

The appellants Cavmont-FMO Capital Corporation Limited and Forli Limited filed a notice of originating motion of appeal on 6th February, 2015 by way of appeal from the decision of the Registrar of the Patents and Companies Registration Agency contained in the letter dated 28th January, 2015 refusing to register the transfer of shares of the City of Lusaka Football Club Plc from Cavmont-FMO Capital Corporation Limited to Forli Limited and seeking for an order:

- a) that the said decision be set aside;
- b) that the respondents be directed to register the transfer of shares from Cavmont-FMO Capital Corporation Limited to Forli Limited forthwith upon such terms as this Honourable court shall think fit; and
- c) that the respondent pays the costs of and incidental to this appeal or for such order or further order as this Honourable Court shall think fit.

The notice of originating motion of appeal is supported by an affidavit deposed to by John Sangwa SC in his capacity as an advocate of the High Court of Zambia practicing under the name and style of Simeza, Sangwa and Associates, the advocates for the appellants. He stated that the first appellant holds shares in City of Lusaka Football Club 2000 Plc and that in 2014, the appellants entered into an agreement which resulted in the second appellant buying six hundred and fifty thousand (650,000) shares from the first appellant for a consideration of United States Dollars One Hundred and Eighty-Seven Thousand Five Hundred (US\$187,500) as per exhibit marked "JS1" being copies of the documents evidencing the transaction between the appellants. Property transfer tax in the sum of Two Hundred and Eighty-One Thousand Nine Hundred and Seventy-Four Kwacha Forty-Three Ngwee was duly paid to the Zambia Revenue Authority as per receipt for payment and tax clearance certificate collectively marked "JS2".

State Counsel went on to depose that the appellant proceeded to complete Companies Form No. 27: Form of Transfer of fully-paid shares marked "JS3"

which together with other supporting documents were presented to the respondent for registration in line with the provisions of the Companies Act on 16th December, 2014 but the respondent rejected them and refused to register the said documents. He stated that following this development the first appellant wrote two letters dated 17th and 18th December, 2014 to the respondent to which there was no response. State counsel further stated that on 19th December, 2014 he wrote a letter to the respondent on the same matter asking for reasons for his decision as per exhibit "JS5". He stated the respondent responded by advising that the decision was founded on the advice of the Zambia Police Service who were said to be investigating the shareholding and directorship of the City of Lusaka Football Club (2000) Plc as per letter dated 22nd December, 2014 marked "JS6".

State counsel stated that on 16th January, 2015 he wrote another letter to the respondent asking him to state the provisions of the law which he relied upon in making his decision. A copy of the letter is exhibited marked "JS7". However, on 28th January, 2015 the respondent responded to the letter by simply reiterating what he had stated in his earlier letter dated 22nd December, 2014 as per letter marked "JS8".

On 11th May, 2015 the appellants filed a further affidavit in support of the notice of originating motion of appeal which was sworn by Andrew Mushibwe who described himself as the legal officer in the second appellant company. He deposed that on 24th March, 2015, the second appellant company wrote to the head of the Fraud Squad at the Lusaka Fraud Squad Division of the Zambia Police to seek clarification as to whether the police investigation referred to by the respondent as the reason for rejecting the share transfer documents related to the directorship or shareholding of City of Lusaka Football Club Plc, as per letter marked "AM1". Counsel stated that in a letter in response dated 7th April, 2015, the officer in charge of the Anti-Fraud Unit confirmed that their investigations into the company were with regard to the directorship and that

they had found that there was no criminal case on the removal of directors and that the matter had therefore been closed. A copy of the letter to that effect was exhibited marked "AM2".

On 11th May, 2015 the respondent filed an affidavit in opposition to the notice of originating motion of appeal which was sworn by Anthony Bwembya, the Registrar and Chief Executive Officer of the Patents and Companies Registration Agency (PACRA). He deposed that paragraphs 1 and 2 of the affidavit in support of the notice of originating motion of appeal sworn by John Sangwa SC were not in contention and that the contents of paragraphs 3 to 6 of the said affidavit were within the peculiar knowledge of the deponent. With regard to the allegations in paragraphs 7 to 12 of the said affidavit, the deponent stated that although he had been laboring under the misapprehension and might have conveyed an impression to the deponent and others which suggested or purported to suggest that he or the Patents and Companies Registration Agency had the power or lawful authority to register the documents which are referred to in paragraph 7 of the affidavit, the correct position as advised by his counsel Michael Musonda, and which he verily believed, is that neither he nor PACRA is vested with the power or authority under any law to register any transfer of shares in respect of any company incorporated under the Companies Act, Cap. 388.

