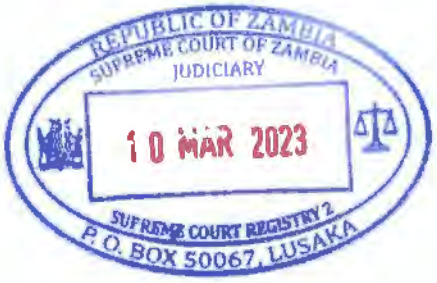
IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 6 OF 2022**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

B E T W E E N:



CITIBANK ZAMBIA LIMITED **APPELLANT**

AND

SUHAYL DUDHIA **RESPONDENT**

Coram: **Malila CJ, Hamaundu and Kaoma, JJS**
on 1st November, 2022 and 10th March, 2023

For the Appellant: Mr. R. Petersen and Mr. C. J. Mumba of Messrs Chibesakunda and Company

For the Respondent: Mrs. S. K. Banda and Ms. W. Chirwa of J and M Advocates

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J U D G M E N T

Malila, CJ delivered the judgement of the Court.

Cases referred to:

1. *Seaford Court Estates Limited v. Asher - [1949] 2 KB 481*
2. *Guardall Security Group Limited v Reinford Kabwe - CAZ Appeal No. 44 of 2019*
3. *African Banking Corporation v. Lazarus Muntete - CAZ/08/23/21*
4. *Citibank Zambia Limited v. Suhayl Dhudia - CAZ Appeal No. 16 of 2020*
5. *Muliokela David Wakunuma v. Sanlam Life Assuarance Zambia Limited Comp. - No. LK/146/2020*
6. *Nosiku Likolo and Others v. Magnum Security Services Limited IRC - LK/154/2021*
7. *JCN Holdings v. Development Bank of Zambia - (2013) ZR 299*

8. *Chikuta v. Chipata Rural District Council - (1974) Z.R. 241*
9. *New Plast Industries v. Commissioner of Lands and Another - (2001) Z.R. 51*
10. *ZEGA Limited v. The Zambia Revenue Authority - Appeal No 96 of 2018.*
11. *Zambia Revenue Authority v. Fillimart Investments Limited - SCJ No. 24 of 2017.*
12. *Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and another - S.C 68/1982.*
13. *Bhagwandas Fatechani Daswani v. HPA International and Others - 2000 (2) SCC 13*
14. *Matilda Mutale v. Emmanuel Munaile - (2007) ZR 118 (SC)*
15. *Anderson Kambela Mazoka and Others v. Levy Patrick Mwanawasa - (2005) ZR 138 (SC)*
16. *General Nursing Council of Zambia v. Ing'utu Milambo Mbangweta - (2008) ZR 105 (SC)*
17. *Zambia National Commercial Bank PLC v. Martin Musonda and 58 Others - Selected Judgment No. 24 of 2018*
18. *Zambia Revenue Authority v. Professional Insurance Corporation Limited - SCZ Appeal No. 34 of 2017*
19. *Hakainde Hichilema and Godffrey Bwalya Mwamba v. Edgar Lungu and Others - 2016/CC/0031*
20. *Development Bank of Zambia and Mary Ncube (Receiver) v. Christopher Mwanza and 63 Others - SCZ/8/103/08*
21. *Attorney-General and Another v Lewanika and Others - (1993-1994) Z.R. 164*
22. *Agro Fuel Investment Limited v. Zambia Revenue Authority - SCZ Appeal No. 187 of 2008*
23. *Ellington Diwell Chongesha v. Securicor Zambia Limited - SCJ Judgment No. 27 of 2014*
24. *Access Bank (Zambia) Limited v Group Five/ZCON Business Park Joint Venture - SCZ/8/52/2014*
25. *Duport Ltd v Sirs - [1980] 1 WLR 142*

Legislation and other works referred to:

1. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia*
2. *The Court of Appeal Act No. 7 of 2016*
3. *Bryan A. Garner (Ed.), Black's Law Dictionary, 9th Edition, 2009.*

4. *H. N. Tewari, Legal Research Methodology, Faridabad, Allahabad Law Agency, 1997.*
5. *Chungu Chanda "Guardall Security Group Limited v. Reinford Kabwe CAZ Appeal No. 44/2019" SAIPAR Case Review, Volume 4, Issue 2, Article 9, 2021.*
6. *Lord Hailsham (Ed.), Halsbury's Laws of England, Volume 4, 4th Edition, Butterworth, 1982.*
7. *Mulela Margaret Munalula, Legal Process: Cases, Statutes and Materials, UNZA Press, 2004.*

1.0. INTRODUCTION

1.1 Nearly eighty years ago, in the case of **Seaford Court Estates Ltd v Asher**[1], Lord Denning made a statement which has eerily ended up being entirely relevant and possibly persuasive in a dispute before the Zambian Supreme Court today. He stated then that:

> **Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised.**

1.2 In this appeal the statute that has come up for consideration is the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, particularly its section 85(3)(b)(ii). That

section was introduced through an amendment to the Act some fifteen years ago. We must now determine whether human powers, at the time of passing that section, foresaw the set of facts which have now arisen. The set of facts question, unswervingly what the consequences are of a failure to comply with the provisions of that section.

1.3 Because the section concerned has been in our statute books for about a decade and a half now, it is remarkable that its practical ramifications have only just recently become a source of concern and anxiety in the industrial and labour relations space and a subject of interpretation in our courts.

1.4 Admittedly, the lower courts have in recent times grappled with the provision. In particular, the Court of Appeal has lately had several bites at the now rather contentious provision and has generated somewhat ambivalent jurisprudence that has caused apparent consternation, particularly amongst complainant users of the Industrial and Labour Division of the High Court.

1.5 In this appeal, we have been invited to approbate or disavow the articulation of the law on the point by the Court of Appeal. At any rate, we are in effect being called upon to pronounce ourselves on whether the Industrial and Labour Relations Division of the High Court loses jurisdiction to continue handling a complaint at the end of one year following its filing in that court, regardless of the cause of the delay and regardless also of the status or stage of the matter at the end of the one-year period.

1.6 An extended or closely related question is whether, if there is indeed a loss of jurisdiction, such loss of jurisdiction attaches to the High Court as a collective, or to the individual dealing High Court judge. Underpinning this question is whether, in the latter instance, the matter could properly be referred to another judge of the High Court, in the same Division wielding, as it were, coordinate jurisdiction.

