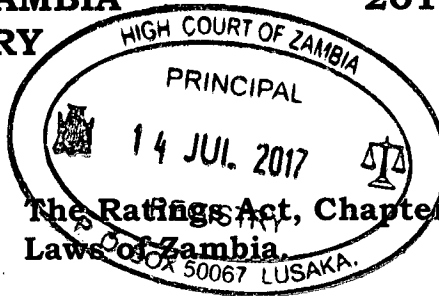


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2017/HP/0926

(Civil Jurisdiction)



IN THE MATTER OF:

**The Ratings Act, Chapter 192 of the
Laws of Zambia.**

IN THE MATTER OF:

**Order 53 of the Rules of the Supreme
Court (RSC) 1999 Edition) Volume 1
and Volume 2**

IN THE MATTER OF:

An Application for Judicial Review

IN THE MATTER OF:

**A purported decision of the Ratings
Tribunal contained in letter from the
Lusaka City Council addressed to the
Applicants dated 27th June, 2016**

IN THE MATTER OF:

**A decision of the Lusaka City Council
contained in a letter addressed to the
Applicants advocates dated 13th
February, 2017**

IN THE MATTER OF:

**Legal Demand Notice for rates from the
Lusaka City Council addressed to the
Applicants dated 3rd May, 2017**

AND IN THE MATTER OF:

**Legal Demand Notice for rates from the
Lusaka City Council addressed to the
Applicants dated 18th May, 2017**

B E T W E E N :

ABDUL PATEL
HASSAN PATEL (T/A BRYWAY ENTERPRISE LIMITED)

**1ST APPLICANT
2ND APPLICANT**

AND

LUSAKA CITY COUNCIL

RESPONDENT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
14th day of July, 2017**

For the Applicant

*Mr. N. M. Mulikita, Messrs Mulikita, Chalwe &
& Kabalata Legal Practitioners*

R U L I N G

Cases Referred To:

1. *Chief Constable of North Wales Police v Evans* (1982) 1WRL 1152
2. *R v Hillingdon Londo B.C ex p. Puhlhofer* (1986) A.C. 484

Legislation Referred To:

1. *Rules of the Supreme Court 1999 Edition*
2. *Ratings Act, Chapter 192*

This is the Applicants Ex-parte Notice of Application for Leave to commence Judicial Review. It is made pursuant to Order 53 Rule 3 of the Rules of the Supreme Court and is supported by a Statement and Affidavit. The decisions that are subject of this application are the following:

“1. “The refusal by the Lusaka City Council to grant an application by the Applicants for remission of 50% of the rateable values for various commercial properties around Lusaka namely, Plot 120 Corner Cairo Road and Katunjila Roads, Plot 17/18 Corner of Cairo and Katunjila Roads, Plot 34 Katunjila Road, Plot 65/66 Chachacha Road and Plot 198A Freedom Way, pursuant to section 23(1) of the Ratings Act, Cap 192 of the Laws of Zambia made on the 18th April, 2016. The Lusaka City Council did not respond to the said application within 60 days as stipulated in Section 23 (3) of the Rating Act, Cap 192 of the Laws of Zambia.”

The Applicants seek the following reliefs:

- (i) ***An order of certiorari to remove and quash the said decision of the Lusaka City Council refusing to grant the application for 50% remission of rates.***

- (ii) ***An order of mandamus to oblige the Respondent to reconsider its decision in accordance with the law.***
- (iii) ***A declaration that the Applicants' request for 50% remission of ground rates was deemed to have been granted after 60 days from the date of application and that the remission took effect on the 18th June, 2016 for the properties known as Plot 120 Corner Cairo Road and Katunjila Roads, Plot 17/18 Corner of Cairo and Katunjila Roads, Plot 34 Katunjila Road, Plot 65/66 Chachacha Road and Plot 198A Freedom Way.***
- (iv) ***A mandatory injunction for the Respondent not to levy distress against the Applicants for any amount left unpaid on the rates for the properties known as Plot 120 Corner Cairo Road and Katunjila Roads, Plot 17/18 Corner of Cairo and Katunjila Roads, Plot 34 Katunjila Road, Plot 65/66 Chachacha Road and Plot 198A Freedom Way***
- (v) ***A declaration that the Applicants' application for remission of 50% of ground rate for the properties known as Plot 120 Corner Cairo road and Katunjila Roads, Plot 17/18 Corner of Cairo and Katunjila Roads, Plot 34 Katunjila Road, Plot 65/66 Chachacha Road and Plot 198A Freedom Way was deemed to have been granted after sixty days of the said application being made on the 18th April, 2016***
- (vi) ***An order that costs of and incidental to these proceedings be borne by the Respondent***
- (vii) ***And all necessary and consequential direction be given.***

