

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE KITWE DISTRICT REGISTRY**  
**HOLDEN AT KITWE**  
**(CIVIL JURISDICTION)**

**2011/HK/SCA/48**

**B E T W E E N:**

**PHIRI (MALE)**

**1<sup>ST</sup> APPELLANT**

**CHISENGA (MALE)**

**2<sup>ND</sup> APPELLANT**

**MRS. TEMBO (FEMALE)**

**3<sup>RD</sup> APPELLANT**

**AND**

**MPATA HILL MINING COMPANY LIMITED**

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

**THENDELIAN MINING COMPANY LIMITED**

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

**MICHEAL MISEPO**

**3<sup>RD</sup> RESPONDENT**

**Before Honourable Mrs. Justice Judy Z. Mulongoti in chambers on  
the 9<sup>th</sup> day of October, 2012**

**For the Appellants : Mr. C. Chali of Nkana Chambers**

**For the Respondents : No Appearance**

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## ***R U L I N G***

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**CASES REFERRED TO:**

- 1. WORKERS DEVELOPMENT CORPORATION LIMITED VS. DAVID MKANDAWIRE  
[1999] ZR 132 (SC)*
- 2. YAMFWA ENTERPRISES LIMITED VS. MECHANISED MINING SOLUTIONS  
LIMITED [2011/HK/330 (HC)]*

**LEGISLATION REFERRED TO**

- 1. Rules of the Supreme Court (White Book) 1999 edition*
- 2. Section 23 Subordinate Court Act, Cap 28*

The Ruling relates to a preliminary issue raised by the learned counsel for the appellants, Mr. Chali. According to learned counsel, the first and second respondents are limited liability companies and it was procedurally wrong that they commenced proceedings in the court below in person, contrary to the law. He contended that Order 5 rule 6 subrule 2 of the Rules of the Supreme Court 1999 edition, clearly indicated that a body corporate cannot commence or carry on proceedings in person. The case of **WORKERS DEVELOPMENT CORPORATION LIMITED VS. DAVID MKANDAWIRE [1]** was cited in authority. In that case the Supreme Court held that **“it is a general rule that a body corporate must be represented in a civil litigation by an advocate unless leave has been previously obtained from court in the exercise of its inherent power to regulate its own proceedings for the body corporate to be represented by a director or other senior person. Leave may be granted in exceptional cases and only for good reasons. Thus, the provisions of section 51 of the Legal Practitioners Act and Order 5 Rule 6 of the Rules of the Supreme Court severely restrict the ability of a body corporate to act in person” ”.**

According to Mr. Chali, the two respondents did not seek leave of the court to proceed in person. Thus, the proceedings were a nullity and should be quashed accordingly.

The ruling of my brother Justice Chali in the case of **YAMFWA ENTERPRISES LIMITED VS. MECHANISED MINING SOLUTIONS LIMITED [2]** was also cited for persuasive value.

Let me state before I consider the issue raised, that I did not hear the respondents because the matter was adjourned several times by both parties. The respondents appeared on 29<sup>th</sup> May 2012. The 3<sup>rd</sup> respondent asked that the matter be adjourned because their counsel was not before court. The matter was adjourned to 6<sup>th</sup> July 2012. The respondents were absent on that day and the matter was adjourned to 22<sup>nd</sup> August, 2012.

On the 22<sup>nd</sup> August, 2012, I decided to hear the appellants' counsel in the absence of the respondents because they were aware of the matter and they did not bother to communicate the reasons for their absence in any way.

I have perused the case cited herein including Order 5 Rule 6 of the Rules of the Supreme Court.

I note that the issue was not raised in the court below and yet the learned counsel also represented the respondents there. This notwithstanding, I am inclined to uphold the preliminary issue.

The position of the law is as argued by Mr. Chali. Thus, the 1<sup>st</sup> and 2<sup>nd</sup> respondents should not have appeared in person without leave of the court.

It is also noteworthy that according to section 23 of the Subordinate Court Act, where the matter involves a dispute as to title or ownership to land, the Subordinate Court can only hear the matter when all parties consent, otherwise the Magistrate is obligated to transfer it to the High

Court. Perusal of the record reveals that no consent of the parties was obtained before the Magistrate proceeded to hear the matter.

For the foregoing, it is my considered view that the proceedings in the court below were a nullity. The parties are at liberty to commence fresh proceedings in the High Court if they so wish. Consequently the appeal before me is otiose.

Leave to appeal is granted.

Dated at Kitwe this 9<sup>th</sup> day of October, 2012

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**Judy Z. Mulongoti**  
**HIGH COURT JUDGE**