

**IN THE SUPREME COURT OF ZAMBIA
220/2012
HOLDEN AT LUSAKA**

APPEAL NO.

(Civil Jurisdiction)

BETWEEN:

METRO INVESTMENTS

APPELLANT

AND

COMMISSIONER OF LANDS

1ST

RESPONDENT

ATTORNEY GENERAL

2ND

RESPONDENT

LUSAKA CITY COUNCIL

3RD

RESPONDENT

CETINA TRANSPORT LIMITED

4th

RESPONDENT

Coram : Mwanamwambwa, JS, Kaoma and Hamaundu, AJS
On 13th August, 2013 and 31st October, 2014

**For the appellant : Mr. C. Sianondo, Messrs Malambo
& Co.**

For the 1st & 2nd respondents : Attorney -General

For the 3rd respondent : Director of Legal Services

**For the 4th respondent : Major. C. Lisita, Messrs Central
Chambers**

J U D G M E N T

HAMAUNDU, AJS, delivered the Judgment of the Court

Cases referred to

- 1. Monze Diocese v Mazabuka District Council, SCZ NO.16 of 2005**
- 2. Wilson Masauso Zulu v Avondale Housing Project Limited, [1982] ZR 172**
- 3. New Plast Industries v The Commissioner of Lands and the Attorney General, [2001] ZR 51**
- 4. Bank of Zambia v Aaron Chungu and Two Others [2008] ZR 159**
- 5. Kundiona V The People [1993-1994] ZR 59**

Statutes referred to:

- 6. Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**
- 7. High Court Act, Chapter 27 of the Laws of Zambia**
- 8. Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia**

This is an appeal against the ruling of the High Court which dismissed the Appellant's matter on the ground that the Appellant had gone to the High Court by way of a wrong originating process.

The background to this appeal is as follows: The Appellant had filed a complaint against the Respondents at the Lands Tribunal on the 26th November, 2003, seeking redress over the

cancellation by the Commissioner of Lands of its certificate of title on Stand No. 22756, Lusaka and the issuance of another certificate of title on the same piece of land to the 4th Respondent. The Lands Tribunal heard the complaint. After the hearing, the Tribunal declared the offer that was given to the 4th Respondent null and void and recommended the cancellation of the certificate of title that was issued to the 4th Respondent. The 4th Respondent appealed to the Supreme Court. In our Judgment of the 13th February, 2009, we noted that the Appellant had commenced its matter in the Lands Tribunal before we had passed our decision in the case of **Monze Diocese v Mazabuka District Council**⁽¹⁾ where we held that, where land has a certificate of title, the Lands Tribunal has no jurisdiction to hear a dispute thereon and that the Lands Tribunal cannot cancel a certificate of title because that is a preserve of the High Court, under the **Lands and Deeds Registry Act**⁽⁶⁾. We, therefore, remitted the case to the High Court for determination of the issues that were raised before the Lands Tribunal and that the costs would abide the result in the High Court. When the matter went to the High Court, the 4th

respondent raised a preliminary objection, arguing that the matter had gone to the High Court by way of appeal instead of being commenced by Writ of Summons. The High Court ruled that the matter should have been commenced *de novo* and in accordance with the appropriate mode of commencement provided under **Order VI Rule 1** of the **High Court Rules**⁽⁷⁾. The court noted that the Appellant had, instead, taken the matter to the High Court by way of appeal. The court held that it was a wrong mode of commencement. That ruling is the subject of this appeal.

The Appellant filed two grounds of appeal.

The first ground is that the court below erred in law and in fact when it held that the matter before it was an appeal even though there was no notice of appeal.

The second ground is that the court below erred both in law and in fact in holding that the matter should have been commenced *de novo* contrary to the Supreme Court guidance that the matter was sent back to the High Court for the determination of all the issues that were raised at the Tribunal.

SELECTED JUDGMENT NO. 45 OF 2014
P.1057

The Appellant filed written heads of argument. Therein, learned counsel for the Appellant argued, in ground one, that the misdirection by the court below lay in its statement that the cause number of the matter was evidence that the matter had gone to the High Court by way of appeal. Learned counsel pointed out that no notice of appeal was lodged together with the record of proceedings of the Tribunal to support the court's view that the matter had gone there by way of appeal. In consolidating this point, Counsel relied on the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**⁽²⁾, where we held that this Court will reverse findings of fact that are not backed by evidence. Counsel contended that there was no evidence to suggest that this was an appeal and that the giving of a cause number was the preserve of the Registry.

