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**IN THE HIGH COURT FOR ZAMBIA** 2017/HP/A005  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



IN THE MATTER OF: **Section 10 (5) of the Immigration and  
 Deportation Act, 2010**

**AND**

IN THE MATTER OF: **Appeal against the decision of the Hon.  
 Minister of Home Affairs dated the 22<sup>nd</sup> of  
 February, 2017**

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

MATTHEW FRANCIS WATKINS	<b>1<sup>ST</sup> APPELLANT</b>
CHARLOTTE DIANE WATKINS	<b>2<sup>ND</sup> APPELLANT</b>

**AND**

THE ATTORNEY GENERAL	<b>RESPONDENT</b>
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**Before Honourable Mrs Justice M. Mapani-Kawimbe in Chambers on the  
 3<sup>rd</sup> day of May, 2017**

<i>For the Applicant</i>	:	<i>Mrs. O. Chirwa, Messrs Ranchord Chungu    Advocates</i>
<i>For the Respondent</i>	:	<i>Mrs. D.M. Shamabobo, Assistant Senior State    Advocate</i>

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**J U D G M E N T**

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**Legislation Referred To:**

1. *Section 10 (5) of the Immigration and Deportation Act, 2010*

This is an appeal against the decision of the Minister of Home Affairs dated 22<sup>nd</sup> February, 2017 refusing the Appellants' Appeal against the decision of the Director General of Immigration of 14<sup>th</sup> April, 2016. Three ground of appeal have been advanced as follows:

1. *That the Minister of Home Affairs fell in error when he rejected the appeal of MATTHEW FRANCIS WATKINS against the decision of the Director General of Immigration not to issue the said MATTHEW FRANCIS WATKINS with an employment permit. That the Minister of Home Affairs failed to take into consideration the submission by the 1<sup>st</sup> Appellant that the position in issue was advertised both locally and internationally and only one Zambian citizen who was not as professionally experienced as the 1<sup>st</sup> Appellant had applied for the position. That the candidate was subsequently employed as the 1<sup>st</sup> Appellant's understudy to assume training under the 1<sup>st</sup> Appellant.*
2. *That Charlotte Diane Watkins, the 2<sup>nd</sup> Appellant is the lawfully wedded wife of the 1<sup>st</sup> Appellant and the 1<sup>st</sup> Appellant's application for an employment permit listed her as such and a permit was similarly sought for the 2<sup>nd</sup> Appellant as a Spouse/Dependant which the Minister of Home Affairs wrongly refused in the appeal and the process referred to under paragraph 1.*
3. *That the decision of the Minister of Home Affairs on the 22<sup>nd</sup> February, 2017, was null and void, and the decision of the Director General of Immigration was similarly null and void because they were delivered outside the time limited under Section 10 (3) and (4) of the Immigration and Deportation Act No. 18 of 2010 respectively AND that failing to comply with the statutory time limits has the effect of granting the Appellants the permits they sought.*

The background of this appeal is that sometime in September, 2015, Ms Patricia Chapple who was then General Manager of a lodge operated by Family Legacy Missions Zambia Limited resigned from her position on 30<sup>th</sup> September, 2015. Thereafter, Family Legacy Missions Zambia Limited engaged the services of A to Z Solutions Limited, a recruitment agency to advertise and shortlist suitable candidates to fill the vacancy. The Appellant was one of the five (5) candidates interviewed by the recruitment agency and hired by Family Legacy Missions. Interviews were conducted by A to Z Solutions Limited on 2<sup>nd</sup> November, 2015 by a panel of three who graded the applicants on a fixed criteria.

The 1<sup>st</sup> Appellant was awarded the highest grade by the panel and offered the position of General Manager based on his qualifications and extensive experience. Only one Zambian citizen applied for the position, and was found to be unsuitable for the position as she required more work experience. She was nonetheless engaged as an understudy of the 1<sup>st</sup> Appellant for a period of two years after which she would take over the position of General Manager.

The 2<sup>nd</sup> Appellant **Charlotte Diane Watkins** deposed an Affidavit where she states that on 19<sup>th</sup> February, 2016, her spouse Matthew Francis Watkins the 1<sup>st</sup> Appellant submitted through his Lawyers Messrs Ranchhod Chungu Advocates an application for Employment Permit as General Manager at Family Legacy Missions Zambia Limited. She states that the Appellants entered Zambia through Kazungula Border Post on 28<sup>th</sup> February, 2016, as shown in the exhibit marked "**CDW1.**" She further states that the 1<sup>st</sup> Appellant's application for Employment Permit was rejected twice by the Director General of Immigration and an appeal to the Minister of Home Affairs was subsequently made on 7<sup>th</sup> July, 2016 and 15<sup>th</sup> February, 2017.

