

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)



IN THE MATTER OF: THE RATING ACT, CHAPTER 192  
OF THE LAWS OF ZAMBIA, AS  
AMENDED BY THE RATING  
(AMENDMENT) ACT, NO.21 OF  
2018

AND

IN THE MATTER OF: AN APPLICATION FOR THE  
APPROVAL OF THE ORDINARY  
RATE LEVY FOR THE KITWE CITY  
RATEABLE AREA

AND

IN THE MATTER OF: AN OBJECTION LODGED BY  
MOPANI COPPER MINES PLC  
RELATING TO POUNDAGE  
APPLIED IN THE VALUATIONS OF  
ITS VARIOUS PROPERTIES

BETWEEN

MOPANI COPPER MINES PLC

APPELLANT

AND

KITWE CITY COUNCIL  
(KITWE RATING AUTHORITY)

RESPONDENT

*Before the Honourable Lady Justice C. Lombe Phiri in Chambers*

*For the Appellant: Mr. S.M Chisulo S.C - Messrs Sam Chisulo & Company.*

*For the Respondent: Mr. J. Mataliro - Messrs James & Doris Legal Practitioners.*

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**JUDGMENT**

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**CASES REFERRED TO:**

1. **Mutembo Nchito v Attorney General 2016/ CC/0004**
2. **Attorney General and Movement for Multiparty Democracy v Lewanika and Others SCZ. Judgment No. 2 of 1994**
3. **Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 172**
4. **Mwanapapa v Jagdish (No. 185/2016) [2019] ZMSC 260**
5. **ZCCM Investments Holdings PLC v Mufalali and Others (Appeal 238 of 2013) [2017] ZMSC 36 (12 April 2017**
6. **Kamouth v Associated Industries International Limited (1980) QB 199**
7. **Indeni Petroleum Refinery Co Ltd v Kafco Oil Limited Selected Judgment No. 29 of 2017**

**LEGISLATION REFERRED TO:**

1. **The Rating Act No. 12 of 1997**
2. **The Rating Act No. 21 of 2018**
3. **The High Court Act Chapter 27 of the Laws of Zambia**
4. **The Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia**

**OTHER MATERIALS REFERRED TO:**

1. **Halsbury's Laws of England, Volume 96, (2012)**
2. **Rules of the Supreme Court (White book) 1999 Edition**

**1. INTRODUCTION**

**1.1** This is an Appeal by the Appellant against the Award of the Rating Valuation Tribunal (“the Tribunal”) dated 31<sup>st</sup> December 2019, which found in favour of the Respondent.

**1.2** The record reveals that the Appellant being dissatisfied with the Award lodged an Appeal under Cause No. 2020/HP/A008, to which the Respondent raised a preliminary issue and was determined by the late Honourable Justice M.C Chitabo SC, on

supported by various documentation, notable of which was the proposed increase in levies applicable to the main valuation roll.

3.2 The Appointed Valuation Surveyor asked the Tribunal to consider the Kitwe City Council's main valuation roll which was based on the open market value and tabulated a total of 50,296 properties with a total rateable value of ZMW25,803,693,010.00.

3.3 A total of 117 objections were received against the valuation roll.

3.4 The Appellant through its company secretary objected to the increase of the levies, as being excessive owing to the financial challenges the Appellant was facing and stated that there was a memorandum for the remission ("remission agreement") of rates for a period of 5 years up to 2020.

3.5 The Tribunal was of the view that the issue for determination was whether a remission that was granted on an expired roll could survive the expiration.

#### 4. DECISION OF THE COURT BELOW

4.1 The Tribunal in its Award found that a Rating Authority could grant a leaseholder a remission of rate under **section 22 of the Rating Act No. 21 of 2018** not exceeding 12 months and where such remission exceeded 12 months it would render such grant illegal.

- 4.2 It was stated that at the time the memorandum was executed, the law did not limit the period for remission and therefore the 5 years would not have been questioned.
- 4.3 It was further stated that given **section 42 of the Rating Act**, the memorandum that was signed on 13<sup>th</sup> January 2016 could not survive its lifespan as the valuation roll on which the remission was anchored upon had expired and did not exist.
- 4.4 The Tribunal was of the view that it had no jurisdiction to grant a remission of rates and advised the Appellant to re-apply to the Council for a remission of rates according to **section 22 of the Rating Act** and in the absence of the remission the Tribunal ruled that rates shall be paid as per the approved rate levies.

## 5. GROUNDS OF APPEAL

- 5.1 Aggrieved by the decision of the Tribunal, the Appellants launched this Appeal advancing (3) three grounds of appeal couched as follows:

### GROUND 1

- 5.2 That the Tribunal erred in both law and fact when it approbated and reprobated its jurisdiction to decide whether or not to confirm the grant of remission of rates to the Appellant for the year 2020.