When the appeal came up for hearing, Counsel for the respective parties opted to file written arguments and to dispense with making oral arguments. I therefore directed counsel to file written arguments in support of their respective cases and I would thereafter render the judgment.

On 1st June, 2015 Mr. Chenda filed the appellants' heads of arguments in support of the appeal in which after stating the background to the appeal, he submitted that the Registrar in justifying the decision complained of stated that his reluctance to effect the transfer of shares was on account of advice

received from the Zambia Police to the effect that there were ongoing investigations relating to shareholding and directorship in the company and that he did not think that it was prudent for him to effect changes to the register when he was alive to the fact that there were police investigations relating to the same transaction. Counsel submitted that he had searched the entire Companies Act and had not found any provision that empowers the respondent to refuse to update the companies register on account of ongoing investigations by the Zambia Police.

Counsel submitted that section 370 (5) of the Companies Act is very specific on the circumstances under which the respondent may refuse to update the companies register and that this is where the source documents or particulars (i) contain illegal matter; (ii) contain errors, omissions or misdirections; (iii) are illegible; (iv) are not written on durable paper; or (v) are otherwise in conflict with the Companies Act. Counsel submitted that since the reason advanced by the respondent in his letter of 28th January, 2015 does not fall under the scenarios under section 370 (5) of the Act, there is no legal basis for it to be advanced as an excuse for not entering the details of the appellants' share transfer on the companies register and updating the respondent's records of the shareholding of the subject company. It was submitted that this is ground to annul the decision contained in the letter of 28th January, 2015 to be followed by the updating of the register of companies with the documents and particulars relating to the appellants' share transfer.

Counsel went on to submit that even if the illegality of the decision complained of were to be ignored and only the factual basis of the case were to be considered, the appellants' submission is that the reasons advanced have since been overtaken by events as the police had informed the appellants that the investigations into the removal of some of the directors from City of Lusaka football club had revealed that there was no criminality involved and that the matter had since been closed. Counsel further submitted that the respondent

in his affidavit in opposition filed on 11th May, 2015 had completely changed his position by stating a new reason for his reluctance to update the companies register to reflect the share transfer between the appellants. Counsel observed that the respondent stated that he had been laboring under the misapprehension that he or PACRA had the lawful authority to register the documents referred to in paragraph 7 of the affidavit in support when neither he nor PACRA had the power or authority under the law to register any transfer of shares in respect of a company incorporated under the Companies Act, Cap.388.

Counsel wondered whether the respondent was suggesting that the particulars of the shareholding of companies incorporated under the Companies Act need not be entered on the register of companies created under section 12 of the Act. He also wondered if the respondent was proposing that once the entries are made in the relevant company's internal register of members there was no corresponding requirement to update the register of companies which is maintained by the respondent. He wondered if that were the case why the law would impose a requirement to notify the respondent of each and every share transfer for a company formed under the Act. He further wondered why the law would dictate that such notification to the respondent must be by way of formally lodging the share transfer instrument with the respondent which instrument must conform to a prescribed form.

Counsel submitted that on a proper construction of the law, particulars of the shareholding of all companies formed under the Companies Act ought to be registered on the register of companies maintained by the respondent and the register should be kept current on such shareholding at different intervals of the life of the company. Counsel submitted that this is evident from the following:

- i. the requirement to specify who the shareholders are (in the prescribed company incorporation form);

- ii. the requirement to lodge annual returns with the Registrar showing the particulars of the company including shareholding;
- iii. the requirement for a return of allotment (of previously unissued shares) to be lodged with the respondent in the prescribed form showing who the allottees of the relevant shares are and in what proportions; and
- iv. the requirement to lodge a share transfer instrument with the respondent (in the prescribed form) depicting inter alia the transferor, the recipient and the number of shares.

Counsel submitted that all the above processes originate in the company which maintains internal records and end with the lodgment of the documents with the respondent who is expected to update the shareholding of the company concerned in the register of companies which is a public record to which the public have access. Counsel contended that to allow the respondent to say that he does not have power to register the appellant's share transfer is to negate the very existence of the register of companies and to abdicate the role of the respondent as its custodian.