The deponent states that she is dependent on the 1<sup>st</sup> Appellant and when his application was rejected, the Department of Immigration asked her to apply for a Temporary Permit, which she did as shown in the exhibit marked "**CDW2.**" The deponent avers that on 15<sup>th</sup> September, 2016, a Temporary Permit was issued to her and was valid up to 24<sup>th</sup> November, 2016, as shown in the

exhibit marked "**CDW3.**" On 22<sup>nd</sup> November, 2016, she made an application to renew her Temporary Permit as the decision of the Minister of Home Affairs had not been passed on the 1<sup>st</sup> Appellant's appeal as shown in the exhibit marked "**CDW4.**"

The deponent avers that on 5<sup>th</sup> December, 2016, her application for a Temporary Permit was approved and was served with an Approval Letter on 30<sup>th</sup> January, 2017, as shown in the exhibit marked "**CDW5.**" The Temporary Permit was valid from 24<sup>th</sup> November, 2016 to 24<sup>th</sup> January, 2017 as shown in the exhibit marked "**CDW6.**"

The deponent states that on 20<sup>th</sup> January, 2017, she made a second application for renewal of her Temporary Permit as the decision of the Minister of Home Affairs had not been made as shown in the exhibit marked "**CDW7.**" On 20<sup>th</sup> February, 2017, she collected her Temporary Permit which was valid from 24<sup>th</sup> January, 2017 to 24<sup>th</sup> April, 2017 as shown in the exhibit marked "**CDW8.**"

She further avers that on 22<sup>nd</sup> February, 2017, the 1<sup>st</sup> Appellant was told that his appeal to the Minister of Home Affairs was unsuccessful at the Immigration Headquarters and was asked to collect his letter of rejection that very day. Thereafter the Appellants were both issued notices of prohibited immigrant status dated 22<sup>nd</sup> February, 2017, and ordered to leave the country within seven days as shown in the exhibit marked "CDW9." The deponent states that she has never applied for an Employment Permit nor worked in Zambia during her stay as she was dependent on her husband.

**Frank Michelo** swore an Affidavit in Opposition behalf of the Respondent where he concedes that the 1<sup>st</sup> Appellant was offered employment by Family Legacy Missions Zambia Limited on 19<sup>th</sup> February, 2016, as General Manager. He states that the 1<sup>st</sup> Appellant lodged an application for an Employment Permit on the same date which was considered by the Immigration Permits Committee (IPC), composed of officers from all security wings and the Ministry of Labour. That upon consideration of the 1<sup>st</sup> Appellant's Employment Permit, the IPC resolved to defer the

application for inspection to establish the need, if any, for an expatriate expertise at Family Legacy Missions Zambia Limited.

The deponent avers that an inspection of the premises was conducted on 5<sup>th</sup> April, 2016, by the members of the IPC who concluded that the position of General Manager did not require any special skill to warrant the 1<sup>st</sup> Appellant's employment and thereby rejected his application. The deponent further avers that the Minister agreed with the decision of the IPC that the position of General Manager did not require an expatriate and consequently rejected the 1<sup>st</sup> Appellant's appeal.

Both Learned Counsels filed written submissions for which I am indebted. Learned Counsel for the Appellants submitted in grounds 1 and 2 that the Immigration Department's policy is based on the principle that an immigrant to Zambia must have a contribution to make in the form of skills, profession or capital. That immigrants should not deprive Zambian Nationals of

employment while at the same time should not be a charge on the State.

Counsel submitted that Zambianisation is defined as the process of adequately preparing Zambian nationals with requisite qualifications and skills to take over jobs occupied by foreign nationals. Counsel referred to the First Schedule of the Immigration and Deportation Act, which sets out the guidelines that are considered when issuing an employment permit. In particular, Class A of the First Schedule provides that:

**“Any person who intends for gain to engage in any trade, business, profession, employment or other occupation:-**

- (a) for which the person is fitted by virtue of the person’s academic or professional qualifications, standard or education, skill and financial resources;**
- (b) in which that person having regard to the productivity and the efficiency of the persons already engaged therein, there is not already sufficient number of persons engaged or available in Zambia to meet the requirements of the inhabitants of Zambia or**
- (c) which is likely to benefit the inhabitants of Zambia generally.”**

Counsel went on to argue that the 1<sup>st</sup> Appellant had proved that he is a specially skilled professional who has worked for various international entities ranging from Perrmont Gaborone



International Convention Centre, which hosted International Summits for Heads of State, the First Lady of the USA in 2011, to Ingwenya Country Escape, Muldersdrift outside Johannesburg where he coordinated and ran all operations excluding hotel accommodation. Counsel also argued that the 1<sup>st</sup> Appellant was only engaged for a short period of two years after which his understudy would take over the position of General Manager. Counsel contended that the 2<sup>nd</sup> Appellant only held a Temporary Permit and not a spouse permit as alleged by the Respondent.

