RELEASE POWER INVESTMENTS (PRIVATE) LIMITED
and
ASSETFIN (PRIVATE) LIMITED
and
SHOPEX (PRIVATE) LIMITED
versus
OLYMPIA FARM (PRIVATE) LIMITED
and
CHIEF REGISTRAR OF DEEDS
and
THE SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
KATIYO J
HARARE,18 October 2022 & 12 0ctober 2023

Civil Trial

T Mpofu, for the plaintiffs
B Mtetwa, for the first defendant

KATIYO J: The plaintiff approached the honourable seeking the following order;

a) an order that the first defendant transfer to first plaintiff the subdivide Stand Number 6000 Bannockburn Township, Certificate of Compliance Approval Number CC/WR/16/2021, Permit and Plan Number SD/WR/01/21 being of the remaining extent of Bannockburn measuring 72.89 hectares held under Deed of Transfer Number 7778/86.
b) that should first defendant fail to cause transfer of the said property to first plaintiff then the third defendant shall sign all such documents and execute all such deeds as will enable the aforesaid transfer
c) that second defendant is to take all the steps necessary to effect the said transfer.
d) that the first defendant shall pay the costs of action
e) Plaintiffs' claim arise from first defendant's undertaking to transfer said immovable property to second plaintiff or its nominee. Second Plair nominated and ceded its rights to the first plaintiff to receive the s transfer. First defendant's undertakings were

accepted by the Plaint and in particular by the first plaintiff resulting in a binding agreement between the parties for the transfer of the said immovable property.

f) In breach of the agreement reached by the plaintiffs and defendant, first defendant has now reneged on its aforesaid und citing considerations that do not arise from the agreement for it to effect transfer.

Brief facts

The first defendant raised a point of law stating that there was wrong citation on the summons. The first defendant stated that its name is Olympia Farm (Private) Limited instead of Olympia (Private) Limited. The first defendant claims that non- citation is fatal and the registered owner of the property OLYMPIA FARM (PRIVATE) LIMITED is not a party to the action pending before the court and it is not known whether or not the entity cited as OLYMPLIA (PRIVATE) LIMITED and if it exists, it has no connection whatsoever with the first Defendant and it would be legally unable to transfer a property belonging to OLYMPIA FARM (PRIVATE) LIMTIED to the first Plaintiff. The first Defendant therefore contends that the non-citation of the legal owner of the land, being OLYMPIA FARM (PRIVATE) LIMITED is fatal to the Plaintiffs claim as it would result in relief incapable of execution.

The plaintiff then made a chamber application under case number HC7058/22for an order for the amendment of the Applicants' summons and declaration as set out in the draft order annexed to this application on the grounds that:

a. Applicants issued a summons citing among others first respondent who was described as Olympia (Private) Limited instead of Olympia Farm (Private) Limited. Olympia Farm (Private) Limited is the owner of the immovable property the subject of the dispute between the parties.
b. At all material times, the applicants interfaced was with the Directors a beneficial owner of the first respondent.
c. The first respondent itself apparently laboring on a common mistake described itself similarly as Olympia (Private) Limited as opposed Olympia Farm (Private) Limited.
d. Applicants assert that no prejudice has been suffered by the first Respondent which has always understood that the claim is directed at it as a consequence of which it has dealt with the claim HC 5397 /21 for all intents and purposes as the first Defendant therein.

First Respondent advised that it only occurred to it on the eve of the trial October 2022 that there had been an error in the citation aforementioned.

e. The Applicants assert that the error in question can be rectified by the amendment of both the summons and declaration. First respondent has indicated its opposition to the application for arguing that the summons in the matter HC 5397 / 21 is incurably bad a nullity for want of citation of an existent Defendant. The Applicants agree with this argument.

The Plaintiff is of the opinion that the amendment will enable trial to progress to resolve the real dispute between the parties. It is in the interest of the administration of justice that the amendment be allowed.

