TN GOLD-OPTIMIST MINE(PVT) LTD

And

TN GOLD-ARCTURUS MINE(PVT) LTD

Versus

PROVINCIAL MINING DIRECTOR

And

METALLON GOLD ZIMBABWE(Pvt) LTD

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
CHILIMBE J
HARARE 12 May & 16 June 2025

Interlocutory application

L.Madhuku for first applicant
F. Mahere for second applicant
T. Mpofu for the second respondent
No appearance for first respondent

CHILIMBE J

INTRODUCTION

[1] The above notation on first and second applicant counsel`s appearance triggered an objection from Mr. *Mpofu* who appeared for the second respondent. The pithy of his protest being that by purporting to appoint separate counsel, first and second applicant effectively and improperly severed their case. I will return shortly to this point in greater detail.

[2] I would have disposed of this objection is summary fashion. However, the arguments subsequently raised necessitated an interpretation and issuance of guidance on, among other matters, the relationship between the rules of the General[1] and Commercial Divisions[2] of the High Court.

[1] The High Court Rules SI 202/21 ("the High Court Rules")
[2] The High Court (Commercial Division) Rules SI 123/20 ("the Commercial Court Rules")

THE DISPUTE BETWEEN THE PARTIES

[3] As recounted by the applicants, the dispute went thus; -on 31 October 2017, first applicant ("TN Optimist") acquired second applicant ("TN Acturus"), then called Acturus Mining Company (Pvt) Ltd as a going concern from second respondent ("Metallon"). Among TN Arcturus's asset inventory were two sets of mining claims (i) Mining Claim 33 and (ii) Mining Claims Outside Mining Claim 33. The latter batch being listed in a schedule attached to the applicants` founding papers.

[4] A dispute arose between the applicants and Metallon over ownership of the assets outside Mining Claim 33 in 2023. In the same vein, second respondent "the Provincial Mining Director") declined to issue Inspection Certificates for the claims concerned. The applicants thus approached this court in the main claim seeking a declaratory order paraphrased as follow;

i. That the contested claims formed part of TN Arcturus's assets inventory as at the time of the latter`s acquision by TN Optimist.

ii. That any Inspection Certificates as may have been issued by the Provincial Mining Director to any party be declared invalid.

iii. That the Provincial Mining Director be ordered to issue the applicants with Inspection Certificates for the claims in question.

iv. That Metallon and other party claiming title to the claims be interdicted from working or dealing in the claims.

[5] The applicants` case was founded on an affidavit deposed to by Mr. Tawanda Nyambirai, in his capacity as Managing Director and Chief Executive of TN Optimist and TN Acturus. To the founding papers was a raft of documentary exhibits as well as 5 supporting affidavits. Similarly, Mr Nyambirai responded, in his answering affidavit, to the depositions in the opposing affidavit filed by Mr. Hapson Makotore, Metallon`s Company Secretary, together with the affidavit of Mr. George Museta, Metallon`s former Legal Advisor.

[6] Both applicants were represented by one firm as legal practitioners. This firm had filed a single set of heads of argument as it had also instructed the two appearing counsel. The application was opposed by Metallon in limine and on the merits. For purposes of disposing of the present objection, it is not necessary to outlay the opposition. I now turn to the objection.

THE OBJECTION

[7] I paraphrase the key arguments as follows; -in essence, Mr. *Mpofu*`s point was that as the applicants had mounted their claim under one set of papers, -the founding and answering affidavit as well as heads of argument- it was improper, for the said applicants to sever their cases by each having its own counsel.

[8] The presence of 2 counsel- for TN Optimist and TN Acturus- each representing their respective client-was untenable and prejudicial to Metallon. The effect being that each applicant stood to prosecute its case independent of the other. Counsel could constitute themselves into a team with one as lead and the other as supporting, then to structure their submissions in terms of established protocol.

[9] Mr. *Mpofu* submitted that the severing of cases offended r 56 (21) of the High Court Rules as read with r 4 (2) of the Commercial Court Rules. The latter rule was a cross-referencing mechanism which permitted the Commercial Division to fall back onto the High Court Rules to address any procedural gap in the former rules.

[10] Since the Commercial Court Rules did not address the issue of severance of cases by co-litigants, the court could properly resort to r 56 (21) of the High Court Rules which provided as follows; -

> (21) Co-plaintiffs shall appear by the same legal practitioner and shall not sever their case.