In ground 3, Counsel referred me to section 10 of the Immigration and Deportation Act, which states that:

***“10(1) After making a decision under this Act, which adversely affects a person, other than the decision relating to deportation and removal, an immigration officer shall notify the person of the decision and the reasons of the decision and give the person at least forty eight hours to make representations.***

***10(2) The immigration officer shall, where the person makes any representation under subsection (1) within fourteen days of receiving the representation, notify the person of the decision made, with respect to the representation.***

***10(3) Any person affected with the decision of the immigration officer under subsection (1) may within forty eight hours of receiving the decision appeal to the Minister.***

***10(4) The Minister, may upon receiving an appeal under subsection (3), reserve or modify the decision of the immigration officer within ten days.***

*Provided that the Minister shall not take any decision before consulting the Director General Immigration and obtaining the Director's advice.*

*10(5) Any person aggrieved with the decision of the Minister under subsection (4) may within forty eight hours of the Minister's decision if appropriate appeal to a Court which may suspend, reserve or modify the decision."*

Counsel contended that the provisions of Section 10 of the Immigration and Deportation Act, were completely disregarded and reprised the background events giving to the inconsistencies as follows:

On 19<sup>th</sup> February, 2016, the 1<sup>st</sup> Appellant submitted an application for an Employment Permit as General Manager at Family Legacy Missions Zambia Limited. On the same date, he made a payment of ZMW1,000.00 for the application. On 4<sup>th</sup> March, 2016, he reported to the Immigration Headquarters where he was issued with a Report Order which required him to report to an Immigration Officer on 4<sup>th</sup> April, 2016. The 1<sup>st</sup> Appellant's application was deferred by the Department of Immigration for an inspection which was conducted on 1<sup>st</sup> April, 2016. On 19<sup>th</sup> April, 2016, the 1<sup>st</sup> Appellant's application was rejected in preference for Zambianisation.

The Department of Immigration by a notice dated 1<sup>st</sup> July, 2016, informed the 1<sup>st</sup> Appellant that his application was rejected for Zambianisation and on 7<sup>th</sup> July, 2016, an appeal against his rejection was submitted to the Minister of Home Affairs. In addition, Family Legacy Missions Zambia Limited submitted an appeal against the rejection of the 1<sup>st</sup> Appellant's Employment Permit to the Minister of Home Affairs, which was similarly rejected.

Counsel contended that throughout the process of the 1<sup>st</sup> Appellant's application for an Employment Permit, the time limits set out in Section 10 of the Immigration and Deportation Act were not adhered to. She prayed to the Court to reverse the decision of the Minister.

In response, Learned Counsel for the Respondent submitted that section 5 (2) of the Immigration and Deportation Act, provided that:

***"The functions of the Department are to: - (c) regulate the migration of any person to Zambia but at the same time promoting economic growth, encouraging the training of citizens and residents by employers by the following, as the case may be:***

- (i) *Ensuring that business in Zambia may employ skilled foreigners who are reliant on intentional exchanges of people and personnel, as provided under any other law.*
- (ii) *Enabling exceptionally skilled or qualified people to sojourn in Zambia.”*

Counsel argued that the 1<sup>st</sup> Appellant who held a Diploma in Catering and Resort Management did not possess special skills that warranted his employment as an expatriate. She further argued that in line with the Government's policy of Zambianisation, a Zambian citizen could take up the employment of General Manager as opposed to foreign expertise. She insisted that it was immaterial that the 1<sup>st</sup> Appellant obtained the highest grade during the interview. She considered that the determining factor was that a foreign national had to be exceptionally skilled. Counsel contended that the 1<sup>st</sup> Appellant had not demonstrated that he was exceptionally skilled in order to be granted an Employment Permit.