Arguments

The first Defendant argues that the plaintiff issued summons citing an entity called Olympia (Pvt) Limited claiming the transfer to first Plaintiff the subdivided Stand Number 6000 Bannockburn Township in terms of certificate of compliance Approval No CC/WR/16/2021, Permit plan no SD/WR/01/21, being 72,89 hectares from the land held under deed of Transfer no 777/86.

This claim is based on a formal written and binding undertakings to transfer stand 6000 Bannockburn Township, Harare to first Plaintiff as a nominee, of Shopex (Pvt) Limited dated March,2019.

Submitted that the alleged formal written and binding undertaking is dated 25th March 2019 and is headed Mandate Form and claims to have been signed by one Dr Kombo Moyana duly representing Olympia Farm (Pvt) Limited by virtue of a Board resolution. The first Respondent asserts that the registered owner of the property Olympia Farm (Pvt) Limited is not a party to the action pending before the court and it is not known whether or not the entity cited as Olympia (Pvt) Limited if it exists, it has no connection whatsoever with the first defendant and it would be legally unable to transfer the property to the first Plaintiff. It is therefore argued non- citation of the legal owner of the land being Olympia Farm (Pvt) Limited is fatal to the plaintiff claim as it would result in relief incapable of being executed. Further contended that the question which arises in this trial which relates to the citation of a non-existent party and the consequences thereof has been thoroughly ventilated in numerous decisions of the SC. In the matter of *Fadzai John* v *Delta Beverages SC* 40/17 at p 5 the Supreme Court held as follows:

> "The respondent highlighted that it has been cited as Delta Beverages Limited as opposed to Delta Beverages (Pvt) Limited. Applicant concedes this point in his answering papers."

In *Gariya Safaris (Pvt) Ltd* v *Van Wyke 1996 (2)* ZLR 246(H) it was stated as follows:

> "A summons has legal force and effect when it issued by the plaintiff against an existing legal or natural person. If there is no legal or natural person answering to the names written in the summons as being those of the defendants, the summons is null and *void ab initio*".
>
> Argued that in this case the applicant cited a nonexistent respondent. Thus in the same vein the application was a nullity."

The defendant avers that the doctrine of ***stare decisis*** states that lower courts are bound by the decisions of the superior courts .Also in the case of *Markham* v *Minister of Energy & Power Development @ 3 Ors* HH 275/21 at p 1:

> "*Stare dicis* is part of this jurisdiction of this court and indeed of many jurisdictions the world over. Its meaning and impot are not only clear but are straight forward. That an inferior court is bound by the decisions of the superior court. The inferior court cannot, by parity of reasoning, ignore or wish away the decisions of the superior court unless it can show, in its attempt to wish away such, that the circumstances of the case which the parties placed before it are distinguishable from those which gave rise to the decisions of the superior court."

It was respectfully submitted that this Honorable Court is therefore bound by the decision of the supreme Court in *Fadzai* v John *Delta Beverages (Supra).*

Senior court for the defendant argued that since one of the defendants is cited as Olympia ((Pvt) Limited it means there is no defendant in before the court. Averred that this court is bound by the law. Stated that citing of a none existent entity is a nullity which cannot be cured or amended.

The first defendant submitted that the present proceedings instituted by the plaintiff against an entity which is known as Olympia Pvt Limited are a nullity. It is so because according to the plaintiff there is no legal entity which answers to the appellation Olympia Pvt Limited. By the same argument submitted that if it exists, it is totally unconnected to the legal owner of the land sought to be transferred and it would be unable to effect such transfer

The first defendant submits that the documents on the bundle of documents including the deed of transfer held under Deed Num 777/86 which appears on p 6 of the Plaintiff Bundle of documents, and the entire proceedings predicated on the plaintiff s summons and declaration which were issued against a nonexistent defendant are a nullity.

From another angle the defendant submitted that in the case of *Veritas* v *Zimbabwe Electoral Commissioner &Ors* SC 103/20 at p 13:

"The citation of a non-existent entity renders the proceedings a nullity"

In response to the point of law raised by the defendant the plaintiff argued that the point of law has been invalidly taken. For completeness the plaintiff is seeking that the papers be amended so that the full citation of the first defendant be given. Further argued that the first defendant is in essence a special plea. Cited is the case of *Doelcam (Pvt) Ltd* v *Pichanick & Ors* 1999 (1) ZRP 390 (HC). Stated that it must:

(a) be taken in pleadings and

(b) be sustainable by evidence.