In conclusion counsel submitted this is a fit and proper case for this court to find that the decision of 28th January, 2015 is not supported by law nor does it have any factual basis and that the new position now taken by the respondent in his affidavit cannot be reconciled with the spirit and provisions of the Companies Act. Counsel submitted that the decision appealed against must be set aside and the respondent be ordered to immediately update the register of companies with the particulars of the share transfer between the appellants.

In the respondent's arguments in opposition to the appeal, Mr. Musonda submitted that the institution of this appeal was wholly misconceived and is a blatant abuse of the process of the court. Counsel submitted that according to the notice of originating motion of appeal filed pursuant to section 379 of the Companies Act, Cap. 388, the appellants seek to have a purported or alleged

decision by the respondent purportedly refusing to register a transfer of shares by the 1st appellant to the 2nd appellant set aside and for an order directing the respondent to register the said transfer. After citing section 379 of the Companies Act counsel submitted that the purported decision of the respondent in respect of which the court's intervention is being sought is according to the notice of originating motion of appeal the decision contained in the respondent's letter dated 29th January, 2015 refusing to register the transfer of shares in City of Lusaka Football Club Plc from Cavmont-FMO Capital Corporation Limited to Forli Limited.

Mr. Musonda submitted that it cannot be seriously disputed that, in order for the jurisdiction of this court to be properly invoked pursuant to section 379 of the Companies Act the following conditions precedent must be in existence namely:

1. that the Registrar as a public official who is vested with and exercises statutory power, had made the decision under attack or being appealed against.
2. that the decision in question was one which the Registrar had the requisite statutory power or lawful authority to make; and
3. that the decision in question is one which would lawfully entitle this court to intervene by doing any of the things which are prescribed in section 379 namely, "*to confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.*"

Counsel submitted that according to the court process which was taken out herein, the appellants were aggrieved by the purported decision of the respondent whereby the Registrar refused to register the transfer of shares in City of Lusaka Football Club Plc from Cavmont FMO Capital Corporation Limited (the 1st appellant) to Forli Limited (the 2nd Appellant)."

Counsel observed that according to paragraph 7 of the affidavit in support of the appellants' appeal, sworn by John Sangwa S.C. the share transfer instrument "and other supporting documents were presented to the respondent for registration in line with the provisions of the Companies Act but the respondent rejected them and refused to register the said documents." Counsel contended that although the deponent of the affidavit had suggested, under oath, that a share transfer instrument and other supporting documents were presented to the respondent for registration in line with the provisions of the Companies Act, neither the deponent of that affidavit nor the appellants' counsel cited any provision of the Companies Act which entitles the respondent to register or refuse to register a share transfer instrument such as that which the appellants had completed and presented to the respondent for registration.

Mr. Musonda reiterated that it cannot seriously be contested that in order for the jurisdiction of this court under section 379 of the Companies Act to be properly invoked, the Registrar of Companies named must have made a decision in law and in fact. He contended that given that the Registrar exercises statutory functions and power under the Companies Act, any decision by him pertaining to the discharge of his statutory functions must be founded on law. Counsel submitted that subsection (3) of section 14 of the Patents and Companies Registration Agency Act No. 15 of 2010 provides that:

"(3) The Registrar shall have all the powers as are provided for, and exercised under, the Companies Act, the Companies (Certificates Validation) Act, etc."

He further submitted that it is clear from the provision which is cited above that the respondent only has powers which are provided for and are exercisable under the Companies Act. Counsel further submitted that it is also worth noting that in terms of section 5 (1) of the Patents and Companies Registration

Act, one of the foremost functions of the Patents and Companies Registration Agency (PACRA) is to “*administer the Companies Act*”.

Counsel went on to submit that in his affidavit in opposition filed on 11th May, 2015, Anthony Bwembya, the respondent herein deposed in paragraph 4.3 inter alia that:

“...although I have been laboring under some misapprehension and might have conveyed an impression ... which suggested or purported to suggest that I, or, the Patents and Companies Registration Agency, had the power or lawful authority to register (a share transfer instrument), the correct position, as so advised by my counsel, Michael Musonda, and which I verily believe, is that neither myself nor the said Agency is invested with the power or authority under the law to register any transfer of shares in respect of any company incorporated under the Companies Act, Cap 388.”
(emphasis added).

Mr. Musonda submitted that the simple issue which prompted the appellants’ search for this Court’s intervention via this appeal was some misapprehended grievance that the respondent had refused to register the transfer of shares in City of Lusaka Football Club Plc from Cavmont FMO Capital Corporation Limited (the 1st appellant) to Forli Limited (the 2nd appellant).

