

**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

APP NO.01/2021

BETWEEN:

VINCENT MAKONDO

(Suing as General Secretary of the Judicial
And Allied Workers Union of Zambia)

APPELLANT

AND

MATILDAH CHILAMBWE

(Sued in her capacity as General Secretary of
the National Union for Judicial Workers)

1ST RESPONDENT

THE LABOUR COMMISSIONER

THE ATTORNEY GENERAL

2ND RESPONDENT

3RD RESPONDENT

**CORAM: Hon Lady Justice Dr. Winnie Sithole Mwenda at Lusaka
on the 20th of July, 2022.**

For the Appellant:

*Mr. P. Mulenga of Messrs. Paul
Mulenga Advocates*

For the 1st Respondent:

In person

For the 2nd and 3rd Respondents:

*Mr. P. Kachimba, Principal State
Advocate*

JUDGMENT

Cases referred to:

1. *Edward Kapapula and two others v Zambia Telecommunications Company Limited, SCZ Appeal No. 47 of 2014.*
2. *Sumaili Mbewe (suing in his capacity as President of the Consolidated Miners and Allied Workers Union (CMAWUZ) v. Lumwana Company Limited, Comp No. IRC/SL/03/2018.*
3. *R v. Simons (1834) 6 c & p 540.*

Legislation referred to:

1. *Article 21 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.*
2. *Sections 5, 9 (2) (3) (4), 18 (3) and 22 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, as amended by Act No. 30 of 1997.*

1. Introduction and Context

- 1.1 Section 5 of the Industrial and Labour Relations Act recognises every worker's right to form and be part of a trade union within the worker's employment sector or trade. This provision is etched in a constitutionally entrenched freedom of assembly and association that every Zambian is entitled to.
- 1.2 The appeal at hand challenges the registration of a new trade union for judiciary workers, the National Union of Judicial Workers (NUJW) which has come to join the Judicial and Allied Workers Union of Zambia (JAWUZ) in advancing the interests of unionised members of staff.
- 1.3 NUJW was registered on 28th June 2017 by the Labour Commissioner and accordingly issued with a Certificate of Registration No. 119. The Appellant as

General Secretary for JAWUZ has appealed against this registration.

- 1.4 The Appellant impugns the registration on a number of fronts. Firstly, the Appellant alleges that the promoters of NUJW fraudulently procured a list of supporters, general meeting resolutions and membership forms in order to secure registration.
- 1.5 Secondly, that the Constitution lodged with the registration forms was defective.
- 1.6 Thirdly, that the Labour Commissioner failed to ascertain the defective application lodged by NUJW and proceeded to issue a certificate of registration notwithstanding the 1st Respondent's failure to comply with the statutory requirements.
- 1.7 Lastly, the Appellant takes issue with the 1st Respondent's act of presenting the certificate of registration of NUJW to the Judiciary administration for purposes of being recognised.
- 1.8 The 1st Respondent, in her position as Interim General Secretary of NUJW opposes the Appeal and avers to have followed the laid down procedure in securing the

registration of the union. Addressing each allegation, the 1st Respondent reacts by maintaining that every member on the list of members submitted during the registration process subscribed voluntarily and there was no legal requirement that such members ought to have resigned from JAWUZ before they signed up for the new trade union.

1.9 It is the 1st Respondent's position that the 2nd Respondent, the Labour Commissioner, acted within the law when he issued the certificate of registration to the NUJW.

1.10 The 2nd and 3rd Respondents did not file any pleadings in respect of the Appeal.

2. Summary of Evidence

2.1 The Appellant called four witnesses in a bid to prosecute the Appeal. Testifying as AW1, Enock Mwape, a trustee in the NUJW, testified that on instruction of the 1st Respondent, he recruited members for NUJW from JAWUZ. He narrated that he went around the judiciary offices informing personnel of NUJW. According to AW1, agreeable personnel would indicate their full name,

national registration card numbers and telephone numbers. However, there were personnel whose names he personally wrote down, such as Alifa Mbewe and Danford Chirwa.