That a special plea cannot be raised anyhow without following the laid down procedure and that in the case of *Allied Bank Limited* v *Dengu & Ors* SC 52/16 the court said:

> "The fact that the issue of locus standi was a point of law which could be taken at any stage in the proceedings could not assist the respondents Although it is trite that a point of law can be raised at any stage during proceedings, that does not mean that the point of law can be raised anyhow. In order for one to raise a point of law validly at any stage, notice must be given to the other party of the intention to raise the point. There must be a formal way of raising the point. In this case, the issue was raised in correspondence between the parties. The issue of locus standi was not properly pleaded by the respondent. The court *a quo* erred in accepting the plea of lack of locus stand which was not properly raised."

The question arises as to whether the rules governing the matter make any special provision for the taking of special pleas. If they do and there is a formal way by wwhich a special plea must be taken, that is the process that must be followed

Rule 42(2) of the High Court Rules, 2021 provides as follows.

> "A plea in bar or abatement, exception, application to strike out or application for particulars shall be in the form of such part of **Form No. I1** as may be appropriate with the necessary changes and a copy thereof tiled with the registrar and in the case of an application for particulars, a copy of the reply received to it shall also be filed."

It was submitted that a special plea can only be taken in pleadings and not in heads or argument or written submissions. This is fairly straightforward and no cause exists for defendant's failure to have followed the rules. Rules of court are meant to be followed- *Makaruse* v *Hide & Skin Collectors (Pvt) Ltd 1996* (2) ZIR 60 (S) at *65D-E; Wilmot* v *Zimbabwe Owner Driver Organisation (Pvt) Ltd* 1996 (2) ZIR 415 (S) at 419C-D. Further submitted the plaintiff.

Further, a Special Plea can only be taken in a particular form. For number 11 has inexplicably not been utilized. The so-called point of law has not been taken in a document that complies with the requirements of the relevant form. Submitted Advocate *Mpofu* for the plaintiff.

Voet 2.1.18 and 19 (referring to Code VIII, 35 (36) 12 & 13) notes:

> "12. **The Emperor Julian to Julian, Count of East.** If an advocate, during the progress of a case, should desire to avail himself of a dilatory exception which he neglected to make use of in the beginning, and he is deprived of this recourse, but still perseveres in setting up this ill-timed defence, he shall be fined a pound of gold."

There would also be need for the plea already filed to be amended. No amendment has been prayed for- *ZFC Ltd* v *Taylor 1999* (1) ZIR 308 (HC). Defendant cannot avoid the rules by claiming that it wants to take points of law. It must follow the rules. Points of law must be taken in a formal way and in a manner provided for by the rules. As it turns out, this position is as old as the law itself. The court has no power to ignore the non-compliance with its rules or to grant condonation where it has not been sought- *Forestry Commission* v *Moyo 1997* (1) ZIR 254 (S).

The attempt to smuggle the special pleas through a process known as "points of law" is incompetent. As spelt out in *Delta Beverages (Pvt) Ltd* v *Murandu* S-38-15**,** the law requires a party raising such points of law to ensure that.

> " (a) the preliminary points are covered by the pleadings,
> (b) there would be no unfairness to the other party;
> (c) the facts are common cause and,
> (d) no further evidence would be required to support the point."

The point is however, substantively wrong. It is not correct that the failure to set out a full name invalidates process. There is a difference between citing a non-existing party and misdescribing an existent party. In the former case, the proceedings are a nullity. In the later case, the proceedings are not a nullity and may be amended.