2.0. BACKGROUND FACTS

2.1. The appellant is an international bank while the respondent is a lawyer. In December 2010 the respondent was engaged

as a Relationship Manager in the appellant bank. For a couple of years, the employer/employee relationship between them flourished without any incidence of fatal disagreement in their structured association. With the passage of time, however, what was a seemingly genial relationship at inception turned sour and regrettably fractured, leading to a somewhat acrimonious separation between the parties.

2.2. Feeling grossly distressed about the events leading to his parting company with his employer, and convinced that he was, at any rate, shabbily treated, the respondent lodged a complaint in the Industrial Relations Court on 23rd July 2013. He sought numerous reliefs, chief among which were damages for unfair, wrongful, and unlawful termination of the contract of employment. The appellant stoutly resisted the claim, contending all the while, that the termination of the respondent's employment was legally justified.

2.3. Over six years later, on 29th November 2019, to be precise, the High Court [Mwansa J] gave judgment in favor of the respondent. Unhappy with that decision, the appellant launched an appeal in the Court of Appeal.

2.4. Before the Court of Appeal could schedule the appeal for hearing, however, the appellant filed a notice of motion, raising diverse preliminary issues. Principally, it contended that the action that culminated into the judgment against it, subject of the appeal in that court, was not delivered within one year. This, it was argued, was contrary to the provisions of the law and established jurisprudence which directed that a matter in that court ought to be disposed of within a year from the date of filing the cause. Consequently, the appellant entreated the Court of Appeal to grant preemptory orders couched in the following terms:

> **(i) That the Judgment of Honourable Justice E. Mwansa under Comp No. IRC LK/211/2013 is null and void ..., and**
>
> **(ii) Further that the Court should not exercise the discretion to remit [sic] the matter to the High Court for re-hearing upon the order under (i) above for reasons more particularly**

revealed in the Record of Appeal and including those articulated in the affidavit filed in support of this motion.

2.5. Put simply, the appellant contended that the failure by the trial court to dispose of the matter within one year rendered the ensuing judgment null and void. Furthermore, that the Court of Appeal was legally precluded from remitting the matter to the High Court as it was now statute barred.

2.6. In opposing the motion, the respondent maintained that the appellant's motion sought to sneakily introduce a new ground of appeal. In the respondent's estimation, the appellant's motion revealed glaring procedural irregularities which would warrant its outright dismissal.

2.7. The Court of Appeal, after hearing both parties, condensed the decisive issues raised into two questions namely:

a) **Whether the judgment delivered by the lower Court is null and void for want of jurisdiction; and**

b) **In the event that we find that the trial court lacked jurisdiction, whether this matter is statute barred and cannot, for that reason, be remitted to the High Court for trial.**

2.8. In determining those issues, the Court of Appeal, agreeing in effect with the appellant's submission, observed that the appellant's motion was anchored in its [Court of Appeal] decision in **Guardall Security Group Limited v Reinford Kabwe**[2] (the Guardall case). In that case, a judge of the Industrial Relations Court had delivered a judgment well over a year after a complaint had first been presented before that Court. On appeal, the Court of Appeal set aside the judgment for what it regarded as want of jurisdiction on the part of the High Court Judge.

2.9. In coming to that decision, the Court reasoned that a failure to comply with section 85 (3)(b)(ii) of the Industrial and Labour Relations Act stripped the dealing judge of jurisdiction to continue dealing with the same matter.

2.10. For completeness, we reproduce the material part of section 85 (3)(b)(ii) of the Industrial and Labour Relations Act. It enacts as follows:

> **The Court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented.**

2.11. In the present case, and in keeping with its decision in the **Guardall**[2] case, the Court of Appeal held that the judgment delivered outside the period prescribed for conclusion of matters, was null and void as the presiding judge had, at expiry of the one year, become destitute of jurisdiction. The Court did not leave matters there. It went on to hold that as the complaint itself had been properly filed, the only blotting infraction lay in the trial court's failure to dispose of the matter within one year from the filing date of the complaint. Therefore, the complaint itself remained 'alive' on the record.

2.12. Consequently, the Court of Appeal set aside the judgment of the High Court and, adopting its approach in the **Guardall**[2] case, remitted the matter to the High Court for a fresh hearing [before a different judge] and deemed the complaint to have been filed on the date of its judgment. This, according to the Court, was for the purpose of

providing a reference date for reckoning the fresh one-year period the High Court was obliged to comply with under section 85(3) (b) (ii) of the Industrial and Labour Relations Act.

2.13. The gist of the Court of Appeal's decision can be distilled from the following passage in its judgment:

> **In the premises, we repeat what we did in the *Guardall Case* and accordingly remit the record to the IRD for re-hearing before another Judge of competent jurisdiction. In order to comply with the time limit which started running upon presentation of the complaint, we order that the complaint is hereby deemed to have been filed on the date of this Judgment.**

2.14. The appellant was not at all enthused by the Court of Appeal's decision and has now appealed to this Court.

3.0. THE GROUND OF APPEAL AND THE APPELLANT'S CASE

3.1. Before us the appellant has fronted a sole ground of appeal framed as follows:

> **Whether, on a proper interpretation, non-compliance with Section 85 (3)(b)(ii) of the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 affects only a judgment delivered, or the entirety of the proceedings.**

3.2. Heads of argument in support of this ground were duly filed. On behalf of the appellant, Mr. Petersen surmised that the appeal hinges on the interpretation of section 85 (3)(b)(ii) of the Industrial and Labour Relations Act whose provisions we have reproduced at paragraph 3.10 above. The question, according to the learned counsel, is whether that section affects both the trial proceedings and the resultant judgment.

3.3. The learned counsel took us through the case law interpreting section 85(3)(b)(ii) of the Industrial and Labour Relations Act, starting with the **Guardall**[2] case, stressing in the process, the holding of the Court of Appeal regarding the lapse of jurisdiction after one-year.

3.4. He pointed us to another Court of Appeal decision in **African Banking Corporation v. Lazarus Muntete**[3] (the **African Banking Corporation** case) where the Court, faced with the trouble of interpreting section 85 (3)(b)(ii) of the Industrial and Labour Relations Act, clarified that it had the requisite jurisdiction to remit a matter to the High Court in an

instance where a judgment delivered after one year following the filing of the complaint is found to be invalid for want of jurisdiction.

