

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 134/2013

HOLDEN AT KABWE

(Civil Jurisdiction)

BETWEEN:

ATTORNEY GENERAL

THE COMMISSIONER FOR LANDS

LIVINGSTONE CITY COUNCIL

CAPTAIN JOHN MWAMULIMA

AND

AMBEX CLOTHING MANUFACTURERS LIMITED

Coram: Wood, Malila and Musonda, JJS.

On 7th November, 2017 and 15th November, 2017

For the 4th Appellant : In person

For the Respondent : No Appearance



1ST APPELLANT

2ND APPELLANT

3RD APPELLANT

4TH APPELLANT

RESPONDENT

JUDGMENT

Wood, JS, delivered the judgment of the Court.

Case referred to:

1. *Union Gold (Zambia) Limited v The Attorney General - SCZ Judgment No.14/2016.*

Legislation referred to:

1. *Order 11 rule 4 of the High Court Rules Cap 27.*

2. *Order 6 Rule 1 of the High Court Rules Cap 27.*
3. *Section 13 (3) of the Lands Act Cap 184 of the Laws of Zambia*

In this appeal, the 4th appellant seeks to set aside a High Court ruling which held that there was no multiplicity of actions or abuse of court process and that the action had been properly commenced.

It is necessary to give a synopsis of the facts leading to this appeal.

On 29th January, 2013 in Appeal No. 174A/2008 between the 3rd and 4th appellants as 1st and 2nd appellants against the respondent, we nullified a ruling of the Lands Tribunal delivered on 3rd June, 2003 relating to Stand No. 1492 Livingstone and held that the matter should have been commenced in the High Court and not the Lands Tribunal. The respondent then commenced another action under Cause Number 2010/HP/806 against the 1st, 2nd, 3rd and 4th respondents. The learned Deputy Registrar dismissed Cause Number 2010/HP/ 806 on 2nd November, 2011 for abuse of process. Undeterred by this set back, the respondent commenced

cause number 2013/HP/0297 which has culminated into this appeal.

When the 4th respondent was served with the writ of summons, he proceeded to file an unconditional memorandum of appearance without a defence. On 18th March, 2013, he applied to dismiss the action for being irregular and an abuse of process. The respondent opposed the application on the ground that the 4th appellant had waived his right to dismiss the action by entering an ordinary appearance instead of a conditional appearance as required by Order 11 rule 4 of the High Court Rules Cap 27 and that this Court had nullified the earlier action that had been commenced before the Lands Tribunal.

In his ruling which has been appealed against, the learned judge held that there was nothing irregular as the action which was commenced before the Lands Tribunal was declared a nullity by this Court on account of the fact that the Lands Tribunal did not at the time have jurisdiction to hear the matter. He also held that he did not see any multiplicity in the respondent's causes especially cause number 2010/HP/806 which had been dismissed.

With regard to the mode of commencement, the learned judge held that the mode of commencement under the Lands Act before the High Court had to be by way of a writ of summons together with a statement of claim in accordance with Order 6 Rule 1 of the High Court Rules Cap 27. The learned judge also held that in the light of this Court's judgment in Appeal No. 174A of 2008 and also in the light of the fact that the Lands Tribunal Act was assented to by the President on 14th November, 2010, the High Court had jurisdiction to hear the matter. He accordingly dismissed the appellant's application to have the matter dismissed on grounds of multiplicity of actions, abuse of court process and improper commencement of an action.

The appellant has now appealed to this Court raising three grounds of appeal. The first ground of appeal is that the High Court acted outside its jurisdiction when it ordered that this matter was properly before the court when such jurisdiction under the Lands Tribunal Act is vested in the Lands Tribunal.

The second ground of appeal is that the High Court erred in law and in fact in holding that the 4th respondent's application was dismissed when the same matter had been duly decided by this Court. The third ground of appeal is that the High Court misdirected itself in that findings of fact were made in the absence of relevant evidence or upon a misapprehension of facts and further that the evaluation of evidence was unbalanced because only the flaws of one side but not of the other were considered in arriving at its decision.