2.2 It was AW1's evidence that the compiled list of personnel was used in the registration process of NUJW. Further, that he was still a member of JAWUZ notwithstanding his position and membership in the new union.

2.3 AW1 testified, further, that his role in the compilation of the list led to him and the 1st Respondent facing criminal charges and at the time of his testimony, he was on police bond pending trial on a charge of uttering and forgery.

2.4 In cross-examination, AW1 stated that he was still a paying member of JAWUZ contrary to the law that requires that he should have resigned from JAWUZ before joining the new union.

2.5 With respect to the criminal charges, AW1 testified that the lead investigator was a Mr. Musonda. He did not know who the complainants in the criminal case were

and that at the time of these proceedings, no further steps had been taken since his police bond.

2.6 In further cross-examination by the 2nd and 3rd Respondent's Counsel, AW1 indicated that he joined NUJW willingly. He admitted to forging two names on the list of members submitted during the registration of the new union.

2.7 In re-examination, AW1 stated that he did not know why there have not been further proceedings in his uttering and forgery case.

2.8 AW2, Danford Chirwa, testified to being a member of JAWUZ and refuted being aware of NUJW. He testified that upon finding out that his name was on the list of members of NUJW and that someone had signed on his behalf, he complained at the Police Station where he was instructed to put down his signature on a piece of paper to facilitate investigations.

2.9 In cross-examination, AW2 stated that when he was approached by AW1 over NUJW, he refused to subscribe as a member. From the time he lodged a complaint, he has not heard from the police.

2.10 Further cross-examination by the 2nd and 3rd

Respondent's Counsel revealed that AW2 did not know that AW1 had admitted to including his name on the list and signing on his behalf.

2.11 In re-examination, AW2 stated that he was waiting on the police to communicate the progress on his complaint.

2.12 Alepha Nachor Mbewe was AW3. He testified that when AW1 approached him over the new union, he refused to subscribe. After some time, he learnt that someone had put his name down and signed on his behalf. AW3 thus reported the matter to the police who took handwriting samples for further investigations. It was AW3's testimony that he was still awaiting feedback over his complaint.

2.13 In cross-examination, AW3 stated that he learnt that his name was among the members of NUJW after it had been registered. AW3 admitted in further cross-examination that removing two names from the list of members submitted in the registration of NUJW, would not take the number below the requisite number of fifty members.

2.14 In re-examination, AW3 maintained that the list submitted in the registration of the new union was not authentic.

2.15 The Appellant (Vincent Makondo) testified as AW4. He stated that in 2017 he was approached by AW2 and AW3 who complained that their names had been illegally included on the list of members for NUJW. These complaints were followed by others from Lusaka, Samfya and Mansa.

2.16 AW4's search at the Ministry of Labour revealed that a new trade union had been registered based on a list of members, some of whom were JAWUZ members and had complained to his office. AW4 wrote to the Labour Commissioner seeking confirmation of the registration of NUJW.

2.17 Following a series of correspondence, exhibited as 'VM18' to 'V20', the Labour Commissioner met with AW4 in the presence of four other JAWUZ members. In the meeting AW4 relayed the irregularities in the registration process. The main points having been the fact that the 1st Respondent still held a position in JAWUZ at the time

that the new union was being registered and the names of JAWUZ members who had been included without their permission.

2.18 The Labour Commissioner advised AW4 to furnish written proof that the members who appeared on the list furnished in support of the registration of NUJW had actually denied being part of the list of promoters for NUJW. The said proof, in the form of letters marked 'VM23' to 'VM30' was furnished to the Labour Commissioner. Notwithstanding the proof, the Labour Commissioner did not cancel the registration.

2.19 AW4 took time to outline the requirements for registration of a trade union. He noted that an application for registration as a trade union ought to be lodged with a list of at least fifty (50) workers who are not subscribed to any other trade union and there should be a copy of the constitution as well as an interim executive committee. These documents ought to be accompanied by a resolution of promoters or members. That, having not met these requirements, the 1st Respondent fraudulently

secured the certificate of registration and the 2nd Respondent acted in error.