3.5. The Court's view in the **African Banking Corporation**[3] case was that what is a nullity is the decision of the trial court and not the filed complaint. The Court of Appeal's decision was purportedly premised on the provisions of section 24 of the Court of Appeal Act which stipulate that:

> **The Court may, on the hearing of an appeal in a civil matter —**
>
> > **if it appears to the Court that a new trial should be held, set aside the judgment appealed against and order that a new trial be held.**

3.6. Counsel also adverted to the decision of the Court of Appeal in **Citibank Zambia Limited v. Suhayl Dhudia**[4], the case subject of this appeal, where the Court of Appeal effectively decided that a failure to dispose of a matter within the requisite one-year period would only nullify the judgment while the proceedings before the Court leading to that judgment remained unaffected. Furthermore, that the matter would be, in the words of counsel, 'reset' by

remitting it to the Industrial Relations Court before a different judge for a [re]hearing and determination.

3.7. It was Mr. Petersen's argument that while it would be convenient to only annul the resulting judgment, the practical effect would be to cause mayhem in the Industrial Relations Court.

3.8. The learned counsel noted that the judges of the Industrial Relations Division of the High Court have routinely relied on the **Guardall**[2] and the **African Banking Corporation**[3] cases in justifying the resumption of jurisdiction where it had been lost by effluxion of time in terms of section 85(3)(b)(ii). To illustrate the point, counsel pointed to two cases. The first was **Muliokela David Wakunuma v. Sanlam Life Assurance Zambia Limited**[5]. There, Mwansa J., seemingly resuscitated lost jurisdiction following the lapse of one year in a somewhat self-contradictory statement in his judgement:

> **the Complaint is still active before the Court and is not rendered null and void by failure to dispose of it in one year. And reference to another judge gives it a fresh lease of life or mandate.**

3.9. Faced with a similar question of jurisdiction in the second (later) case of **Nosiku Likolo and Others v. Magnum Security Services Limited**[6] the same Judge opined that:

> **in my considered view, reallocation of the matter to a different judge of the Court brings in a new perspective in that one-year limit within which to dispose of a matter starts running from the time he/she is re-allocated the matter...the Court is given leeway to deem the date of reallocation as the date when time starts running for disposal of the Complaint.**

3.10. Mr. Petersen pointed out that the decisions in the two cases were made before matters went to trial following preliminary issues raised by the parties questioning the court's jurisdiction.

3.11. Counsel argued, however, that the Court of Appeal's view that only the judgment is rendered null and void does not apply in instances where the one-year elapses before the matter is even heard. In that case, there would be no judgment to speak of.

3.12. In all, Mr. Petersen agreed with the Court of Appeal only to the extent that a judgment delivered outside the prescribed time is invalid for want of jurisdiction but disagreed that the lodged complaint remains active. As regards the status of the proceedings, he contended that they too are 'poisoned' after the one-year period. Therefore, any decision made from those proceedings is a nullity.

3.13. We were referred to our decision in **JCN Holdings v. Development Bank of Zambia**[7] where we relied on **Chikuta v. Chipata Rural District Council**[8] and **New Plast Industries v. Commissioner of Lands and Another**[9] in holding that if a court has no jurisdiction to hear and determine a matter, it cannot make any lawful orders or grant any remedies sought by a party.

3.14. Mr. Petersen further referred us to the ruling of the Court of Appeal, subject of this appeal, and noted that the cases which the Court of Appeal interrogated in those portions of the ruling all relate to the time within which a decision of a court must be made whereas the provision subject of this

appeal relates to the period for disposal of the whole matter.

3.15. To be clear, the cases interrogated by the Court of Appeal in that part of the ruling were **ZEGA Limited v. The Zambia Revenue Authority**[10], **Zambia Revenue Authority v. Fillimart Investments Limited**[11], **Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and another**[12] and **Bhagwandas Fatechani Daswani v. HPA International and Others**[13]

3.16. It will be recalled that in **ZEGA Limited v. Zambia Revenue Authority**[10] what was at issue was whether a written decision of the Tax Appeals Tribunal delivered about eleven years after the hearing of the matter, was valid in view of section 10 of the Tax Appeals Tribunal Act which enjoins the Tribunal to render its decision within sixty days of conclusion of the hearing. The Court of Appeal held that the decision delivered outside the period specified by statute was null and void.

3.17. The case of **Zambia Revenue Authority v. Fillimart Investments Limited**[11] was decided by the Supreme Court. The main question in that case was whether the Tax Appeals Tribunal had jurisdiction to grant a stay of execution. Although we noted section 10 of the Tax Appeals Tribunal Act providing for the Tribunal to deliver its decisions within sixty days of hearing a matter, we did not pronounce ourselves on the consequence of failure to comply with that section.

3.18. In the Nigerian case of **Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and another**[12], which the Court of Appeal heavily relied upon, the Supreme Court of Nigeria considered section 258(1) of the 1979 Constitution of Nigeria which ordered any court established under it to deliver a written judgment within three months after a hearing. The court held that a judgment delivered outside the prescribed period was without effect. In the Indian case of **Bhagwandas Fatechani Daswani v. HPA International and Others**[13], a judgment delivered close to five years after

the prescribed period for delivery was, largely on account of the integrity of such a decision, held to be unsafe. The court directed a retrial before the High Court.

3.19. On the principles of interpretation of statutes, the learned counsel for the appellant quoted a passage from our decision in **Matilda Mutale v. Emmanuel Munaile**[14] in which we stated that where the words of a statute are precise and unambiguous, then no more can be necessary than to expound those words in the ordinary and natural sense. He reminded us that we echoed these sentiments in **Anderson Kambela Mazoka and Others v. Levy Patrick Mwanawasa**[15] and **General Nursing Council of Zambia v. Ing'utu Milambo Mbangweta**[16].

3.20. Mr. Petersen submitted, as was held in those cases, that the literal rule of interpretation must be applied in this case as the provision in question is clear and unambiguous. By the said provision, a court is mandated to hear and determine a matter within the prescribed period of one year.

3.21. Adopting the view taken by the Constitutional Court in **Zambia National Commercial Bank Plc v. Martin Musonda and 58 Others**[17], Mr. Petersen argued that even after the amendment of the Constitution in 2016, the Industrial Relations Court continued to operate under the existing legislation.

3.22. He stressed that there is a distinction between the time within which a decision must be made and the time within which proceedings must be concluded. According to Counsel, the first of these goes to the validity of the decision while the second affects the proceedings and all that flows from those proceedings.

3.23. He reiterated that where a court does not dispose of a matter within the prescribed time, that court loses jurisdiction and without jurisdiction there logically cannot be any valid decision. He referred us to our decision in **Zambia Revenue Authority v. Professional Insurance Corporation Limited**[18] where we remarked that jurisdiction

is the gateway to the temple of justice, and without it there would be no basis for continuing with the proceedings.

