

**IN THE COURT OF APPEAL FOR ZAMBIA**  
**HOLDEN AT LUSAKA**  
(CIVIL JURISDICTION)

**CAZ APPEAL NO. 201/2021**  
**CAZ/08/313/2020**

BETWEEN:

**MUBITA MWANANUKA**

**APPELLANT**

AND

**ARMAGUARD SECURITY LTD**

**RESPONDENT**



**CORAM: KONDOLO SC, NGULUBE, BANDA-BOBO, JJA**

**On 15<sup>th</sup> June, 2022, and 3<sup>rd</sup> August, 2022**

*For the Applicant : Mrs. M. K. Liswaniso, Legal Aid Counsel- Legal  
Aid Board*

*For the Respondent : Mr. V. Kayawe- In-house Counsel*

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## **J U D G M E N T**

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**KONDOLO SC, JA** delivered the Judgment of the Court

CASES REFERRED TO:

- 1. PC Cheelo & 19 Others v Zambia Consolidated Copper Mines Limited  
SCZ/27/1999**

LEGISLATION REFERRED TO:

- 1. The Constitution of Zambia (Amendment) Act No. 2 of 2016**
- 2. The Industrial and Labour Relations Act No.8 of 2008**
- 3. The Employment Act, Chapter 268, Laws of Zambia**

## 1. INTRODUCTION

- 1.1. This is an appeal against the decision of the High Court delivered by Judge Chitabo SC, dated 17<sup>th</sup> July, 2019, setting aside the proceedings before him for irregularity.

## 2. BACKGROUND

- 2.1. The Appellant commenced an action on the High Court General List in respect of labour related claims for housing allowance arrears, statutory retirement benefits, leave days, interest on the claimed sums and costs.
- 2.2. The Respondent raised a preliminary issue stating that the action ought to have been commenced in the Industrial/Labour Relations Division of the High Court and not under the General List as had been done.

## 3. HIGH COURT DECISION

- 3.1. After considering the arguments advanced by the parties, Chitabo J referred to **Section 4 and Section 85 (1) (4) of the Industrial and Labour Relations Act, Section 3 of the Employment Act and Article 133 of the Constitution Amendment Act** and set aside the proceedings after holding as follows;

*“It is quite evident from the same constitutional provisions and legislation that the Plaintiff’s action*

*ought to have been launched in the Industrial and Labour Relations Division and not the General Division or List."*

#### **4. APPEAL**

- 4.1. Dissatisfied with the trial Court's Ruling, the Appellant has appealed and raised only one ground of appeal as follows;

**The Trial Court erred in law and fact when it dismissed the appellants matter which was commenced in the General List but for irregularity.**

#### **5. ARGUMENTS BY THE PARTIES**

- 5.1. The Appellant filed heads of argument in which it was submitted that the Appellant's action sought to recover leave days and housing allowance owed under a master and servant relationship between the Appellant and the Respondent.
- 5.2. That the Appellant was entitled to commence the action under the General List because he was simply trying to recover what was owed to him out of the contract he had with the Respondent and which the Respondent had breached.



5.3. He cited the case of **PC Cheelo & 19 Others v Zambia Consolidated Copper Mines Limited** <sup>(1)</sup> in which it was held that the High Court has jurisdiction to try cases arising out of pure master and servant relationships and that the instant case is one such case.

5.4. It was submitted that the Appellant was thus entitled to commence its action in the General List.

5.5. The Respondent did not file any heads of argument.

## **6. THE HEARING**

6.1. At the hearing Mrs Liswaniso, on behalf of the Appellant, advised the Court that she had not been served with the Respondent's heads of argument.

6.2. Mr. Kayawe, in-house Counsel for the Respondent, admitted that he had not served their heads of argument on the Appellant. He asked that the matter be adjourned to enable him file the heads of argument.

6.3. The only reason we allowed the adjournment was because the appeal touches on an important point of procedure in regard to commencing proceedings on the General List of the High Court or the Industrial Relations Division of the High Court (HC-IRD) *vis-à-vis* matters related to employment.

6.4. By agreement of the parties, we ordered that the Respondent files and serves its heads of argument on the Appellant within the next seven days and that the Appellant had the right to reply within 14 days of being served.

## **7. DECISION OF THIS COURT**

7.1. Over seven days has elapsed since we allowed the Respondent to file his heads of arguments and we have not had sight of them. We shall proceed to determine this rather straight forward point of procedure by considering the Appellant's heads of argument.

7.2. The mainstay of the Appellant's argument was the guidance given by the Supreme Court in the case of **PC Cheelo & 19 Others v Zambia Consolidated Copper Mines Limited (supra)**. This case was decided before the stand-alone Industrial and Labour Relations Court was assimilated into the Industrial Relations Division of the High Court (HC-IRD) which was created by the **Article 133 of the Constitution Amendment Act No. 2 of 2016**.

7.3. The Appellant's argument is self-defeating because the Industrial and Labour Relations Court no longer exists. There is now only the HC-IRD which over and above

dealing with employment matters previously handled by the High Court General List in the previous structure, now also deals with those matters that were the exclusive purview of the Industrial Relations Court.

7.4. The purpose for which the HC-IRD was established is crystal clear and to allow the haphazard filing of claims will interfere with the smooth administration of justice.

7.5. We agree with the trial Judge that this matter ought to have been filed in the HC-IRD.

#### **8. DECISION OF THIS COURT**

8.1. The appeal is consequently dismissed and the Appellant is at liberty to recommence the action in the HC-IRD.

8.2. The Parties shall bear their own costs.

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**M. KONDOLO, SC**  
**COURT OF APPEAL JUDGE**

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**P.C.M. NGULUBE**  
**COURT OF APPEAL JUDGE**

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**A.M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**