2.20 During cross-examination, AW4 stated that the meeting with the Labour Commissioner was held on 29th August 2017 and that JAWUZ membership validation is carried out annually. That, JAWUZ has a total number of 3,923 members who pay a fixed percentage of their salary as subscription fee.

2.21 AW4 stated that JAWUZ has been in existence for twelve years and was the only trade union in the Judiciary until the registration of NUJW.

2.22 AW4 testified that the 1st Respondent relinquished her JAWUZ membership on 14th May 2018 long after NUJW had been registered. With respect to JAWUZ members who complained about their names being included without their permission, AW4 stated that the total number of complaints came from five members. The witness admitted that discounting the five names from the list tendered in support of the application for registration of NUJW, did not bring the number of supporters below the requisite fifty (50).

2.23 It was AW4's further testimony that the entire list of members furnished in support of the registration of NUJW included JAWUZ members.

2.24 In re-examination, AW4 maintained that the registration of NUJW was defective on account of the list of members furnished to the Labour Commissioner.

2.25 The 1st Respondent testified as RW. She stated that she was a member of JAWUZ until she lost elections as General Secretary in 2016. She felt that there was need for another union and started mobilising for membership. Some members of the National Executive of JAWUZ resigned before the registration of NUJW on 28th June 2017.

2.26 That, immediately after the registration, the Appellant unsuccessfully challenged the registration of the new union and caused to be lodged complaints which saw the 1st Respondent being summoned by the Police. The criminal case has not proceeded any further because the last time she was at Court on 29th May 2018 in respect of the charges, she was informed that there was no such case.

2.27 RW testified that while all this was going on, she and other interim executive members of NUJW sought recognition of the union from the Judiciary administration who required them to determine their membership base. That, this development forced the Appellant to commence an action before the Court. RW maintained that the registration of NUJW was done in line with the law.

2.28 In cross-examination, RW admitted that there was no documentary proof that the police had found no merit in the forgery allegations.

2.29 With respect to members belonging to two trade unions at the same time, RW stated that a member need not resign from a union to join another. That, she resigned from JAWUZ because she did not want to be subjected to monthly deductions.

2.30 In re-examination, RW stated that the complainants in the criminal complaints were Alepha Mbewe and Danford Chirwa. The witness also clarified that she was still paying the subscription fee to JAWUZ because the Judiciary administration advised that it would only halt

JAWUZ deductions once the case before Court had been disposed of.

2.31 In conclusion RW stated that since AW1 had admitted to the forgery, the Appellant should push for his prosecution rather than seeking to cancel the registration of NUJW.

2.32 This marked the end of hearing of the Appeal.

3. Summary of Legal Arguments

3.1 The Appellant began his final submissions by making extensive reference to the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia on the prerequisites of registering a trade union. Recounting the evidence of AW1-AW4, the Appellant submitted that twenty-three (23) names on the list of proposed members submitted by the 1st Respondent during the registration of NUJW still belonged to JAWUZ. This, the Appellant submitted, defied the position held in **Sumaili Mbewe (suing in his capacity as president of the Consolidated Miners and Allied Workers Union (CMAWUZ) v. Lumwana Company Limited**¹. That, in that case, it was held

that no employee can belong to two unions at one and the same time.

3.2 The Appellant pointed out that none of the twenty-three (23) members followed the steps set out in section 22 of the Industrial and Labour Relations Act on relinquishing membership in JAWUZ. The twenty-three members thus, belonged to JAWUZ at the time NUJW was being registered.

3.3 Submitting on the alleged falsified list of members, the Appellant referred to the evidence of AW2 and AW3 who stated that they had not appended their names to the list and that their signatures had been forged by AW1.

3.4 The Appellant adverted to **R v. Simons**², and submitted that the admission by AW1 that he had appended AW2's and AW3's names without their knowledge coupled with the forging of signatures was enough to establish the fraudulent activities that surrounded the registration of NUJW.