[11] Mr. *Madhuku* took a different view. Rule 56 (21) of the High Court Rules was inapplicable to the matter before the court. It appeared in Part VII of the High Court Rules- a section regulating the conduct of trial proceedings. Rule 56 itself was sub-headed; -*Set Down and hearing of Civil Trials and other related matters.* The present matter constituted motion proceedings governed by a disparate regime under Part VIII of the High Court Rules. To buttress his point, Mr *Madhuku* drew attention to the rationale behind the distinction, in the High Court Rules, between trial and motion procedure.

[12] In trial proceedings, parties made the case as they unravelled the evidence to the court, a situation inapplicable in motion procedure where the cases were set out in the papers. The two applicants intended to each motivate and emphasise its case via counsel's oral arguments. Severing of cases applied to two parties intendent upon taking advantage of alternative positions or "baskets" in moving their respective cases, which was not the case in the instance.

[13] Continuing, counsel urged the court to take what he argued was a common-sense approach. Further, the applicants before it had each taken a deliberate decision to engage separate counsel. This decision was perfectly proper and counsel urged the court to permit the applicants to retain each retain counsel to present oral argument. The question of separate counsel was governed by the general practice because the rules did not quite specify the procedure applicable.

[14] In response to a probe from the court as regard the import of r 36 of the Commercial Court Rules, Mr *Madhuku* was of the view that such did not impede the applicants` quest to enlist two separate counsel to argue each`s case. Rule 36 merely required a party`s legal practitioner to file heads of argument in opposed applications. The applicants counsel were again, coming forth to accentuate orally, the arguments condensed in the heads of argument.

[15] More importantly, there was nothing in the rules to bar the parties to argue their cases each focussed on their specific matter. Mr. *Madhuku* submitted that there was therefore no need to invoke r 4(2) of the Commercial Court Rules. That rule was meant to address what counsel described as a gap in "much more substantive procedure", a situation which did not arise presently.

[16] Ms *Mahere* associated herself with the position taken by Mr. *Madhuku*. Counsel added that the objection was an unacceptable attempt to obstruct the applicants` exercise of the right to be heard as well as be represented by a legal practitioner of choice. These being rights protected under s 69 of the Constitution of Zimbabwe.

[17] Further, counsel contended that r 56 (21) had no application to the matter. Part VIII of the High Court Rules did not stipulate the number of legal practitioners which could represent a party in motion proceedings. The High Court Rules left to the party, the question of how many legal practitioners such party could enlist to argue its case.

[18] To that extent, the Commercial Court Rules had left the matter open as a deliberate omission. Consequently, Ms *Mahere* submitted that there was no lacuna in the Commercial Court Rules on the point. Similarly there was therefore no need to invoke the cross-reference

option under r 4(2) of the Commercial Court Rules. The applicants were neither abandoning their original position in the papers nor issues raised in the heads of argument. The approach proposed by the applicants was supported by the constitution and not prohibited in the rules.

[19] Mr *Mpofu* took his original argument further in response. He countered his colleagues` quest to distinguish motion and trial proceedings and urged, in the process, a closer examination of the rules. The jurisdiction`s rules of court as a general rule, adopted a unitary system where certain matters were universally dealt with under one set of rules. The High Court Rules, as an example, made no distinction between motion or action proceedings when dealing with service, referrals or execution.

[20] Counsel therefore differed with the contention that where a specific rule is reposed in a section dealing with one action procedure, it automatically excluded motion proceedings. He turned, in that regard, to r 53 of the Commercial Court Rules which stated that; -

> 53 Conduct of hearing, postponements and adjournments
> (1) Subject to these rules, *the provisions of Order 49 of the High Court Rules shall apply mutatis mutandis in relation to hearings conducted before the court*: Provided that where the hearing of the matter has commenced it shall be continued from day to day until all the witnesses in attendance have been examined.

[21] This rule, according to counsel, applied to all hearings irrespective of the procedure adopted to mount the case. Rule 53 of the Commercial Court Rules referred Order 49 in the old High Court Rules 1971 applied mutatis mutandis. But there was a minor typo in that r 53 refers to the generality of Order 49 rather than the specificity of Order 49 r 442.

