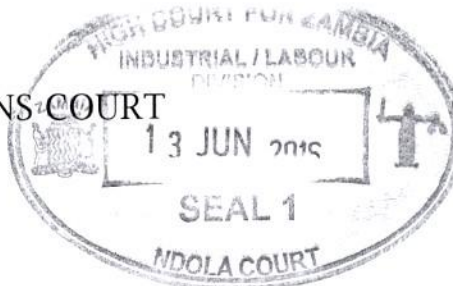


IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA



COMP/31/2016

BETWEEN:

MINE CONTRACTORS & ALLIED WORKERS UNION
OF ZAMBIA

COMPLAINANTS

AND

SILONDWA ENGINEERING LIMITED

RESPONDENT

**CORAM: HON. MR. JUSTICE D. MULENGA ON THE 13TH DAY OF
JUNE, 2016**

For the Complainant : In Person

For the Respondent : Mr. J. Kabuka of Messrs J. Kabuka & Company

RULING

Cases referred to:

1. *Harry Mwaanga Nkumbula & Simon Mwansa Kapwepwe v United Nation Independence Party* (1978) Z R 388.
2. *National Milling Limited v A. Vashee (suing as Chairman of Zambia National Farmers Union)* SCZ Judgment No. 23 of 2000.

Other Works referred:

Employment Law in Zambia, cases & materials, Revised Edition of 2011 at page 193

The Complainant herein filed a Notice of Complaint and Affidavit in Support sworn by one Sampa Leonard Musonda, the Director of Administration and Human Resource of Mine Contractors and Allied

Workers Union of Zambia, on 30th March, 2016. The Complainant filed also summons for an injunction order.

The Complainant took out the said legal process in its own name, namely Mine Contractors and Allied Workers Union of Zambia. The Respondent through its advocates filed summons to set aside the complaint and subsequent process for irregularity. The said application is supported by an affidavit, dated 19th April, 2016.

The Respondent's application is for setting aside the Notice of Complaint filed by the Complainant as the same is irregular having been issued in the name of a non- legal entity.

On the hearing of both the parties, Learned Counsel for the Respondent submitted that a Trade Union is not a legal person at law and cannot, therefore, sue or be sued in its own name. He referred the Court to the Writings of W.S. Mwenda in her book: **Employment Law in Zambia, cases & materials, Revised Edition of 2011 at page 193.**

There is no affidavit in opposition to the application herein filed by the Complainant. However, one Sampa Musonda on behalf the Complainant submitted that, the Complainant had filed summons for Leave to amend the legal process herein. Further that this Court has jurisdiction under Order 20 of the High Court Rules, at any stage of the proceedings to amend, whether the defect or error be that of the Party applying or not.

The Complainant referred the Court to Article 21 of the Constitution of (Amendment) Act, 2015.

There is no dispute that the Complaint filed herein is in the name of a Trade Union, the same being Mine Contractors and Allied Workers Union of Zambia and by its nature, its an unincorporated body.

The Supreme Court of Zambia held in the case of **Harry Mwaanga Nkumbula & Simon Mwansa Kapwepwe v United Nation Independence Party (1)** that an unincorporated body is not a legal entity and is therefore, not capable of suing and being sued in its own name, it can only sue or be sued in the representative capacity. The same holding was made in the case of **National Milling Limited v A. Vashee (suing as Chairman of Zambia National Farmers Union) (2)**.

As regards the submissions by the Complainant that this Court has jurisdiction under Order XX of the High Court Rules, Cap 27 of the laws of Zambia, at any stage of the proceedings to order any proceedings to be amended. It is clear that the Complainant is referring to Order Xviii of the High Court Rules aforesaid.

However, whereas, there is also an application for amendment on Court file, the application of the Respondent goes to the root of whether or not the Complainant's Complaint was properly before Court therefore, such an application is given preference.

The only logical conclusion is that the matter herein was irregularly commenced as the Complainant is not a legal entity with capacity to issue legal process in its own name. The Respondent's application accordingly succeeds, the Complainant's Notice of Complaint together with the

accompanying applications is hereby set aside for irregularity. Costs to the Respondent to be taxed by the Court in default of agreement.

Leave to appeal within thirty days (30) days from the date hereof is granted.

Delivered at Ndola this **13th** day of **June, 2016**.


.....
D. MULENGA
HON. JUDGE