3.5 Lastly, the Appellant maintained that the Labour Commission defied section 9 (3) of the Industrial and

Labour Relations Act when he proceeded to register NUJW without satisfying himself that the requirements of the Act had been met.

3.6 That, in the face of evidence that the 1st Respondent had engaged in falsification of documents, the Labour Commissioner was supposed to cancel the certificate of registration. Having not done so, the Labour Commissioner violated the law. The Appellant thus, urged me to uphold the appeal.

3.7 The 1st Respondent filed submissions in response. Briefly stated, she submitted that there was no basis for the Appellant to challenge the registration of NUJW. In the 1st Respondent's view, the Appellant's evidence failed to prove the alleged forgery as the members listed among the proposed members freely joined NUJW and have since expressed their intention to leave JAWUZ.

3.8 It was the 1st Respondent's position that the action at hand was a mere afterthought on the part of the Appellant whose main aim is to have NUJW deregistered.

3.9 The 1st Respondent urged the Court to dismiss the appeal for lack of merit.

4. Determination of matter

4.1 I have carefully considered the Appeal and the evidence proffered by the parties. The Appeal at hand is inviting me to determine whether the Labour Commissioner acted in line with the law when he issued the certificate of registration to NUJW.

4.2 The Appellant's position is that the registration was in contravention of the Industrial and Labour Relations Act as the list of supporters included JAWUZ members who had indicated that they did not wish to subscribe to NUJW. It is also the Appellant's position that seeing as the 1st Respondent was a member of JAWUZ, she cannot hold the position of Interim General Secretary in NUJW without resigning from JAWUZ.

4.3 The Respondents on the other hand maintain that NUJW was registered in line with the dictates of the Industrial and Labour Relations Act.

4.4 It is important to note that there is a presumption set by Section 9(4) of the Industrial and Labour Relations

Act to the effect that a certificate of registration is *prima facie* evidence that the provisions of the Act relating to registration were complied with.

4.5 In the face of such a presumption, a party assailing the registration of a trade union has to furnish enough evidence to establish that the registration was not in compliance with laid down procedure. That is the feat that the Appellant has to meet for this Appeal to succeed.

4.6 Section 9(2) of the Industrial and Labour Relations Act as amended by Act No. 30 of 1997 provides as follows-

An application to register a group of employees as a trade union shall be signed by not less than fifty supporters or such less number as may be prescribed by the Minister and shall be accompanied by:

(a) two duly certified copies of the constitution of the proposed trade union; and

(b) such other documents so required by the commissioner.

4.7 From this provision, the requirements for the registration of a trade union are mainly two. Firstly, is the requirement to have the application signed by at least fifty (50) supporters. Secondly, is the need for two copies of the constitution for the proposed trade

union. The two can be accompanied by other documents that the Labour Commissioner deems necessary.

4.8 I note that although the Appellant's pleadings alleged that both requirements had not been met, the evidence only concentrated on the requirement to do with supporters as he alleged that the list lodged with the application included JAWUZ members whose names had been fraudulently included on the list. I will, therefore, take it that the Appellant abandoned that part of the Appeal and concentrated on the issue of the list of names.

4.9 From the evidence tendered by the parties, it is not disputed that the registration of NUJW was accompanied by a list of sixty-two (62) supporters. What is in contention is that about twenty-three (23) of those members belonged to JAWUZ and that about five of them had not consented to their names being added. AW1 admitted having included the names of AW2 and AW3 without their permission.

4.10 Section 5 of the Industrial and Labour Relations Act recognises that membership of a trade union is left to the choice of an employee. In **Edward Kapapula and two Others v Zambia Telecommunications Company Limited**³, the Supreme Court observed in relation to trade union membership that-

...in terms of both Article 21(1) of the Zambian constitution as amended, and section 5 of the Industrial and Labour Relations Act, CAP 269, being a member of or belonging to a trade union is a right which is exercised or enjoyed voluntarily. This means that an employee can choose whether or not to join or belong to a trade union.

4.11 Section 5(1)(f) of the Industrial and Labour Relations Act as amended by Act 30 of 1997 amplifies on the voluntary nature of trade union membership, by giving an employee the right not to be a part of a trade union or the right not to be required to relinquish membership of a trade union.

