

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

Appeal No. 191/2021

BETWEEN:

MWIINGA MAXWELL

1ST APPELLANT

SAMAMBA MUMBUWA

2ND APPELLANT

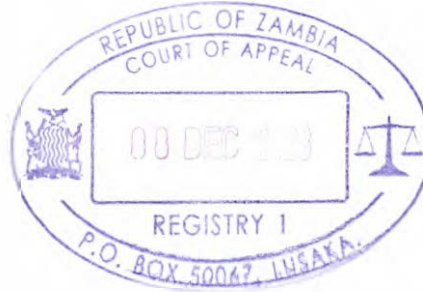
MBOLONGWE RAPHAEL

3RD APPELLANT

AND

MODROW MPANDE

RESPONDENT



CORAM: Chashi, Muzenga and Patel, JJA
On 19th September 2023 and 8th December 2023.

For the Appellants: Mr. N. Zulu, Messrs Dove Chambers, agents for MAK Partners

For the Respondent: Mr. K. Phiri, Messrs Malama & Co.

J U D G M E N T

MUZENGA JA, delivered the Judgment of the Court.

Cases referred to:

- 1. Hermann Josef Kibler v. Apollo Agricultural Holdings Limited
– SCZ Appeal No. 149 of 2015.**

2. Col. Paul Chikuswe Chilanga (Rtd) v. Lt. General I. S. A. Chisuzi (Rtd) (sued in his capacity as the Army Commander at the material time – CAZ Appeal No. 53 of 2017.

1.0 INTRODUCTION

1.1 This is an appeal against the judgment of Mulife, J, as he then was, dated the 16th of April 2021, in which he dismissed the appellant's cause for want of merit.

2.0 BACKGROUND

2.1 The background to this appeal is that the appellants sued the defendant (now respondent) by way of writ of summons claiming the following reliefs:

- (i) A declaration or an order that KASFA interim committee is unlawful established thus null and void.**
- (ii) Declaration that the expulsion of the plaintiff as members form KASFA was unlawful.**
- (iii) For payment of refund of annual contributions to KASFA from 1996 to 2019.**
- (iv) Shares on every asset that KASFA owns and has.**

- (v) Payment for money to the plaintiffs in the sum of K4,400.00 each which they used to buy shares through KASFA as per agreement together with interest at the current bank lending rates of Zambia.**
- (vi) An order for injunction restraining the interim committee from withdrawing any money from KASFA account because they are not signatories.**
- (vii) An order for an injunction restraining the interim committee from conducting or holding of elections for the Association until this matter is resolved by the Honourable Court.**
- (viii) An order for an injunction that the office-property of KASFA to be closed or kept in such manner pending final determination.**
- (ix) Damages for loss of contract which members would have benefited from was it not for the unlawful interim committee operating KASFA.**
- (x) Any other relief as the court may deem fit.**
- (xi) Costs of and incidental to these proceedings.**

2.2 The Writ and Statement of claim were subsequently amended, following an application by the appellants, which amended the second claim to now read:

“A declaration that KASFA new executive committee under the same Chairman and Secretary General of the previous interim committee is unlawfully established, null and void thus not lawful office bearers.”

2.3 The respondent filed a defence in which the appellants’ claims were contested and additionally counter claimed the following:

- (i) A declaration that the plaintiff is not a member of KASFA.**
- (ii) Injunction restraining the plaintiff either by himself or through his agents from interfering with the operations and management of KASFA.**
- (iii) General damages.**
- (iv) Costs.**
- (v) Any other relief the court may deem fit.**

2.4 At the time of commencement of trial, the plaintiffs abandoned all their other claims in the originating process other than the first two claims, which for clarity we shall reproduce below:

- (i) A declaration or an order that KASFA interim committee is unlawful established thus null and void**
- (ii) A declaration that KASFA new Executive Committee under the same chairman and secretary general of the previous interim committee is unlawfully established, null and void thus not lawfully office bearers.**

3.0 APPELLANT'S CASE

- 3.1 The appellants' evidence was that an extra ordinary meeting was called following some irregularities in the manner in which the executive committee dealt with the affairs of Kaleya Smallholders Farmers' Association (KASFA), an association registered under the Societies Act. The extra ordinary general meeting passed a vote of no confidence in the executive committee and they were removed. On the same day, their members went ahead to elect members of the interim committee. According to the appellants, this decision was forced on the members and it also violated Article 5.9(d) of the Constitution of KASFA.
- 3.2 It was averred that the appellants' committee, being the disciplinary committee, should have run the affairs of KASFA for 60 days after which they must call for elections, after an audit is done, in order to usher in a new executive committee.
- 3.3 It was the appellants' evidence that the interim committee was illegally in office and illegally ran the affairs of KASFA and their subsequent being KASFA executive committee members was null and void.
- 3.4 The appellants further averred that the respondent was not eligible to contest the election as he had audit issues pending at the police.

