IN THE COURT OF APPEAL OF ZAMBIA **Appeal No. 028 of 2022**

HOLDEN AT KABWE

(CIVIL JURISDICTION)

BETWEEN:

AFROX ZAMBIA LIMITED **APPELLANT**

AND

ROBERT KAONGA **RESPONDENT**

CORAM: CHASHI, MUZENGA AND PATEL SC, JJA

On 13th October & ...20...November 2023

For the Appellant: Ms. Kate Nalondwa
Messrs. AMW & Co Legal Practitioners

For the Respondent: Mrs. F.K. Muselitata & Ms. C. Chimankata
Messrs. Shamakamba and Associates

JUDGMENT

Patel JA, delivered the Judgment of the Court

Cases referred to:

1. Zesco Limited v David Lubasi Muyambango (2006) Z.R. 22
2. The Attorney General v Richard Jackson Phiri (1988- 1989) Z.R. 121 (S.C)
3. Graham Banda v Rudnap Zambia. (No Citation)
4. Dennis Chansa v Barclays Bank Zambia PLC -SCZ/8/128/2011.
5. Guardall Security Group Limited vs Reinford Kabwe -SCZ No. 44 of 2019.
6. John Sangwa vs Sunday Bwalya Nkonde- SCZ No. 2 of 2021.
7. Citibank Zambia Limited v Suhayl Dudhia -SCZ No. 6 of 2022.
8. Mahavir Woollen Mills v. CIT (245 ITR 297).
9. Nkhata and Others v Attorney-General (1966) Z.R. 124
10. Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 172.
11. The Attorney General v Kakoma (1975) ZR 216.
12. The Attorney General v Achiume (1983) ZR 1
13. Zambia National Provident Fund V Yekweniya M Chirwa (1986) Z.R. 70 (S.C.)

Legislation referred to:

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

Other Works:

1. A Comprehensive Guide to Employment Law in Zambia -Cases and Materials Revised edition Justice Dr. W.S Mwenda & Chanda Chungu.

1.0 INTRODUCTION

1.1 This is an appeal against the Judgment of Hon D. Mulenga delivered on 13th December 2021. A Notice of Complaint and Affidavit in Support was filed on 10th March 2020 on grounds that the Appellant's decision to dismiss the Respondent from employment was wrongful and unfair after being charged with offences contrary to the Company Grievance and Disciplinary Code and Procedures for Employees ("The Code"), which is now the subject of this appeal.

2.0 BACKGROUND

2.1 The brief facts of this matter are that, the Respondent (*the Complainant in the Court below*) had been an employee of the Appellant (the *Respondent in the Court below),* under a Contract of Employment on permanent and pensionable terms, from on or about 5th October 1995. Of relevance to this action, is that during the course of the Respondent's employment, the Appellant issued a Memorandum on 19th December 2019 which instructed all employees to attend an end of year function, scheduled to take place on 20th December 2019.

2.2 According to the Memorandum, noted at *page 45* of the Record of Appeal *(The Record)*, the function was to commence at 15:00 hours with the Managing Director's feedback, followed by recognition of deserving employees for long service and meritorious performance. The Memorandum indicated that the main event would proceed thereafter. It also indicated that operations on site would close at 13:00 hours, to allow for employees to be taken to the venue.

2.3 Contrary to the instructions outlined in the Memorandum, the Respondent (and some other employees) did not attend the function and did not communicate his failure to attend, to his respective supervisors. Consequently, the Appellant issued a letter dated 13 January 2020, entitled 'Exculpatory Letter' and invited its employees (including the Respondent), to show reason as to why they should not be charged. This is evident at *page 43* of the Record.

2.4 The listed employees tendered their exculpatory letters, providing reasons as to why they failed to attend the function as per the Memorandum. Subsequently, the Appellant proceeded to charge some of the employees in accordance with its Grievance and Disciplinary Code.

2.5 With reference to the Respondent, and by letter and notification of disciplinary inquiry dated 16th January 2020, the Respondent was charged in accordance with **clause 9 and 10 of the Code** for failure to carry out lawful and reasonable instructions which is a dismissible offence and absconding from work as a second offence.