## GROUND 2

5.3 That the Tribunal erred in both law and fact when it held that the rates remission agreement signed between the Appellant and the Respondent had expired contrary to the provisions of **Section 42(1) of the Rating Act. No. 21 of 2018 of the Laws of Zambia.**

## GROUND 3

5.4 That the Tribunal erred in both law and fact when it failed to state in its Ruling the reasons for the award, especially regarding the main ground of the Appellant's objection i.e the proposed poundage to a Kwacha in the main valuation roll, 2020 which in respect of the Appellant's Plant and Machinery and other rateable properties had increased fivefold from the ordinary rate approved for the last main valuation roll of 2016.

## 6 HEADS OF ARGUMENT

### 6.1 APPELLANT'S HEADS OF ARGUMENTS

6.1.1 In support of the first ground of appeal, the Court was referred to the repealed **Sections 8(3) and 23 of the Rating Act No. 12 of 1997** which provisions despite being replaced by the **Rating Act No. 21 of 2018** were in existence at the time the Appellant and Respondent executed an agreement in 2016 for the remission of rates on a multi-year rate structure basis which agreement prescribed the rates payable up to 2020.

- 6.1.2 It was submitted that the Tribunal acknowledged that an agreement was executed between the Appellant and the Respondent regarding the remission of rates for 5 years which agreement was executed under the **Rating Act No. 12 of 1997** effective 2016 for 5 years.
- 6.1.3 It was submitted that the Tribunal erred in both law and in fact when it approbated and reprobated its jurisdiction to decide whether or not to confirm the grant of remission of rates to the Appellant for the year 2020. The Court was referred to **Sections 31 and 42 of the Rating Act No. 21 of 2018** in contending that the Tribunal had absolute jurisdiction to confirm the grant of remission of rates to the Appellant for the year 2020 as set out in the agreement.
- 6.1.4 The Court was also referred to the case of **Mutembo Nchito v Attorney General**<sup>(1)</sup> wherein the Constitutional Court held that:

*"It is trite law that when a new law, including the Constitution, comes into effect or repeals and replaces an existing law, it does not invalidate existing rights and obligations. This is where the transitional provisions come in to continue the state of affairs in existence at the time of coming into force of the new law particularly to pending proceedings, to avoid absurdity and chaos that may occur if there is an abrupt change in the law. These transitional*

*provisions do not have any impact or bearing on transactions or processes under the old law which are already complete on the coming into effect of the new law."*

6.1.5 It was submitted that the enactment of the **Rating Act No. 21 of 2018** did not invalidate the agreement. It was stated that **Section 42(1) of the Rating Act No. 21 of 2018** had transitional provisions which were explained in the case of **Mutembo Nchito v Attorney General** <sup>(1)</sup> and therefore **Section 42(1) of the Rating Act No. 21 of 2018** affirmed the validity of the remission agreement.

6.1.6 Concerning ground two, it was argued that the remission agreement could not be invalidated by the Tribunal as any rights, obligations and conditions which validly accrued to the parties under the **Rating Act No. 12 of 1997** remained valid on the coming into operation of the **Rating Act, No.21 of 2018**.

6.1.7 In support of this, the Court was referred to **Section 42 of the Rating Act No. 21 of 2018** and **Section 14(3) of the interpretation and General Provisions Act**, as well as the case of **Attorney General and Movement for Multiparty Democracy v Lewanika and Others** <sup>(2)</sup> which held as follows:

should be per the terms of the remission agreement executed by the parties in 2016.

**6.1.11** Turning to ground three, it was stated that **Section 34 1 (c) of the Rating Act, No. 21 of 2018** placed a mandatory obligation on the Tribunal with what to comply with when rendering Awards, in that the Tribunal must always state the reason for its award.

**6.1.12** The Court was referred to the case of **Wilson Masauso Zulu v Avondale Housing Project Limited** <sup>(3)</sup> on the duty to adjudicate upon every aspect of a suit between parties so that every matter in controversy was determined in finality. It was stated that the Tribunal neglected to furnish reasons for its award and had it done so it would have concluded that the proposed rates for the 2020 valuation roll were excessive and would impact the Appellant's business negatively.

**6.1.13** The Court was also urged to uphold this Appeal and dismisses the Tribunal's Award which was delivered without reasons as required by law and the Appellant prayed for Costs.

## **6.2 RESPONDENT'S HEADS OF ARGUMENTS**

**6.2.1** In response to the Appellant's Heads of Arguments, the Court was first graced with preliminary objections on points of law. The Respondent posed the following questions:



1. Whether the Appeal herein was competently before this honourable Court considering that no Record of Appeal had been filed by the Appellant in accordance with the rules of Court.