[22] Rule 53 (2) of the Commercial Court Rules exposed this obvious error in 53 (1) by referring more accurately to Order 49 r 445. Counsel thus urged the court to read r 53(1) as referring to Order 49 r 442 which was in fact, a replica of r 56 (21) of the High Court Rules. Order 49 r 442 read; -

> 442. Legal practitioner for co-plaintiff
> Co-plaintiffs shall appear by the same legal practitioner and shall not sever their case.

[23] The error could be addressed through the principle of "reading in" discussed in *S v K (a juvenile)* 2009 (2) ZLR 409(H). The High Court, per UCHENA J (as he then was) held that obvious errors in statutes could be obviated through a rational reading in so as to restore the

sense and import of such statute. Accordingly, Mr. *Mpofu* reiterated that the applicants were precluded from severing their cases by operation of r 56 (21).

[24] Taking the baton from the court`s earlier inquiry on the impact of r 36 of the Commercial Court Rules to the present argument, Mr. *Mpofu* argued as follows. Each legal practitioner intending to be heard was obliged to file their own heads of argument. Herein, only one legal practitioner had done so. The result being that only one team of legal practitioners could appear and argue.

[25] Mr. *Mpofu*'s answer to Ms *Mahere*`s argument on the constitutional right of a party to be heard and represented by counsel of choice was fleeting. All substantive rights extended to, or enjoyed by a litigant under any law including the Constitution, had to be accessed via the constrictions of adjectival gateways. In the present matter, no right was being attenuated. The applicants were merely being invited to avoid affronting the requirements of r 56 (21).

[26] I invited Mr *Madhuku* and Ms *Mahere* to respond specifically to the fresh argument regarding the cross-reference in r 53 (1) of the Commercial Court Rules. This point had introduced a twist to the tale. Mr. *Mpofu* had effectively, abandoned without specific concession, the lacuna argument, in favour of the direct cross-reference created by r 53.

[27] After traversing Mr. *Mpofu*'s points in reply, Mr. *Madhuku* concluded with a rather telling if not drastic argument. The Commercial Court Rules contained a fundamental defect in that they made several references to the High Court Rules in the style of the old 1971 High Court Rules. Such cross-references to a set of repealed rules rendered the relevant provisions invalid. Counsel's train of reasoning in that regard went thus; -

THE FULLER ARGUMENTS ON THE STATUTORY INTERPRETATION TECHNIQUE OF "READING IN"

[28] First, Mr. *Madhuku* disputed the application of r 53 (1) of the Commercial Court Rules to the matter at hand. Rule 53 dealt with "Conduct of hearing, postponements and adjournments". Properly construed, the term "hearings" referred "common-sensically" to civil trials in the Commercial Court. A purposive and contextual interpretation of r 53 disclosed that the receipt

by a court of legal argument in motion proceedings could not be elevated to the status of a hearing.

[29] Secondly, counsel went so bold as to declare, with uncharacteristic vehemence, that Mr. *Mpofu*'s submissions amounted to a "dangerous" invitation for the court to rewrite the rules! For the reason that r 53 of the Commercial Court Rules did not in any manner, cross reference to r 56 (21) of the High Court Rules but the offending Order 49. The error in r 53 went beyond a mere typographical error.

[30] The anomaly constituted an incurable defect which the handy principle of reading-in could not remedy. The offending portions had to be expunged, he submitted. Reference in the Commercial Court Rules in the old 1971 High Court Rules format constituted glaring inconsistencies which only the draftsman could rectify. Counsel referred in that regard to *ZLHR v Minister of Transport & Ors* 2014 (2) ZLR 44(H) at 57D-58A and *S v Nathoo Supermarket (Pvt) Ltd* 1987(2) ZLR 136(S) at 139G-140F.

[31] Ms *Mahere*`s response was to draw the court`s attention to the proviso to r 53 of the Commercial Court Rules as a clear suggestion that the rule contemplates trial rather than motion proceedings. It made reference to witness, a concept associated with trials. If the framers of the Commercial Court Rules meant r 53 to refer specifically to r 56 of the High Court Rules or even r 442 of Order 49, they would have clearly said so.

[32] One was obliged, in dealing with this matter, to consider the mischief behind r 56 (21); - the need to avoid multiple layers of cross examination or the possibility of leading questions and such matters. Herein, all that the two applicants intended to do was each to argue their point minus departure from their cases.