The grounds on which relief is sought are:

1. **Illegality/Procedural Impropriety:** The Applicants state that there was procedural impropriety in the manner that the Respondent arrived at its decision to reject their application on the remission of rates. Their application was submitted to the Lusaka City Council on 18th April, 2016, and they deemed that approval had been given upon the expiration of sixty days from the date thereof. The Respondent's refusal was only communicated to them by a letter dated 27th June, 2016,

which they did not receive and was in contravention of section 23 of the Ratings Act, which provides that:

“The rating authority shall respond to the application for remission of rates within sixty days from the date of receiving the application for remission. Where the rating authority does not respond to the application within the specified period, the remission shall be deemed to have been granted from the date on which the sixty days period expired.”

(2) Irrationality: The decision of the Rating Tribunal of the Lusaka City Council to reject the application for remission of rates was Wednesday unreasonable in terms of Section 23 of the Ratings Act. The fact that the Respondent informed the Applicants that their application was unsuccessful shows that there was no proper authority addressing its mind to the decision which had been dismissed by operation of the Ratings Act.

Abdul Sattar Patel swore an Affidavit on behalf of the Applicants. He deposes that the properties subject of this application are Plot 120 Corner Cairo Road and Katunjila Roads, Plot 17/18 Corner of Cairo and Katunjila Roads, Plot 34 Katunjila Road, Plot 65/66 Chachacha Road and Plot 198A Freedom Way. He states that on 18th April, 2016, the Applicants applied to the

Lusaka City Council for a remission of 50% of the rateable values of the properties aforesaid as shown in the exhibit marked **“ASP1.”** That the application for remission of the rateable values was made on the ground that the store fronts of the properties in dispute had been taken over by street vendors for their business.

The deponent states that the Lusaka City Council never responded to the application for remission of rates within the sixty days as prescribed law. That the application was deemed to have been granted upon the expiration of the sixty days. The deponent further states that the Lusaka City Council by a letter dated 13th February, 2017, informed the Applicants through their Advocates of its response dated 27th June, 2016, shown in the exhibits marked **“ASP2”** and **“ASP3”**. That the letter dated 27th June, 2016 was not delivered to the Applicants and was only brought to their attention by the letter dated 13th February, 2017.

The deponent avers that on 15th May, 2017, the Lusaka City Council served the Applicants a Legal Demand Notice for rates for K33,846.40, stating that if the Applicants failed to pay, it would

cause a Warrant of Distress to be issued as shown in the exhibit marked "**ASP4.**"

The deponent states that a further Legal Demand Notice for rates for K8,126.80 on Stand No. LUS/17/RE and LUS/18 was issued on 6th June, 2017 as shown in the exhibit marked "**ASP5.**" The deponent contends that the continued refusal by the Lusaka City Council to grant the remission of rates was made without regard to the law.

At the hearing, Learned Counsel placed reliance on the Statement and Affidavit in Support filed herein. I have anxiously considered this application, the Statement and Affidavit filed in Support. The application raises the question whether in the circumstances of this case, I can grant the Applicants leave to commence judicial review proceedings.

It is a well settled principle of law under Order 53 Rule 4 of the Supreme Court Rules that:

"54 (3) An application for leave to apply for judicial review should be made promptly and in any event within three months from the date when the ground for the application first arose unless the Court considers that there is a good reason for extending the period within which the application shall be made."

In the case of **Chief Constable of North Wales Police v Evans**¹, the Court stated that:

“The remedy of judicial review is concerned with reviewing and not the merits of the decision in respect of which the application for judicial review is made but the decision making process itself. In all cases of judicial review, the purpose is to ensure that an individual is given fair treatment by the authority to which he has been subjected. That authority must not be substituted by the opinion of the Court.”

It was further stated in that case that:

“The Court will not, however, on a judicial review application act as a “Court of Appeal” from the body concerned; nor will the Court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body’s jurisdiction, or the decision is Wednesbury unreasonable. The function of the Court is to see that lawful authority is not abused by unfair treatment.”