In *Gariya Safaris (Put) Ltd* v *Van Wyk* 1996 (2) ZUR 246 (HC) MALABA J, as he then was, approved of the following,

> "In van *Vuuren* v *Braun & Summers* 1910 TPD 950 WESSELS J at p 955 said.
> "Now in order to bring a defendant legally into court a summons is required.
>
> > ... Next the summons must specify the defendant. It is true that it will not be a flaw in the summons if the defendant is not described as accurately as he should be. If a man is baptised 'George Smith' it is no defect in the summons to call him John Smith'

> because the individual is pointed out with sufficient accuracy. But it there were no mention of the defendant at all the summons would be a wholly worthless document and could not be amended by inserting the defendant's name in count."

The weight of academic opinion accepts the correctness of this decision- Herbstein and Van Winsen, *The Civil Practice of the Superior Courts of South Africa 3 Ed at p 195, Erasmus Superior Court Practice at B 1-119, and Jones* and *Buckle The Civil Practice of the Magistrates' Courts in South Africa 8 Ed Vol 1* at p 387.

In this matter what is missing is the word FARM. All the other details are accurate. An indication has been given that the defendant is a company- *Clan Transport (Pvt) Ltd* v *Pemhenayi & Anor 1999* (I) ZUR 521 (H) @ 524. That indication is key as it speaks to legal personality. The defendant knows itself. It has responded to the claim, Affidavits have been filed on its behalf. No doubt what has been sued is an existent party albeit one that has been misdescribed.

In *Marange Resources (Private) Limited* v *Core Mining and Minerals (Private) Limited (In liquidation) & Ors* SC-37-16 it was held that such issues of citation must be resolved by the parties.

In *Mapondera & Ors v Freda Rebecca Gold Mine Holdings (Private) Limited* SC-81-22 the Supreme Court held as follows.

> "I could go on and on but the principle of law established by case law is clear. Where an existing entity is inadvertently misdescribed in judicial proceedings it is permissible to apply for correction of the anomaly in good faith provided that there is no irreparable prejudice to the other party."

Mapondera on case judgment is binding on this court on account of the *stare decisis* doctrine given that it is a judgment of a full court but John judgement is a one judge judgment issued in chambers.

There are a number of authorities in support of this proposition outside the Supreme Court,

In *Masuku* v *Delta Beverages* HB-172-12 the description (Private) Limited was missing and the court allowed the process to be saved. It was held:

> "… generally, proceedings against a non-existent entity are void **ab initio** and thus a nullity However, where there is an entity which through some error or omission is not cited accurately, but where the entity is pointed out with sufficient accuracy, the summons would not be defective."

In *Nivert Trading (Private) Limited* v *Hwange Colliery Company* HH-791-15 what was missing was the word Limited, the process was yet again served.

In *Kawa* v *Muzenda & Ors HB*-108-14 what was missing was the word Foundation in the name of the litigant. The court concluded that this was immaterial to the validity of the process.

In *Muzenda* v *Emirates Airlines & Others* HH 775/15 it was said.

> "I am of the view that the description of a party to a suit does not immutably determine the nature and identity of a party. The law reports are full with instances where the correct description of a party was allowed, in the absence of prejudice to the other party involved."

In *Nhandara Timbers (Pvt) Ltd* v *Messenger of Court and 2 Ors* HH-323-17 an entity had contracted on the basis of a given name and had had it recorded that the name was one of a registered company. The court allowed it to be sued by its given name though that was not the registered name.

In The Sheriff of the High Court Mackintosh & Others 2013 (2) ZLR 352 the facts were as those in Nhandara.

In Embling & Anor Two Oceans Aquarium CC 2002 (2) SA 653 plaintiffs had described the defendant as "Two Oceans Aquarium, a close corporation…… having its place of business at Dock Road, Waterfront, Cape Town". The return of service pointed out that the defendant business was not trading as a close corporation. The court held that since there was in existence a legal persona, it did not matter that it had been incorrectly described.