In ground 2, Counsel referred me to section 23 (1) of the Immigration and Deportation Act, which sets out thus:

*“Subject to section twenty one, a spouse permit may be issued by the Director General to the spouse of the following:*

- (a) A citizen; or*
- (b) An established resident.”*

Counsel cited section 2 of the Immigration and Deportation Act which defines an established resident as:

**“Established resident means , in relation to any date, a person who is not a citizen or a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia for a period of four years immediately preceding that date.”**

Counsel submitted that the 2<sup>nd</sup> Appellant who is married to the 1<sup>st</sup> Appellant was not an established resident within the meaning of section 2 of the Act and did not qualify to be granted a spouse permit.

In ground 3, Counsel cited section 10 (3) and (4) of the Immigration and Deportation Act where she contended that the 1<sup>st</sup> Appellant’s letter of appeal was delivered to the Minister on 16<sup>th</sup> February, 2017. The Minister rendered his decision on the appeal on 22<sup>nd</sup> February, 2017, within ten days of having received it as required by law. She argued that the letters from Appellant’s Counsel dated 7<sup>th</sup> July, 2016 showing that a letter was written on that date were inconsequential as there was no proof to show when they were delivered to the Minister of Home Affairs.

Counsel argued in the alternative that section 10 of the Immigration and Deportation Act, is not mandatory in that the Minister was required to render a decision within 10 days. Further, the law does not provide for a permit to be granted by default if the appeal is not heard within 10 days by the Minister of Home Affairs. She prayed to the Court to dismiss the appeal in its entirety on the ground that it lacked merit. She also prayed for costs.

I have paid the closest attention to the submission of both Counsels in this case. As I see it, this appeal underscores one issue for determination, whether the Minister's action to reject the 1<sup>st</sup> Appellant's application for an Employment Permit offended the provisions of the Immigration and Deportation Act.

The rules on Zambianisation and employment permits are well known and have been reprised by the parties in their written submissions. It is therefore scarcely necessary for me to recount those principles. In the present case, the 1<sup>st</sup> Appellant was employed as General Manager by Family Legacy Missions, Zambia

Limited. It is alleged that he topped the interview and has specialist <sup>ex pat</sup> ~~expatriate~~ based on his credentials in his Curriculum Vitae.

His qualifications as listed in his Curriculum Vitae are as follows:

**(i) Education**

*Last School Attended: Wendywood High School, Johannesburg  
Grade passed: Matric  
Year: 2001*

**(i) Tertiary Training**

*Institution: Damelin College, Randburg, Johannesburg  
Qualification: Degree in Hotel, Catering & Resort Management  
Dates: 2002 – 2003  
Qualification: Certificate in Event Management  
Dates: 2004 – 6 months Course, 2 nights a week*

**(ii) Other Training**

*First aid, Level 1  
"Investment in Excellence" Course  
Disciplinary experience in all areas of industrial relations  
I currently chair disciplinary enquiries when needed by the HR department and therefore am well aware of the formalities. Due to the fact that laws are different in Botswana, I spent a few days researching the differences when I first arrived.*

**(iii) Computer Skills**

*MS word, Excel, Outlook, Apex (aka Jade), plus Point, Plus Central, Fidelio, Lanmark, Micros and Opera."*

Without attempting to lend an expert interpretation of the 1<sup>st</sup> Appellant's qualifications, I find that it would be safe to conclude that the 1<sup>st</sup> Appellant carries his trade in hotel hospitality. His qualifications reveal that he has attained a sufficient level of tertiary education. Further, he has participated in the organization of high level meetings with high profile participants.

However, the question remains and that is whether his credentials are enough to support his application for an Employment Permit. In the premises, I am inclined to agree with Learned Counsel for the Respondent that the 1<sup>st</sup> Appellant does not demonstrate exceptional expatriate expertise to afford him the opportunity of working as General Manager at Family Legacy Missions Zambia Limited. His type of training is at tertiary level and is being offered locally. This being the case, I find that a Zambian national can easily be recruited for that position.

The 2<sup>nd</sup> Appellant who is the 1<sup>st</sup> Appellant's spouse and dependent on him, is disentitled from being granted a spouse



permit as her husband is neither a citizen nor an established resident. In view of the foregoing, I find that it is hardly necessary for me to consider the contention that the Minister failed to comply with the statutory time limits.

In consequence, I have no hesitation in holding that the Minister was on firm ground when he rejected the 1<sup>st</sup> Appellant's application for an Employment Permit. I accordingly, dismiss this appeal and award costs to the Respondent to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 3<sup>rd</sup> day of May, 2017

*M. Mapani-Kawimbe*  
M. Mapani-Kawimbe  
**HIGH COURT JUDGE**