[33] Mr *Mpofu* in reply on the point that all that the court needed to do was establish if indeed what was before the court qualified as a hearing. If so, then r 53 (1) applied. Secondly the fact that r 53 (1) referred to a non-existent rule 445 of Order 49 clearly exposed its meaningless nature. That in addition to the fact that Order 49 carried no rule which regulated hearings constituted a further anomaly which justified a reading-in by the court to infuse sense into the rules.

[34] Mr. *Mpofu*'s final leap at the fire dance went thus; - as a general rule, courts could, under limited circumstances and in exercise of proper discretion, rewrite statutes. The main purpose being to give effect to the reverend wish of the legislature. If courts could in that respect, adjust Acts of Parliament for good effect, then why not their own set of rules meant to rationalise the adjudication of matters before the courts?

THE ISSUES EMANATING FROM THE OBJECTION

[35] In my view, the alarm sounded by Mr. *Madhuku* (and Ms *Mahere* by association) that the objection beguiled the court into the rewriting of the rules, was needless. The crisp issue arising from the objection is whether the applicants stand barred from severing their cases as prescribed by r 56 (1) of the High Court Rules 2021, or any other consideration at law. This question demands nothing more than application of the established rules of interpretation to the relevant provisions of the Commercial Court and High Court Rules raised in argument.

[36] I may state of course that Mr. *Mpofu*'s final submission urging the court to interpret the "reading-in" authorities liberally amounted to but one of the considerations under the aegis of statutory interpretation. I extract, as a reminder, the following line from a longer passage setting out the iconoclastic remarks of GUBBAY CJ thirty-five years ago in *Zimnat Insurance Company Ltd v Chawanda* 1990 (2) ZLR 143 (S) at 154 that; -

> "…...judges have a certain amount of freedom or latitude in the process of interpretation and application of the law. It is now acknowledged that judges do not merely discover the law, but they also make law."

[37] I turn to the contentious rule 53 (1) of the Commercial Court Rules. This provision closed as it were, the argument on the lacuna. As such, there is no need to resort to the cross-referral facility in r 4 (2) of the Commercial Court Rule in disposing the objection. (See also *Liziwe Museredza And 385 Ors V (1) Minister of Agriculture, Lands, Water And Rural Resettlement & 9 Ors* CCZ 11-21; *Dairiboard Zimbabwe (Private) Limited v The Taxing Master N. O. (2) Richard Gangira* SC 61-24 and *Zimbabwe Leaf Tobacco Company (Pvt) Ltd v Bhuka Fungai Chinamasa* HH 658-23 as discussed in *Mac En Paul (Pvt) Ltd v Gwanda Municipality & Anor* HH 227-25).

[38] That conclusion reduces the issues on r 53 (1) to two; firstly, can the rule survive the invalidity arguments raised by Mr. *Madhuku*, and secondly if so, is it applicable to motion proceedings? The principle of reading-in becomes a ready tool to resolve the first, and the rest of the rules on interpretation address the second.

[39] That courts can read-into statutes and salvage same from the blight of glaring error was a principle accepted by counsel from both sides. Errors in legislation may variously arise from typographical (typos), misprints, draftsman mistakes, or as observed by Denning LJ (as he then was), the lexicographical idiosyncrasies which he expressed as follows in *Seaford Court Estates Ltd* v *Asher* [1949] 2 All ER 155 (CA) at 164 E-H; -

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were."

[40] This decision was cited with approval in *S v K* (supra), where the problem confronting the court was expressed as follows at 417 A-B; -

> "Section 248 does not provide for a mental disorder or defect being a complete defence. It provides for consent to medical treatment for non-therapeutic A purposes. It is therefore not the provision intended by the legislature in s 29(2) of the Mental Health Act. The legislature clearly intended to refer to a section of the Code which provides for a mental disorder or defect being a complete defence. There is no doubt in my mind that a wrong section was referred to in s 29(2) of the Mental Health Act. There is therefore an error of reference. The intention of the legislature was obviously to refer to the section which provides that a mental disorder or defect can be a complete defence. A reading of the Code reveals that s 227 of the Code deals with that issue."

[41] In seeking to address the above anomaly, the court considered authorities on the point including *Skinner* v *Palmer* 1919 WLD 39 *Durban City Council* v *Gray* 1951 (3) SA 568(A);

S v *Aitken* 1992 (2) ZLR 84 (S); *S* v *Karani* 1997 (2) ZLR 114 (H); and *Bennett NO* v *Master of the High Court* 1986 (1) ZLR 127 (H). It resolved the matter as follows at 419 A-B; -

> "I am satisfied that the legislature in this case said what it did not intend to say. The rest of its words in s 29(2) of the Mental Health Act clearly point to its having intended to refer to s 227 of the Code. Its reference to s 248 of the Code is therefore a mistake which this court must correct to give effect to the clear intention of the legislature."