In *Golden Harvest (Pty) Ltd* v *Zem-Dem* CC 2002 (2) SA 653 by reason of a *bona fide* mistake made by its legal representatives, the plaintiff was cited in its particulars of claim as "Golden Harvest (Pty) Ltd." It subsequently appeared however, that the plaintiff was in fact a company, Norris Fresh Produce (Pty) Ltd, which traded as "Golden Harvest." The plaintiff thereupon applied for an amendment in which it sought to substitute for its name as cited the following citation: "Golden Harvest, a business of which the sole proprietor is Norris Fresh Produce (Pty) Ltd." This application was afforded. See also *Luxavia (Pty) Ltd* v *Gray Security Services (Pty) Ltd 2001(4) SA 211 and Four Tower Investments (Pty) Ltd* v *Andre's Motors* 2005 (3) SA 39 and *Blaauwberg Meat Wholesalers CC* v *Anglo Dutch Meats Exports Limited 2004* (1) ALL SA 129 (SCA).

In *Ochieng & 2 Ors* v *Kenyan Premier League Ltd & 2 Ors Petition No.4 of 2017* an existent entity had been cited but had been misdescribed. The court said.

> "I have considered the submission by counsels and I find that this is not a case of non-existent or faceless entities that would invariably be incapable of suing or being sued but is a case of pure misdescription of parties"

In *Nagar Palika & Anor* v *Shivshankar Gupta* 2005 (4) MPHT 19 it was held that a misdescription could be corrected.

In *Muzenda* v *Emirates (supra)* it was held.

> "I am of the view that the description of a party to a suit does not immutably determine the nature and identity of a party. The law reports are full with instances where the correct description of a party was allowed, in the absence of prejudice to the other party involved. This would be done after an application to amend. The plaintiff herein was not diligent. After being advised of the wrong citation of first defendant, all she had to do was apply for amendment. I would have granted such amendment as I am of the view that there was no prejudice to first defendant. However, the court can only do so upon asking. The court cannot *mero motu* grant orders not sought. Without such amendment, the first defendant remains wrongly cited. See *ZFC Ltd* v *Tayior* 1999 (I) ZIR 308 and Order 20 r 132 and 134 of this court's rules, *Commercial Union Assurance Company Limited* v *Waymark* NO 1995"

In *Lourenco* v *Raja Dry Cleaners and Steam Laundry (Pt) Ltd* 1984 (2) ZUR 151 (SC) at 159E-F stated as follows

> "The main aim and object in allowing an amendment to pleadings is to do justice to the parties by deciding the real issues between them. The mistake or neglect of one of the parties in the process of placing the issues before the court and on record will not stand in the way of this unless the prejudice caused to the other party cannot be compensated for in an award of costs. The position is that even where a litigant has delayed in bringing forward his amendment, as in this case, this delay in itself, in the absence of prejudice to his opponent which is not remediable by payment of costs, does not justify refusing the amendment."

In supplementary heads of arguments, the first defendant further argues as follows, It is submitted that the plaintiffs' contention is misplaced. The trite position of the law is that a point of law which goes to the root of the matter can be raised at any stage. She cited

Case of *Sindikumbuwalo Pacifique* v *The Commissioner General Department of Customs & Excise* 137/18

AT PAGE 3:

The question whether or not there is a defendant before the court is a critical point of law. A court cannot proceed to hear any matter on merit unless satisfied that there are parties before it who seek resolution of a dispute resulting in a competent decision which is binding

upon the parties. Critical as it is, a point of law can be raised at any time. I do not believe that the issue of whether or not there is a defendant before the court has to be raised through an exception. In *Muchakati* v *Netherburn Mine* 1996 (I) ZLR 153 (S) the Supreme Court held that a point of law that went to the root of the matter can be raised at any time. Apart from a litigant raising same the court can raise it *mero motu*.

Argued that given the weight of the 1' Defendant point of law and its impact on the proceedings and also the judgement of the Court, it follows that the point of law raised by the Defendant is a critical point of law which can be raised at any stage. Therefore, the contention that the first defendant's point of law is invalidly taken is misplaced and without merit.

See – *Veritas* v *Zimbabwe Electoral Commission & Ors* SC 103/20 at p 14. Therefore, there is sufficient evidence before the Court that there is no defendant who answers to the appellation Olympia (Private) Limited. If there was, then clearly the plaintiffs would not be applying for any amendment. Instead, they would be placing before the court the cited entity's founding documents including Certificate of Incorporation and title deeds showing its ownership of the land. The were submissions from both parties.