The appellant has filed two sets of heads of argument. The first set was filed on 22nd July, 2013 while the second set was filed on 9th October, 2017 without leave. We must state at once that rules are made to be followed. Rule 12 of the Supreme Court Rules Cap 25 specifically provides for extension of time or for taking any step in or in connection with any appeal. Parties are not free to file documents anytime they feel like. We shall therefore not consider the further arguments filed on 9th October, 2017 as no leave was obtained. We also note that the heads of argument filed on 22nd July, 2013 are general in nature and do not specifically address the

three grounds of appeal raised in the memorandum of appeal. This is undesirable as roving arguments whether from counsel or a party appearing in person as is the case in this appeal, is contrary to rule 58 (7) of the Supreme Court Rules which stipulates that:

“(7) The document setting out the heads of argument shall clearly set out the main heads of the appellant’s arguments together with the authorities to be cited in support of each head of argument.”

We shall nonetheless address the arguments generally. The appellant has argued that under section 13 (3) of the Lands Act Cap 184 of the Laws of Zambia, a lessee aggrieved with the decision of the President to cause a certificate of re-entry to be entered in the register may, within thirty days, appeal to the Lands Tribunal for an order that the register be rectified.

The issue which needs to be addressed is whether section 13 of the Lands Act as read with section 22 of the same statute which deals with the jurisdiction of the Lands Tribunal under the Lands Act of 1995 had served to oust the jurisdiction of the High Court in land matters.

We held in the case of *Union Gold (Zambia) Limited v The Attorney General*¹ that the High Court's jurisdiction is not ousted by the Lands Tribunal in land matters. We further held that an aggrieved party can choose between proceeding to the High Court or the Lands Tribunal to have his grievances redressed and that the High Court not only has appellate jurisdiction as conferred by section 16 of the Lands Tribunal Act No. 39 of 2010 but that it still maintains its original jurisdiction in land matters. There is therefore no merit in the first ground of appeal that the matter was improperly commenced.

Contrary to the argument by the appellant in his second ground of appeal that this matter is being re-litigated, we held in Appeal No. 174A/2008 that the matter should have been commenced in the High Court and not the Lands Tribunal. This does not in any way mean that the matter had been conclusively decided on the merits for the appellant to argue that the matter was being re-litigated and as such was an abuse of process or a multiplicity of actions. The respondent was perfectly entitled to

commence a fresh action in the High Court. There is equally no merit in the second ground of appeal.

With regard to the third and last ground of appeal, the appellant has not shown how the learned judge in the court below made findings of fact in the absence of relevant evidence or misapprehended the facts or how he did not balance the evidence by the parties. We have perused the various affidavits. This was a relatively uncomplicated application which was bound to fail in the court below because this Court held in Appeal No. 174A of 2008 that the proceedings before the Lands Tribunal were a nullity. In addition to the judgment of this Court in Appeal No. 174A of 2008, cause number 2010/HP/806 was discontinued. Further, the High Court has jurisdiction in land matters. The third ground of appeal is also dismissed as it lacks merit.

We declined to hear any oral arguments from the 1st, 2nd and 3rd appellants when we heard this appeal in Kabwe because the 1st, 2nd and 3rd appellants were technically not appellants as they had not filed notices of appeal in this appeal.

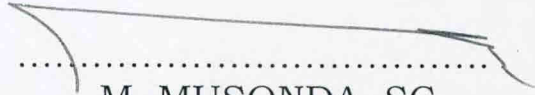
For the foregoing reasons this appeal is dismissed with costs against the 4th appellant to be agreed or taxed in default of agreement.



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A.M. WOOD
SUPREME COURT JUDGE



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M. MALILA, SC
SUPREME COURT JUDGE



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M. MUSONDA, SC
SUPREME COURT JUDGE