3.24. To support his argument, he referred us to the case of **Hakainde Hichilema and Godfrey Bwalya Mwamba v. Edgar Lungu and Others**[19] in which the Constitutional Court held, inter alia, that it had lost jurisdiction after the constitutionally prescribed time for hearing the presidential election petition had elapsed.

3.25. Regarding the power to remit matters that are not heard for lack of jurisdiction to the High Court for hearing and determination, Mr. Petersen argued that a previously filed complaint does not remain alive post the requisite one-year period for conclusion of the matter. He contended that a court cannot regain lost jurisdiction and maintained that Section 85(3)(b)(ii) of the Industrial and Labour Relations Act affects as much the proceedings as it does the judgment.

3.26. In orally supplementing his heads of argument at the hearing of the appeal, counsel suggested that the applicable rule of statutory interpretation in the present case should be the literal rule as the purposive rule of interpretation must only be applied to remedy an absurd result arising out of a literal interpretation. He referred to the definition of the word 'absurdity' in Black's Law Dictionary that it is:

> **the state or quality of being grossly unreasonable; an interpretation that leads to an unconscionable result especially one that the parties or the drafters could not have intended and probably never considered.**

3.27. After quoting various passages from the **Guardall**[2] case, he submitted that the mischief that the 2008 amendment to the Industrial and Labour Relations Act was meant to cure was the delay in conclusion of matters commenced in the Industrial and Labour Relations Court. Where, after the one-year period elapses and the matter is not yet concluded, a party is at liberty to recommence the action in line with section 85(3)(b)(i) of the Industrial and Labour

Relations Act which allows a court, on application by a party, to extend the period for presenting a complaint.

3.28. As regards the use of the purposive approach, Counsel conceded that the court may, in appropriate circumstances, consider the consequences of the literal interpretation of a statutory provision and the intention of parliament. However, he maintained that remittance or reallocation of a matter for a fresh hearing cannot be the cure for the loss of jurisdiction.

3.29. We were urged to uphold the appeal in its entirety. Further, that in light of Rule 44 of the Industrial and Labour Relations Court Rules the question of costs shall be left to the discretion of the Court.

4.0. THE RESPONDENT'S CASE

4.1. Mrs. Kalima-Banda, on behalf of the respondent, submitted that the appellant's appeal is frivolous and vexatious as it aims at depriving the respondent of a hearing of its complaint on the merits. She contended that her view is fortified by the fact that the appellant initially

appealed against the decision of the High Court before presenting a motion raising preliminary issues in its own appeal.

4.2. It was counsel's view that the only reason that the appellant challenged the remittance of the matter to the High Court was because it believed that the matter had become statute barred. In addition, she argued that the appellant is not challenging the propriety of the filing of the complaint but rather the Court's failure to determine the matter within one year from the date the complaint was filed.

4.3. Mrs. Kalima-Banda contended that the appellant has reneged on its argument and now contends that the Court has no jurisdiction to remit the matter to the High Court. In addition, that the decision of the Court of Appeal did not have the effect of dismissing the respondent's claim. She added that, by this appeal, the appellant is attempting to have the matter against it dismissed without being determined on the merits.

4.4. Mrs. Kalima-Banda referred us to our decision in **Development Bank of Zambia and Mary Ncube (Receiver) v. Christopher Mwanza and 63 Others**[20] to support her argument that there must be finality to litigation.

4.5. Regarding the rules of statutory interpretation, the learned counsel referred us to Chapter 7 of the book *Legal Process: Cases, Statutes and Materials* by Mulela Margaret Munalula where the learned author identifies several rules of statutory interpretation which include the context rule, the fringe rule, the mischief rule, the literal rule, the golden rule and discusses presumptions.

4.6. Mrs. Kalima-Banda also referred us to an extract from Tewari's book, *Legal Research Methodology,* where the learned author H. N. Tewari opines that the literal rule essentially entails that from the words of the law there should be no departure. According to counsel, the literal rule is the primary rule that the courts must employ where a statute is clear and unambiguous. We were, however, reminded of our holding in **Attorney General and Another v.**

Lewanika and Others[21] where we stated that wherever a strict interpretation of a statute gives rise to an absurdity and unjust situation, the judges should and can use their good sense to remedy it. To further buttress her argument, Mrs. Kalima-Banda referred us to the cases of **General Nursing Council of Zambia v. Ing'utu Milambo Mbangweta**[16] and **Agro Fuel Investment Limited v. Zambia Revenue Authority**[22] where we stated that while the literal rule of interpretation is the primary rule it can be departed from if the result of its application would be an absurdity.

4.7. Mrs. Kalima-Banda invited us to purposively interpret the provision subject of this appeal. She referred us to the **Guardall**[2] case where the Court of Appeal cited with approval the decision of the Supreme Court of Nigeria in **Chief Dominic Onuorah Ifezue v. Livinus Mbadugha and another** [12] where that Court set aside a decision of the Court of Appeal which had been delivered outside the prescribed time and remitted the matter to the lower court for rehearing and determination.

4.8. To further persuade us, Mrs. Kalima-Banda referred us to the English case of **Seaford Court Estates Limited v. Asher**[1] and quoted a passage from the judgment of Lord Denning L.J. calling upon judges not to be passive bystanders lamenting the lack of clarity in statutes and urging them instead to work on finding the legislative intent.

4.9. Counsel argued that the provisions of the section in issue, while seemingly clear in their import, must be interpreted using a purposive approach. She contended that the interpretation solicited by the appellant would lead to an unreasonable and unjust outcome.

4.10. According to Counsel, the judges of the Industrial Relations Division of the High Court are currently using their initiative and common sense so that matters are reallocated and given a new lease of life. Counsel observed that the Industrial Relations Court which is now a division of the High Court was created as a court of substantial justice. We were referred to the definition of the term

'substantial justice' by the learned authors of Black's Law Dictionary when they define it as:

> **Justice fairly administered according to rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits.**

4.11. Pushing the argument further, Mrs. Kalima-Banda drew our attention to the case of **Ellington Diwell Chongesha v. Securicor Zambia Limited**[23] where we acknowledged the fact that the Industrial Relations Court is meant to administer substantial justice. She also referred us to a passage from Chungu Chanda's article in *SAIPAR Case Review* where the learned author reviews the **Guardall**[2] case and discusses the purpose of Section 85(3)(b)(ii) of the Industrial and Labour Relations Act in the following words:

> **...to ensure that employment matters, being matters that go to the root of employee's livelihood are dealt with in a reasonably efficient manner. This is due to the importance of having issues relating to employment disputes and income security of a person disposed of expeditiously. Work-related disputes are seen as critical matters due to the implication they could have on an employee and his ability to sustain himself and his family.**

4.12. In trying to exhort us to accept her submission, the learned counsel drew us into some administrative statistics in the Industrial and Labour Relations Division of the High Court. She intimated that at the time of filing the respondent's heads of argument there were a total of 656 Complaints filed in the Industrial and Labour Relations Division in 2022 alone against a total of five (5) judges in that Division. This number of cases, she grieved to say, did not even include matters that the Division had carried forward from the previous year.

