

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

**APPEAL NO. 048/2021  
CAZ/08/46/2021**

**BETWEEN:**

**MOPANI COPPER MINES PLC**

**AND**

**ESNART TEMBO KATONGO  
MIRRIAM BANDA**



**APPLICANT**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

***Coram: Makungu, Ngulube and Sharpe-Phiri, JJA***

***On the 17<sup>th</sup> January, 2023 and 7<sup>th</sup> June, 2023***

*For the applicant: Mr. A. Imonda of Imonda & Co*

*For the respondents: Mrs. M.M. Chabala of Messrs Muya & Co*

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## **RULING**

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**MAKUNGU, JA delivered the ruling of the Court**

**Cases Referred to;**

1. *Guardall Security Group Limited v Reinford Kabwe*, CAZ Appeal no. 44 of 2019
2. *Citibank Zambia Limited v Suhayl Dudhia*, CAZ Appeal no. 16 of 2020
3. *Citibank Zambia Limited v Suhayl Dudhia* SCZ Appeal No.6 of 2022

**Legislation Referred to;**

1. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia*

**1.0 INTRODUCTION**

1.1 Appeal No. 048/2021 between the same parties, was scheduled for hearing on 17<sup>th</sup> January, 2023. On that date, both parties were before us but the appeal was not heard due to the preliminary objection raised by the appellant which is yet to be determined. The Notice of Motion to raise a preliminary issue on a point of law pursuant to **Order VII Rule 1 (1) of the Court of Appeal Rules-2016** was filed on 22<sup>nd</sup> December, 2022. The objection raised was as follows:

1.2 *The complaint having been presented to the court on 5<sup>th</sup> October, 2018 (page 11 line 14-18 of the Record of Appeal) and the judgement having been delivered on 22<sup>nd</sup> day of January 2021 (page 47 line 5 of the Record of Appeal) after one year period fixed by the provisions of section 85 (3) (b) (ii) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia had elapsed, the court had no jurisdiction to hear and determine the complaint.*

## **2.0 BACKGROUND**

- 2.1 On 5<sup>th</sup> October, 2018, the respondents commenced an action in the Industrial Relations Division of the High Court against the applicant. Judgment was delivered on 22<sup>nd</sup> January, 2021. The appeal before us (Appeal No. 048/2021) is against that judgment.
- 2.2 On 17<sup>th</sup> January, 2023, when the matter came up for the hearing of the main appeal, counsel for the applicant informed us that he had filed a motion on 22<sup>nd</sup> December, 2022 which was electronically served on the respondents' counsel the following day. The respondent's counsel acknowledged receipt of the same on 10<sup>th</sup> January, 2023.
- 2.3 The respondents' counsel applied for an adjournment as he required time to file an affidavit in opposition. We therefore granted the respondents 7 days within which to file an affidavit in opposition and skeleton arguments if any, and to serve the same on the applicant. We gave the applicant 5 days from the date of receipt of the affidavit in opposition within which to file a reply. However, the respondents did not file any document in opposition to the preliminary application.



2.4 The affidavit in support of the application filed on 22<sup>nd</sup> December, 2022 was sworn by Prince Sinkala, the Legal Officer for the applicant company. The gist of his affidavit is that: On 5<sup>th</sup> October 2018, the complainants Esnart Tembo Katongo and Mirriam Banda, presented the complaint before the High Court, Industrial Relations Division, pursuant to **section 85 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**

2.5 That the trial commenced on 18<sup>th</sup> January, 2021. After trial, the matter was adjourned to Friday 22<sup>nd</sup> January, 2021 for judgment.

2.6 He went on to state that, two years and three months had elapsed between 5<sup>th</sup> October, 2018 when the complaint was presented to the court and 22<sup>nd</sup> January, 2021 when the matter was disposed of. That this entails that the matter was disposed of out of time.

### **3.0 APPLICANT'S SKELETON ARGUMENTS**

3.1 In the Skeleton Arguments filed herein on 22<sup>nd</sup> December, 2022, counsel for the applicant referred us to **Section 85 (3)**

(b) (ii) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, which provides as follows:

**“The court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it.”**

3.2 He further referred us to our decisions in the cases of **Guardall Limited v Reinford Kabwe<sup>1</sup>**, and **Citibank Zambia Limited v Suhayl Dudhia<sup>2</sup>** where the judgments of the Industrial Relations Division were declared null and void and set aside on account that the cases were disposed of after the expiry of one year from the day the complaints were presented to the Court.

3.3 On the basis of the above authorities, counsel submitted that as the Industrial Relations Court delivered the judgment out of time, the same should be set aside for want of jurisdiction.

#### **4.0 OUR DECISION**

4.1 We have considered the preliminary objection to the appeal, the applicant's affidavit evidence and the written submissions.

4.2 We have had occasion to deal with the provisions of the Industrial and Labour Relations Act, which sets the time frames within which the Industrial Relations Division should dispose of cases.

4.3 In the **Guardall Case**<sup>1</sup> relied on by the applicant, we had occasion to interpret **Section 85(3)(b) (ii) of the Industrial and Labour Relations Act** which provides that cases before the Industrial Relations Division of the High Court must be dealt with within one year from the day that the complaint is filed. We also **interpreted section 94(1)** of the same act provides that a court shall deliver judgment within sixty (60) days of hearing the case.

4.4 The brief facts of the case where that the complaint was presented to the Industrial Relations Court on 6<sup>th</sup> September, 2017 and the court had only upto 6<sup>th</sup> September, 2018 to dispose of the matter. Trial took place on 5<sup>th</sup> December, 2018. However, the court only delivered judgment on 14<sup>th</sup> December, 2018 about 3 months outside the prescribed period of time.

4.5 On appeal, we set aside the judgment for want of jurisdiction on the part of the High Court. We held that;



***“Failure to comply with section 85 (3) (b) (ii) of the Industrial Relations Act stripped the dealing judge of jurisdiction to continue dealing with the matter. Further that, whether or not the non-compliance had been caused by the Court or other players is immaterial as the cesser of jurisdiction is by act of law.”***

4.6 In the case of **Citibank Zambia Limited v Suhayl Dudhia<sup>2</sup>**, where the complaint was filed on 23<sup>rd</sup> July 2013 and judgment was delivered on 29<sup>th</sup> November, 2019. The delay in this case exceeded 6 years. We nullified the judgment, as it was delivered outside the period prescribed by law.

4.7 When the above matter went on appeal, in **SCZ Appeal No.6 of 2022<sup>3</sup>**, the Supreme Court using the purposive rule in interpreting **section 85 (3) (b) (ii) of the Industrial and Labour Relation Act**, held as follows;


***“The court does not lose jurisdiction after one year. To hold otherwise would in our view create a result which is absurd in light of the intention of parliament to curb delays in concluding matters of an industrial relations nature.***

*A purposive approach would in our view be in keeping with the general tone of the Industrial and Labour Relations Act, which in section 85 (5) enacts that the main object of the court is to do substantial justice between the parties before it."*

4.8 In essence, the Supreme Court overruled our judgment in the Guardall case. By necessary implication, all the other decisions based on the Guardall case are now bad law. Consequently, the judgment in this matter cannot be nullified on the basis of the Guardall case.

## **5.0 CONCLUSION**

5.1 In sum, we find no merit in this notice of motion and it is dismissed with costs. The same may be taxed in default of agreement between the parties.

  
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**C.K. MAKUNGU**  
**COURT OF APPEAL JUDGE**

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

  
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**N.A. SHARPE-PHIRI**  
**COURT OF APPEAL JUDGE**