

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

CAZ Appeal No. 253/2021

BETWEEN:

NEIL KIRKPATRICK

AND

**BRICK BACK LIMITED T/A GAMAMWE
RANCHES**



APPELLANT

RESPONDENT

CORAM : Chishimba, Sichinga and Ngulube JJA

On 10th October, 2023 and 27th November, 2023

For the Appellant : Mr. O. Sambo of Messrs. Mwenye &
Mwitwa Advocates

For the Respondents : Mrs. S. Kalima-Banda of Messrs. J & M
Advocates

J U D G M E N T

CHISHIMBA JA, delivered the judgment of the court.

CASES REFERRED TO:

- 1) Guardall Security Group Limited v Reinford Kabwe CAZ Appeal No. 44 of 2019
- 2) ZEGA Limited v Zambia Revenue Authority SCZ Appeal No. 96 of 2018
- 3) Citibank Zambia Limited v Suhayl Dudhia SCZ Appeal No. 6 of 2022
- 4) Bisalomo Mumba v Michael Nsangu & Others CAZ Appeal No. 31 of 2021

LEGISLATION REFERRED TO:

- 1) The Industrial and Labour Relations Court Rules, Chapter 269 of the Laws of Zambia
- 2) The Industrial and Labour Relations (Amendment) Act No. 8 of 2008



1.0 INTRODUCTION

1.1 This is an appeal against the ruling of the Hon. Mr. Justice Egispo Mwansa dated 17th May, 2021, dismissing the appellant's complaint on a preliminary issue raised on the basis that the court had no jurisdiction to determine the matter in light of section 19(3)(b)(ii) of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia.

2.0 BACKGROUND

2.1 On 16th November, 2017, the appellant filed a complaint against his former employers, the respondent, in the Industrial Relations Division (herein after referred to as 'the IRD') seeking several reliefs. The respondent filed its answer and affidavit in support of answer on 9th January, 2018.

2.2 On 7th May, 2021 the respondent filed a notice of motion to raise preliminary issues pursuant to **rule 33 of the Industrial and Labour Relations Court Rules, Chapter 269 of the Laws of Zambia** and **Order 14A and Order 33 rule 3 of the Rules of the Supreme Court of England, 1999 Edition**. The issue raised for determination was whether or not the court below had the requisite jurisdiction to hear the complaint after the lapse of the statutory one year period

within which to dispose of matters in the IRD as prescribed as **section 19(3)(b)(ii) of the Industrial and Labour Relations Act, 2008.**

3.0 ARGUMENTS IN SUPPORT OF THE ISSUE RAISED IN THE COURT BELOW

- 3.1 The respondent contended that though the notice of complaint was filed on 16th November, 2017, the notice of hearing was only issued on 8th April, 2021 returnable on 23rd August, 2021. Therefore, the court below has no jurisdiction to continue hearing the matter because the Industrial and Labour Relations Act stipulates that matters must be concluded within one year of the complaint being filed.
- 3.2 In their arguments, the respondent relied on the provisions of **rule 33 of the Industrial and Labour Relations Court Rules, Order 14A and 33 rule 3 of the RSC and section 19(3)(b)(ii) of the Industrial and Labour Relations Act,** which has since been amended in **section 85(3)(b)(ii)** and provides as follows:

“ii) 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.”

3.3 Counsel submitted that the provision is couched in mandatory terms requiring the IRD to dispose of a matter within one year from the day on which the complaint was presented. He cited the case of **Guardall Security Group Limited v Reinford Kabwe** ⁽¹⁾ in which we held that **section 85(3)(b)(ii) of the Industrial and Labour Relations Act** is couched in mandatory terms leaving no room for a judge to use his discretion to dispose of the matter outside the one year period from the date of presentation of the complaint or application.

4.0 DECISION OF THE COURT BELOW

4.1 The learned Justice Mwansa agreed with the respondent that the court had no jurisdiction to hear the matter based on our decision in the **Guardall Security Group Limited case** and dismissed the matter for want of jurisdiction.

5.0 GROUNDS OF APPEAL

5.1 Dissatisfied with the decision of the court below, the appellant appealed by advancing three grounds of appeal couched as follows:

- 1. The lower court below erred in law and in fact when it proceeded to hear and determine the application to raise preliminary issues pertaining to whether it had jurisdiction to*

hear the matter as directed under section 19(3)(b)(ii) (sic) of the Industrial and Labour Relations Act after termination of its jurisdiction;

2. The court below misdirected itself in law by dismissing the matter; and

3. The court below erred in law and fact when it dismissed the action for want of jurisdiction instead of sending the matter to the Judge-in-Charge for re-allocation to a judge of competent jurisdiction for commencement of trial.