4.13. Counsel noted that it is inevitable that these matters would not be concluded within one year. She also noted that the Complaint, subject of this appeal, was filed in 2013 and judgment was rendered in 2019 with various factors contributing to the delay. She reiterated that in these circumstances the court must employ the purposive rule of interpretation as any other rule would lead to an unjust result.

4.14. According to Mrs. Kalima-Banda, the appropriate order would be to extend the prescribed time and remit the matter for rehearing before the Industrial Relations Court or deem the judgment of Mwansa J. to have been valid.

4.15. With regard to the issue of subject matter jurisdiction, Counsel called in aid Black's Law dictionary. The learned authors define this type of jurisdiction as:

> **Jurisdiction over the nature of the case and the type of relief sought; the extent to which the court can rule on the conduct of the persons or the status of things.**

4.16. Consequently, Counsel contended that while there may be loss of subject matter jurisdiction, the complaint remains properly filed before the Court. Therefore, the Court of Appeal was on firm ground when it found that the complaint was not void and proceeded to remit the matter to the High Court.

4.17. According to Counsel, it could not have been the intention of Parliament to have matters dismissed when the one-year period lapses even when parties are not at fault.

4.18. In augmenting her heads of argument at the hearing of the appeal, the learned counsel for the respondent contended that all the criteria for employing the purposive approach to interpreting the relevant provision in this case has been met. The literal interpretation, she argued, would bring about an absurd and unconscionable result which was outside the intention of the Legislature and the drafters.

4.19. She added that Section 85(3)(b)(ii) of the Industrial and Labour Relations Act does not prescribe what happens when there is non-compliance with the said provision which has led to various interpretations by judges in the Division. Further, that respondents in the Industrial and Labour Relations Division of the High Court have used the provision as a device to escape liability. She further suggested that until an amendment is made to the provision, a purposive interpretation approach ought to be adopted.

4.20. In conclusion, counsel argued that while the appeal is guised under the cloak of public interest, it is at its core frivolous and vexatious as is evidenced by the different issues raised by the appellant before the Court of Appeal and those raised in this Court.

5.0. ANALYSIS AND DECISION OF THE COURT

5.1. Notwithstanding the formulation of the ground of appeal which we have reproduced at paragraph 4.1 of this judgment, this appeal raises somewhat curious and deeply troubling questions which implicate section 85(3)(b)(ii) of the Industrial and Labour Relations Act, in particular the consequences of failure to conclude matters before the court within one year of their being filed.

5.2. The **Guardall**[2] case, decided by the Court of Appeal in June 2020 and its progeny, seem to have come up with two fairly uneasy propositions, namely first, that a court that fails to conclude any matter before it within the one-year period prescribed in section 85(3)(b)(ii) of the

Industrial and Labour Relations Act is divested of its legal capacity to continue handling that matter. Second, that despite its loss of jurisdiction, the dealing judge in that court, or the appellate court in the event of an appeal, could nonetheless re-allocate the same matter to another judge (of co-ordinate jurisdiction) within the High Court to undertake a *de novo* hearing of the matter.

5.3. We begin by addressing the second of the two propositions which we find rather unsettling. The notion of a revival of lost jurisdiction by the High Court is one that seems to have come through the innovative interpretation of section 85(3)(b)(ii) of the Industrial and Labour Relations Act by the Court of Appeal.

5.4. This point was so passionately explained in the **African Banking Corporation**[3] case. In that case, that Court held that where a decision of the High Court is passed after one year from the commencement of the action, it is the judgment that is invalid for want of jurisdiction and not the complaint itself and, therefore, that remittance of the

case record to another judge of the High Court for a fresh hearing is the proper and justified course to take.

5.5. We have also earlier on in this judgment generously quoted from Mwansa J's judgments in **Muliokela David Wakunuma v. Sanlam Life Assurance Zambia Limited** [5] and in **Nosiku Likolo and Others v. Magnum Security Services Limited**[6] where the learned judge claimed, among other things, that 'reference of a matter to another judge gives it a fresh lease of life or mandate' and that 'reallocation of the matter to a different judge of the Court brings in a new perspective in that the one year limit within which to dispose of a matter starts running from the time he/she is re-allocated the matter.'

5.6. These judicial pronouncements, in our view, are a confirmation that the two propositions articulated by the Court of Appeal as regards the consequences of a failure to abide by section 85(3)(b)(ii) of the Industrial and Labour Relations Act have, in point of fact, acquired strong judicial resonance in some Superior Courts.

5.7. Counsel for the parties have correctly pointed to case authorities explaining the effect of absence of jurisdiction on the part of a court. We agree with the authorities that hold that when a court is destitute of jurisdiction it has no legal capacity to deal with a matter beyond the determination that it has no jurisdiction. We are in this regard sympathetic to the articulation of this point by a single judge of this court in his ruling in the case of **Access Bank (Zambia) Limited v Group Five/ZCON Business Park Joint Venture**[24] where he observed that:

> **It hardly bears emphasis that without jurisdiction, a court has no power to take one more step. Where a court holds the opinion that it has no jurisdiction – the very basis for continuation of the proceedings before it – the judge must forthwith remove his wig and gown and down his tools in respect of the matter before him.**

5.8. Our understanding of Mr. Petersen's submission on the point is that once lost, jurisdiction cannot be recreated or reestablished. The only course lawfully available to a complainant desiring to have her complaint, which is vitiated for want of jurisdiction, determined is to invoke the permissive provisions that vouchsafes to the High

Court power to entertain and allow delayed filing of complaints. Mrs. Kalima-Banda, on the other hand, thinks judges in both the High Court and the Court of Appeal have the power and the obligation to keep matters caught up in the one-year rule alive by allocating or referring such matters to other judges of the High Court.

