

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

2021/HP/1240

(Civil Jurisdiction)

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

AND

**IN THE MATTER OF: ORDER 53 RULE 3 AND 4 OF THE RULES
OF THE SUPREME COURT OF ENGLAND
1999 EDITION**

AND

**IN THE MATTER OF: THE MINES AND MINERALS
DEVELOPMENT ACT NO. 11 OF 2015**

BETWEEN

LUKONDE MAKUNGU

AND

ATTORNEY GENERAL



APPLICANT

RESPONDENT

**BEFORE HON. MR. JUSTICE C. KAFUNDA IN CHAMBERS AT LUSAKA
THE 31st DAY OF MARCH, 2022.**

For the Applicant: L. Phiri with Ms. C. Banda of August Hill Associates

For the Respondent: P. Shambulo with W. Musanta of AG Chamber's

RULING

Cases Cited:

- 1. Chiluba and Others V Attorney General SCZ No. 125 of 2002.**

Legislation Referred to:

1. **Order 53 Rule 3 of the SCR 1999**
2. **Order 2 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia.**

INTRODUCTION

This Application was commenced by Summons pursuant to **Order 53 Rule 3 of the SCR 1999 and Order 2 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia.** The Applicant seeks:

- An order for the extension of time within which to file an application for leave to apply for judicial review.

The Application was supported by an Affidavit in which the Applicant averred that PCB Limited was granted a small-scale exploration licence for the period of four years pursuant to the Mines and Minerals Development Act and the Mines and Minerals Development (General) Regulations 2016. That on 27th December, 2019 the mine safety department wrote to PCB Limited issuing it with a default notice for breach of provisions of the Mines and Mineral Development Act and by that letter, PCB Limited was notified that the Ministry of Mines, wished to revoke its exploration license within 30 days if PCB Limited did not show cause why the exploration licence should not be revoked.

The Applicant averred that, on 21st February, 2020 PCB Limited wrote to the then Minister of Mines, informing him that an agreement had been reached with Zambia Gold Company Limited in relation to a proposed joint venture relating to the exploration licence, that the venture was agreed upon as a means of qualling the undue influence being exerted on PCB Limited's exploration licence by the Ministry of Mines.

The Applicant further averred that on 27th February 2020, the Minister of Mines purported to grant approval to transfer the exploration Licence to Zambia Gold Company Limited and that following the grant of the approval to transfer the licence, the Minister of Mines on 24th March, 2020 granted the exploration licence, under the same license number to Zambia Gold Company Limited. The Applicant seeks an order of the Court to quash the decision of the Minister on failure to follow the laid down procedure which is condition precedent to the exercise of his powers under the Mines and Mineral Development Act.

The Applicant stated that he was constrained to bring an application for judicial review in the time period laid down because the Minister of Mines whose decision they sought to challenge was

in office until parliament was dissolved in June 2021 and a new Minister only assumed office in September, 2021. The Applicant further averred that it was his view that to launch the application for leave earlier would have potentially led to adverse action against the exploration licence and other licences held by PCB Limited given that the Minister who had made the decision was still in office.

The Applicant submitted that in line with the Mines and Mineral Development Act and the Mines General Regulations, the Minister could only have legally granted approval to transfer the exploration licence after an application was submitted in the prescribed form with the accompanying documents that is, the minutes of the PCB Limited board meeting and resolution of the board, approving the transfer, reasons for transfer, tax clearance certificate and an application for the exploration licence in the prescribed form being submitted. The Applicant contends that at no point did PCB Limited submit any such documents approving the transfer of the exploration licence. For this reason, the Applicant challenges the decision of the Minister.

The Respondent did not file any response. When the matter came up for hearing on 27th September 2020, the Respondent counsel

argued that the Applicant lacks locus standi in the matter as PCB Limited is a limited liability company and as such the application is irregular. Counsel for the Respondent submitted that one of the requirements for judicial review is that the Applicant should have sufficient interest. He submitted that procedurally under Order 53, in judicial review proceedings, there are two controlling concepts; locus standi, and leave to commence judicial review proceedings. The assertion of Respondent is that, a Plaintiff must have locus standi to commence judicial review proceedings.

In reply counsel for the Applicant submitted that the question of sufficient interest is a factual one and that to suggest that a director or shareholder cannot take out judicial review will be a misinterpretation of the law.

I have considered the application before me and the submissions of both learned counsel. In this regard I first wish to discuss the fundamental purpose of judicial review which is to ensure that powers of public bodies and offices are exercised for the purpose they were conferred, and in the manner in which they were intended to be exercised. The foregoing connotes that the exercise of power should and ought to be controlled. The Supreme Court

held in **Chiluba and Others V Attorney General** ⁽¹⁾ at page 153 that:

"The court will not on 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."

One overriding rule governing the standing of the applicant to apply for judicial review is that the court must consider that he "has sufficient interest in the matter to which the application relates. Locus standi is concerned with whether the plaintiff is entitled to invoke the jurisdiction of the court. Thus, to have locus standi, a plaintiff has to be legally aggrieved. In the case of Chiluba, the Supreme Court held at page 95 that:

"To be 'legally aggrieved,' a person must be not merely dissatisfied with or even prejudiced by an action or decision. He must also have been deprived of or refused something to which he was legally entitled. . . . He must be able to point to some 'encroachment or vested right"

The law on separate legal personality between shareholders and the company is well settled. In this case it is PCB Limited which is aggrieved by the actions of the Minister who is alleged to have deprived it of its licence. Of course, the Applicant as shareholder may also feel aggrieved by the actions of the Minister against his company. The question is whether or not the grievance of the Applicant as shareholder in PCB Limited can be said to be a grievance for purposes of investing into the Applicant sufficient interest or locus standi for him to sustain a suit in judicial review. Does the Applicant meet the test of being legally aggrieved as set out in the Chiluba case cited above? According, to that test, for one to be legally aggrieved, they must have been deprived of or refused something to which they are legally entitled. In this case, it is PCB Limited who were entitled to the licence they were later deprived of. Being a separate legal entity from its shareholder, I do not see how the shareholders can also be said to have been legally entitled to the licence which was later retrieved from PCB Limited. The shareholders may be dissatisfied as beneficiaries from the profits of PCB Limited but one cannot extend the rights of PCB Limited to them as shareholders just as you cannot extend liabilities of PCB

Limited to them as shareholders. These are different legal persons and they bear different rights and liabilities.

In the premises, I find the grievance of the Applicant as shareholder to be a mere dissatisfaction which does not meet the test of being legally aggrieved. This being the case, I hold that the Applicant has no requisite interest to sustain a suit in judicial review, hence I cannot grant him leave to commence judicial review proceedings out of time. The application is accordingly dismissed.

No order for costs.

Dated at Lusaka this 31st Day of March, 2022.

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CHARLES KAFUNDA
JUDGE

