

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

APPEAL NO. 018/2022

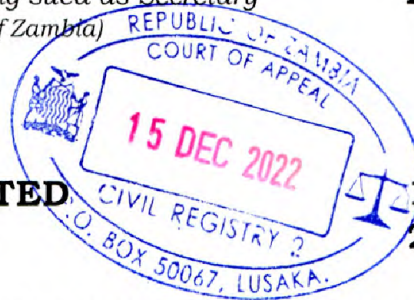
BETWEEN:

YOSAMU NYIRONGO *(Being sued as Secretary
General of United Mineworkers Union of Zambia)*

APPELLANT

AND

CINMUS SUPPLIES LIMITED
HUMPHREY MUSONDA



1ST RESPONDENT
2ND RESPONDENT

CORAM: CHASHI, SIAVWAPA AND BANDA-BOBO JJA

On 15th November and 15th December 2022

FOR THE APPELLANT: NOT IN ATTENDANCE

FOR THE RESPONDENTS: MRS. N. NYANGU-ZIMBA OF MESSRS
MAGUBBWI & ASSOCIATES

J U D G M E N T

SIAVWAPA JA delivered the Judgement of the Court.

Case referred to:

1. *Edman Banda vs Charles Lungu, SCZ selected Judgment No.22 of 2017*

Legislation referred to:

1. The Money Lenders' Act, Chapter 388 of the Laws of Zambia

1.0 **INTRODUCTION**

- 1.1 This appeal is against the Ruling of the Honourable Lady Justice M.C. Mulanda dated 25th August, 2021.
- 1.2 In her Ruling, the learned Judge dismissed a preliminary issue raised by the Appellant seeking to dismiss the entire action on the basis that the Respondents engaged in money-lending without a Money-Lenders Certificate contrary to section 3 of the Money Lenders' Act Chapter 388 of the Laws of Zambia.

2.0 **BACKGROUND**

- 2.1 Between January and December, 2013, the Appellant and the Respondents entered into various agreements by which the Respondents lent and the Appellant borrowed various sums of money.
- 2.2 On 15th August, 2017, the Respondents filed a writ of summons and a statement of claim at the Ndola Registry of the High Court by which they claimed as follows:
 - (i) Payment of the sum of K1,481,400.00;
 - (ii) Interest as provided for under the contract;
 - (iii) In the alternative interest as by statute provided;
 - (iv) Costs;
 - (v) Any other and /or further relief the court shall deem fit.

2.3 The Appellant filed a defence on 1st September, 2017 as amended.

2.4 On 24th March, 2020, the Appellant filed Notice to raise a Preliminary issue of law which was argued on 10th December, 2020 in Chambers.

3.0 **RULING OF THE HIGH COURT**

3.1 The learned Judge delivered her ruling on 25th August, 2021 dismissing the preliminary issue after reproducing an extract from the case of Edman Banda vs Charles Lungu¹, in which the Supreme Court of Zambia held that in terms of section 2 of the Money Lenders Act, a Money-Lender is one whose business is that of money lending and advertises or announces or in any way holds himself out as carrying on the business of money-lending.

4.0 **THIS APPEAL**

4.1 Dissatisfied with the ruling rendered by the learned Judge, the Appellant filed a Notice and Memorandum of Appeal on 11th January, 2022.

4.2 The following grounds of Appeal are attached to the Memorandum of Appeal:

1. The learned trial Judge erred in law and fact for dismissing the Applicant's preliminary issue that the Respondent had

been money-lending without a licence and the preliminary issue sought dismissal of the case.

