

**IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2013/HP/0750

IN THE MATTER OF: An Applicant for Leave to Apply for Judicial Review
AND

IN THE MATTER OF: Order 53 RULE 3 of the Rules of the Supreme Court 1999
Edition

AND

IN THE MATTER OF: Section 93, Rule 1 © of the Mines and Minerals Act Chapter
213 of the Laws of Zambia

BETWEEN:

COLLUM COAL MINING INDUSTRIES LIMITED

APPLICANT

AND

THE ATTORNEY –GENERAL

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE D.Y. SICHINGA, SC

IN CHAMBES THIS 12TH DAY OF AUGUST 2013

FOR THE APPLICANT : MR. F. TEMBO, MERSSRS FRANK TEMBO AND PARTNERS

FOR THE RESPONDENT : MRS.M.M. CHOMBA, SENOIR STATE ADVOCATE,ATTORNEY-
GENERAL

RULING

Cases referred to:

1. *R v Chief Constable of Mersyside Police Ex parte Calvelye (1986) 1 All ER 257*
2. *R v Epping and Harlow General Commission Ex parte Goldstraw (1983) 3 All ER 257*
3. *Preston v IRC (1985) 2 All ER 327*
4. *Newplast INDUSTRIES V Commissioner of Lands SCJNo. 8 of 2001 and Preston v IRC (1985) 2 All ER 327*
5. *Rv Epping and Harlow General Commissioners, ex parte Goldstraw [1983] 3 All 257 at 262*

R1

R1

At the hearing of the inter parte summons to discharge leave to commence Judicial Review, the Applicant was not present. However, the court proceeded to hear the application made by the respondent as they relied on an affidavit of service filed on the 6th of August 2013 showing that the Applicant had been duly served. The Application is made pursuant to Order 52/14/62 of the Rules of the Supreme Court. In support of the application, the Respondent relied on an affidavit in support of summons files on the 28th of June 2013. In addition counsel for the Respondent relied on an affidavit in support summons filed on the 28th of June 2013. In addition counsel for the Respondent made oral submission in support of the applicant. The Applicant did not oppose the application.

In the main it is submitted by the Respondent that the substantive applicant for Judicial Review will fail for two reasons:

The first is that the application has been made out of time given that the decision which is subject to review was made on the 20th of February 2013. It is submitted that Order 53 rule 4 stipulates that an application for Judicial Review should be made promptly and within three months from the date of when grounds first arose. It is submitted that the application for Judicial Review ought to fail as it was filed on the 30th may 2013, a period outside the stipulated time. Counsel contended that the Applicant had not demonstrated any good reason for the court to extend the period to commence Judicial Review.

Secondly, it is submitted that the main applicant will fail as the applicant for Judicial Review Contravenes Section 152 and 153 of the Mines and Minerals Development Act, No. 7 of 2008. It is submitted that the Mines and Minerals development Act, Cap 213 was repealed and replaced by Act No. 7 of 2008.

Section 252 (1) of the Act No. 7 of 2008 provides for an aggrieved person to appeal to the Minister. Counsel relied on the cases of R V Chief Constable of Mersyside Police Ex parte Calvelye (1986) 3 All ER 257; and R v Epping and Harlow General Commission Ex parte Goldstraw (1983 3 All ER 257; Preston v IRC (1985) 2 All ER 327 to support the State's position that the Applicant's failure to appeal was fatal to these proceedings.

Lastly, the state submitted that Section 153 (1) provides that provides that a person aggrieved with the minister's decision ought to commence process by way of appeal. Counsel relied on the cases of Newplast Industries v Commissioner of lands SCJ No. 8 of 2001 and Preston v IRC (1982) 2 All ER 327.

I have carefully considered the application to discharge leave and the arguments advanced by counsel. Order 53 Rule 14 sub rule 58 provides that:

"An application for leave to move for judicial review must be made promptly, which in this context means as soon as practicable or as soon as circumstances of the case will allow, in any event such application must be made within three months from the date when grounds for the application first arose"

I have perused the record and noted that the decision being challenged was made on the 20th February 2013 and the application for Judicial Review as only filed on the 30th may 2013, a period exceeding the stipulated period. No reasons are advanced by the Applicant for this. The Court agrees with submissions made by counsel for the State that the application for judicial review is out of time.

The court further agrees with further submissions by the State that the mines and Minerals Act, Cap 213 is no longer the law as it has been repealed and replaced by Act No.7 of the 2008. The Applicant cannot therefore sustain an application for judicial review pursuant to a repealed law.

Finally, where an application for judicial review has the alternative of appealing from the decision in question, judicial review will normally be refused. Sir John Donaldson MR said in the case of R V Epping and Harlow General Commissioners, ex parte Goldstraw [1983] 3 All ER 257 AT 262:

“it is a cardinal principle that, save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised where other remedies were available and have not been used.”

The alternative remedy of appealing to the Minister surely provides more than a glimmer of hope that this avenue would have resolved the issue fully and directly, and faster than judicial review.

In the main, I accept the Respondent’s submissions and find that the APPLICANT WOULD FAIL TO MOVE THIS COURT TO REVIEW THE DECISION BEING CHALLENGED. FOR THE FOREGOING REASONS, I FIND THAT applicant is not entitled to the remedies under Judicial Review. As a consequence of my findings, I discharge the leave granted and dismiss the action with cost. This would be my decision in the substantive action.

Leave to appeal to the Supreme Court is Granted.

Delivered at Lusaka this 12th day of August 2013.

D.Y. Sichinga,SC

JUDGE