IN THE SUPREME COURT OF ZAMBIA **Appeal No. 217/2004**
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

CHENG YOU **APPELLANT**

AND

THE ATTORNEY-GENERAL **RESPONDENT**

Coram: **Lewanika, DCJ, Mumba, Mushabati, JJS**
6th June 2006

For the Appellant: Mr F S Kongwa of Messrs Kongwa & Company

For the Respondent: No Appearance

JUDGMENT

Mumba, JS, delivered the Judgment of the court.

This is an appeal against the High Court judgment whereby the court below refused to issue orders for certiorari and mandamus against the decision of the Minister of Home Affairs deporting the appellant.

In the year 2000, about June, the appellant came into the country on the basis that he was an investor wishing to run a tourism enterprise and was granted a temporary permit. He

applied for an investment certificate to renovate Buchi hotel in Kitwe and run the same in order to promote tourism in the country. Appellant was granted the investment certificate upon payment of the requisite fees. Further funding was demanded for the certificate in order to satisfy the conditions then prevailing for investment in Buchi hotel. The certificate also allowed appellant one year within which to complete and reorganize the hotel and start operating it. Further, the certificate had a condition to the effect that within 6 months of being granted the certificate, appellant had to show tangible evidence of operations undertaken to complete renovations to prepare for the operation of Buchi hotel.

It was common cause that later, appellant renovated another building in which he operated a restaurant. On the same premises there was a casino operated by another company, City Casino Limited. The casino was licensed although the appellant claimed he had no interest in it. According to the appellant, he was forced to start a restaurant business because Kitwe City Council did not respond to his letter requesting a

licence to run Buchi hotel as per his investment certificate. Appellant also asserted that in any case, the restaurant he was running was within the provisions of the Investment Act, as it was a tourist venture. Appellant stated that his pledge of US296,000 to invest in Buchi hotel still stood as he was waiting for the response from Kitwe City Council, as the licensing authority over Buchi hotel.

The evidence on record, as per the affidavit in opposition sworn by one, Greenwell Lyempe, a senior prosecutions Officer with the Immigration Department of the Ministry of Home Affairs, was to the effect that instead of pursuing the subject of the investment certificate, which appellant had declared both at Immigration and Investment Centre, appellant decided to rent a house where he operated a restaurant and casino and that that was the reason for rejection of his self-employment permit previously granted. It was also stated that operating a restaurant and a casino were not within the provisions of the investment certificate granted and that Buchi hotel had remained unattended to for a period of one year since.

The appellant advanced seven grounds of appeal, as follows:

Ground 1: The learned Judge misdirected himself in law and in fact in not adverting to the validity of the only ground given for the revocation permit, namely that the appellant was running an illegal casino.

Ground 2: The learned Judge misdirected himself in law and in fact in not adverting to the appellant's complaint that the sole ground advanced for the revocation of the permit was based on ultraneous considerations and made in bad faith and was therefore bad in law.

Ground 3: The learned Judge misdirected himself in law and in fact in holding that Buchi hotel was already given to someone else when there is no evidence that the appellant was informed of the decision.

Ground 4: The learned Judge misdirected himself in law and in fact in holding that the rehabilitation and management of Buchi hotel was the only tourist.

Ground 5: The learned Judge misdirected himself in law and fact in not adverting to the requirement that where a reason is given for the exercise of an administrative

action, there must be a substratum of facts which, though the courts may not enquire into a decision based on them, must nevertheless exist.

Ground 6: The learned Judge misdirected himself in deciding that the rules of natural justice did not require the respondent to hear the appellant on the ground stated in the notice to leave the country.

Ground 7: The learned Judge erred in law and in fact in not adverting to the appellant's complaint that the order to leave the country at such short notice when he has cases pending in the courts in which he is claiming compensation and given the level of investment he has made, was not made and is a further demonstration of bad faith on the part of the respondent.

Appellant filed written heads of argument which he relied upon. At the hearing of the appeal there was no appearance by both parties but Mr Kongwa, Counsel for the appellant, had written to the court to proceed with the appeal as he was relying on the written heads of argument already filed. We proceeded with the appeal.

In the written heads of argument, the submissions were only confined to the first ground of appeal.

The essence of the submissions was that the court had jurisdiction to review the manner and procedure by which administrative decisions were made. It was submitted that the revocation of the temporary self-employment permit was based on wrong information that the appellant was operating an illegal casino. After reciting Section 21 of the Immigration and Deportation Act on the powers of the Chief Immigration Officer, it was submitted that the appellant was not called upon to answer the allegations that he was running an illegal casino, in addition, that there were no facts upon which the decision to revoke the temporary permit was based. It was submitted that the import of Section 21 presupposes that the Chief Immigration Officer would act on the basis of facts, that the Officer would hear the person against whom allegations were made before making a decision and, would give reasons for the decision made. It was submitted that there were no facts apart from

rumours upon which the Chief Immigration Officer based his decision.

It was further submitted that it is trite law that if a repository of power exercises that power without adherence to the procedure, the letter and spirit of the regulations granting that power, a purported exercise of the power would be invalid. Volume 1 of Halsbury's Laws of England, 4th Edition, paragraph 63 was cited in support of the submissions. It was submitted that in the exercise of authority, there was an obligation to consult, to give notice to enable representations to be made before the exercise of power; that there was also an obligation to give reasons for the exercise of power and, finally, the obligation to give information on the right of appeal. Finally, it was submitted that it was manifestly unreasonable to make a decision without facts, that to do so was a clear error of law; that such a decision would be held to have been made without jurisdiction.

There being no submissions in support of the rest of the grounds, we considered them abandoned.

There was no response from the respondent.

We have duly considered the grounds of appeal and the written heads of argument filed by the appellant. We have also noted the evidence on record and the judgment appealed against.

The gist of this appeal lies in the interpretation of the investment certificate granted to the appellant, as the certificate was the basis of the appellant's stay in the country. According to the letter on page 29 of the record of appeal, the investment certificate was for purposes of renovating, rehabilitating and operating Buchi hotel and nothing else. If and when appellant failed to get a license for Buchi hotel from Kitwe City Council, appellant should have gone back to the Investment Centre to explain his dilemma or to apply for a variation of the investment certificate. The investment certificate did not allow appellant to

operate a restaurant, which business was not even listed as an alternative form of investment, yet, page 32 of the record of appeal shows a lease agreement for the premises on which the restaurant was run. Appellant's submission that the restaurant fell in the same category as a tourism enterprise was not a valid response.

The letter from the Investment Centre stated in part, "...You are further advised to contact the Investment Centre for assistance and guidance at any stage in the development of your project, and to submit a progress report on project implementation within 6 months from the date of issue of the Investment Certificate." Appellant chose not to go back to the Investment Centre for assistance.

The law on investment, as a means of entry and stay in Zambia, is very clear and strictly applied, non-compliance is not an option. On the facts of this case and the documentary evidence, it is clear that the appellant was in breach of the conditions allowing him to stay in the country. We do not find it necessary to discuss the rest of the submissions on the exercise

of administrative power as we find Section 21 of the Immigration and Deportation Act very clear. We find no merit in this appeal and we dismiss it.

In view of the circumstances of this appeal, we make no order on costs.

D.M. Lewankia
DEPUTY CHIEF JUSTICE

F.N.M. Mumba
SUPREME COURT JUDGE

C.S. Mushabati
SUPREME COURT JUDGE