2. The learned trial Judge erred in law and fact when she said on last page of R8 that the qualification of money lender is when the lender advertised in the Newspapers etc. and announcing that they are Money Lenders.
3. The Judge below erred when she did not recognize the fact that there were several agreements between January, and November 2013. It is our view that if it was a single incident the lender would not have been caught by Money Lenders Act Chapter 398 of the laws of Zambia if it was a one off act.
4. As can be seen in the Record of Appeal, the Appellants' amended defence to amended writ of summons and Statement of Claim, there were about fourteen series of agreements a sample or samples which will be available in the Record of Appeal. Cinmus Supplies Limited was in business of money lending this time with United Mineworkers Union of Zambia.
5. We have seen the Supreme Court Ruling under Edman Banda vs Charles Lungu. We would like to distinguish it with section 9(1) Cap.398.

Read line 9

“and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be”.

“9(2)

The note or memorandum aforesaid shall contain all the terms of the contract and in particular shall show the date on which the loan is made, the amount of the principal of the loan and either the interest charged on the loan expressed in terms of a rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the schedule.”

The Respondent complied with section 9(i) and 9(ii) and fitted nicely in the box of Money Lender. In our view it is not a question of declaration or advertising it is a question of action. All the arguments shown in the Record of Appeal show date, sums loaned to be paid within 30 days at 50%. There is no way their transactions for eleven months; January to November, 2013 can be casual loans. The Memorandum or Agreements also use the words LENDER and BORROWER; these words should be translated in

their natural meaning without any twist or departure of the true meaning of the words.

6. The Respondent charged 50% interest for 30 days if principal sum was not paid in next 30 days the sum plus 50% would be new principal to be paid. This was compound interest in Bemba called lunda lunda. Whoever carries business of lunda lunda comes in the ambit of CAP 398 of the Laws of Zambia.

In conclusion, we wish to persuade this Honourable Court that the transactions between the parties were not accidental they were truly business transactions which knowingly to the Respondent fell under the wings of Monday Lenders Act Cap 398. We therefore pray for an order that CAP 398 of the Laws of Zambia was applicable in the transaction between the Appellant and the Respondents and therefore, the Judge below erred in law and fact. The action of the Respondent should be dismissed with damages to be assessed with costs interest and costs here and below.

5.0. **ARGUMENTS IN SUPPORT**

- 5.1 We have observed that the heads of argument are an exact replica of the grounds of appeal. The Appellant combined the grounds of appeal and the arguments which is very unusual as there is no way of distinguishing the grounds from the arguments.

5.2 However, what we discern from the last part of the grounds of appeal is that the Appellant contends that the fact that there were several agreements entered into over a long period of time, all carrying interest, created a lender and borrower relationship bringing the Respondents within the definition of a Money Lender under Section 3 of the Money Lenders Act.

6.0 **ARGUMENTS BY THE RESPONDENTS**

6.1 On the date of hearing, the Respondents had not filed heads of argument. Counsel submitted that the Respondents had taken the view that their submissions in the Court below were adequate for the appeal.

6.2 Counsel however, prayed that she be allowed to file heads of argument out of time. We accordingly ordered that the Respondents file their heads of argument before the close of business the following day.

6.3 As at the time of writing this Judgment, more than seven days from the date of the hearing, the record did not have a copy of the heads of argument for the Respondents. We are therefore, inclined to assume that the Respondents did not file heads of argument.

7.0 OUR ANALYSIS AND DECISION

- 7.1 Before we delve into the main issues, we would like to observe that the Appellant filed a strangely crafted memorandum of appeal. We say strangely because it appears to contain grounds of appeal and heads of argument.
- 7.2 Our reading of the said memorandum of appeal reveals that only paragraphs 1, 2 and 3 are grounds of appeal and what follows thereafter are arguments and authorities. This format seems to take a substantial departure from the guidance given under order X rule 3(11) of the Court of Appeal Rules which directs that the memorandum of appeal shall be in substantial conformity with Form XVIII in the first schedule to the Rules of the Court.
- 7.3 We nonetheless take the view that the combining of the two is not fatal to the appeal as Order X rule 3(11) only requires substantial conformity to the Form. We take the view that the fact that the grounds are clearly set out enables us to determine the appeal notwithstanding the anomaly.
- 7.4 Coming to the substantive issues of the appeal, after a careful consideration of the arguments and the Ruling appealed against, we take the view that the only question in dispute in this appeal is whether the Respondents are Money Lenders

requiring a Certificate under section 3 of the Money Lenders Act.

