

IN THE HIGH COURT FOR ZAMBIA

2013/HP/1785

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

PETER CHINDA

PLAINTIFF

AND

ZAMBIA WILDLIFE AUTHORITY

1ST DEFENDANT

THE ATTORNEY GENERAL

2ND DEFENDANT

**BEFORE THE HONOURABLE MADAM JUSTICE P. K. YANGAILO
ON 26TH JANUARY, 2018.**

For the Plaintiff:

Ms. M. Mwiinga - Keith Mweemba Advocates

For the Defendants:

*Mr. T. Msimuko and Ms. Aggie Bowa - Attorney
General's Chambers*

RULING

CASE AUTHORITIES REFERRED TO:

- 1. Zambia Consolidated Copper Mines vs. Jackson Munyika Siame and 33 Others (2004) ZR 193; and*
- 2. Goodson Kapuka and Others vs. Mwinilunga District Council, Minister of Finance (As a Corporation sole - Third Party) (2006) ZR 158.*

LEGISLATION AND OTHER WORKS REFERRED TO:

- 1. The High Court Act, Chapter 27 of the Laws of Zambia;*
- 2. The Zambia Wildlife Act No. 14 of 2015;*
- 3. The Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia;*
- 4. The Zambia Wildlife Act No. 12 of 1998; and*
- 5. The State Proceedings Act Chapter 112 of the Laws of Zambia.*

In this Ruling, I will refer to the Appellant as the 1st Defendant and the Respondent as the Plaintiff. This is an Appeal by the 1st Defendant brought pursuant to **Order XXX Rule 10** of **The High Court Act**¹ against the Ruling of the Deputy Registrar made on 7th October, 2016, in which the learned Deputy Registrar refused to grant an Order to strike out the 1st Defendant from the proceedings and ordered that the proceedings against the 1st Defendant, an entity dissolved by the repealing Act may be continued as though the repealing written law had not been made.

One ground of appeal was advanced as follows: -

1. The Learned Honourable Deputy Registrar erred in law and in fact by refusing to Order that the 1st Defendant be struck out from the proceedings based on his findings that **Regulation 5 (2)** of the Second Schedule of **The Zambia Wildlife Act**² contravened **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³;

The 1st Defendant and Plaintiff filed herein their Heads of Arguments.

The 1st Defendant contends that **Section 147** of **The Zambia Wildlife Act**² provides for the repeal of **The Zambia Wildlife Act**⁴ under which the 1st Defendant was established pursuant to **Section 4** of the repealed Act⁴. The 1st Defendant further contends that **Regulation 5 (2)** of the Second Schedule of **The Zambia Wildlife Act**² provides for procedure of winding up the affairs of the 1st Defendant and is couched in the following terms: -

"Any legal proceedings or application pending immediately before the commencement of this Act by or against Government in respect of the Authority maybe continued by or against the Government."

The 1st Defendants argues that the effect of **Regulation 5 (2)**² is that legal proceedings against the dissolved 1st Defendant are neither abated not suspended, but that the proceedings are merely continued against or by the Government of the Republic of Zambia. Further, as provided in **Section 12** of **The State Proceedings Act**⁵, proceedings against the Government shall be by the Attorney General.

The 1st Defendant submits that **Regulation 5 (2)** of the Second Schedule of the Act², should be distinguished from **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³ in that **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**⁴ provides as follows: -

"where a written law repeals in whole or in part any other written law, the repeal shall not... affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made."

According to the 1st Defendant, the effect of **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³ is that where there is a repeal in a written law and that repeal affects the investigation or legal proceedings then by implication that repeal will be deemed not to have been made. On the other hand, the 1st

Defendant submits that **Regulation 5 (2)** of the Second Schedule of the Act² substitutes the 1st Defendant with the Government. The 1st Defendant argues that substituting the 1st Defendant with the Government will not in any way alter the parties' rights, privileges or affect the legal proceedings and that all such entitlements as provided in **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³ are not affected as these entitlements may be claimed by or against the State and not the 1st Defendant. It has been submitted that **Regulation 5 (2)** of the Second Schedule of the Act² merely provides for the correct party on which one may continue to make his claims.