6.2.2 Reliance was placed on **Rules 5 and 6 of the High Court (Appeals) (General) Rules** on the need to file a record of appeal and the case of **Mwanapapa v Jagdish** <sup>(4)</sup> which emphasised the need to file a record of appeal. It was stated that the Court would note that no record of appeal was filed as per the rules and therefore the Appeal ought to be dismissed for irregularity.

2. Whether the Tribunal and this Court had the jurisdiction to hear and determine the Appellant's objections considering the fact that the Appellant's objections to the Tribunal were invalid for non-compliance with **Section 17 (2) (e and g) of the Rating Act No. 21 of 2018.**

6.2.3 It was stated that the Appellant's objections were invalid as they did not comply with the provisions of **Section 17 (2) (e and g) of the Rating Act No. 21 of 2018**. It was stated that the **Rating Act No.21 of 2018** was very clear in that objections contrary to the law were not valid.

6.2.4 It was also stated that the jurisdiction of the Tribunal was limited to hearing and determining valid objections made in accordance with the provisions of the Rating Act.

6.2.5 The Court was referred to the case of **ZCCM Investments Holdings PLC v Mufalali and Others** <sup>(5)</sup> touching on the absence of jurisdiction to qualify the argument that the Tribunal lacked the jurisdiction to hear the matter on the basis that the objections were invalid thereby robbing the Tribunal of the jurisdiction to determine the issues and equally this Court.

3. Whether the Appeal herein was competently before this honourable Court having not been filed within 30 days from the date of the decision and there being no power under the Rating Act to extend time within which an appeal may be filed.

6.2.6 The Court was referred to **Section 17 (7) and 35 (1) of the Rating Act** which provides for Appeals to the High Court from the Tribunal to be made within 30 days of the decision as well as **Section 37 of the Interpretation and General Provisions Act** regarding the extending of time in Statute.

6.2.7 It was stated that the Rating Act did not give the tribunal or the Court any power to extend the time within which any decision may be appealed against as the same ought to have been expressly provided for. Comfort was found in the

English case of Kamouth v Associated Industries International Limited <sup>(6)</sup> in which the Court held inter alia that:

*"The court cannot enlarge a time limit which a statute has specified."*

- 6.2.8** It was stated the Appeal ought to be dismissed for being out of time and that the leave granted ex-parte to the Appellant was a nullity as the Tribunal was devoid of any such power.
- 6.2.9** In relation to grounds one and two, it was stated that there was no objection directly based on the remission of rates and the Tribunal rightly stated that it had no jurisdiction to grant remissions or to deal with issues relating to remission of rates. The Court was referred to **Section 30 of the Rating Act** for the Tribunal's jurisdiction.
- 6.2.10** Touching on ground three it was stated that the Appellant failed to argue the ground owing to the prayer given by the Appellant. It was further stated that the reason the objections were invalid was because they did not meet the requirements of the law.
- 6.2.11** It was further stated that the objection ought to have been accompanied by an expert assessment by a registered valuation surveyor which would help both the Tribunal and

the Court to set aside an entry on the valuation roll and replace it with a proposed rate or one decided by the Court.

**6.2.12** It was contended that the Tribunal gave a reason for its award, as the Appellant's basis for the objection was the remission agreement and its inability to settle the rates of which the Tribunal arrived at in its award by dispelling the issues regarding remission of rates which formed the basis of the objection.

**6.2.13** The Court was referred to **Section 8 of the Rating Act No.21 of 2018** for the process of arriving at the rates payable and **Section 35 (2) of the Rating Act** as follows:

*“An appeal shall not be made to Court against the amount of an award made by the Tribunal or against a decision of the Tribunal as to whether an objection has been properly made”*

**6.2.14** It was stated that objections could only be sustained if it was proved from an expert's perspective that the surveyor who prepared the valuation roll failed to adhere to the law or ignored a certain industrial practice and not merely because a ratepayer felt they could not afford to pay the rate, and could not be appealed.

**6.2.15** The Respondent prayed that the appeal be dismissed in its entirety with Costs

### 6.3 APPELLANT'S HEADS OF ARGUMENTS IN REPLY

6.3.1 In reply, it was argued that the Respondent's preliminary objections, ought to have been made in accordance with **Order 14A and Order 33 Rule 3 of the Rules of the Supreme Court (White book) 1999 Edition** and therefore, it was procedurally wrong for the Respondent to raise such preliminary objections in response to the Appeal and therefore ought to be dismissed.