7.5 The Appellant has argued that the nature of the transaction between the parties, brought the Respondents within the purview of the Act and as such, the transactions ought to be declared null and void for want of a licence.

7.6 By arguing as above, the Appellant seems to suggest that anyone who lends money to another in a formalized manner by executing a contract to evidence the agreement and the terms thereof satisfies the definition of a Money Lender under the Act.

7.7 The learned Judge below, in her Ruling, called into aid the case of Edman Banda v Charles Lungu (Supra) which explained the import of the definition of Money Lender in section 2 of the Act.

7.8 Section 2 defines Money-Lender as follows;

“Includes every person whose business is that of money-lending or who advertises or announces himself or holds himself out in anyway as carrying on that business, but shall not include.”

The exclusions are not relevant to this appeal.

7.9 What we can see from the above definition is that it is demonstrative rather than restrictive. However, the key to

determining who is captured by the definition is that the person must be in the business of lending-money either by establishment, advertisement or by holding out as such.

7.10 Where any of the above facts is established in relation to a person, then section 3(1) of the Act, which is the basis of this appeal applies, namely; that

“Except as hereinafter provided, every money lender, whether carrying on business alone or as a partner of a firm, shall take out annually in respect of every address at which he carries on his business as such, a licence (in this Act referred to as a “money-lender licence”) which shall expire on the 31st December in every year and there shall be charged on every money-lender’s licence a fee of four hundred and fifty fee units or, if the licence be taken out not more than six months before the expiration thereof, three hundred fees units.”

7.11 After reviewing the Supreme Court definition of Money-Lender, the learned Judge found as a fact that there was no evidence that the Respondents were in the business of money-lending, advertising or holding themselves as such.

7.12 We have, just like the learned Judge below, considered the evidence before her and the documents of registration of the 1st

Respondent and there is nothing suggesting that the Respondent's business falls within the purview of section 2 of the Act.

7.13 We therefore find no fault in the learned Judge's view that the Respondents did not require a Money-Lender's Certificate before they could lend money to the Appellants.

7.14 As regards the argument that the multiple lending agreements executed between the Appellant and the Respondents bring the Respondents within the contemplation of section 2 of the Act, we are of the view that the argument is misplaced. We say so because our understanding of the definition of money-lender is that for one to be categorized as such, they must be engaged, as part of their business and livelihood, in lending money not only to one entity or individual but to anybody wishing to borrow money on terms.

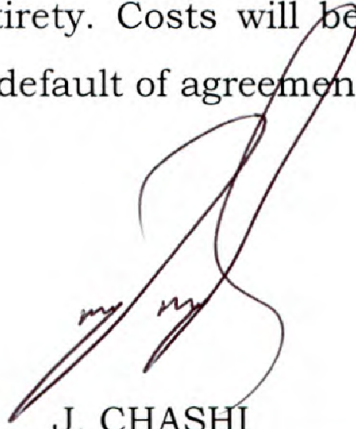
7.15 In this case, the fact that the various contracts for lending money were with only one entity, the Appellant, does not make the Respondents entities engaged in the business of money-lending.

7.16 On that score, we are in full agreement with the learned Judge below's finding that the Respondents did not require to hold a

Money-Lender's Certificate to lend multiple times to the Appellant.

8.0 CONCLUSION

- 8.1 In light of our analysis of the appeal and our expressed views, it is clear that this appeal is devoid of any merit. We accordingly dismiss it in its entirety. Costs will be for the Respondents. Same to be taxed in default of agreement.




J. CHASHI

COURT OF APPEAL JUDGE



M. J. SIAVWAPA
COURT OF APPEAL JUDGE



A.M. BANDA-BOBO
COURT OF APPEL JUDGE