The 1st Defendant further submits that with the commencement of **The Zambia Wildlife Act**², the 1st Defendant ceased to have legal capacity to be sued or sue, therefore this would not defeat the provisions of **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³, as **Regulation 5 (2)** of the Second Schedule of the Act² steps in to provide a party that has the legal capacity to sue or be sued on which the elements listed in **Section 14 (3) (e)** of **The Interpretation and General Provisions Act**³ may be successfully claimed.

On the foregoing, the 1st Defendant prayed that it be struck out from the proceedings.

The Plaintiff in his Heads of Arguments contends that the Ruling of the Deputy Registrar is in line with the law on retrospectivity of the law and their contention is affirmed by the case of **Zambia**

Consolidated Copper Mines vs. Jackson Munyika Siame and 33 others¹, where the Supreme Court held that: -

"We accept that it is a well-settled principle of law that there is always a presumption that any legislation is not intended to operate retrospectively but prospectively and this is more also where the enactment would have prejudicial effect on vested rights. According to the learned authors of Maxwell on Interpretation of Statutes (3) Nova Constitutio futuris forum imponere devet, non praeteritis - upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. Side by side with this presumption of prospective application is the well-established principle of law that all statutes must be construed as operating only on the cases where or on facts which came into existence after the statutes were passed, unless retrospective effects are clearly intended..." (Counsel's emphasis)

The Plaintiff also invited the Court to the case of **Goodson Kapuka and Others vs. Mwinilunga District Council, Minister of Finance (As a Corporation sole - Third Party)**², where the Court held as follows: -

"The general principle is that a statutory enactment is not intended to operate retrospectively. The exception to this rule is that enactments of a procedural nature may apply retrospectively."

The Plaintiff further referred this Court to **Section 14 (3)** of **The Interpretation and General Provisions Act**³, which is couched in the following manner: -

"Provisions with respect to amended written law and effect of repealing written law

- (3) Where a written law repeals in whole or in part any other written law, the repeal shall not-**
- (a) revive anything not in force or existing at the time at which the repeal takes effect; or**
 - (b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed; or**
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed; or**
 - (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any written law so repealed; or**
 - (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made."**

The Plaintiff argues that although the 1st Defendant referred to **Section 14** of **The Interpretation and General Provisions Act**³ and stated that it does not apply, it did not sufficiently demonstrate why the section does not apply or why the 1st Defendant should be struck out of the proceedings. The Plaintiff further argues that **Section 14 (3)** of **The Interpretation and General Provisions**

Act³ is of general applicability and the 1st Defendant is therefore bound by it.

It has also been submitted by the Plaintiff that the rights, liabilities and capacity of the parties to the suit as at the date of commencement of Court proceedings in 2013 is the relevant date as regards who should be a party to the proceedings. The Plaintiff contends therefore that **The Zambia Wildlife Act**² does not defeat the intention of **Section 14** of **The Interpretation and General Provisions Act**³ as it does not expressly provide that the Act shall have retrospective effect nor state that the provisions of **Section 14** of **The Interpretation and General Provisions Act**³ shall not apply to **The Zambia Wildlife Act**².

The Plaintiff further contends that **Regulation 5 (2)** of the Second Schedule of the Act² is subsidiary legislation and not *pari passu* with **The Interpretation and General Provisions Act**³ and therefore **Section 14** of **The Interpretation and General Provisions Act**³ supersedes the Regulations in terms of applicability because of the hierarchical structure of statutory law. It has been argued by the Plaintiff that **The Interpretation and General Provisions Act**³ is very clear in providing that legal proceedings shall not be affected, as in the present case, by a subsequent law that changes the capacity of a party to the proceedings.

On the strength of the arguments above, the Plaintiff contends that the Appeal cannot be sustained and prays that it be dismissed as it is heavily misguided and lacks merit.