In the case of **R v Hillingdon London B.C ex p Puhlhofer**², Lord Brightman stated thus:

“(It) is not, in any opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case. The ground on which the Courts will review the exercise of an administrative discretion is abuse of power, e.g. bad faith, a mistake in constructing the limits of the power, a procedural irregularity or unreasonableness in the Wednesbury sense...i.e unreasonableness verging on an absurdity:... Where the existence or non-existence of a fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the Court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision making

power save in a case where it is obvious that the public body consciously or unconsciously, are acting perversely.”

It follows therefore, from the cited authorities that the remedy of judicial review is only concerned with reviewing the decision making process of a public body or authority and not the merits of the decision. The existence or non-existence of facts should be left to the judgment and discretion of the public body or authority entrusted by Parliament. The Court is only permitted to intervene in cases where a public body or authority has consciously or unconsciously acted perversely.

Order 53 Rule 14 sub rule 55 of the Rules of the Supreme Court informs me that the requirement of granting leave for judicial review is meant among other things, to enable an aggrieved party an opportunity to move the Court for judicial review. At this point, I must only be satisfied with the fact that there is a case fit for further investigation at a full inter partes hearing of a substantive application for judicial review.

After carefully examining the Statement and Affidavit filed herein, I find that the Applicants applied for an additional remission

of rates. Their letter dated 18th April, 2016, shows that the Applicants were granted a remission that they were dissatisfied with. An additional request as stated in their letter is reproduced herebelow for the sake of clarity:

“18th April, 2016

The Town Clerk
Lusaka Civic Centre
LUSAKA

Dear Sir/Madam

Re: **HIGH REVISED PROPERTY RATES AND UNMATCHED SERVICE FROM COUNCIL**

We own a number of commercial properties around Lusaka including Plot number 120 Cairo Road and 17/18 which are opposite each other on Katunjila Road, as well as Plot 34 which also extends on to Katunjila road opposite the former Twentieth Century cinema building. We also own Plot 65 and 66 as well as 198A Freedom Way.

In the last five to six years, we have attended the last two rates tribunal hearings at the Civic Centre and we have on both occasions made submissions wherein we have given reasons rejecting your proposal to increase rates. However, we appreciate that a minimal reduction was made in comparison with the initial proposed increase, but it was not adequate and we therefore appeal that you grant us further remission of 50 percent of the rateable values of the properties we have mentioned above. Our appeal is in accordance with Article 23 (1) of the Rating Act number 12 of 1997.....

We await your quick response.

Yours faithfully
BRYWAY ENTERPRISE

Abdul Sattar Patel
DIRECTOR

cc: The Mayor of Lusaka
cc: The Director of Finance – Lusaka City Council”

The Respondent by a letter dated 27th June, 2016, sent the following response which is reproduced herebelow:

"Ref: VREM/8/3/6/MIM/ak

27th June, 2016

The Director
Bryway Enterprise
P O Box 30964
LUSAKA

Dear Sir

Re: **APPLICATION FOR REMISSION OF RATES ON STAND Nos. LUS/120, LUS/17/RE AND LUS/18, LUS/65, LUS/66 AND LUS/198/A, TOWN CENTRE, LUSAKA**

Reference is made to your application in respect of the above matter.

We regret to inform you that Council did not approve your application for remission of rates at its sitting of 20th June, 2016 as it **does not** satisfy the conditions upon which the Council offers remission.

In this regard, you are hereby implored to continue honouring your rates liability to avoid any inconvenience.

If in any case you have challenges in settling your arrears at once, you can contact the Office of the Director of Finance for a payment plan facility to enable you liquidate the outstanding rates over an agreed payment period.

Yours faithfully
LUSAKA CITY COUNCIL

Alex Mwansa
TOWN CLERK

cc: Director of Valuation and Real Estate Management
cc: Director of Finance"

I take judicial notice that the Respondent has scheduled sittings and the discussion on the remission of rates would have to be considered at such a meeting. As stated above, the Applicants request was additional to their earlier request for a remission. This implies that the Applicants had already been given remission on rates. This being the case, the Applicants should have sought

further redress with the Ratings Tribunal rather than bringing this action to Court.

I am, therefore, not satisfied that this is a case fit for further investigation at a full inter partes hearing. Accordingly, I decline to grant the Applicants leave to commence judicial review. I make no order as to costs.

Dated this 14th day of July, 2017.


M. Mapani-Kawimbe
HIGH COURT JUDGE