5.9. For our part, we have considerable difficulty accepting the reasoning employed by the courts in those cases. The arguments justifying the position taken by the Court of Appeal, especially, do not sit entirely easy with either existing binding or persuasive authority, or even logic.

5.10. In our considered view, jurisdiction reposes in these circumstances, in the High Court - the one High Court that the country has, established by Article 133 of the Constitution – and does not just attach to the individual judges of the High Court handling specific matters. Therefore, when the High Court bases its decision to vitiate proceedings on want of jurisdiction, it is illogical and wrong for the same High Court in the same matter to

rule that it still has jurisdiction to refer or reallocate the cause, or to suggest that it can recreate jurisdiction for itself, only that this time that jurisdiction is to be exercised by a different judge of co-ordinate power within the same court. Once its jurisdiction elapses, if it does at all, it logically means it has no jurisdiction to take one further step in the matter, including allocating or reallocating it. We believe that the approach taken by the High Court to allocate matters after it holds that it has no jurisdiction, finds no support in any authority in the law, and much less, in common sense.

5.11. We think on the contrary that if a High Court judge loses jurisdiction over a matter for reasons which are not personal or peculiar to the judge, that judge cannot create or recreate that jurisdiction through a re-allocation of the matter to another judge of the same court, for it is in truth the court that has lost jurisdiction. It would be the High Court losing jurisdiction and the High Court passing on jurisdiction to itself. A loss of jurisdiction renders the High

Court bereft of jurisdiction to decide on the further conduct of a matter.

5.12. A similar argument extends to the Court of Appeal. Once the High Court has lost jurisdiction, the Court of Appeal cannot recreate that jurisdiction for the High Court by a mere reference of the matter to the same court that has lost jurisdiction. In fact, we agree with Mr. Petersen that once jurisdiction is lost, it cannot be revived by remitting the matter to the Industrial Relations Court or by reallocation of the matter to a different judge of the Division.

5.13. Notwithstanding our foregoing observations, we consider the issue whether lost jurisdiction may be reestablished, as a peripheral question and, therefore, the view we have ventilated on this matter can at best sound in *obiter dictum.* The bottom-line question, in our respectful view, remains whether jurisdiction is in fact lost by the sheer failure to conclude a matter within one year of its initial filing.

5.14. In the ruling, subject of this appeal, it is the decision in the **Guardall**[2] case that the Court of Appeal apparently placed premium upon and consequently followed. In the **Guardall**[2] case itself the Court appeared to have, as we have stated already, significantly relied on a Nigerian Supreme Court decision. As illustrated by Mr. Petersen in his arguments, the judges within the Industrial Relations Division of the High Court would appear to have followed the **Guardall**[2] decision, amplified as it was in subsequent judgments to which we have referred, in reviving lost jurisdiction.

5.15. In the absence of a clear spell-out of the consequences of failure to observe the provision of section 85(3)(b)(ii) of the Industrial and Labour Relations Act, the question, in our opinion, becomes one of statutory interpretation. It requires a careful appraisal of the construction to be placed on that section within the general intendment of the Act and the overall design of the section.

5.16. In determining this question, the Court of Appeal in the **Guardall**[2] case considered the plain meaning of section 85 (3) (b) (ii) of the Industrial and Labour Relations Act which we have quoted at paragraph 3.10 of this judgment. The Court noted the mandatory nature in which the provision is couched and opined that the jurisdiction of the Industrial Relations Court is limited to a period of one year and once that period elapses, that jurisdiction is lost. In the Court of Appeal's view, it matters not on whose account the delay is occasioned as the loss of jurisdiction is by operation of the law.

5.17. Our view, which is shared by counsel for both sides, is that the default position when interpreting legislation is for the court to consider the plain language of the statute itself. In other words, the interpretive process normally begins with a narrow focus on the meaning of particular words and phrases. Where the language of the statute is simple and unambiguous, it must be applied according to its terms.

5.18. Indeed, the provision of section 85(3)(b)(ii) appears clear and seemingly does not require any exoteric interpretation to understand it. It directs the court to dispose of a matter brought before it within a period of one year from the date of filing or presentation of the complaint. What the section does not state, however, is what the consequence or consequences should be of failure to abide by it. Yet, we are clear in our view that no exclusion or restriction of the court's jurisdiction is to be readily inferred from this provision alone.

5.19. We must interpose here and ask ourselves a difficult but direct question: was the decision in **Guardall**[2] which has been followed almost to the point of fanatical adulation lately, in fact the correct decision? The ominous question is whether the Court of Appeal should have adopted the literal rule of interpretation when considering section 85 (3)(b)(ii) of the Industrial and Labour Relations Act.

5.20. Where, as in this case, the statutory provision being considered is silent or unclear as to what the consequences of its breach will be, the judge has the duty to interpret the provisions of the statute to fit the purpose for which the statute was drafted and thereby avert reading into the statute unintended consequences for its non-observance. The judge must not attribute a meaning, or in this case a consequence, to the provisions which may bring forth inconsistencies, uncertainties, and ambiguities when the provisions are considered against the legislative intent.

5.21. Broadly speaking, where the literal rule of interpretation creates an absurdity, the golden rule may be invoked to modify the reading of words to avoid an offensive situation. Likewise, the mischief rule allows judges to consider the gap or the mischief which the statute was intended to address. The purposive approach requires that judges look beyond the contents of the statute and discover the original purpose for the enactment of the

legislation and its meaning should be defined from that purpose.

5.22. The point was well articulated by Lord Denning, when in **Seaford Court Estate v Asher**[1] he stated, in a passage also quoted by Mrs. Kalima-Banda in her submission, thus:

> **A judge believing himself to be fettered by the supposed rule that he must look at the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity, it would certainly save the judge trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot just fold his hands and blame the draftsmen. He must set out to work on the constructive task of finding the intention of Parliament, and he must do this not just from the language but also from the consideration of the social conditions which give rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature.**

Our observations in **Agro Fuel Investment Limited v. Zambia Revenue Authority**[22] and other case authorities to which Mrs. Kalima-Banda referred, were to the same effect. In the **Agro Fuel**[22] case we stated as follows:

> **According to decided cases, the duty of the Courts in the interpretation of statutes is to give effect to the intention of the Legislature. And the primary rule of interpretation of statutes is that the meaning of any enactment is to be found in the literal and plain meaning of the words used, unless this would result in absurdity, in which case the Court's authority to cure the absurdity is limited.**