4.12 It, therefore, follows that an insinuation that an employee unknowingly found his name on the list of promoters for NUJW does raise meritorious questions. However, I note from the Appellant's evidence that

from the list, only two names were convincingly proved to have been questionably added. The three witnesses, AW1-AW3 gave evidence to this effect.

4.13 While the Appellant maintained that a number of people on the list indicated ignorance about their support for NUJW, apart from letters exhibited in 'VM12' - 'VM14' of the Affidavit in Support and 'VM24' 'VM28' 'VM29 and 'VM40' of the Affidavit in Reply, there was no other evidence pointing to more numbers as asserted by the Appellant. Even when the exhibits are considered, the total number of names comes to seven. Noting that the list accompanying the registration application had a total number of sixty-two (62) supporters, the NUJW application met the requisite minimum number of fifty (50) supporters. This ground thus, collapses on that basis as the dictates of the Act were met.

4.14 The Appellant's opposition to the registration of NUJW did not end there; he questioned the regularity of the registration of NUJW on the basis that all the names appearing on the list of supporters were actually

JAWUZ members. He brought to his aid the decision of my learned brother in **Sumaili Mbewe (suing in his capacity as President of the Consolidated Miners and Allied Workers Union (CMAWUZ) v. Lumwana Company Limited**¹ to the effect that an employee cannot belong to more than one trade union; a decision I entirely disagree with.

4.15 I have combed through the Industrial and Labour Relations Act and there is no express prohibition against an employee belonging to more than one trade union. This, in my view, is anchored on the underlying freedom of assembly and association that an employee enjoys. To restrict membership to one union can unnecessarily hamper an employee's right to assemble and associate freely. By way of an example, restricting employees to a single trade union would infer that an employee who has two jobs has to surrender one union membership, an unnecessary fetter not sanctioned by statute. It is trite that any restrictions that restrict the exercise of rights and freedoms have to be expressly stated in legislation for them to have the force of law. I

thus, have difficulties in accepting the position that no employee can belong to more than one trade union.

4.16 Further section 5(1) (f) of the Industrial and Labour Relations Act recognises an employee's right not to be required to relinquish trade union membership. This right in my view is quite operative in the instant case. Thus, the Appellant's argument that JAWUZ members ought to have resigned from JAWUZ before supporting the registration of NUJW is not supported at law.

4.17 It appears such a restriction only applies to trade union office bearers. Section 18(3) of the Industrial and Labour Relations Act provides that-

No person who is a full-time officer of a trade union shall be a full-time officer of any other trade union of the congress unless he resigns from his first office.

4.18 The Act only expressly proscribes trade union officers from holding positions in more than one trade union. The prohibition does not extend to ordinary members of one trade union from being an office bearer in another trade union. The position held by the Appellant on the 1st Respondent's position as Interim

General Secretary in NUJW thus, equally collapses. There is no evidence indicating that the 1st Respondent was an office bearer in JAWUZ as the Appellant's evidence was that she had unsuccessfully challenged him in the 2016 elections. She clearly did not hold any position in JAWUZ to bar her from serving as Interim General Secretary in NUJW.

4.19 I see no reason in addressing the ground that touched on the recognition of NUJW as it was anchored on the alleged irregularity of the registration, which allegation has collapsed. It follows that this particular ground also fails.

4.20 Having found no merit in the grounds of appeal advanced by the Appellant, I find that the Labour Commissioner acted appropriately when he registered NUJW as a trade union and I see no basis to cancel the certificate of registration so issued.

5. Decision

5.1 I find and hold that the Certificate of Registration No. 119 in respect of NUJW was issued in accordance with the Industrial and Labour Relations Act.

- 5.2 The Appeal is dismissed for lack of merit.
- 5.3 I award costs to the Respondents, to be taxed in default of agreement.

Delivered at Lusaka this 20th day of July, 2022


Dr. Winnie Sithole Mwenda
JUDGE