2.6 Following the above, a Disciplinary Hearing was held on 21st January 2020 and the Committee found the Respondent guilty as charged. He was advised that he had two (2) days to appeal against his summary dismissal. The appeal process was interrupted by an illegal strike constituted by the Respondent and other employees, which, in turn, led to the closing down of the Appellant's operations on the material day.

2.7 The Respondent's appeal was subsequently heard, and his dismissal upheld.

2.8 Dissatisfied with the decision of the Appellant, the Respondent launched an action before the Industrial Division of the High Court at Ndola, on 10th March 2020, claiming the following reliefs:

i. *Damages for unlawful, illegal, unfair, and discriminatory termination of employment;*
ii. *Damages for charging and dismissing the Respondent on issues that are not chargeable and dismissible;*
iii. *Damages for forcing an employee to attend a function;*
iv. *Interest;*
v. *Costs.*

2.9 In response to the Notice of Complaint, the Appellant filed its Answer and Affidavit in Support, both dated 8th April 2021 noted at *pages 94 to 146* of the Record.

3.0 DECISION OF THE COURT BELOW

3.1 The learned trial Judge considered the pleadings, and Parties' arguments respectively. The lower Court noted that the issue for determination of the Court is whether the complainant's dismissal from employment was unlawful, unfair and discriminatory.

3.2 In considering the issue for determination, the learned trial Judge referred to the cases of **Zesco Limited v David Lubasi Muyambango**[1] and **Attorney General v Richard Jackson Phiri**[2] and guided himself that it was not the duty of the Court to place itself in the position of an appellate tribunal, if it is shown that the correct procedure had been followed. The only question

to be determined, being whether there was a substratum of facts to warrant the dismissal.

3.3 The trial Court took the view that though on the face of it, it appeared as though due process was followed, in charging and dismissing the Complainant from employment, the Court considered that the critical issue was whether there was a substratum of facts to warrant the charge and dismissal.

3.4 The lower Court acknowledged the provisions of **section 5 of the Industrial and Labour Relations Act,**[1] and referred to the Complainant's exculpatory letter and took the view that the reason the Complainant did not attend the end of year function, bordered on union grievances. The Court noted that the crux of the matter was whether or not refusal to attend the end of year function by the Complainant, amounted to disobedience of lawful instructions of the Respondent as an employee or amounted to breach of the Complainant's employment duties and relied on the case of **Graham Banda v Rudnap Zambia**[3]**.**

3.5 The lower Court in analysing its decision, considered the evidence on record and noted that it was common cause that there was a grievance by the unionised employees who felt that the Respondent management need not hold the end of year function at Njele Park, instead it should have paid them Christmas bonus. The Complainant's union communicated their position to the Respondent's management.

3.6 The lower Court noted that there was further evidence on record that unionised employees went on work stoppage and demanded the reinstatement of the Complainant. It was noted that the Complainant in his exculpatory statement made it clear that as a union member he was standing with others in solidarity not to attend the function if management did not hear them.

3.7 The lower Court took the view that it cannot be denied that throughout the Disciplinary process, the Respondent was aware that the Complainant was a union leader and his refusal to attend the function in issue was based on union activities. The Court placed reliance on the case of **Graham Banda v Rudnap Zambia**[3] in which it was held that it cannot be said that the alleged breach of employment duties at the instance of the Complainant was independent and not linked to his trade union activities to justify dismissal for disobedience.

3.8 In the lower Court's opinion, the interpretation of the Memorandum dated 19th December 2019 is that the work operations at the Respondent Company closed at 13:00 hours on 20th December, 2019, having already made a finding of fact that the Complainant reported for work and worked till 13:00 hours, it cannot be argued that the Complainant absconded from work.

3.9 The lower Court took the view that the Complainant was unfairly treated in comparison to other employees who were similarly circumstanced but not dismissed, because he was a union member.

3.10 It was the position of the lower Court that employers should not be quick to crack the whip on employees on flimsy grounds like not attending an end of year function, when the actual reason for the dismissal is connected to trade union activities as demonstrated by the Complainant. It was the Court's view that employees must be allowed to freely enjoy the rights that come with trade union membership, among them not to be subjected to dismissal on mere ground of being a union member.

3.11 The lower Court took the view that the Respondent did not properly exercise its disciplinary power against the Complainant as there were no substratum of facts to support the charges and dismissal from employment.

