

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**



BETWEEN:

**MADHUSUNDAN REDDY GAVI REDDY  
SUBHASHINI REDDY GAVI REDDY  
VEDASTE NZEYIMANA**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT**

AND

**UMA MAHESWAR REDDY GAVI REDDY  
SYAM SUNDER REDDY GAVI REDDY  
BABITHA REDDY KOKONDA  
GAVI BEVERAGES LIMITED**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT**

***Before:***

***The Hon. Mr. Justice Charles Zulu***

For the 1<sup>st</sup> Applicant:

Mr. K. Samiselo of Messrs ZS Legal Practitioners.

For the 2<sup>nd</sup> Applicant:

Mr. D. Mushenya of Messrs Wright Chambers.

For the 3<sup>rd</sup> Applicant:

Mr. D. Jere of Messrs Dickson Jere and Associates.

For the 1<sup>st</sup> Respondent:

Mr. A. M. Musukwa & Mr. M. Musukwa of Messrs Andrew Musukwa & Co, and Mr. M. Chitambala of Lukona Chambers.

For the 2<sup>nd</sup> & 3<sup>rd</sup> Respondent:

Mr. N.K.R Sambo of Sambo Kayukwa & Co., and Mr. B. Mweemba, of Messrs Keith Mweemba Advocates.

The 4<sup>th</sup> Applicant:

No Appearance.

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**R U L I N G**

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Case referred to:

1. ***Sun Country v Charles Kearney and another (Selected Judgment No. 20 of 2017).***

Legislation and Other Works Referred to:

1. ***The Rules of the Supreme Court (RSC) of England and Wales 1965 (White Book, 1999 Edition).***
2. ***Black's Law Dictionary 10<sup>th</sup> Edition.***

## **1.0 INTRODUCTION**

1.1 This ruling is respect of a “notice of motion to raise preliminary issue” dated May 8, 2024, at the instance of the first Applicant. The application was made pursuant to Order 14A and Order 33 rule 3 of the ***Rules of the Supreme Court (RSC) of England and Wales 1965 (White Book, 1999 Edition)***. The issue raised for determination was couched as follows:

***Whether the deponent of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's affidavit in opposition to the amended affidavit in support of amended originating summons for a order to set aside the final arbitral award had the requisite authourity to depose to the same.***

## **2.0 HEARING**

2.1 The first Applicant deposed to an affidavit in support. He observed that an affidavit in opposition to the originating process, dated April 4, 2024 filed by the second and third Respondents was deposed to by Mendis Gamamedha Liyanage

Chaninda Deepal. It was noted that the said deponent only had the power of attorney to act for the second Respondent and not the third Respondent.

2.2 An affidavit in opposition to this application was equally deposed to by Mendis Gamamedha Liyanage Chaninda Deepal. He stated that he was granted the power of attorney dated April 19, 2022, to represent the second Respondent in this matter, which he exhibited, marked "MDGL 1". He added that on August 4, 2022, he was granted another power of attorney dated August 4, 2022, to represent the third Respondent in matters related hereto. He exhibited the same marked "MDGL 2".

### **3.0 ARGUMENTS**

3.1 The concerned parties through their respective counsel substantively argued for and against the application. I will not labor to summarize the arguments seriatim.

### **4.0 DETERMINATION**

4.1 In the light of the affidavit in opposition to this application, it is clear that this is an open and shut application, so to speak.

4.2 According to **Black's Law Dictionary 10<sup>th</sup> Edition** at page 1084, an instrument titled, the "power of attorney" is defined in the following terms:

***An instrument granting someone authority to act as an agent or attorney-in-fact for the grantor. The***

***authourity so granted; specif., the legal ability to produce a change in legal relations by doing whatever acts are authourized.***

4.3 It is factually evident that, there is no want of authourity on the part of Mendis Gamameda Liyanage Chaninda Deepal to represent the third Respondent in the manner sought herein. The instrument above stated attests to this position. For the avoidance doubt, the said power of attorney provides:

***I, Kakonda Babitha Reddy....,do hereby appoint, nominate constitute and authourize Mendis Gamameda Liyanage Chaninda Deepal....to represent me in any Company related and legal aspects of Gavi Beverages Limited, or to sign on my behalf and do all acts and things necessary in respect of my absence as my true representative in Zambia.***

4.4 The application is dismissible. Nevertheless, it was desirable for Mendis Gamameda Liyanage Chaninda Deepal in the said joint affidavit dated April 4, 2024, to state that he equally had the power of attorney to accordingly represent the third Respondent, and exhibit the same. And in the light of present disclosures, the initial omission does not make the whole affidavit amenable to be set aside, because the omission is not fatal (see **Sun Country v Charles Kearney and another (Selected Judgment No. 20 of 2017)**).

## **5.0 CONCLUSION**

5.1 In view of the foregoing, the application by the first Applicant is dismissed. However, I make no order as to costs.

5.2 Leave to appeal is granted.

**DATED THIS 13<sup>TH</sup> DAY OF MAY 2024.**



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**THE HON. MR. JUSTICE CHARLES ZULU**