6.0 HEADS OF ARGUMENTS BY THE PARTIES

6.1 We have taken note of the respective heads of arguments filed by the learned Counsel. We will not rehash them for obvious reasons, namely the Supreme Court decision in the case of **Citibank Zambia Limited v Suhayl Dudhia** which overturned the **Guardall** case. Save to state that at the hearing of the appeal, Learned Counsel for the appellant, Mr. Sambo submitted that the decision of the court below to dismiss the matter was based on our decision in the **Guardall Security Group Limited case** which has since been reversed by the Supreme Court decision of **Citibank Zambia Limited v Suhayl Dudhia** (supra). He prayed that the appeal be allowed and the matter be remitted to the court below with costs to the appellant in view of the expense he has been put through.

6.2 In response, Mrs. Kalima-Banda submitted that the court below was well within its jurisdiction to hear and determine the preliminary application as the application related to jurisdiction of the court. With respect to the prayer for costs, learned counsel submitted that the matter having been commenced in the Industrial Relations Division, no costs can be awarded.

6.3 In reply, Mr. Sambo conceded and withdrew ground one in light of the Supreme Court decision of **Citi Bank Zambia Limited**.

7.0 DECISION OF THE COURT

7.1 We have considered the appeal, the arguments and authorities cited by learned Counsel on record. It is not in dispute that the notice of complaint for this matter was filed in the Industrial Relations Division on 16th November, 2017. The record shows that for over three years, the matter was not set down for trial. The complaint was dismissed on 17th May, 2021 following the preliminary issue raised by the respondent.

7.2 We are of the view that the issue for determination is whether or not the court below was on firm ground in dismissing the

matter for want of jurisdiction. Therefore, we shall begin by addressing grounds one and three.

7.3 In ground two and three, the appellant argues that the court below misdirected itself in law in dismissing the matter for want of jurisdiction instead of sending it to the Judge-in-Charge for re-allocation. That the effect of **section 85(3)(b)(ii) of the Industrial and Labour Relations Act**, is that a complaint filed in the IRD must be heard and determined within one year from the date the notice of complaint was filed by the appellant.

7.4 In the case of **Guardall Security Group Limited v Reinford Kabwe** ⁽¹⁾ we declared the judgment of the lower court delivered more than one year from the date the matter was commenced, null and void for want of jurisdiction and set it aside. We further remitted the record for re-hearing before another judge of competent jurisdiction. The court below relied heavily on our decision in dismissing the complaint before it.

7.5 **The Guardall** decision was set aside by the Supreme Court in the case of **Citibank Zambia Limited v Suhayl Dudhia** ⁽³⁾ where it held that a court does not lose jurisdiction when a

matter has not been concluded in one year. The court held as follows:

“5.36 We think that a purposive interpretation of section 85(3)(b)(ii) of the Industrial and Labour Relations Act means that 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.

5.37 A purposive interpretation would also, 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.”

7.6 In addition the Supreme Court stated at paragraph 5.50 that:

We may also add that the one year rule (for expeditious disposal of industrial and labour disputes) was not intended to lock out litigants who, through no fault of their own, could not have their cases determined within one year.

7.7 In that regard, the Supreme Court guided that the lower court which rendered the decision more than one year after the prescribed period did (does) not lose jurisdiction to determine the matter.

7.8 We hold that the court below misdirected itself in law by holding that it had lost jurisdiction to hear and determine the

matter after one year had lapsed from date of commencement. We find merit in grounds two and three.

7.9 As regards the issue whether the lower court had jurisdiction to hear and determine the preliminary issue, we held in the case of **Bisalomo Mumba v Michael Nsangu & Others** ⁽⁴⁾, that:


“... by its very nature, an application under Order 14A of the Rules of the Supreme Court, 1999 Edition seeks to determine the cause or dispose of it on a point of law, without a full trial.”

7.10 Therefore, we hold that the court below was not precluded from hearing and determining the application as it was well within its rights to do so.

7.11 As regards the prayer for costs, we are of the view that as the matter was commenced in the Industrial Relations Division of the High Court, **rule 44(1) of the Industrial and Labour Relations Court Rules** prohibits the award of costs unless where a party acted unreasonably in prosecuting or defending the matter. We hold the view that the actions of the respondent in making several applications do not amount to unreasonable conduct.

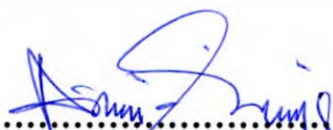
8.0 **CONCLUSION**

8.1 In conclusion, we uphold the appeal and reiterate that the court below had jurisdiction to proceed to determine the matter even after the lapse of a period of one year from date of commencement. We hereby set aside the dismissal of the matter and remit the record for re-hearing before another Judge. The parties shall bear their own costs.



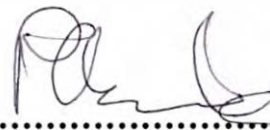
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F. M. Chishimba

COURT OF APPEAL JUDGE



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D. L. Y. Sichinga, SC

COURT OF APPEAL JUDGE



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P. C. M. Ngulube

COURT OF APPEAL JUDGE