Counsel observed that according to the affidavit which was filed in support of the appeal, the registration of the transfer of shares was being pursued by or on behalf of the appellants “*in line with the provisions of the Companies Act*” and yet not even the fairly elaborate heads of arguments which were filed in court on 1st June 2015 on behalf of the appellants cited a single provision of the Companies Act which creates some legal requirement or imposes some legal duty upon the respondent to register a transfer of shares. Counsel observed that the closest that the Companies Act gets to involving PACRA in a

share transfer transaction is by way of the rather novel innovation which was introduced in July 2011, when section 57 of the Companies Act was amended by the introduction of an obligation to have any “... *person who transfers shares in a private company ... notify the Registrar in the prescribed manner and form* (emphasis added.)

Counsel submitted that section 57 of the Companies Act is instructive in the context of the subject matter of this appeal as it provides for the manner in which shares can be transferred. He submitted that subsection (2) of section 57 of the Act enacts as follows:

“(2) If an instrument of transfer of fully paid shares in a company is in the prescribed form, executed by both the transferor and the transferee, or by persons duly authorised on behalf of the transferor or the transferee, the company shall not refuse registration of the transfer on the ground of form.”

Counsel submitted that the meaning of section 57 (2) as quoted above is very clear and unambiguous and does not require any special aids to decipher the same. He further submitted that from the plain meaning of section 57 (2), the acceptance or refusal to register a share transfer falls within the domain of the company to which the shares that would be the subject of transfer relate. Counsel emphasized that it follows from the foregoing provisions that it is not, by any stretch or of the imagination, open to PACRA or its Registrar to accept or refuse to register a share transfer transaction.

Counsel went on to submit that quite apart from the clear provisions of section 57 (2) of the Companies Act, the subject of share transfer registration is also explicitly dealt with in section 64 and 65 of the Companies Act which provide as follows:

“64. (1) Subject to section sixty-nine, a company shall not register a transfer of shares unless-

- (a) a proper instrument of transfer has been delivered to the company; or*
- (b) the right to the shares has been transmitted by operation of law.*

(2) Transfers may be lodged with the company by either the transferor or transferee.

(3) If a company refuses to register a transfer, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice in writing of the refusal, together with a statement of the facts which are considered to justify refusal.”

Counsel submitted that on the other hand, section 65 (3) enacts as follows:

“(3) A company may refuse to register a transfer of shares to any person who-

- (a) is under eighteen years of age; or*
- (b) is of unsound mind and has been declared to be so by the court or a court of competent jurisdiction of another country.”*

Counsel submitted that what is resoundingly clear from the provisions of the Companies Act which have been set out above is that the registration of a share transfer is the preserve of the company to which the shares in question relate. He submitted that the foregoing case is hardly surprising because the purpose of securing a share transfer registration is so as to have the new share owner issued with share certificate in respect of their acquired shares and to have their name entered in the register of members. To that effect counsel cited section 66 (1) of the Companies Act which provides as follows:

“66. (1) A company shall, within two months after the allotment of any of its shares or after the registration of the transfer of any shares, deliver to the registered holder thereof a certificate under the common seal of the company stating-

- (a) the number and classes of shares held by him, and the distinguishing numbers thereof (if any);*
- (b) the amount paid on such shares and the amount (if any) remaining unpaid; and*
- (c) the full name and address of the registered holder and whether the holder is an individual, a body corporate or an unincorporated association.”*

Counsel further submitted that aside from the company being responsible for issuing a share certificate to anyone who becomes a new share owner in a company, such a share owner must be entered in the register of members which section 48 (1) of the Companies Act requires every company to maintain.

Mr. Musonda stated that needless to say, neither share certificates nor registers of members or shareholders are kept or maintained by PACRA or its Registrar. He observed that what PACRA or the Registrar is legally mandated to maintain pursuant to section 12 (1) of the Companies Act is the register of companies which contains information which every company (via its company secretary) is obligated to furnish PACRA with under various provisions of the Companies Act by way of legal or statutory compliance.