6.3.2 Reliance was placed on the case of Indeni Petroleum Refinery Co Ltd v Kafco Oil Limited <sup>(7)</sup> which held as follows:

*“.....The High Court Rules are couched in a manner that all actions before that court are Judge driven, which entails that a Judge of that court has the responsibility of ensuring that all actions before him are stirred to their logical conclusion promptly. In doing so, the High court has the responsibility of ensuring that it adopts the quickest method of disposing of a matter before it, justly and having, afforded the parties an opportunity to be heard. To achieve this, there is built in the practice and procedure of the High Court and indeed appellate courts, a system whereby, an obviously hopeless, frivolous or vexatious matter may be dealt with at interlocutory stage without having to await a full hearing. This ensures that*

*there is a saving on the already overstretched resources of the court and indeed that matters are disposed of at least cost to the parties. A robust judge must ensure that he is alert and invokes the inherent jurisdiction vested in him of weeding out hopeless, frivolous and vexatious matters and those wrongly presented before him after giving the parties an opportunity to be heard. A Learned High Court Judge is not deprived of the duty of exercising this discretion based on the fact that a party has submitted to such proceedings whose commencement has been called into question because the mere fact of submitting to such proceedings does not cure the defect nor does it amount to acquiescence of the defect...”*

**6.3.3** It was also stated that reference to **Section 30 of the Rating Act, No. 21 of 2018** relating to the jurisdiction of the Tribunal did not set out its jurisdiction but referred to Assessors.

**6.3.4** It was reiterated that the Tribunal was vested with the requisite jurisdiction to enforce and uphold the remissions agreement entered into by the parties in 2016 as **Section 31 of the Rating Act, No. 21 of 2018** gave the Tribunal power to do so.

**6.3.5** It was stated that the remission agreement stipulated the rates that would have been applied on the Appellant's rateable property for 5 years which agreement was to

become inoperative by effluxion of time at the end of 2020 and therefore could not be superseded by the valuation roll of 2020.

**6.3.6** In response to the arguments raised against ground three, it was stated that it was erroneous for the Respondent to argue that the objections raised by the Appellant before Tribunal were invalid as this ought to have been brought before the Tribunal.

**6.3.7** It was further stated that the Award rendered by the Tribunal was null and void and could not be enforced against the Appellant as it did not meet all the requirements set out in **Section 34 of the Rating Act, No. 21 of 2018**.

**6.3.8** The Appellant prayed that the Award of the Tribunal be rendered a nullity and for an order that the Respondent was bound by the terms of the Remissions Agreement.

**6.3.9** It was further prayed that the ordinary rate approved by the Tribunal and all entries in the Respondent's main valuation roll for 2020 relating to the Appellant's rateable properties be set aside and order that the process of rating valuation in respect of the Appellant's rateable properties be recommenced in a supplementary roll.

## 7 ANALYSIS

7.1 In response to the Appeal the Respondent has raised a preliminary objection stating that the appeal ought not to be allowed as it was made out of time. Now this objection goes to the root of the matter as it brings into question the jurisdiction of the Court. The Appellant have argued that the objection ought not to be entertained as it was not brought properly pursuant to Order 14A and Order 33 Rule 3 of the Rules of the Supreme Court (Whitebook) 1999 Edition. Now in dealing with this issue it is important to recognise that the essence of Order 14A is to allow a party to raise an issue which, if considered, may render the proceedings determined. Further, the same order 14A does provide that the said issues may be raised at any stage of the proceedings. While it is pretty clear that the Respondent in raising the issue have not categorically cited the said Order 14 A, they have in a timely fashion brought to the attention of the Court the legal issue of time within which the appeal ought to have been lodged. In the case of **Vengelatos v Vengelatos (SCZ Selected Judgment No.35 of 2016)**<sup>(8)</sup> the Supreme Court cited with approval the learned authors of Halsbury's Laws of England who said that :

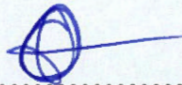
*"It is the duty of an appellate court to entertain a plea as to jurisdiction at any stage even if the point was not raised in the court below."*

7.3 With the above guidance it is clear that on appeal, the appellate court has the discretion to attend to a plea that brings the court's



- 7.6 Section 35 (1) of the Rating Act, Act No.21 of 2018 clearly provides that an appeal should be made within 30 days. Clearly that was not the case here. It is further not clear where the Tribunal drew its jurisdiction to grant the appeal out of time. The Tribunal, not having had the jurisdiction to do so, their action is deemed null and void. In view of the foregoing it is found that this Court, sitting on appeal, lacks the jurisdiction to entertain the appeal.
- 7.7 As the appeal stands dismissed for want of jurisdiction there is no need to deal with the other issues raised or the main subject of the appeal.
- 7.8 The appeal is accordingly dismissed with costs for the Respondent, to be taxed in default of agreement.
- 7.9 Leave to appeal granted.

Delivered at Lusaka this <sup>15<sup>th</sup></sup> day of <sup>May</sup> ....., 2024.



.....  
**C. LOMBE PHIRI**  
**JUDGE**