

**IN THE HIGH FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(JUDICIAL REVIEW JURISDICTION)**

2023/HP/2100

BETWEEN:



**THE PEOPLE
AND
THE LABOUR COMMISSIONER
THE ATTORNEY GENERAL
EX PARTE KALAHARI TRANS (Z) LIMITED**

Before: *Hon. Mr. Justice Charles Zulu.*

For the Applicant: Messrs Mukoloba Mwansa Advocates.

R U L I N G

Cases referred to:

- 1. North - Western Energy Company Limited v The Energy Regulation Board (2011) ZR. Vol. 2 512 at 521.**
- 2. New Plast Industries v Commissioner of Lands & the A.G. (2001) Z.R. 51.**

Legislation referred to:

- 1. The Rules of the Supreme Court (RSC) 1965 (White Book 1999 Edition Vol. 1).**
- 2. The High Court Act Chapter 27 of the Laws of Zambia.**
- 3. The Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia.**

1.0 INTRODUCTION

1.1 This ruling is in respect of an application by the Applicant, Kalahari Trans (Z) Limited, for leave to apply for judicial review. The application was made pursuant to Order 53 rule 3 of the **Rules of the Supreme Court (RSC) of England and Wales 1965, (White Book) 1999 Edition**. And, if leave is granted, the Applicant seeks to quash the decision of the Labour Commissioner allegedly rejecting the Applicant's application to terminate the recognition agreement, executed between the Applicant and the Zambia Union of Tanker Drivers and Allied Workers, dated October 3, 2023.

2.0 HEARING

2.1 The matter was scheduled for *inter partes* hearing on December 14, 2023, but none of the parties were present. The applicant having filed the requisite documents; I decided to render this determination based on the said documents, rather than to strike out the application for non-attendance and want of prosecution.

3.0 BACKGROUND

3.1 The facts distilled from the founding documents are that, the Applicant, Kalahari Trans (Z) Limited is a company engaged in the transport business, and the Zambia Union of Tanker Drivers and Allied Workers (ZUTDAW) is a trade union. The Applicant and ZUTDAW entered into a Memorandum of Recognition Agreement dated January 4, 2022, whereby the Applicant undertook to recognize the Union, as representing the

Applicant's eligible employees in employment and labour matters.

3.2 By letter dated May 29, 2023, the Applicant wrote to the Labour Commissioner beseeching the Labour Commissioner to ratify the Applicant's desire to terminate the Memorandum of Recognition Agreement. And by letter dated October 3, 2023, the Labour Commissioner responded, declining the Applicant's request, and urged the Applicant to exercise clemency over 20 employees, the Applicant is alleged to have dismissed.

3.3 Essentially, the ground advanced for judicial review is that, the decision of the Labour Commissioner is illegal, to the extent that the Labour Commissioner had no jurisdiction to consider extraneous circumstances in his decision making process.

4.0 DETERMINATION

4.1 I have carefully considered the facts and the Applicant's arguments. Paragraph 53/14/55 of the White Book, outlines the factors that the court should consider at the stage when leave is sought, thus:

The purpose of the requirement of leave is:

- (a) to eliminate at an early stage any applications which are either frivolous, vexatious, or hopeless.***
- (b) to ensure that an application is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further investigations.***

4.2 In the case of **North-Western Energy Company Limited v The Energy Regulation Board**⁽¹⁾ Matibini J, (as he then was) had an opportunity to thoroughly consider paragraph 53/14/55, of the White Book, and he lucidly remarked as follows:

Order 53/14/55 goes on to stipulate that the requirement that leave must be obtained is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers, and authorities might be left as to whether they could safely proceed with the administrative action, while proceedings of judicial review were actually pending even though misconceived.

4.3 The primordial question is whether judicial review is tenable in the light of section 85 of the **Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia**, which vests original and exclusive jurisdiction in the Industrial Relations Division (IRD) over any industrial relations matter. This jurisdiction *inter alia* pertains to the Court's power to interpret the terms of collective or/and recognition agreements. Including inquiring into and adjudicate upon any matter affecting the collective rights, obligations and privileges of employees, employers and representative organizations.

4.4 Notably, by virtue of section 10 of the **High Court Act Chapter 27 of the Laws of Zambia**, the applicability of Order 53 RSC to our jurisdiction is by the doctrine of default rule. It is patent that this matter falls within the purview of section 85 of the **Industrial and Labour Relations Act**. Therefore, the Applicant cannot have recourse to Order 53 RSC, because our

indigenous statute is not lacking as to how, and which court has jurisdiction over disputes or matters anchored on industrial relations, in particular on collective or/and recognition agreements.

- 4.5 My foregoing resolve is comparably sure-footed in the case of ***New Plast Industries v Commissioner of Lands & the A.G.***⁽²⁾ wherein the Supreme Court held:-

Section 89 of the Lands and Deed Registry Act provides for a procedure by way of appeal. There is, therefore, no default in practice in matters falling under the Lands and Deeds Registry Act. There is no choice between commencing an action by an application for judicial review or by an appeal. We are satisfied that the practice and procedure in the High Court is laid down in the Lands and Deeds Registry Act. The English White Book could only be resorted to if the Act was silent or not fully comprehensive. We therefore hold that this matter having been brought to the High Court by way of judicial review, when it should have been commenced by way of an appeal, the Court had no jurisdiction to make the reliefs sought. This was the stand taken by this court in Chikuta vs. Rural Council (1), where we said that there is no case in the High Court where there is a choice between commencing an action by a writ of summons. We held in that case that where any matter is brought to the High Court by means of an originating summons when it should have been commenced by a writ, the court has no jurisdiction to make any declarations. The same comparison is applicable here. Thus, where any matter under the Lands and Deeds Act is brought to the High Court by means of judicial review when it should have been brought by way of an appeal, the court has no jurisdiction to grant the remedies sought.

5.0 CONCLUSION

5.1 In the light of the foregoing, it is inevitable to hold that, it is an abuse of the court process to institute proceedings in this Division or List, as the case may be, by way of judicial review under Order 53 RSC. The matter or dispute hereof lies exclusively within the jurisdiction of the Industrial Relations Division, and the mode of commencement is prescriptively *sui generis*, etched in Part II of the **Industrial Relations Court Rules Chapter 269 of the Laws of Zambia.**

5.6 Accordingly, the application for leave to apply for judicial review is dismissed for impropriety and want of jurisdiction.

DATED THE 23RD DAY OF APRIL, 2024.



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HON. MR. JUSTICE CHARLES ZULU