Counsel argued that what is patently clear from the foregoing submissions is that neither PACRA nor its Registrar (the Respondent in this matter) performs any legal or statutory role under the Companies Act in relation to the registration of any share transfer. He stated that given that the Companies Act, Cap 388 neither empowers nor entitles the respondent to register or to

refuse to register any transfer of shares, no decision was made by the respondent in the context of this appeal and under the said Act which is capable of being appealed against pursuant to section 379 of the Companies Act or, at any rate which can be competently adjudicated upon by this Court pursuant to the said statutory provisions.

Counsel cited Lord Woolf and Professor Jowel, J. Q. C. the learned authors of Judicial Review of Administrative Action, 5th edition (1995: Sweet and Maxwell, London) who state the following at page 112:

“On the occasion, the court has refused to review allegedly unlawful administrative action on the ground that the public authority had made no decision capable of being reviewed ... in such situations no decision has been made and therefore there is nothing capable of being reviewed.”

Counsel referred to the respondent’s assertion in his affidavit in opposition when he stated that he was *“laboring under some misapprehension and might have conveyed an impression ... which suggested or purported to suggest that I, or the Patent and Companies Registration Agency, had the power or lawful authority to register (a share transfer instrument), the correct position, as so advised by my counsel, Michael Musonda, and which I verily believe, is that, neither myself not the said agency is invested with the power or authority under any law to register any transfer of shares in respect of any company incorporated under the Companies Act, Cap 388.”* (emphasis supplied).

Counsel stated that the position of the law around which the subject of the appeal revolves is settled regardless of what the respondent’s misapprehension might be. He contended that the respondent is vested with statutory power or authority and the duty and obligation imposed on him is to act in accordance with the law, no more and no less. Counsel cited the learned author Bennion, F. A. R. (1997) who states in *statutory interpretation: A Code* at page 183 that:

“A power to do something extends only to that thing. Its purported exercise extending to a different thing is not, to that extent the exercise of the power at all: the power exercised must be the power conferred.”

Counsel went on to cite the learned editors of Halsbury’s Laws of England, volume 1 (1), 4th edition who have put the matter in the following words at paragraph 20:

“a public body with limited statutory powers must not exercise authority not conferred upon it... powers granted for one purpose are to be used to achieve that purpose and not an extraneous purpose.”

He stated that the same learned editors of Halsbury’s Law of England further state at paragraph 19 as follows:

“if the repository of a power exceeds its authority, or if a power is exercised without lawful authority, a purported exercise of power may be pronounced invalid ... All statutory powers must be exercised in good faith and for the purpose for which they were granted.”

Counsel submitted that the kernel or gist of the appellants’ appeal is that the respondent refused to register the transfer of shares from the 1st appellant to the 2nd appellant and that according to the appellants the refusal by the respondent to proceed in the afore-mentioned manner was unlawful. Counsel submitted that unfortunately the appellants have completely failed to point to any single provision of the law which the respondent breached, let alone failed to obey.

Counsel contended that he on the other hand was demonstrated on behalf of the respondent that what he had been invited to do by the appellants, namely,

to register the transfer of shares from the 1st appellant to the 2nd appellant was something that he had no lawful power or authority to do, irrespective of his uninformed personal or subjective disposition.

Counsel contended that given that the respondent had no lawful authority or power to do what the appellants had sought to have him do, whatever his purported decision was is one that is incapable of being confirmed, reversed or varied by this court as contemplated in the legal provision namely, section 379 of the Companies Act, upon which his appeal is founded.

Counsel submitted that it is with due respect, resoundingly unfortunate that the heads of argument which were filed on behalf of the appellants did not address the critical issues which he has canvassed above. Counsel submitted that by reason of the foregoing, his comments upon the same will be limited to the following:

1. The Registrar maintains a register of companies and not that of members. Companies, acting by their secretaries, submit information e.g. via annual returns which form the basis of what is contained in the register of companies. In the instance case, a seller and buyer of shares were seeking to have their share transfer transaction registered. This could only be done by the company whose shares were being bought/sold because this is the company which maintains the register of members and which can issue shares to new shareholders.
2. Section 57 (4) of the Companies Act does not deal with registration of share transfers.

In conclusion, counsel submitted that given that no or no lawful decision was made by the respondent or, at any rate, no decision of the kind contemplated in section 379 of the Companies Act was made by the respondent, this Court cannot as the appellants' are seeking, properly or lawfully be invited to

intervene or invoke its jurisdiction pursuant to that provision, the present proceedings are wholly incompetent, misconceived and ought to be dismissed with costs as being an abuse of the process of this court.