5.23. In **Attorney-General and Another v Lewanika and Others** [21], we observed that:

> **...the present trend is to move away from the rule of literal interpretation to 'purposive approach' in order to promote the general legislative purpose underlying the provisions. Had the learned trial judge adopted the purposive approach, she should undoubtedly have come to a different conclusion. It follows, therefore, that whenever the strict interpretation of a statute gives rise to unreasonable, and an unjust situation, it is our view that judges can and should use their good common sense to remedy it...**

5.24. The learned authors of Halsbury's Laws of England, 4th edition, volume 4 at paragraph 1369 note that:

> **It is usually said that the making of the law, as opposed to its interpretation, is a matter for the legislature, and not for the courts, but, in so far as Parliament does not convey its intention clearly, expressly and completely, it is taken to require the court to spell out that intention**

> **where necessary. This may be done by finding and declaring implications in the words used by the legislator, or by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation.**

5.25. The purposive rule gives primacy to the construction which serves better in accomplishing the objects and purposes for which particular legislation was enacted. This rule takes its cues from the mischief rule which posits that interpretation should be accorded to a statute which suppresses the mischief that was present in the old law, and advances the remedy given by the legislature in the new law.

5.26. We thus agree with counsel for the respondent that the judicial duty of statutory interpretation is not a duty merely to read; it is a duty to help the legislature achieve the aims that can reasonably be inferred from the statutory design, and it requires us to pay attention to the spirit as well as the letter of the statute.

5.27. It seems to us from a reading of the judgment of the Court of Appeal in the **Guardall**[2] case that the Court was significantly influenced by the literal rule of interpretation of the provision in question, leading it to the conclusion that on the plain words of section 85(3)(b)(ii) of the Act the court loses jurisdiction one year after a complaint is presented before it. This position resonates with the argument advanced by Mr. Petersen.

5.28. To be fair to the Court of Appeal, it did give an extended consideration of the purpose of the amendment which gave life to the provision in issue. The Court took time to locate the mischief the legislature intended to cure with the 2008 amendment, by section 85(3)(b)(ii) of the Industrial and Labour Relations Act.

5.29. To the extent relevant, portions of the Court of Appeal judgment reads as follows:

> **In our quest to appreciate the mischief that the legislature intended to cure through the amendment of Section 85(3) of the Industrial and Labour Relations Act, we consulted the Parliamentary debates of 15th August, 2008 when the amendment Bill was presented for second**

reading... the then Minister of Labour and Social Security... said the following in relation to the proposed amendment to Section 85(3);

"Mr. Speaker, however, a number of challenges which need to be addressed have been experienced in our labour market. The challenges include, among others the following;

(i) "The long time taken to settle industrial disputes"

...We also checked the Report of the Committee which contains the following statement;

"Section 85 of the Act provides for the jurisdiction of the Court.... The complaint shall be presented within 90 days of exhausting all available administrative channels and where there are no administrative channels the period is limited to 90 days of the occurrence of the event leading to the complaint or application. ... Furthermore, the Court will be required to dispose of the matter within one year of presentation of the complaint before the Court."

What we note from the two statements by the Select Committee and the Minister is that the mischief identified was the long time it took, under the then Section 85(3) to settle industrial disputes as no time limit was provided. Secondly, the legislature proposed to use the time limit in the proposed amendment as the cure for the problem of delay.

5.30. We agree with the Court of Appeal insofar as identifying the mischief that the 2008 amendment sought to remedy

is concerned. The objective was to ensure that delays are curbed in the disposal of cases. Any interpretation that would suggest a contrary intention would, in our respectful view, create an absurdity.

5.31. Surprisingly, after all its industry in locating the intention of the legislature in coming up with the provision in issue, the Court of Appeal, in the end, opted to uphold the literal rule of interpretation when it observed that:

> **We strongly believe that side-stepping the plain unambiguous words of the legislature would be to make the law devoid and contemptuous of Parliament.**

5.32. We, of course, accept the notion that courts must always resist the temptation to engage, under the façade of statutory interpretation, in what is really judicial legislation; they should avoid encroaching on parliamentary ground. Lord Diplock's counsel, given in **Duport Ltd v Sirs**[25], is in this regard quite instructive. Parliament, he said, makes laws while the judiciary interprets them, meaning that, where Parliament has

legislated, it is for the courts to interpret the legislation, not to rewrite it.

5.33. The lengthy delays in concluding industrial disputes before the courts in this country have for years been fairly endemic. The reason for the statutory insistence on the expeditious conclusion of matters is to promote the speedy and efficient administration of justice so that it is not compromised either by administrative lapses or inertia on the part of the litigants.

5.34. We thus do not agree with the holding of the Court of Appeal relating to the loss of jurisdiction of the High Court after the lapse of the one-year period considering the very mischief the law sought to cure and the unique nature of the Industrial Relations Court. If indeed the intention of the Legislature in passing section 85(3)(b)(ii) was that industrial and labour relations disputes not concluded within one year would leave the presiding court without jurisdiction many cases would be terminated without

judgment being passed. Parties would be locked out from receiving justice – not even delayed justice.

5.35. Therefore, putting it plainly, the view we take is that the approach taken by the Court of Appeal in the **Guardall**[2] case defeats the very purpose for which the law was amended in 2008. The 2008 amendment was meant, as the Court of Appeal readily acknowledged, to provide speedy justice to those that brought matters before the Industrial Relations Court.

5.36. We think that a purposive interpretation of section 85 (3)(b)(ii) of the Industrial and Labour Relations Act means that the Court does not lose jurisdiction after one year. To hold otherwise would, in our view, create a result which is absurd in light of the intention of Parliament to curb delays in concluding matters of an industrial relations nature.

5.37. A purposive interpretation would also, in our view, be in keeping with the general tone of the Industrial and Labour Relations Act which in Section 85(5) enacts that the main

object of the Court is to do substantial justice between the parties before it.