3.5 When cross-examined, the witness (who was the 1st plaintiff) admitted that the extra ordinary general meeting was chaired by the 2nd respondent as chair of the disciplinary committee and him as secretary. He also admitted having subsequently facilitated the ushering into office of the interim committee in violation of the Constitution. He further averred that the election of the interim committee following the removal of the executive committee, though done on the same day, 23rd July 2019, was within the 60 days period. This was generally the close of the appellant's case.

4.0 RESPONDENT'S CASE

4.1 The respondent called three witnesses. The gist of the evidence was that the respondent convened a meeting on behalf of the appellants' Disciplinary Committee, in his then capacity of Advisory Committee Chairperson, on the 23rd of July 2019. The meeting was presided over by the appellants' Disciplinary Committee at which the executive committee was removed, after which the appellant's Disciplinary Committee proceeded to conduct elections which ushered in the interim committee.

4.2 Later his present executive committee was elected by the general membership of KASFA. The appellants were expelled from KASFA on 3rd of September 2019.

5.0 DECISION OF THE COURT BELOW

5.1 The learned trial court found that the appellants having been expelled from KASFA and having abandoned the claims which challenged the legality of their expulsion from KASFA, now lacked *locus standi* to sue in matters to do with KASFA as they were no longer members. They can as such not institute proceedings on behalf of the organisation to which they are not members.

5.2 Further that the appellants had not demonstrated how they shall be affected by the reliefs they were seeking from the court below, considering that the reliefs are for the sole benefit or detriment of KASFA and its members. The action was thus bound to fail on this score for want of *locus standi*.

5.2 The court below went further to consider the merits of the cause and held that the interim committee was properly ushered into office in compliance with Article 5.9(d) of the KASFA Constitution as it was elected within the 60 days period stipulated and that the consequent

election of the executive committee was regular. The appellant's cause was dismissed for want of merit.

5.3 On the respondent's counter claim, the trial court granted the injunction sought but the claim for general damages was declined for want of evidence.

6.0 GROUNDS OF APPEAL

6.1 Disgruntled with the judgment of the lower court, the appellants have appealed to this Court advancing three grounds of appeal couched as follows:

- (i) The Court erred in law and fact when it held that Kaleya Small Holders Farmers' Association interim committee which was selected on 23rd July, 2019, was legally and properly selected.**
- (ii) The Court erred both in law and fact when it held that the current executive committee of the Kaleya Small Holders Farmers' Association was properly selected and ushered into office.**
- (iii) The Court erred both in law and fact when it held that the members of the current executive committee of Kaleya Small Holders Farmers' Association qualified to be elected as committee members despite their being overwhelming**

evidence that some of them still had pending criminal investigations pending at the police.

7.0 APPELLANT'S ARGUMENTS

7.1 Learned counsel for the appellants argued ground 1 and 2 together and drew our attention to Article 5.9 paragraph (d) of the KASFA Constitution which stipulates that:

“(d) Whenever a public meeting passes a vote of no confidence in the executive committee, the disciplinary committee SHALL run the affairs of KASFA for sixty (60) days.”

7.2 It was contended that where the executive committee is removed by way of passing a vote of no confidence by the general membership, it is mandatory for the Disciplinary Committee to run the affairs of KASFA for sixty (60) days. Counsel argued that the rationale for allowing the Disciplinary Committee to run the affairs of KASFA after a vote of no confidence was *inter-alia* to allow for auditing of the KASFA books of accounts so that clean books of accounts are handed over to the new executive committee. It was learned counsel's further contention that the 60 days period also enable their Disciplinary Committee to scrutinise the eligibility of aspiring candidates.

- 7.3 Counsel argued that because the foregoing was not followed, the learned court below erred when it found that the interim committee and the executive committee were properly elected.
- 7.4 In support of ground 3, counsel argued that the trial court erred when it held that the members of the executive committee of KASFA qualified to be elected despite there being overwhelming evidence that some of them had pending criminal investigations at the police.
- 7.5 Counsel contended that the executive committee was illegal in the sense that the books of accounts were not audited before the said committee was ushered into office as provided in Article 5.9(e) of the KASFA Constitution. Secondly, that the candidates were not scrutinised by the Disciplinary Committee as provided by the KASFA Constitution.
- 7.6 We were referred to Article 5.9(g) of the KASFA Constitution which provides that:

“If anyone is found with an outstanding case at the police or court related to audit, he/she shall not be allowed to contest with KASFA audit review.”

7.7 It was argued that the executive committee consists of office holders who have pending matters at the police in connection with audit queries involving KASFA funds and as such they are illegally in office.