In the appellant's arguments in reply to the respondent's head of argument filed on 30th July, 2015, Mr. Chenda submitted that the respondent had gone to great lengths to argue about how a transfer of shares is a transaction to be registered in the internal records of a company and how there is no role to be played by the respondent in that internal registration process of a company.

Counsel conceded that clearly the said issue is not in dispute whether legally or otherwise. He proceeded to argue however, that this appeal is not about what the company should do internally but about the role of the respondent vis a vis a transfer of shares. Counsel submitted that he demonstrated in his arguments of 1st June 2015 that the respondent is a custodian of the register of companies which is a public record with particulars of all companies incorporated under the Companies Act.

Therefore, counsel contended that the respondent cannot now run away from the obligation to update the register of companies with the details of the new shareholding of the City of Lusaka Football Club (2000) Plc.

Counsel stated that the companies register is public record and that members of the public are entitled to find the updated information once the respondent has been notified of a share transfer in the prescribed form.

He contended that such notification is exactly what the appellants tried to do and in rejecting the appellants' attempts the respondent abdicated his duty to heed the notification and update the companies register maintained by him.

Counsel reiterated his submission in the main arguments of 1st June 2015 that there are various provisions of the Companies Act which show that the register of companies is to be kept current on, inter alia, the shareholding at different intervals of the life of a company.

He argued that although the respective processes originate with the company internally where internal records of the said processes are kept, the processes end with documents being lodged with the respondent whether as notification or otherwise.

Counsel contended that the respondent is obligated to update the shareholding of the relevant company in the relevant part of the register of companies and cannot escape legal redress of his actions by pointing at the internal processes of the company when the respondent has by law a record keeping role to play as a result of the internal processes of a company.

Counsel went on to submit that a perusal of the heads of arguments filed by the respective parties shows that the parties are essentially agreed that the respondent's decision which is complained of was illegal for lack of any legal basis but that the parties reach the said conclusion for different reasons.

Counsel therefore, submitted that having agreed (for different reasons) with the appellants' position that the decision complained of was without legal basis, there remains no legal limb for such a decision to stand.

Counsel contended further, that the respondent's argument that the decision complained of cannot be redressed under section 379 of the Companies Act (because according to the respondents it related to something which the respondent had no power to do under the Act.) is misconceived because section 379 itself does not qualify the right of appeal by limiting it to only those decisions lawfully made by the respondent.

Counsel argued that section 379 does not categorize or specify the types of decisions which can be the subject of a statutory appeal but is worded broadly enough to include any and every decision of the Registrar regardless of whether the decision was made under lawful power or not.

Counsel contended that it is thus grossly misconceived and baseless for the respondent on the one hand to concede that the decision complained of was unlawful and yet on the other hand argue that it is not capable of redress in these proceedings. He submitted that there is no such restriction on the jurisdiction conferred on this court by section 379 of the Companies Act and that there is no premise upon which the respondent can request this court to abdicate its duty to adjudicate on this matter.

Counsel reiterated that this is a deserving case for this court to find that the decision of 28th January 2015 is not supported by law and has no factual basis and that the new position taken by the respondent before this Court cannot be reconciled with the spirit and provisions of the Companies Act.

In conclusion counsel submitted that the circumstances call for the setting aside of the decision appealed against and an order for the immediate updating of the register of companies with the particulars of the share transfer between the appellants.

I have considered the submissions and arguments by counsel for the appellants and counsel for the respondent, respectively.

The appeal has been brought by the appellants against a decision of the Registrar of the Patents and Companies Registration Agency contained in a letter dated 28th January, 2015 by which the Registrar refused to register the documents relating to the transfer of shares of the City of Lusaka Football Club (2000) Plc from Cavmont-FMO Capital Corporation Limited to Forli Limited.

The ground of appeal is that the decision of the respondent is ultra vires section 370 of the Companies Act.

The applicants seek that the decision be set aside and that the respondent be directed to register the transfer of shares from the 1st appellant to the 2nd appellant upon such terms as this court may deem fit and that the respondent pays the costs of this appeal.

The appeal is brought pursuant to section 379 of the Companies Act, Cap 388 which provides as follows:

“Subject to this Act, a person aggrieved by a decision of the Registrar may within fourteen days after the date on which he is notified of the decision, appeal to the Court against the decision, and the Court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.”

It will be noted from the provisions of section 379 which is set out above that a person aggrieved by any decision of the Registrar may appeal against the decision to this court. Thus the appeal was properly brought under section 379 of the Act.