Analysis

As evidently clear the arguments raised in this case were put to bear as they were presented. Having raised this point of law there was a chamber application filed by the plaintiff for an amendment of the summons given as case number HC7058/22. Heads of arguments were filed and for the purpose of expedience this court has simply decided to deal with this question argued as one rather than separating them. The issue of whether a point of law can be raised in the manner it was raised has been dealt with in a number of occasions. The arguments in this case have touched on that issue. It is not in doubt that a question of law can be raised any time during the proceedings. From the arguments presented by the plaintiff it would appear there were some correspondences on that issue but with no agreement reached. Can the first defendant be faulted for raising this point at the stage she did? The chamber application purports to amend the pleadings well before the question had been dealt with. What is critical in this whole matter is whether the point raised by the first defendant can sustain in view of the already decided cases. Once this issue is resolved it is the end of the matter. The issue as to whether a point of law can be raised anytime during the proceedings has been ventilated already in a number of authorities in this jurisdiction as argued by both parties. The form in which it will take is neither here or not but it is permissible that such a point can

be raised anytime. In this case it was clear that the issue complained of by the first defendant is quite material to the matter and it was within the parameters of the law to do so. The arguments by the plaintiff on the procedure which the defendant should have followed is neither here or not and that alone could not answer the issue before this court. It is evidently clear that there was an issue of the identity of the first defendant. Once that is answered it resolves the matter. The first defendant has argued that it is a wrong **citation** thereby giving court no defendant before it. On the other hand, the plaintiff argues that it is not an issue of citation but that of **misdescription.**

If a finding is made in favour of the former then it is the end of the matter and if it is in favour of the latter then it is permissible to grant the application of the amendment. What is not in dispute here is that the parties agree that right from the commencement of these pleadings they were corresponding with each other on the understanding that they were the correct parties. This is clear from the papers filed before this court. The first defendant was responding to the summons as though he was the correct party. I say so because a mere reading of the pleadings filed will demonstrate that. The first defendant as alluded to by the plaintiff must also have been laboring under the common mistake belief that they were dealing with the correct identity of the parties. It explains why this point was raised at the very last minute before the commencement of the trial. The plaintiff argues that what is critical is to deal with the real dispute before the court as ignoring it would not end this matter. As has already been demonstrated the purported chamber application has cited the defendant with exactly similar facts and details save for the identity which differs in so far as the word “farm” is concerned. What is clear is that this matter will not be resolved by the point of law raised but that it will give rise to other litigation. But as emphasized above that if it was a wrong citation then it would be the end of the matter. In the arguments presented it is clear that the whole issue hangs on as to whom in the case of wrong identity the order would be enforced against. It would be of no legal effect. This is to uphold the principle that court orders should be enforceable without which will render the judiciary into disrepute. But where a court finds the issue of wrong citation being the case then the issue of material prejudice to the other party arises. Cases for and against the issue have been cited above. While in some circumstances where it is permissible to grant such it must be emphasized that due diligence should be exercised.

In the case of Mapondera & Ors as cited above it was held by the Supreme Court that where an existing entity is inadvertently misdescribed in judicial proceedings it is permissible to apply for correction of the anomaly in good faith provided that there is no irreparable

prejudice to the other party. Equally by the same token in *Masuku* v *Delta Beverages* as cited above, although the description (Pvt) Limited was missing and the court allowed the process to be served. This was despite the general rule that such process is a nullity *ab initio.* Of great importance is the issue of irreparable harm to the other party. This position has been dealt with in a number of cases as given above in and out of our jurisdiction. In Muzenda case (supra) what was missing was the word "foundation" in the name of a litigant. The court came to the conclusion that it was immaterial to the validity of a process. As was also held in *Muzenda* v *Emirates Airlines & Ors* HH 775/15 that a mere description of a party to a suit does not immutably determine the nature and identity of a party.

In a SA case *Embling & Anor* v *Two Oceans Aquarium* CC 2002 (2) SA 653 a return of service with a wrong description was allowed in the sense that there was in existence a *legal persona* it did not matter that there was a misdescription.