In ground two, Learned Counsel for the Appellant argued that the misdirection of the court below lay in its statement that the matter should have been commenced *de novo* contrary to the Supreme Court guidance that the matter was sent back to the High Court for determination of all issues raised in the Tribunal.

SELECTED JUDGMENT NO. 45 OF 2014
P.1058

Counsel argued that the proceedings of the Lands Tribunal were part of the record of appeal which had been prepared in the previous appeal to the Supreme Court. The Tribunal proceedings contained all the issues that were to be determined by the court as directed by the Supreme Court. The appellant filed that record of appeal in the court below. If a new action were to be commenced as advised by the court below, then there was the possibility that new issues that were not raised in the Lands Tribunal might be raised before the High Court.

Learned Counsel prayed that the appeal be allowed on the aforementioned grounds.

The 4th Respondent also filed its heads of argument.

Learned Counsel argued, in relation to ground one, that the court below was on firm ground when it held that the cause number was evidence that the matter had gone before the High Court by way of appeal because items number 7 and 8 in the index of the current record of appeal filed into the Supreme Court showed that a record of appeal was filed into the High Court containing the record of proceedings in the Lands Tribunal.

Counsel argued that even the cause number that was given indicated that the matter had been brought to the High Court by way of an appeal. Learned Counsel argued that the Appellant could not rely on the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**⁽²⁾ because that case discussed situations where the Supreme Court could reverse findings of fact of a trial court where the trial court dealt with the evidence of witnesses, whereas, in this case, the trial court made a ruling on a point of law following a preliminary objection raised by the 4th Respondent.

In ground two, Learned Counsel argued that all cases that are sent by the Supreme Court to the High Court for re-trial are usually commenced *de novo*. The lower court was, therefore, on firm ground to order that the matter should have commenced *de novo* following the direction by the Supreme Court. Learned Counsel argued, further, that commencement of matters in the High Court was clearly provided for under **Order VI of the High Court Rules**⁽⁷⁾ and that there was no provision at law to bring a matter before the High Court, in the manner that the Appellant

did, by way of filing a further record of proceedings from the Lands Tribunal. Learned Counsel argued that no appeal could lie from the Lands Tribunal to the High Court, just as there was no provision for an appeal from the Industrial Relations Court to the High Court. In consolidating its argument, the Respondent relied on the case of **New Plast Industries v The Commissioner of Lands and the Attorney General**⁽³⁾ where we held that the mode of commencement of any action is as prescribed in the relevant statute and not dependent on the relief sought. This position, according to Counsel, was also reaffirmed in the case of **Bank of Zambia v Aaron Chungu and two Others**⁽⁴⁾.

Learned Counsel submitted that the whole appeal lacked merit and that it be dismissed with costs.

At the hearing, both Counsel relied on their written heads of argument.

We have considered the arguments by both parties.

We wish to emphasize that in our judgment of the 13th February, 2009, we **remitted** this matter to the High Court for the determination of the issues that were raised before the Lands

Tribunal. That order was made in accordance with the powers that are conferred on this Court in **Section 25** of the **Supreme Court of Zambia Act.**⁽⁸⁾ The portion relevant to this appeal in that section provides:

“25 (1) on hearing of an appeal in a civil matter, the court :-

b) may, if it thinks it necessary or expedient in the interest of justice-----

iv) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appears to it necessary.”

We wish to take this opportunity to emphasize that when the Supreme Court remits a matter to the High Court for hearing, there is no need for the parties to file the originating process. The High Court must, instead, proceed to hear the matter. In the process, the High Court may, in an appropriate matter, issue directions requiring the parties to file pleadings and bundles of documents in order that the parties' respective positions are

made clear. The court below in this case, therefore, misdirected itself when it held that the Appellant should have filed the originating process under **Order VI of the High Court Rules**.

We allow this appeal and, again, remit the matter to the High Court for hearing. We award costs of this appeal to the Appellant. The costs of the previous appeal will abide the result in the High Court, as we said in the previous judgment.

.....
M.S. MWANAMWAMBWA
SUPREME COURT JUDGE

.....
R.M.C. KAOMA
ACTING SUPREME COURT JUDGE

.....
E.M. HAMAUNDU
ACTING SUPREME COURT JUDGE