

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

SP51/2023

BETWEEN:

**EVANS MWIYA
EDWARD CHABALANDA**

**1ST APPLICANT
2ND APPLICANT**

AND

EASON MUSOKOTWANE

RESPONDENT

Coram: Siavwapa JP, Makungu, and Patel, JJA

On the 22nd day of January and 7th day of February, 2024

*For the Applicants: Mr. A. Mbambara of Messrs Mbambara Legal
Practitioners*

For the Respondent: No appearance

RULING

Makungu JA, delivered the Ruling of the Court.

Cases referred to:

- Hermanus Philips Steyn v. Giovanni Gneccchi – Rusoone civil application of 2012*
- Bidvest Food Zambia Limited and 4 others v. CAA –Import and Export Limited (SCZ 838 2018)*

Legislation referred to:

- The Court of Appeal Act, 2016.

1.0 INTRODUCTION

1.1 On 17th November, 2023 the applicants filed herein a motion for leave to appeal to the Supreme Court against our Judgment dated 7th November, 2023. The same was filed pursuant to section 13(2) and 3(a) of the Court of Appeal Rules, 2016.

2.0 SUMMARY OF OUR JUDGMENT

2.1 In the Judgment of 7th November, 2023 we dismissed the appeal by the applicants and upheld the election of the respondent as Chief Musokotwane, by the duly constituted Electoral College. Each party was ordered to pay its own costs.

3.0 AFFIDAVIT IN SUPPORT OF THE MOTION

3.1 The affidavit in support of the motion was sworn by both applicants. In brief, the applicants state that they are dissatisfied with that Judgment and are desirous of appealing against it on the grounds stated in the draft memorandum of appeal exhibited as '**EMEC3**' containing proposed grounds of appeal. The grounds of appeal are framed as follows:

1. The court erred in law and fact when it failed to take into account the provisions of the Constitution which recognize the institution of Chieftaincy as being predicated upon the traditions and culture of its respective people.

2. The court misdirected itself when it failed and or neglected to refer to and give effect to the customs and traditions of the Toka – Leya people.

3. The court misdirected itself when it failed to take into account the degenerating effect of subjecting the ascension to the throne of Chief Musokotwane to voting in the name of modernity.

3.2 The appellants state that they believe their advocates advice that the intended grounds of appeal raise points of law of public importance and that they have high prospects of success.

3.3 That the departure from established customs and traditions has created an important question of law which the Supreme Court should clarify.

4.0 HEARING OF THE MOTION

4.1 The applicants were represented by their advocates who relied entirely on the affidavit in support of the motion and the heads of argument. The respondent himself was present during the hearing but not his advocates. We were advised by the applicants' counsel that the respondent's advocates informed him that they had not filed any documents in opposition and

that they would not attend the hearing but that their client would.

5.0 APPLICANTS' HEADS OF ARGUMENT

5.1 In their heads of argument dated 17th November, 2023 the appellants' advocates submitted that the proposed grounds of appeal meet the criteria set out in section 13 (3) (a), (c) and (d) of the Court of Appeal Act, 2016. It is submitted that points of law of public importance have been raised and the appeal has high prospects of success. We were referred to the case of **Hermanus Philips Steyn v. Giovanni Gnechi – Rusoone civil application of 2012** ¹ for the definition of “a point of law of public importance” as follows:

“The importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have a more general significance. Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law and that it is for the common good that such law should be clarified so as to enable the courts to administer that law not only in the case at hand, but also in such cases in future. It is not enough to show that a difficult question arose. It must be an important question of law. “As Madam JA. (as he then was said in

Mural v. Wainaina (1982) KLR 38 at page 49 par 1 Appeal No. 56 of 2017).”

“A question of general public importance is a question which takes into account the wellbeing of a society in just proportions.” (Underlined for our emphasis)

5.2 In light of the foregoing, counsel contends that the proposed appeal clearly transcends the circumstances of the senior Chief Musokotwane succession dispute as answers to the questions will have a profound effect on the basis on which traditional authorities anchor their entrenched customs and traditions.

5.3 Counsel proceeded to argue the proposed grounds of appeal in an effort to demonstrate that the requirements of Section 13 (3) (a) (c) and (d) have been satisfied. Section 13 (3) (a) (c) and (d) provide as follows:

“(13) The court may grant leave to appeal where it considers that:

(a) The appeal raises a point of law of public importance.

(c) The appeal would have a reasonable prospect of success and

(d)There is some other compelling reason for the appeal to be heard.

5.4 We shall not recapitulate the submissions made in support of the grounds of appeal, suffice to say that we have considered the same.

5.5 Counsel also referred us to the case of **Bidvest Food Zambia Limited and 4 others v. CAA –Import and Export Limited²** where the Supreme Court had the following to say about points of law of public importance,

“...Categories of cases of public importance are clearly never closed. Points of law of public importance are clearly never closed. Points of law of public importance can, in our view, be harnessed more easily in appeals where there is demonstrably for the public or general good of the public for the Supreme Court, as a final court, to review the legality of extraordinary questions and new legal provisions informing public authorities, or where a significant part of the public stands to be informed and guided by the Court’s interpretation so that in that sense there is a public interest in the outcome of an appeal.”

5.6 He finally prayed that leave to appeal be granted.

6.0 ANALYSIS AND DECISION

- 6.1 We have carefully considered the affidavit in support of the application for leave to appeal and the appellants' written arguments. Our duty at this stage of the proceedings is merely to consider whether the provisions of section 13(3) (a) (c) and (d) of the Court of Appeal Act have been satisfied by the appellant or any part thereof and if so, to grant leave. (see the Bidvest case)
- 6.2 In determining the appeal that was before us, we had applied to the facts the constitutional provisions such as Article 165 (1), case law and Cabinet Circular Number P.A 4/22 of 1972. We had also analysed the arguments made by counsel on both sides together with the judgment of the lower court and the grounds of appeal. We gave comprehensive reasons for our decision. The Judgment speaks for itself.
- 6.3 We are of the firm view that the matter does not transcend the circumstances of this particular case and that the propounded grounds of appeal do not raise any point of law of public importance as defined by both the **Hermanus case** and the **Bidvest case** *supra*; that needs the attention of the Supreme Court.

6.4 Further, the appeal would have no reasonable prospects of success and there is no compelling reason for it to be heard.

6.5 We note that the matter has dragged on for about seventeen (17) years. It has been said from time to time that litigation must come to an end.

6.6 Leave to appeal is therefore denied and each party will bear his own costs.



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M.J. SIAVWAPA
JUDGE PRESIDENT



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



.....
A.N. PATEL, SC
COURT OF APPEAL JUDGE