[42] The same reasoning had guided the Supreme Court twelve years earlier in *S v Nathoo Supermarket (Pvt) Ltd* 1987(2) ZLR 136(S) where the court held, at 139 that; -

> "That there has been a patent mistake on the part of the legal draftsman in the use of the words "that subsection" and "subsection (1)" is unquestionable. It would seem that the mistake arose in consequence of the draftsman's reference to the predecessor to s 5, as contained in SI 370/80, which was framed under two subsections. However that may be, I do not consider that there is any obstacle preventing this court from rectifying the error by reading and interpreting the words in contention as "this section".

[43] More recently, this court dealt with the point in *ZLHR v Minister of Transport & Ors* 2014 (2) ZLR 44(H) and concluded that mundane or obvious errors could not be permitted to derail the efficacy of legislation. MAFUSIRE J held as follows at page 57 D-58 A

> *"In casu*, Mr *Uriri's* argument that SI 106 of 2014 is unlawful because it refers to a wrong Act of Parliament is illusory. Whilst the error is patently obvious, it is so infinitesimal as to be inconsequential. It practically was a typing error, a slip of the pen by the typist, or of the tongue by whoever may have dictated the contents. A law cannot be knocked down for such a minor mistake. There is no question that the Minister does have the power under TORA to fix toll tariffs. There is no question that it is s 6 of TORA that empowers the Minister to make subsidiary legislation. TORA is Chapter 13:13 in the statute books. All the other provisions of SI 106 of 2014 seem perfect except the erroneous reference to ROMOTRA.It is not every mistake that affects the validity of a law. Even some far more serious mistakes or omissions than in the present matter have

failed to upset an existing law. In the *Blair Atholl* case, *supra*, Murphy J said in para 36 of the judgment:

"Even though the notice might have been invalid for want of compliance with the time period, such procedural invalidity, in the face of substantial compliance and no notable prejudice, does not justify a declaration of invalidity with retrospective effect. Illegal acts can have factual consequences which in all other respects are lawful and have no on-going or prospective illegal effect. Sometimes invalid administrative action, in this case the non-compliance with a statutory procedure, must be allowed to stand in the interests of finality, pragmatism and practicality, especially when non-compliance is not material or prejudicial – *Chairperson, Standing Tender Committee* v *JFE Sapela Electronics* 2008 (2) SA (SCA) para In such circumstances, a court in its discretion may decline to set aside the invalid action …"

On this particular point the Minister is not being impugned for any procedural impropriety. He is being impeached for a typing error. This ground must fail."

[44] My reading of this decision and those in the preceding paragraphs in as follows; -faced with an anomalous provision, the court must apply the usual rules of statutory interpretation commencing with the basic rules of such exercise. Should such inquiry render the provision in question illogical, then the court must ascertain the cause of such defect.

[45] And if such defect emanates from an error, then the next task is to determine the nature, and effect of the error. Such reflection must be based on whether the provision can be jettisoned or salvaged-the default position being to avoid lightly condemning as invalid, extant provisions of the law. If reading-into the statute, guided of course by the surfeit of examples documented in the authorities, can save the provision, then the court should proceed and do so.

[46] As indeed I shall proceed to do in this instance by examining the error issuing from r 53 (1) of the Commercial Court per Mr. *Mpofu*`s prognosis. Counsel's conclusion that reference in r 53 (1) to Order 49 was erroneous cannot be correct. Rule 53 (1) is, in my view, an all-encompassing provision. Its reference to Order 49 generally, rather than Order 49`s rule 442 in particular was deliberate. I say so for the following reasons; -

[47] Order 49 addresses in its purview, various matters pertinent to the conduct of trial. Matters coincidental to those found between Part VI and Part VII of the High Court Rules. Similarly, r 53 (1) provides for matters to do with the conduct, adjournment and postponement of hearings. The issues covered by those three aspects are wide. If we adopt Mr. *Mpofu*'s argument then it means that r 53 (1) must be confined to r 442 or r 56 (21) on severance of cases only. Surely, such could not have been the intention of the framers of the rules to confine r 53 (1)? This observation is as critical as it is fatal to the first part of Mr. *Mpofu*`s argument.