3.12 The lower Court arrived at the conclusion that the Complainant was unfairly and unlawfully dismissed from employment by the Respondent. In ascertaining the measure of damages applicable to the Complainant, the court placed reliance on the case of **Dennis Chansa v Barclays Bank Zambia**[4]. The lower Court noted that the Complainant, having been a long serving employee for over 22 years, awarded him 24 months' salary as damages for unlawful and unfair dismissal. The Court ordered that the award shall attract interest at the average short-term deposit rate from the date of Complaint to the date of Judgment, and thereafter at the current lending rate as approved by the Bank of Zambia until full payment.

4.0 THE APPEAL

4.1 Being dissatisfied with the Judgment of the lower Court, the Appellant filed a Notice of Appeal on 22nd December 2021 and amended Memorandum of Appeal on 1st February 2022, advancing six (6) grounds of appeal:

i. *The Learned Judge in the Court below misdirected himself in law and fact when he delivered Judgment in the matter in the Court below contrary to the provisions of Section 19 (3) (b) (11) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, his jurisdiction having terminated.*

ii. *The Learned Judge in the Court below misdirected himself in law and fact when he delivered Judgment in the matter in the Court below contrary to the provisions of Section 94 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, his jurisdiction having terminated.*

iii. *The Learned Judge erred in law in and fact when he found that the Respondent had worked a full day until 13:00 hours contrary to the evidence on the record, including the Respondent's own admissions.*

iv. *The Learned Judge erred in law and fact when he found that there was no substratum of facts to support the dismissal of the Respondent contrary to the evidence on the record.*

v. *The Learned Judge erred in law and fact when he failed to properly analyse the evidence on the record and ultimately held that the Respondent was unfairly dismissed.*

vi. *The Learned Judge erred in law and fact when he awarded the Respondent 24 months' salary as damages for unfair dismissal contrary to the law on award of such damages.*

5.0 APPELLANT'S ARGUMENTS IN SUPPORT OF THE APPEAL

5.1 We have duly considered and appreciated the Appellant's Heads of Argument filed on 9th February 2022 which we will not recast, save for emphasis as necessary.

6.0 THE RESPONDENT'S HEADS OF ARGUMENT

6.1 The Respondent purported to file its Heads of Argument on 10 October 2023.

7.0 THE HEARING

7.1 At the hearing, Counsel Muselitata, acknowledged that the Respondent having filed its Heads of Argument on 10 October 2023, without seeking leave of the Court and with no justifiable grounds, advanced an application for an order to expunge the offending Heads of Argument and for leave to file its Heads of Argument. The application was dismissed, there being an Affidavit of Service proving that service of the Appellant's Record of Appeal and Heads of Argument had been effected on 14 February 2022. The offending Heads of Argument were expunged and the Respondent not allowed to participate in the appeal.

7.2 The Appellant placed full reliance on the Record of Appeal and its Heads of Argument.

8.0 DECISION OF THIS COURT

8.1 We have carefully considered the grounds of appeal reproduced in *paragraph 4* above, the impugned Judgment and the arguments of the Parties. We will address our minds to the grounds of appeal in the order canvassed in the Appellant's heads of argument.

8.2 In addressing our minds to *grounds 1* and *2,* we note that they are interrelated and will be addressed collectively. Our attention has been directed to the Appellant's central issue for judgment as it pertains to the Court's jurisdiction. The first, being the time within which a matter ought to be concluded and the second issue, being the time set for delivery of judgments by the Industrial and Labour Relations Court. It is their submission that the Court below erred when it rendered its judgment dated 16th December 2021 (hereinafter called "the Judgment") when its jurisdiction had long terminated.

8.3 The Appellant has also referred to our decision rendered in the matter of **Guardall Security Group Limited vs Reinford Kabwe** [5] on the issue of loss of jurisdiction on account of delay in delivering judgment. We note the Supreme Court in the case of **John Sangwa vs Sunday Bwalya Nkonde** [6] which decision emphasized the importance of delivering justice without delay.

