus the rules permit the association to style itself with a name of its choice. R8C provides as follows:-

8C. Proceedings by or against persons under their trade name

Subject to this Order, a person carrying on business in a name or style other than his own name may sue or be sued in that name or style as if it were the name of an association, and rules 8A and 8B shall apply, *mutatis mutandis*, to any such proceedings”

I am thus persuaded with the position taken by the plaintiff and I am satisfied that the plaintiff is a proper litigant, capable of suing and being sued.

I need to dispose to the small issue of an objection taken by the plaintiff that defendant's did not with a directive of this Court, by failing to file and serve their submissions on the plaintiff by 21 May 2018. I had given timelines for the filing by way of a court directive. Plaintiff was served with the defendant's submissions on 22 May 2018 and not on 21 May 2018. I have reviewed my file note. The directive which was given to the defendant was that it should file its submissions by the end of the day on 21 May 2018. Perhaps I ought to have included the words '*...and serve on the plaintiff*' however, in the absence of my having been specific, and taking into consideration that the plaintiff received the submissions on 22 May 2018, it is my view that the defendant substantially complied with the directive of the court and that service was effected timeously.

Going back to the substantive issue, as I have already said, I find the plaintiff's argument to be the more persuasive of the two. Accordingly I order as follows:

"The point in limine which was taken by the defendant in its plea filed with the court on 19 February 2016 is dismissed with costs being in the cause."

*Gill Godlonton & Gerrans, plaintiff's legal practitioners
Messrs Ziumbe & Partners, defendant's legal practitioners*