

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

COMP/IRDLK/398/2018

BETWEEN

ALFRED CHILINDA



COMPLAINANT

AND

KONKOLA COPPER MINES PLC

RESPONDENT

(IN LIQUIDATION)

Coram: Chigali Mikalile, J this 19th day of March, 2024

For the Complainant: No appearance

For the Respondent: Ms. S. Banda - ECB Legal Practitioners

RULING

Cases referred to:

1. Chirumba v. Union Bank Zambia Limited (In Liquidation), SCZ No. 7/2003
2. The Law Association of Zambia v. The President of the Republic of Zambia & Others, No. 13/CCZ/2019

Legislation referred to:

1. The Corporate Insolvency Act, 2017
2. The Industrial and Labour Relations Act, Cap 269
3. The Industrial Relations Court Rules, Cap 269

Introduction

1. The delay in the delivery of this ruling is deeply regretted. This was due to inadvertency in diarising the matter.
2. This is an application filed on 20th July, 2020 by the respondent to stay proceedings against a company in liquidation pursuant to section 66 of the Corporate Insolvency Act No. 7 of 2017.

Background

3. The complainant filed his notice of complaint against the respondent on 22nd November, 2018 seeking the following reliefs:
 - a) A declaration that his dismissal was wrongful, hence null and void
 - b) An order for compensatory damages for wrongful dismissal, in the alternative reinstatement
 - c) Exemplary damages
 - d) Costs, interest and any other relief the court may deem fit.
4. The matter was initially allocated to the Hon. Judge Chisunka, as he then was, and was reallocated to this Court on 28th March, 2023.

Respondent's case

5. The respondent's application was supported by an affidavit sworn by Glory Chipoya, the respondent's legal counsel. He averred that following the complainant's Notice of Complaint, a Provisional

Liquidator was appointed to wind up the respondent. Exhibited to the affidavit is the Order appointing the Provisional Liquidator. According to Mr. Chipoya, all actions against the respondent are stayed by operation of the law following the appointment of the Provisional Liquidator.

6. In the skeleton arguments filed on 29th November, 2023, counsel for the respondent submitted that section 66 of the Corporate Insolvency Act proscribes this Court from entertaining the matter until the complainant obtains the requisite leave from the High Court (General List) to proceed against the respondent. Section 66 states:

Where a winding-up order is made or a provisional liquidator is appointed, an action or proceeding shall not be proceeded with, or commenced against a company except by leave of the Court and subject to such terms and conditions as the Court may impose.

7. Counsel then submitted that section 281 of the Companies Act Chapter 388, which section was similar to section 66 of the Corporate Insolvency Act, was interpreted by the Court of apex jurisdiction in the case of **Chirumba v. Union Bank Zambia Limited (In Liquidation)**⁽¹⁾ wherein the Court stated that:

“Under Section 281 of the Companies Act, Chapter 388 of the Laws, it is mandatory upon a party wishing to commence or proceed with an action against a limited liability company in liquidation to obtain such leave from the High Court.”

8. Counsel went on to argue that even though the Industrial Relations Division is a division of the High Court, it has no jurisdiction to grant the leave demanded for by section 66 of the Insolvency Act. Counsel’s argument is that the IRD has exclusive jurisdiction as prescribed by section 85(1) of the Industrial and Labour Relations Act, Chapter 269.

9. Further, and pursuant to the Constitutional Court decision in the case of **The Law Association of Zambia v. The President of the Republic of Zambia & Others**⁽²⁾, where, according to counsel, the Constitutional Court encouraged litigants to incorporate their preliminary issues in their opposing affidavit and skeleton arguments so as to minimise the possibility of multiple hearings, the issue of locus standi of the representative of the complainant was argued.

10. According to counsel, section 91 of Cap 269 is clear that a complainant can only institute an action either in person or through an officer of a representative body or a legal practitioner. Human Rights and Amnesty is nether of the two therefore not eligible to represent the complainant.

Complainant's case

11. The complainant did not file an affidavit in opposition despite being given an opportunity to react to the application. He also failed and/or neglected to attend the hearing of the application despite being aware of the hearing date which was 30th November, 2023.