8.4 We acknowledge, with reference to the case of **Guardall**[5], and note that the decision has subsequently been overruled by the Supreme Court in **Citibank Zambia Limited v Suhayl Dudhia**[7] on the question of loss of jurisdiction, which the Appellant attempts to raise before us. It is sufficient to state that

grounds 1 and 2, and the corresponding arguments on the alleged loss of jurisdiction, having been overtaken by the pronouncements of the Supreme Court in the case of **Citibank Zambia Limited v Suhayl Dudhia,**[7] need no further judicial reasoning.

8.5 We now turn to address *Grounds 3, 4* and *5*. The Appellant argued the grounds collectively and we will address them in the same manner. It is the Appellant's contention that these three grounds attack the evaluation of the evidence by the trial Court, and its subsequent findings and are based on fact and law. They have placed reliance on the case of **Mahavir Woollen Mills v. CIT**[8] in support of the argument that evaluation of such evidence by another tribunal would not arrive at the same finding.

8.6 It is the Appellant's submission that the Memorandum dated 19th December 2019, was an instruction to all employees, to attend an end of year feedback function to take place on 20th December 2019. According to the Memorandum, its operations at head office and plant, on the material day would end at 13:00 hours, to allow for employees to be taken to the venue for the attendance of the Feedback.

8.7 It was their submission that in breach of the instruction imbedded in the Memorandum, the Respondent together with some of the employees of the Appellant, did not attend the Feedback without securing prior permission from their respective supervisors or communicating their failure to attend thereof. Consequently, the Appellant took down the names of the employees that were absent and invited them to show reasons why they should not be charged in accordance with the Code. We have noted several

letters directed at those employees that did not attend. The Respondent's exculpation letter appears at *page 123* of the record.

8.8 We have seen the notifications of disciplinary charges against **Mr. Kapasa Nsofu**, **Mr. Justine Mwewa** and **Mr Robert Kaonga,** (the Respondent herein) all dated 16th January 2020. It was their submission that the Respondent was charged with both *failure to carry out lawful and reasonable instruction* **and** *absconding from work* contrary to **clause 9** and **10** of the Code. It was their argument that the sanction for failure to carry out lawful instructions as stipulated in the Code is summary dismissal. Whilst the sanction for absconding from work is a written warning, the same was overtaken by the guilty verdict against the Respondent as regards his failure to carry out lawful and reasonable instructions.

8.9 It was submitted that the disciplinary committee found the Respondent guilty as charged and thereafter summarily dismissed him.

8.10 We have noted from the minutes of the Disciplinary Committee Meeting held on 21st January 2020, and from the Company's Code, which provides that the sanction for absconding work is a written warning and refusal to follow lawful and reasonable instruction is summary dismissal.

8.11 It is the Appellant's submission that the evaluation of the evidence by the learned trial Judge was wrong when he found that the Respondent had worked up to 13:00 hours and could therefore not be said to have absconded work. It is their argument that the learned Judge glossed over the fact that the Feedback was an important event that every employee was expected to attend without fail. It is their submission that the Respondent did not follow a lawful instruction and the Appellant was

justified in dismissing him. We refer to the affidavit of Christopher Chanda, RW2. In his affidavit in support of answer, it was deposed that clause 25 of the Company's Disciplinary and Grievance Procedure, allows the Appellant to discipline an erring employee and that the Appellant had the necessary disciplinary power and exercised it. It was deposed that the said Memorandum marked "**CC1**" bearing the instruction to attend the Managing Director's End of Year Feedback on 20 December 2019, was addressed to all employees and that the function was to take place during working hours and as a result the Appellant cut short its operational hours to ensure this.

8.12 We have considered these three grounds and refer to page *J16* of the Judgment of the Court below, in which the Court correctly guided itself based on the decisions of the Apex Court rendered in the cited cases **of Zesco Limited v David Lubasi Muyambango**[1] and **The Attorney General v Richard Jackson Phiri**[2] on the approach to be taken in such matters. The Court should only concern itself to see if correct procedures have been followed and not for the Court to assume the position of the appellate tribunal if it is shown that the correct procedures had been followed, the only question being whether there was a substratum of facts to warrant the dismissal.