In the present case the decision appealed against is the decision of the respondent contained in the letter dated 28th January, 2015 in which the respondent refused to effect changes to the register relating to the transfer of shares in the City of Lusaka Football Club (2000) Plc from the 1st appellant to the 2nd appellant. The appellants contend that the refusal by the respondent to update the companies register due to “*ongoing investigations by the Zambia Police*” has no legal basis as it is not a ground upon which the Registrar may refuse to register a document under section 370 (5) of the Act.

In opposing the appeal the respondent in paragraph 4.3 of his affidavit in opposition contends that although he was laboring under some misapprehension and might have conveyed an impression to the deponent (being the appellants' advocate) and others which suggested or purported to suggest that he or the Patents and Companies Registration Agency had the power or lawful authority to register the documents which were referred to in paragraph 7 of the affidavit in support of the notice of originating motion of appeal, the correct position as advised by his advocate Michael Musonda is that neither he nor the Agency is vested with the power or authority under any law to register any transfer of shares in respect of any company incorporated under the Companies Act, Cap 388.

Further, Mr. Musonda on behalf of the respondent submitted that the appellants' appeal is misconceived and is an abuse of the process of the court because the appellants seek to have a purported or alleged decision by the respondent purportedly refusing to register a transfer of shares by the 1st appellant to the 2nd appellant set aside and for an order directing the respondent to register the said transfer. Counsel contended that in order for the jurisdiction of this court to be properly invoked pursuant to section 379 of the Act the following conditions precedent must be in existence, namely, that the Registrar as a public official who is vested with, and exercises statutory power, had made the decision under attack or being appealed against; that the decision in question was one which the Registrar had requisite statutory power or lawful authority to make, and that the decision in question is one which would lawfully entitle this court to intervene by doing any of the things which are prescribed in section 379, namely to confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.

Counsel essentially contended that since the Companies Act does not empower or entitle the respondent to register or to refuse to register any transfer of shares, no decision was made by the respondent in the context of this appeal

and under the Companies Act which is capable of being appealed against pursuant to section 379 of the Companies Act or, at any rate, which can competently be adjudicated upon by this court pursuant to the said statutory provision.

I have considered the respondent's assertion that the respondent did not make any decision under the Act which could be appealed against as he has no statutory power to register or refuse to register a share transfer instrument. In so doing I have carefully examined the respondent's letter dated 28th January, 2015 in which he said the following words:

"We acknowledge receipt of your letter dated 16th January, 2015 ... regarding transfer of shares in City of Lusaka Football Club (2000) Plc.

We wish to reiterate that our reluctance to effect the transfer of shares is on account of advice received from the Zambia Police to the effect that there are on-going investigations relating to shareholding and directorship in the company. We do not think that it is prudent for us to effect changes to the register when we are alive to the fact that there are police investigations relating to the same transactions.

In view of the above, we are unable to effect the transfer of shares."
(Emphasis added).

It will be observed from the above quotation that the respondent in his letter clearly stated that he did not find it prudent "to effect changes to the register" when he was alive to the fact that there were police investigations relating to the same transactions. He therefore advised that he was "unable to effect the transfer of shares."

Further, I note that although the notice of originating motion of appeal states that the appeal is against the decision of the Registrar refusing to register the transfer of shares of the City of Lusaka Football Club Plc from Cavmont-FMO Capital Corporation Limited to Forli Limited, counsel for the appellants in paragraphs 6 and 7 of the affidavit in support stated that when the transfer of paid-up shares form and the supporting documents were presented to the respondent, he rejected them and refused to register the said documents. To that effect counsel deposed as follows:

- “6. The appellant proceeded to complete Companies Form No. 27: Transfer of Fully-Paid Shares. Produced and shown to me marked “JS3” is a copy of the said form.
7. I am reliably informed that on 16th December, 2014, the said form and other supporting documents were presented to the Respondent for registration in line with the provisions of the Companies Act but the Respondent rejected them and refused to register the said documents.”

Thus, although the notice of originating motion of appeal refers to the respondent refusing to register the transfer of shares of the City of Lusaka Football Club Plc from the 1st appellant to the 2nd appellant, the decision taken by the respondent and which gave rise to this appeal was the refusal by the respondent to effect changes to the register on the ground that there were police investigations relating to the transaction. The Respondent’s decision was made in exercise of the statutory powers conferred upon him by section 370 (1) of the Companies Act. The section reads as follows and I quote:

“370. (1) Where this Act requires any document or particulars to be lodged with the Registrar, the Registrar shall register them in the manner prescribed or, if no manner is prescribed for the document or particulars, as determined by the Registrar.”