At the scheduled hearing of the Appeal, the 1st Defendant and Plaintiff reiterated their arguments as contained in their respective Heads of Arguments, which I will not repeat.

I have seriously considered this appeal together with the Ruling by the learned Deputy Registrar. I have also considered the Heads of Arguments filed on behalf of the 1st Defendant, and the oral submissions by the 1st Defendant and Plaintiff, for which I am grateful. The major question raised in this Appeal is whether the 1st Defendant should be struck out of these proceedings by virtue of **Regulation 5 (2)** of the Second Schedule of **The Zambia Wildlife Act²**.

The 1st Defendant has argued that on the basis of the law that repealed the Act that established it, it should be struck out of these proceedings and any claims against it must be continued against the Government. On the other hand, the Plaintiff has argued that legal proceedings against the 1st Defendant cannot be affected by a subsequent law that changes the capacity of a party to the proceedings.

I have examined both **The Zambia Wildlife Act⁴**, which established the 1st Defendant and **The Zambia Wildlife Act²**, which is the repealing Act. It is common knowledge that **The Zambia Wildlife Act²**, was promulgated to repeal **The Zambia**

Wildlife Act⁴ that established the 1st Defendant. Part of the changes brought about by **The Zambia Wildlife Act**² was the introduction of **Regulation 5 (2)** of the Second Schedule of **The Zambia Wildlife Act**². The idea behind **The Zambia Wildlife Act**² was, *inter alia*, that the Government takes over the functions that were previously being performed by the 1st Defendant. The 1st Defendant argued that it cannot continue being a party to this action as it is no longer in existence following the repeal of **The Zambia Wildlife Act**⁴. Learned Counsel for the 1st Defendant stated that the existence of the 1st Defendant was premised on **The Zambia Wildlife Act**⁴, which no longer exists owing to the repeal of the statute. **Regulation 5 (2)** of the Second Schedule of **The Zambia Wildlife Act**², which I have cited above, expressly permits the continuation of existing litigation in the name of the Government.

The Court is satisfied, from these events, that the said Regulation 5 is purely administrative. The Regulation does not necessarily absorb the 1st Defendant's liability, if any, claimed by the Plaintiff. However, the continuation of such actions against the 1st Defendant will now be against the Attorney General, instead. It is evident that upon the repeal of **The Zambia Wildlife Act**⁴, the 1st Defendant ceased to exist. In short, it was extinguished. When **The Zambia Wildlife Act**² came on the scene, the legal personality of the 1st Defendant changed, and the Government became the rightfully replacement in its place.

I have also examined ***The Interpretation and General Provisions Act***³. The question raised by the Plaintiff's submission is whether the provision in ***The Interpretation and General Provisions Act***³ can be superseded by a Regulation contained in an Act. In my view, while the general position of the law is that regulations, in general, are subsidiary to the provisions of the substantive Act that they apply to, the circumstances of the current matter are distinguishable from this general position of the law. The Regulation in issue amplifies on the provisions of the substantive Act that it applies to. The existence of 1st Defendant is extinguished in ***Section 147*** of the substantive Act². ***Regulation 5 (2)*** of the Second Schedule of ***The Zambia Wildlife Act***² merely amplifies the provisions of the Act by providing that, in place of the non-existent 1st Defendant, will now stand the Government. Surely a non-existent party, in the circumstances of this matter, cannot continue to be a party to a cause of action. That, in my view, was the intention of the Act repealing the former Act. However, liability of any existing party on the repealed Act continued. The Regulation merely lays down a procedure of how a litigant or prospective litigant should go about seeking a redress against an entity that has been replaced by the Government.

Consequently, I find that the Appeal has merit and I Order as follows: -

1. The Ruling of the District Registrar is hereby overturned;

2. The 1st Defendant is struck out as a party to the proceedings herein; and
3. The Plaintiff's claims herein shall be continued against the 2nd Defendant.

I make no order as to costs.

Leave to Appeal is granted.

Delivered at Lusaka on 26th day of January, 2018.



P. K. YANGAILO
HIGH COURT JUDGE