8.13 We note the finding complained of by the lower Court when he stated as follows:

''It is the considered position of this Court that employers should not be quick to crack the whip on employees on flimsy grounds like not attending an end of year function, when the actual reason for the dismissal is

connected to trade union activities as demonstrated by the Complainant. Employees must be allowed to freely enjoy the rights that come with trade union membership, among them not to be subjected to dismissal on mere ground of being a union member. The Respondent therefore did not properly exercise its disciplinary power against the Complainant as there was no substratum of facts to support the charges and dismissal from employment'.'

8.14 In addressing our minds to this finding by the lower Court, we refer to the Appellant's arguments which advances the issue that the Respondent, did not at any stage, say that he was treated differently because he was a union member. We have also noted at *line 6 of page J21* where the lower Court was of the view that the Respondent was unfairly treated in comparison to other employees who were similarly circumstanced but not dismissed. The Court took the view that the actual reason for his dismissal was because the Respondent was a union member. The lower Court appeared to have placed reliance on a case referred to as **Graham Banda v Rudnip Zambia**. We offer our comments in the concluding paragraph.

8.15 We have combed the Record, read through the disciplinary proceedings as well as the proceedings on the appeal and the record of proceedings in the Court below and can find no mention of the Respondent having stated that he was treated differently from people who were similarly circumstanced. Furthermore, the Appellant in its Answer and supporting Affidavit confirm that the Memorandum was a lawful instruction issued to all its employees, it was a reasonable instruction, violation of which led to a finding of gross insubordination and failure to follow instructions which was a dismissible

offence and for which the Respondent was dismissed. The Respondent at his appeal hearing, confirmed that he had neither excused himself from attending the Feedback meeting nor had he informed his supervisor about his medical or religious beliefs. He also understood the charge "refusal to follow lawful and reasonable instruction" was a dismissible offence according to the Appellant's grievance and disciplinary Code. It is also obvious that the claims raised do not speak to the Respondent's dismissal on account of his belonging or his activities as a trade union member. The claims are repeated in *paragraph 2.8* above. In *casu,* the Respondent did not plead that his membership of the Trade Union is what caused his dismissal. No evidence was led to this. We ask ourselves whether the learned Judge in the Court below was entitled to make those assumptions.

8.16 It is trite that as an appellate Court, we will be slow to interfere with findings of fact made by the Court below unless certain criteria is met. We refer to the decision of the Supreme Court in the case of **Nkhata and four others v Attorney General**[9], wherein the Court directed on circumstances in which a trial judge can be reversed on facts.

8.17 We have had occasion to look at the Record and note that the Respondent in his exculpatory letter, states that he deliberately did not attend the feedback as a means of coercing Management to attend grievances. He confirms that management had been informed by the Union in writing on some grievances on which they wanted feedback. This explanation, in our considered opinion, clearly admits wilful refusal to attend an event, as a means of forcing issues on Management. The learned Judge in the lower Court correctly cautioned himself that if the Respondent is found to have

disobeyed lawful instructions, then it should be considered that his dismissal was justified.

8.18 In *casu*, we are satisfied that the learned Judge made a critical finding of fact as quoted in *paragraph 8.13* above, which is not supported by the evidence before the lower Court. We are further of the view that in formulating his opinion, the Judge in the Court below, expanded the reliefs sought by the Respondent and introduced claims which were not pleaded. We are of the considered view, that in assessing and evaluating the evidence, the Judge in the Court below took into account matters which he ought not to have taken into account. We are also satisfied that the lower Court in assessing and evaluating the evidence before it, drew inferences which are not supported at all. The inference drawn by the lower Court of the reasons behind the Respondent's dismissal, are a clear misdirection of the lower Court stepping into the shoes of the appellate tribunal despite the clear direction issued by the Apex Court in the cited cases of **Zesco Limited v David Lubasi Muyambango**[1] where the Supreme Court stated as follows:

"It is not the function of the Court to interpose itself as an appellate tribunal within domestic procedures to review what others have done. The duty of the Court is to examine if there was necessary disciplinary power and if it was exercised properly".

A similar caution was noted in the case of **Attorney General v Richard Jackson Phiri.**[2]

In *casu*, it has been noted that the correct disciplinary procedure having been invoked, the lower Court ought not to have made inferences and assumptions which are not supported from the Record.

