

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 16/2007

BETWEEN:

**NATIONAL MOVEMENT
AGAINST CORRUPTION**

APPELLANT

AND

SOFRAM SAFARIS LIMITED

1ST RESPONDENT

MBEZA SAFARIS LIMITED

2ND RESPONDENT

SWANEPOEL & SCANDROL LIMITED

3RD RESPONDENT

LEOPARD RIDGE SAFARIS LIMITED

4TH RESPONDENT

Coram: LEWANIKA, DCJ, MUMBA, MUSHABATI, JJS,
28th March, 2007 and 12th July, 2007

For The Appellant:

Mr. S. L. Chisulo, S.C. Messrs. S.
Chisulo & Company

For The 1st & 2nd Respondents

Mr. W.M. Kabimba of Messrs W.M.
Kabimba & Company

JUDGMENT

Mumba JS, delivered the Judgment of the Court.

Cases referred to:

1. **Zambia Seed Company Limited vs. Chartered International (PVT) Ltd [1999] ZR 151.**

This is an appeal against the ruling of the learned trial Judge in the court below on a preliminary issue raised by the appellant.

The appellant and the Zambia Wildlife Authority obtained a consent judgment between themselves under Cause No. 2006/HP/0596.

The respondents were not parties to those proceedings and were not informed about them. The respondents brought a fresh action to challenge the said consent judgment whose terms, they claimed, adversely affected their entitlements and standing vis-à-vis their prior agreements on hunting concessions with the Zambia Wildlife Authority.

The appellant raised a preliminary issue in the court below that the respondents were wrong in law by starting a fresh action to challenge the consent judgment, that they should have applied to be joined as parties to the action in which the consent judgment was obtained.

The learned trial Judge in the court below dismissed the preliminary issue stating that as respondents were not parties to

the consent judgment but were affected by its terms, they were entitled to bring fresh proceedings to challenge the said consent judgment.

The appellant filed four grounds of appeal as follows:-

1. **“The trial Judge erred and misdirected himself when he concluded in paragraph 5 of page R6 of the Ruling that *“the consent judgment clearly affected the rights and interests of the Respondents herein (Plaintiffs in the Court below) in particular as regards paragraph 1 (a) and (d) (i) and (ii);”* without explaining to what extent and whether adversely or positively the said consent judgment had affected the rights and interests of the respondents.**
2. **In view of ground (1) above, there is a strong inference that the trial Judge had erroneously accepted the arguments by the respondents herein that:**
 - (i) **the consent judgment had abrogated the respondents’ rights with Zambia Wildlife Authority.**
 - (ii) **The consent judgment was a final judgment against the respondents and therefore the only way they could attack the consent judgment was through the action commenced by the respondents before the trial judge.**
3. **The learned trial Judge misapprehended the purpose and effect of paragraph 1 (a) of the consent judgment and thereby failed to recognize and consider the following facts and points of law in his Ruling:**

- (i) That the respondents were cited for a specific public injury, i.e. poaching which they had each committed and apparently admitted.
- (ii) That the compromise penalties meted out by Zambia Wildlife Authority against each of the Respondents for the said public injury were contrary to the Zambia Wildlife, Act No. 12 of 1998 and that the said compromise penalties were therefore against public policy and illegal.
- (iii) That overall, the consent judgment, arising out of judicial review proceedings, was intended only to enjoin the Zambia Wildlife Authority to comply with the law and any terms contained in the Hunting Concession Agreements entered into with each of the respondents.

The trial Judge erred in principle and misdirected himself on a point of law and when he attempted to explain *locus standi* to challenge a consent judgment in terms of one being an interested party in the contents of the consent judgment; as opposed to one being a party to the agreement contained in the consent judgment.”

Mr. Chisulo, learned state counsel for the appellant cited authorities in support of his submission that the respondents were wrong in law to start a fresh action to challenge the consent judgment.

The gist of the appellant's submission is that the respondents cannot bring a fresh action to challenge a consent judgment, they should instead apply to join as parties to the action and plead their case in that same action.

The respondents stand, on the other hand, is that they are entitled to bring a fresh action to challenge the said consent judgment.

Mr. Kabimba, learned counsel for the respondents cited authorities in support of his submissions one of them being the case of **Zambia Seed Company Limited vs. Chartered International (1)**.

The legal issue for determination in his appeal is whether the respondents, on the facts on record, can challenge the consent judgment by initiating a fresh action.

On account of the view we take of this appeal, it is not necessary to discuss the submissions of the parties in detail

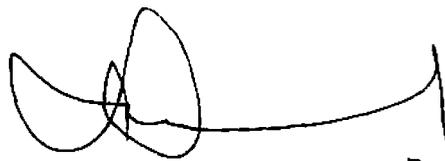
suffice it to say that we have duly considered them together with the authorities cited.

This is an appeal which raises a point of law which is already settled. The learned trial Judge in dismissing the preliminary issue relied on the pleadings on record which show that indeed, the consent judgment being challenged, adversely affects the interests of the respondents. We agree with the observations of the learned trial Judge in his ruling that in the peculiar circumstances of this case, the respondents' interests regarding prior hunting concessions entered into with a party to the consent judgment were adversely affected. The record shows that the terms of the consent judgment complained of, in part, directed implementation of sanctions against the respondents. The record also shows that the appellant, a party to the consent judgment, stated in its defence to the action brought by the respondents in the court below that appellant had no obligation to inform the respondents of the proceedings under which the said consent judgment was obtained. It is not in dispute that the terms of the consent judgment, in part, affect the entitlements of

the respondents. We wish to reiterate what we said in the case of **Zambia Seed Company Limited vs. Chartered International (1)** that a consent judgment is final and that,

“...by law the only way to challenge a judgment by consent would be to start an action specifically to challenge that consent judgment...”

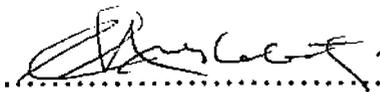
A consent judgment, once sealed is final determination of issues therein, it is not possible to join the proceedings after judgment has been pronounced. The respondents were in order to institute fresh proceedings as they did. We dismiss the appeal with costs, to be taxed in default of agreement.



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D. M. LEWANIKA
DEPUTY CHIEF JUSTICE



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F. N. M. MUMBA
SUPREME COURT JUDGE



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C.S. MUSHABATI
SUPREME COURT JUDGE