Decision

12. I have considered the affidavit evidence and skeleton arguments filed by the respondent. It is not in dispute that a Provisional Liquidator for the respondent was appointed by the Order of the High Court on 21st May, 2019. This was about 6 months after the complainant had commenced action against the respondent.

13. As seen from section 66 of the Corporate Insolvency Act cited above, where a Provisional Liquidator is appointed, an action or proceeding shall not be proceeded with against a company except by leave of Court.

14. As noted above, the complainant did not oppose the application. The inevitable conclusion is that he did not obtain the necessary leave to proceed with the action as by law required.

15. It was argued on behalf of the respondent that this leave ought to be obtained from the General List as the Industrial Relations Division has no jurisdiction.

16. Jurisdiction of this Court is provided for under section 85(1) of Cap 269 which states:

“The Court shall have original and exclusive jurisdiction to hear and determine any industrial relation matters and any proceedings under this Act.”

17. Sub section 9 of section 85 provides guidance on what constitutes industrial relations matters. It states:

For the purpose of this section "industrial relations matters" shall include issues relating to-

(a) inquiries, award and decisions in collective disputes;

(b) interpretation of the terms of awards, collective agreements and recognition agreements;

(c) general inquiries into, and adjudication on, any matter affecting the rights, obligations and privileges of employees, employers and their representative bodies.

18. It is clear that the jurisdiction of this Court is exclusive to the matters outlined above and quite clearly the granting of leave to an applicant that has a dispute with a company in liquidation is not a power granted by this provision. The complainant would have to proceed under the General List of the High Court for such a relief.

19. I now turn to the issue of locus standi.

20. When the matter first came up for hearing of the within application, on 7th November, 2023, in attendance was a Mr. Fredrick Chinsala of Human Rights & Amnesty who, back on 16th October, 2020, filed Authority to represent the complainant pursuant to Rule 57 of Cap 269. He was present when the matter was given a fresh date on which date the complainant was a no show.
21. As rightly submitted by the respondent's counsel, section 91 guides on who may represent a complainant if he/she is not in person. It provides as follows:
- 91. (1) At any hearing before the Court, any party may appear in person or be represented-*
- (a) by an officer of a representative body; or*
- (b) by a legal practitioner.*
22. Section 3 of Cap 269 defines "representative body" as *"a trade union, a federation of trade unions, an employers' organisation and a federation of employers organisations or any other representative body registered under this Act;"*
23. Rule 57 of the Court Rules, Cap 269 states that:
- "When a party is represented by a person other than a legal practitioner, he shall file an authority to represent the party in*

or substantially in accordance with, Form IRC 27 contained in Party F of the schedule.”

24. It is clear to see from section 91 and the definition of representative body in section 3 of Cap 269 that a complainant can appear in person or by legal counsel or may be represented by a trade union, a federation of trade unions or a representative body registered under Cap 269 provided that body files an authority to represent the complainant.
25. The record shows that Mr Fredrick Chinsala filed authority in accordance with Rule 57. The filing of the authority, in my view, is symbolic of the fact that Mr. Chinsala is not a legal practitioner. Nevertheless, there is no proof that the organisation from which he hails, that is, the Human Rights and Amnesty is a body registered under Cap 269 as per law provided. Counsel for the respondent submitted that the organisation is registered under the Societies Act. I have no reason to dismiss this assertion as there is no proof to the contrary.
26. In the circumstances, Mr. Fredrick Chinsala or Human Rights and Amnesty cannot represent the complainant as they are neither advocates nor a representative body registered under Chapter 269.

Conclusion

27. From the foregoing, it is clear to see that this Court has no jurisdiction to proceed in the absence of leave to proceed against

the respondent, a company in liquidation. Thus, until such a time that such leave is obtained, the proceedings herein would have to be and are hereby stayed.

28. Leave to appeal is granted.

Dated at Lusaka this 19th day March, 2024.



M.C Mikalile

HIGH COURT JUDGE