8.19 In our considered opinion, this is a classic case, which following the principles enunciated in the case of **Wilson Masauso Zulu v Avondale Housing Project Limited,**[10] in as far as it relates to findings of fact, and hold the view that we are entitled to reverse such findings, where we are satisfied that the finding was either perverse or made in the absence of any evidence or upon a misapprehension of facts or where the finding, on a proper review of the evidence, cannot be reasonably made by any trial court acting correctly.

8.20 We are also alive to the Supreme Court's holding in the case of **Attorney General v Kakoma**[11] that:

"A court is entitled to make findings of fact where the parties advance directly conflicting stories and the court must make those findings on the evidence before it, having seen and heard witnesses giving that evidence."

The Supreme Court in the case of **Attorney General v Achiume**[12] has stayed steadfast in its guidance, that an appellate court will not reverse findings of fact, made by a trial judge, unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon misapprehension of facts or that they were findings which, on a proper view of evidence, no trial court acting correctly can reasonably make.

8.21 In *casu,* the Appellant's position is that the Respondent was dismissed because he refused to carry out a lawful instruction. In addressing our minds to this issue, we have perused the Record and note the evidence of the witnesses at trial, where the Respondent admits that the Memorandum was addressed to all employees including himself and was a serious instruction to the employees. He further acknowledged that the function was to take place in two phases. The first being the Managing Director's feedback, followed by award giving and the main event thereafter. The hearing of his appeal, where he was represented by a Union representative, equally concedes that it was wrong for the respondent to not have complied with a lawful instruction as contained in the Memorandum. There is nowhere in the Record any allegation or insinuation that the Respondent was dismissed for being a Member of the Trade Union.

8.22 It is our considered view that the Respondent did not follow a lawful instruction and the Appellant was justified in dismissing him. After perusal of the record and having analysed the Code, we note that refusal to follow lawful and reasonable instruction and absconding from work renders the Respondent in breach of the code. In this instance, we remain guided by the case of **Zambia National Provident Fund V Yekweniya Mbiniwa Chirwa**[13] which provides:

"Where it is not in dispute that an employee has committed an offence for which the appropriate punishment is dismissal and he is also dismissed, no injustice arises from a failure to comply with the laid down procedure in the contract and the employee has no claim on that ground for wrongful dismissal or a declaration that the dismissal is nullity."

We also refer to the case of **The Attorney General vs. Richard Jackson Phiri**[2], where the Apex Court made it clear that:-

"Once the correct procedures have been followed the only question which can arise for the consideration of the Court based on the facts of the case would be whether there were in fact facts established to support the Disciplinary measures since any exercise of power will be regarded as bad if there is no substratum of facts to support the same."

8.23 We hold the view that it is not in dispute that the Respondent committed an offence, and the Appellant, in deciding that the Respondent's action warranted a dismissal by virtue of their code and having followed due process and the fundamentals of natural justice, it is not within our jurisdiction to interfere. We therefore find that the Respondent's dismissal was not unfair nor was it unlawful as he was properly dismissed by virtue of the Appellants Grievance and Disciplinary Code. We have also noted from the Record, that the Respondent was not treated differently from other employees who were similarly circumstanced and certainly nothing to justify the conclusion that he was dismissed for being a member of the trade union.

8.24 In any event and based on the decision in the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**[10], it is trite that the burden of proof rests on the Respondent and we are not satisfied that he has discharged it successfully to uphold the findings he seeks to defend. We set aside the finding of unlawful and unfair dismissal. We accordingly allow grounds 3, 4 and 5 of the Appeal.

8.25 Having determined as we have, we believe it is *otiose* for us to consider the argument in ground 6 on the award of damages, as it is naturally set aside.

9.0 CONCLUSION

9.1 We accordingly find merit in the appeal and allow it. Each Party will bear its own costs, here, and in the Court below.

9.2 As a post-script, we are compelled to mention that one of the authorities (**Graham Banda v Rudnip Zambia)** referred to by the lower Court, does not appear to exist. We have searched high and low, to no avail. We re-iterate a caution to both litigants and the trial courts, to be mindful and vigilant when placing reliance on authorities, which either do not exist, or are mis-quoted in the context.

J. CHASHI
COURT OF APPEAL JUDGE

K. MUZENGA
COURT OF APPEAL JUDGE

A.N. PATEL, S.C.
COURT OF APPEAL JUDGE