What being emphasized is that where the error does not irreparably affect the other party then a correction should be allowed especially where such an entity exists. Surely it would not make sense to disregard such where it is clear that the entity or party being described is the same party as before the court but just that there is an omission or an error which appears genuine. If the other party labours under a genuine common mistake belief that it is the same party being described and responds to the same summons or pleadings in a manner as if though was correctly described why should a correction not allowed. A mere reading of the authorities cited in this case by both parties emphasize on the principle of irreparable harm to the other party.

The distinction between a wrong citation and misdescription is one of a degree. A wrong citation places the intended target or entity away from the identity of the nature of the item or entity being identified such that one is not even able to locate it. A misdescription does not necessarily place such item or entity away and may easily be identified with a bit of correction.

The first defendant in this case is adamant that there is no defendant in this case relying on a number of cases in cases in cases in our jurisdiction. They emphasized that in the case of *Veritas* v *Zimbabwe Electoral Commission & Ors* SC 103/20 at 4 Also, in the case of *Sindikumbuwalo Pacifique the Commissioner General Department of Customs and Excise* 137/18 at pp 3. The court said thar

> "The *question of whether or not there is a defendant before the court is a critical point of law. A court cannot proceed to hear a matter on merit unless satisfied that there are parties before*

it who seek resolution of a dispute resulting in a competent decision which is binding upon both parties. Critical as it is a point of law can be raised anytime."

The two senior counsels went at length pound for a pound on each other and provided this court with detailed information on their arguments. What is critical is whether the defendant was correct to raise this objection at the very last minute. I have already alluded to this above. A point of law can be raised any at any stage during proceedings and need not emphasize more on this. It is however not permissible if one was aware all along of the existence of such and only wait to do so at an opportune moment just to frustrate proceedings. I should hasten to point out that where an amendment will not change the direction or defense or plea of a party it cannot be held to be ultras the case authorities cited by both parties in this case. As is evidently clear the first defendant proceeded to answer to the pleadings in every material way as if he knew he is the one called upon to do so by the summons. There is nowhere in the pleadings where one can be mistaken as to which summons and dispute, he was relating to. Other than the omission of the word "Farm" all other particulars are correctly described and the defendant responded accordingly. In my view I do not think the Supreme court intended to have one size fits all situation but that each case depends on its own circumstances. In this case an amendment by insertion of word "Farm "is not in any way going to alter the first defendant case in a material and prercidicial way. As put above the defendant acted as if he knew he was the one being called to answer to the summons. He responded to all the averments in every material resect. The relief being sought remains the same. This Court has no doubt that this was not a question of wrong citation but a mere description of the other party.

There is absolutely no prejudice or let alone irreparable harm to the defendant in the event of such an amendment being allowed. This was a mere technicality which cannot be allowed to derail the proceedings. Litigation must come to finality. Upholding the objection in this case does not necessarily bring this litigation to finality. At times it is wise to let proceedings go on to finality than halting them without just cause. In this case I am persuaded by the plaintiff argument.

Conclusion

Having gone through the papers and hearing counsels I am persuaded by the applicant's argument that this case does not fall squarely to those cases where wrong citation was given.

As reiterated above. this was a mere omission which should not be left unamended. As court made a finding that there will be no harm to other party. This was a well-researched case

by both senior counsels. In the end I come to the conclusion that the point of law raised be and hereby dismissed and the plaintiff allowed to amend his summons and pleadings to read Olympia Farm (Private) Limited and no other amendment are permissible without the authority of this court.

So, after hearing and perusing the papers, **IT IS ORDERED THAT:**

1. The point of law raised by the first Defendant be and is hereby dismissed.
2. The application for amendment be and is hereby granted.
3. The plaintiff summons and pleadings be and is hereby amended to read Olympia Farm. (Private) Limited instead of Olympia (Private) Limited.
4. No other amendments are permissible without the authority of the court.
5. No order as to costs.

Gill Godlonton Gerrans, applicant's legal practitioners
Mtetwa & Nyambira, first respondent's legal practitioners