7.8 Counsel therefore prayed that the appeal be allowed with costs to the appellants.

8.0 RESPONDENT'S ARGUMENTS

8.1 Counsel for the respondent opposed the appeal and stated on the onset that the appellants misunderstood the ratio *decidendi* in the judgment of the lower court and if they did, they would not have launched the within appeal. Counsel indicated that they would argue the 3 grounds together as they were related.

8.2 It was learned counsel's submission that the appellant's cause was dismissed on the basis that they lacked *locus standi* having been expelled from KASFA. We were referred to a number of authorities on this score, including the case of **Hermann Josef Kibler v. Apollo Agricultural Holdings Limited**¹ and our decision in the case of **Col. Paul Chikuswe Chilanga (Rtd) v. Lt. General I. S. A. Chisuzi (Rtd) (sued in his capacity as the Army Commander at the material time.**²

- 8.3 It was learned counsel's submission that the appellants having abandoned the challenge to their expulsion from the Respondent Association were left with no *locus standi* to proceed with the matter as they accepted their expulsion and ceased to be members of the association. It was counsel's further argument that the learned trial court was on firm ground as there existed no basis upon which the reliefs sought could be granted.
- 8.4 Learned counsel went on to argue that even if the appellants had the requisite *locus standi*, their appeal is bound to fail as there was overwhelming evidence that the first and second appellants presided over the meeting which passed a vote of no confidence in the executive committee and went further to preside over the elections which saw the ushering into office of the interim committee.
- 8.5 Counsel contended that the interim committee was elected in accordance with the KASFA Constitution within 60 days. It was argued further that Article 5.9(d) should not be read in isolation but together with paragraph (e). It was argued that since the proposed names were brought to the attention of the Disciplinary Committee, they had

an opportunity to scrutinise the candidates within the meaning of Article 5.9(f) of the KASFA Constitution.

- 8.6 It was lastly argued that if the members of the interim committee had pending cases, the 1st and 2nd appellants, who were Secretary and Chair of the elections at the time the candidates were elected, they (1st and 2nd appellant) would have rejected them.
- 8.7 It was argued that the interim committee, which subsequently became the executive committee was properly elected into office in the elections presided over by the 1st and 2nd appellants being Secretary and Chairman of the Disciplinary Committee.
- 8.8 Learned counsel prayed that the appeal be allowed.

9.0 DECISION OF THE COURT

- 9.1 We have carefully considered the evidence on the record, the judgment of the court below and the arguments by both parties. The preemptory issue in this appeal is whether the appellants had the requisite *locus standi* to procure the cause in the court below and consequently the within appeal.
- 9.2 The appellants in the court below, in the initial originating process challenged the legality of their expulsion from KASFA. This was clearly

stipulated in their second claim. They subsequently amended the originating process, completely dropping the challenge to their expulsion as was contained in the second claim.

- 9.3 The trial court found that having been expelled from KASFA and having withdrawn the challenge to their expulsion, they lacked *locus standi* since they were no longer members of KASFA. In the **Hermann Josef Kibler** case *supra*, the Supreme Court held that:

"An expelled member ceases to have the right to be given back a company house he was evicted from by virtue of termination of employment through an injunction as his interests in the house seized by virtue of his expulsion."

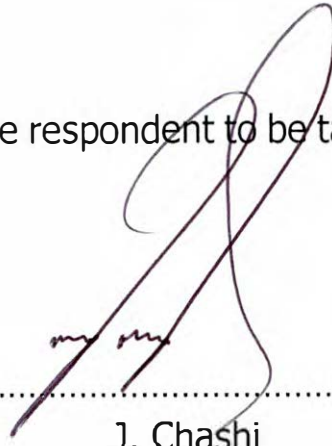
- 9.4 The appellants have not in the grounds of appeal before this court challenged the decision of the trial court, neither have they challenged their expulsion. This clearly means that the expulsion and the finding of the trial court, having not been appealed against stands.
- 9.5 We agree with learned counsel for the respondent that the appellants lack *locus standi* to sue and consequently lack *locus standi* to prosecute this appeal. On this score, we find no merit in the appeal and we dismiss it.

9.6 Because of the position we have taken, we are precluded from considering the appeal.

10.0 CONCLUSION

10.1 Having found that the appellants lack *locus standi* in this matter, we dismiss the appeal.

10.2 We award costs to the respondent to be taxed in default of agreement.



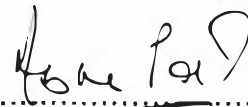
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J. Chashi

COURT OF APPEAL JUDGE



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K. Muzenga

COURT OF APPEAL JUDGE



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A. N. Patel, SC

COURT OF APPEAL JUDGE