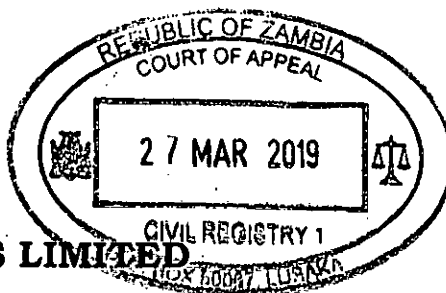


IN THE COURT OF APPEAL OF ZAMBIA APPEAL NO. 184 OF 2018
HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:



JONAS ENTERPRISES LIMITED

APPELLANT

AND

JALUSI INVESTMENTS LIMITED

RESPONDENT

CORAM: Chashi, Lengalenga and Siavwapa, JJA

ON: 27th March 2019

For the Appellant: C. Kaela, Messrs G. M. Legal Practitioners

For the Respondent: N/A

J U D G M E N T

CHASHI, JA delivered the Judgment of the Court.

Legislation referred to:

- **The High Court Act, Chapter 27 of the Laws of Zambia**

When this matter came up for hearing of the appeal, we engaged Mr. Kaela, Counsel for the Appellant, on whether the learned Judge in the

court below was clothed with jurisdiction to review her Judgment dated 19th December 2017 and rendering a Ruling on 27th April 2018.

We brought up this issue as we noted from the record of appeal that at the time the learned Judge started the trial on 17th December 2013, she was then a High Court Judge.

At the time the Judgment was rendered, which was in accordance with Section 17A (2) of **The High Court Act**, the learned Judge had already ascended to the position of Judge of the Court of Appeal.

Counsel for the Appellant did not give us a satisfactory response.

He instead sought the guidance of the Court.

Order 39/1 of **The High Court Rules (HCR)** provides as follows:

“Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn), and upon such review, it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision.

Provided that where the judge who was seized of the matter has since died or ceased to have jurisdiction for any reason, another judge may review the matter."

The proviso to Order 39/1 **HCR** entails that a Judge who delivers Judgment in a matter he was seized with cannot review his Judgment, if he had since ceased to have jurisdiction for any reason.

The Judgment may be reviewed by another Judge with equal jurisdiction as the Judge in the Judgment.

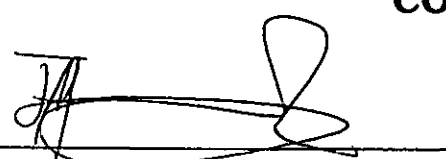
In *casu*, the learned Judge at the time the application was being made had ceased to have High Court jurisdiction and was therefore *functus officio* and could therefore not preside over High Court matters.

In the view that we have taken, this appeal is therefore not appropriately before us. The matter is accordingly remitted to the High Court of Zambia at Kitwe to be allocated to a High Court Judge.

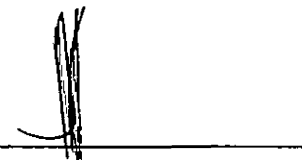
Each party shall bear his own costs.



J. CHASHI
COURT OF APPEAL JUDGE



F. M. LENGALENGA
COURT OF APPEAL JUDGE



M. J. SIAVWAPA
COURT OF APPEAL JUDGE