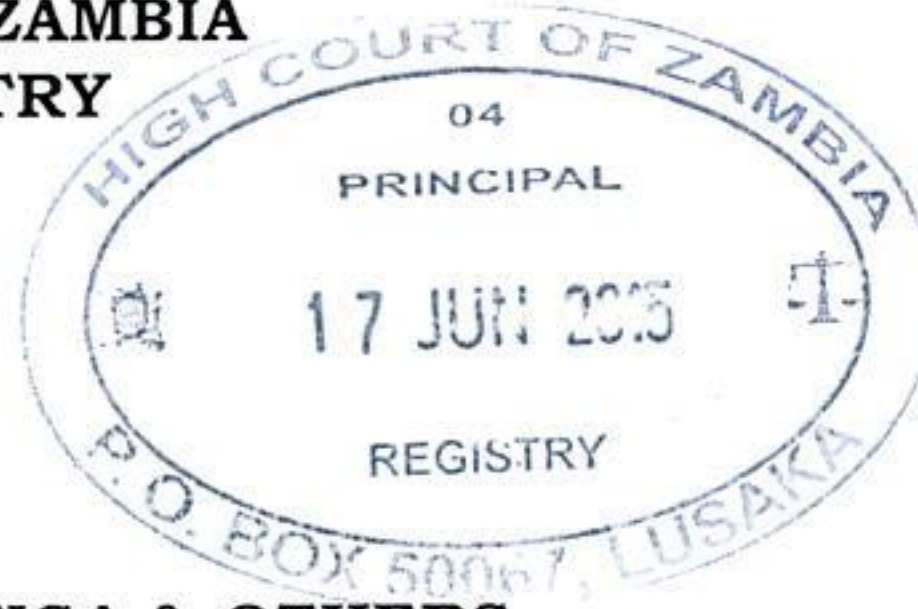


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA**

**2001/HP/0045**



**BETWEEN:**

**WILLARD SOLOMON NTHANGA & OTHERS**

**PLAINTIFFS**

**AND**

**STANDARD CHARTERED BANK (ZAMBIA) PLC**

**DEFENDANT**

**BEFORE: E.M. Hamaundu, JS**

For the Plaintiffs: Mr. M. L. Mukande, SC, Messrs. Mukande & Co.

For the Defendant: Mr. E. S. Silwamba, SC, Messrs. Eric Silwamba, Jalasi & Linyama Legal Practitioners

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**RULING**

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This is an appeal by the defendant against the Deputy Registrar's ruling dismissing its preliminary objection to the inclusion of 68 of the plaintiffs to these proceedings.

Since I am now a Supreme Court Judge, I have found it necessary to examine the record and consider whether I have jurisdiction to determine the appeal. *Section 17A (2) of the High Court Act, Chapter 27 of the Laws of Zambia* provides:

**“In any case where a Judge has been appointed (whether before or after the commencement of Act No. 3 of 1972) to be or to act as Supreme Court Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.”**

In view of that provision, I can only have jurisdiction to render a ruling on the defendant's appeal if I heard it prior to my appointment. The following is a brief background leading to where the matter currently is.

This matter was commenced in 2001 by the plaintiffs who, then, were about 53 in number. Over the years, other former employees of the defendant joined the action until the plaintiffs were about 334. On the 10<sup>th</sup> of February, 2005, counsel for the plaintiffs applied for leave to amend the writ of summons in order to include a further 68 former employees of the defendant as plaintiffs. The application was not heard, although, after the application was lodged, the proceedings thereafter were reflecting the inclusion of the 68 former employees. After judgment, both in the High Court and Supreme Court, the matter went for assessment. It was at that point that the defendant on the 18<sup>th</sup> May, 2011, raised a preliminary objection to the inclusion of the 68 former employees to

the proceedings. The Deputy Registrar rendered a ruling on the 26<sup>th</sup> May, 2011, dismissing the objection. The defendant appealed against that ruling on the 31<sup>st</sup> May, 2011. In the meantime, in or about 2010, about 141 former employees of the defendant had applied to join the proceedings after judgment. The application had been dismissed by the Deputy Registrar. The plaintiffs had then appealed against the ruling. This was prior to the defendant's preliminary objection relating to the 68 former employees. On the 15<sup>th</sup> July, 2011, the parties came before me in chambers. The parties' advocates on both sides informed me that they would rely on the submissions that they had filed before the Deputy Registrar. I duly read the submissions that were referred to me. That led me to render a ruling on the appeal relating to the application for joinder of the 141 former employees. Thereafter, I started receiving intimation through my Marshal that the parties were saying that I had omitted to render a ruling on the appeal relating to joinder of 68 other former employees of the defendant. A perusal of the record could not reveal such an appeal as having been before me. I, therefore, maintained the stand that I had rendered a ruling on the appeal that came before me.

Over the years, intimation kept being relayed to me that a ruling on the appeal relating to the 68 former employees was still being awaited. My repeated perusal of the record did not still disclose such an appeal. In the end, I called for a meeting with the advocates at which I asked them to give me copies relating to that appeal. It is through the copies that I received from counsel that I was able to compile a separate record which gave a clear picture of what I have just outlined.

The question now, therefore, is; did I hear this appeal? The record of what transpired on the 15<sup>th</sup> July, 2011, will give a clear picture of what appeal was before me.

The notes I made on that day show that learned counsel for the defendant addressed me first. Counsel said that the appeal was for the plaintiffs. Counsel went on to inform me that, as advocates, they had agreed with those of the plaintiffs that they would rely on the submissions that they had made before the Deputy Registrar. Learned counsel for the plaintiffs confirmed that position. Counsel went on to ask me to look at the following documents; the plaintiffs' skeleton arguments dated the 6<sup>th</sup> August, 2010 and 19<sup>th</sup> August

2010, respectively; the defendant's affidavit in opposition and skeleton arguments dated the 7<sup>th</sup> May, 2010 and 15<sup>th</sup> July, 2010, respectively, and; the plaintiffs' notice of appeal filed in April, 2011.

When I perused the documents referred to me, they all related to the appeal concerning the 141 former employees. Hence, the ruling that I rendered. The preliminary objection which gave rise to this appeal only arose on the 18<sup>th</sup> May, 2011. Clearly, all those skeleton arguments that were filed in 2010 could not have been referring to this appeal. Further, this appeal is by the defendant. Yet both counsel on that day informed me that the appeal that was for hearing was that of the plaintiffs. Therefore, my conclusion is that the appeal which came before me on the 15<sup>th</sup> July, 2011 was that of the 141 former employees. This appeal was not before me. Consequently, I have never heard it. It follows, therefore, that I now have no jurisdiction to hear it or render a ruling on it, even on arguments that the parties made before the Deputy Registrar. The only way forward is for this matter to be re-allocated to another judge who will hear the appeal. I accordingly refer the matter to the Judge in-Charge.

There shall be no order as to costs.

Dated the .....day of ..... 2015.



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**E. M. Hamaundu**  
**SUPREME COURT JUDGE**