Further section 370 (5) of the Act provides that:

“(5) If the Registrar is of opinion that any document or particulars lodged with him-

- (a) contain matter or matters contrary to law;*
- (b) by reason of any error, omission or misdescription have not been duly completed;*
- (c) are insufficiently legible;*
- (d) are written on paper insufficiently durable; or*
- (e) otherwise do not comply with the requirements of this Act;*

he may refuse to register the document or particulars in that state and direct that they be amended or completed in a specified manner and re-submitted.”

In this case, the respondent refused to effect changes to the register of companies when the appellants lodged the documents referred to in paragraph 7 of the affidavit in support of notice of originating motion of appeal because according to him it was not prudent for him to effect the changes to the register when there were police investigations going on regarding the transaction. The refusal had nothing to do with the state of the documents themselves as stipulated by section 370 (5) of the Act.

The documents in issue were lodged by the appellants pursuant to section 57 (4) of the Act which provides as follows:

“(4) Subject to sections sixty-four and sixty-six a person who transfers shares in a private company under this section shall notify the Registrar in the prescribed manner and form.”

It will be observed from the section set out above that it is a mandatory requirement of the law that a person who transfers shares in a private company under section 57 of the Companies Act should notify the Registrar in the prescribed manner and form about the said transfer. Clearly, the rationale behind the requirement for a person who transfers shares in a company to notify the Registrar is so that the Registrar updates the companies register as regards the shareholders in the said company. Once the notification is given under section 57 (4) of the Act, the Registrar is also required to register the documents or the particulars submitted to him pursuant to section 370 (1) of the Companies Act unless the documents in issue do not meet the requirements set out in subsection (5) of section 370 of the Act.

In this case, the ground upon which the respondent refused to effect changes to the register namely that there were police investigations relating to the transaction by which the shares in Lusaka City Football Club (2000) Plc were transferred from the 1st appellant to the 2nd appellant is not among the grounds upon which he may refuse to register a document or particulars. Thus his refusal to effect changes to the register of companies for that reason was unlawful.

Therefore, Mr. Musonda's assertion that there was no decision made by the respondent which could be appealed against pursuant to section 379 of the Act is untenable because the letter dated 28th January 2015 which is exhibited by the appellants to their affidavit in support of the notice of originating motion of appeal shows that the Registrar refused to effect changes to the companies register to reflect the transfer of shares from the 1st appellant to the 2nd appellant in Lusaka City Football Club Plc. Further, the respondent's assertion in paragraph 4.3 of the affidavit in opposition that he was under the misapprehension and may have conveyed the impression to the appellants and their advocates that he had the power or lawful authority to register the documents referred to in paragraph 7 of the affidavit in support when the

correct position is that he does not have the power or authority under any law to register any transfer of shares in respect of any company incorporated under the Companies Act, Cap 388 is equally untenable. This is because section 370 (1) of the Act does give the Registrar power to register a document or particulars which are required to be lodged with the office of the Registrar under the Act subject to subsection (5) of the said section. It is clear from the letter dated 28th January, 2015 which the Registrar wrote to the appellants advocates, Messrs Simeza Sangwa and Associates and which letter has given rise to this appeal that the respondent was well aware that the reason the appellants lodged the share transfer documents pursuant to section 57 (4) of the Act was in order for him to effect the necessary changes to the companies register to reflect the current shareholders in Lusaka City Football Club (2000) Plc as required of him under the Companies Act, Cap 388.

In the circumstances, I hold that the appeal has merit and I accordingly allow it. In exercise of the powers conferred upon this Court by section 379 of the Act, I set aside the respondent's decision refusing to effect changes to the companies register to reflect the current status of shareholders in the City of Lusaka Football Club (2000) Plc and direct the Registrar to update the companies register with the particulars of the share transfer in accordance with the documents to be submitted by the 1st appellant Cavmont-FMO Capital Corporation Limited pursuant to section 57 (4) of the Companies Act upon payment of the stipulated lodgment fees.

I award the costs of this appeal to the appellants to be agreed and taxed in default of agreement. Leave to appeal is granted.

Dated the 26th day of February, 2016.



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A.M.SITALI
JUDGE