[48] But the argument still sustains. If r 53 (1) refers to Order 49, and Order 49 scopes in r 442, which r 442 is identical to r 56 (21) of the High Court Rules, then the matter swings back to the original discourse. The next question being; - does r 56 (21) apply to motion proceedings?

[49] But such question must be preceded by resolution of Mr. *Madhuku'*s grand submission that the Commercial Court Rules are rendered invalid where they (incompetently) seek to refer to a set of repealed rules as r 53 (1). I do not believe so. To my mind, a simple explanation and solution abounds. It derives from r 4 (2) of the Commercial Court Rules which I set out below; -

> (2) To the extent that any procedural matter arises during any proceedings before the court, which matter is not specifically regulated or provided for under these rules, then in such event the High Court Rules, 2021 (hereinafter referred to as "the High Court Rules") shall apply mutatis mutandis).

[50] The underlined phrase resolves the matter. The Commercial Court Rules are explicit. They point, in all cross-references or lacuna, to the *High Court Rules 2021*. This governing definition in r 4 (2) therefore reduces the archaic references in the 1971 mode to but an anomaly. An anomaly to be resolved via the self-same process outlined above. As such, I am unpersuaded by counsel`s argument that all "1971" style references in the Commercial Court Rules irremeably taint the rules and should be excised. Nonetheless, the point is well-noted that consideration of an urgent revision of the rules is merited.

DOES THE TERM "HEARING" IN R 53 (1) OF THE COMMERCIAL COURT RULES APPLY TO MOTION PROCEEDINGS?

[51] Ms *Mahere* drew my attention to the proviso to r 53 (1) and I believe the wording thereof is pivotal. The proviso contemplates that "the" hearing referred to earlier in that rule is one that involves the calling and examination of witnesses. Further, the proviso employs the definite article ***"the"*** rather than ***"a"*** to render a conjunctive reference to hearings in which witnesses are called. Without a doubt, such hearings can only refer to trial proceedings.

[52] This conclusion supports the position by applicants` counsel that r 53 is exclusive to action proceedings. Similarly, Order 49 r 442 dealt with trial procedure. Resultantly, so too did its "successor", r 56(21). This rule was reposed in Part VII of the High Court Rules dealing with "SETTING DOWN OF CIVIL TRIALS AND CIVIL TRIALS" meaning the setting down of civil trials as well as handling of the civil trials in concerned. And, as noted already, r 56 dealt with *[The Set[3]] Down and hearing of Civil Trials and other related matters.*

[53] Finally, the critical r 56 (21) of the High Court Rules need not be considered from any other dimension other than its ordinary meaning. It deals with "co-plaintiffs", an indisputable reference to litigants in action rather than motion proceedings. There can be no doubt that Mr. *Madhuku* and Ms *Mahere* were correct that the r 56 (21) applied to civil trials.

DISPOSITION

[54] This finding destroys the argument or legal basis proffered in moving the objection. But it does not dissolve the essence of the objection itself. I have before me two co-applicants who founded and defended their causa under one set of papers filed by one legal practitioner. The unitary nature of the application before the court is beyond argument.

[55] Such is also consistent with the nature of the claim, and in particular, the relationship between TN Optimist and TN Arcturus. These characteristics disclose no peculiarity as would warrant the pertinacity demonstrated by applicants` counsel, (despite protestations of intention to the contrary) in proceeding separately. Mr. *Madhuku* did intimate at some point, that there was some motivation for adopting such strategy.

[3] Another typo in the sub-heading.

[56] But beyond the aforesaid hint from counsel, no details or at least, nature of such motivation were shared with the court. The main risk arising from a severance of the case, on the facts before me, are the potential procedural conflicts that may flare up during the hearing owing to uncertainty on the part of the court and second respondent, of how the applicants intended to structure their arguments. On that basis, I will uphold the objection but allow each party to carry its own costs.

It is therefore ordered that; -

1. The objection by second respondent be and hereby upheld.
2. First and second applicant be bound to prosecute the present matter as co-litigants represented by one team of counsel, whatever the number, and as such, first and second applicants shall not sever their case.
3. That there be no order as to costs.

Moyo and Jera -first and second applicants` legal practitioners.
Scanlen and Holderness-second respondent`s legal practitioners

[CHILIMBE J_____16/6/25]