5.38. The Court of Appeal in the **Guardall**[2] case referred to our decision in **Anderson Kambela Mazoka and others v Levy Mwanawasa and others**[15] (the Mazoka case) in which the respondents' advocates had, as an offshoot to their main argument, prompted us to rule on whether jurisdiction is lost by a court if it did not determine an election petition within the 180 days prescribed by the Electoral Act (then in force). We explained in our *obiter* remarks, as the Court of Appeal correctly quoted us in the **Guardall**[2] case, that jurisdiction was not lost. We stated thus:

> **The respondents have also submitted that in the event that we hold that section 18 of the Electoral Act applies to Presidential Election Petitions, we should also hold that section 27(1) ... which prescribes the time limit of 180 days within which to determine an election petition should also apply.... We found that section 18 ... does not apply ... to a presidential election petition.... Even if section 27(1) would be applicable, strict adherence to it would lead to a number of illogicalities and absurdities in parliamentary and presidential elections in that regardless of any reason, a petition which exceeds 180**

> **days must cease or collapse in midstream without any determination. This, in our view, would be most unsatisfactory. Perhaps this explains why the section is silent on what should happen when a petition has exceeded 180 days. We take note that in practice most parliamentary election petitions and even the last presidential election petition exceeded 180 days.**

5.39. To us the principal consideration must be that the courts must perform their constitutional mandate, that is to say, adjudicate matters and resolve disputes. With a view to realising this constitutional imperative, courts have as we hinted in the **Mazoka**[15] case, times without number, leaned in favour of tolerating some delays even beyond one year, provided no other irregularity is discernable in the proceedings, or their handling.

5.40. Our approach in the **Mazoka**[15] case has as much to do with the attainment of the aim and purpose of the judicial function as set out in the Constitution as it has with the realities of the constraints and challenges upon the judicial system in terms of limited resources, inadequate adjudicators, poor logistics, congested court rolls, and overburdened court infrastructure and facilities.

5.41. Although there is, strictly speaking, no legal argument that Mrs. Kalima-Banda was making when she observed that the number of cases filed in the Industrial and Labour Relations Division of the High Court, viewed against available judges, made the reallocation to new judges of cases that had reached the one-year time line, justifiable, it would be unrealistic, in our view, not to recognise that the administration of justice in this country is under severe stress.

5.42. It is beyond argument that inordinate and/or unreasonable delay in the administration of justice defeats the ends of justice. In fact, it often occasions miscarriage of justice and it is thus to be deprecated.

5.43. Time prescriptions of times within which to conclude proceedings or deliver judgments are the bane of many judges lives on the bench and can be a source of relentless worry and pressure. They are, however, important for completion of work; for encouraging its smooth flow, and for setting expectations. There may also be serious

consequences for failing to meet deadlines. This is probably why under section 94(2) of the Industrial and Labour Relations Act it is the adjudicator who suffers the penalty.

5.44. A number of case authorities have been cited by counsel to support the view that where a time period is prescribed for a court to perform, or an individual to move the court, failure to comply with such timeline leaves the court without jurisdiction.

5.45. It is of course difficult to accept, as a general proposition, that failure by a court, however caused, to conclude hearing and determining a dispute within a statutorily stipulated time, results in a loss of jurisdiction, even when the statute in question is silent on the consequences of such failure. In the Industrial and Labour Relations Act itself, for example, section 94 directs that at the conclusion of a trial of a dispute, a judgment must be delivered within 60 days. Judgments delivered outside the 60-day period, and they are in majority, are not

necessarily void on account of loss of jurisdiction. The sanction for failure to deliver within the prescribed period is, under subsection 2, placed on the adjudicator.

5.46. The nature and causes of delay must be understood, and so should the complexity of some matters, and other imponderables that creep in during court proceedings such as the possible death, midstream, of an adjudicator and the need to rehear a matter, or a prolonged illness by a party to litigation, or the outbreak of a public emergency such as COVID 19, which renders a hearing impossible for a good part of the year, and the possible temporal unavailability of vital witnesses for considerable periods of time. It would be fallacious and unfair to adopt an unbending attitude that portrays any cause of delay as inconsequential, and that provided such delay exceeds one year it should result in the termination of proceedings.

5.47. Whether proceedings so terminated can be recommenced in the manner suggested by Mr. Petersen or not, there is doubtlessly serious prejudice to the litigants, or at least

one of them. There is in any case never any guarantee that an application for late filing of a complaint will always be granted by a court.

5.48. For good measure, we must stress that using the literal rule of construction to imply a loss of jurisdiction is absurd because when jurisdiction is deemed lost, without a possibility of a rehearing there is an injustice occasioned because litigating parties go without resolving their dispute. That could never have been the intention for the 2008 amendment to the Industrial and Labour Relations Act.

5.49. Even assuming that the matter is recommenced after a one-year delay, there would be occasioned to the parties an injustice too, and that action would not meet the purpose of the amendment – speedy disposal. If there is one thing that is certain, it is that delay cannot be cured by a party recommencing an action after one year. On the contrary it would only further delay the disposal of the matter in addition to causing other forms of prejudice. It

could also, in theory at least, create endless one-year cycles which is plainly an absurd result.

5.50. We may also add that the one-year rule (for expeditious disposal of industrial and labour disputes) was not intended to lock out litigants who, through no fault of their own, could not have their cases determined within one year.

5.51. Purely from the access to justice perspective, the provisions of section 85(3)(b)(ii) of the Industrial and Labour Relations Act cannot be construed otherwise than designed to expedite determination of cases before the labour court. Access to justice is more likely to be impeded when matters cannot be concluded because they have clocked one year in court, still less can access to justice be promoted if courts are deemed to lose jurisdiction at the end of one year after the matters are filed in court.

5.52. To the extent that the Court of Appeal decision in **Guardall**[2] took a narrow view of the consequences of failure to comply with section 85(3)(b)(ii) of the Industrial and

Labour Relations Act, it was badly decided and is liable to be over-turned.

5.53. We accordingly hold that the case of **Guardall Securities Group Limited v. Reinford Kabwe**[2] is bad law and is hereby reversed. This, by necessary implication, means that all other decisions based on or arising from the **Guardall**[2] case can suffer no better fate.

5.54. The effect of this is that the High Court Judge who tried the present matter and rendered his decision beyond the one-year prescribed period did not lose jurisdiction to determine the matter. Therefore, his judgment was not a nullity as held by the Court of Appeal. The present appeal is thus dismissed.

5.55. Granted that the appellant had filed an appeal, and rather than prosecute it decided to take out a motion on its own appeal, we are inclined to exercise our discretion in regard to the award of costs, against the appellant. There will thus be costs for the respondent to be taxed if not agreed.

5.56. What vividly emerges from this judgment is the need for legislation to be clear. Many complainants in industrial and labour disputes have not had their cases heard on account of the interpretation that beyond one-year, courts lose jurisdiction. This is notwithstanding that no fault can be attributed to them for the delay. They have failed to recommence their matters for various reasons, not least because they may lack the technical know-how or the financial wherewithal to do so; or the respondent company may have, for whatever reason, ceased to exist, or the relevant vital witnesses may have expired.

5.57. Our recommendation to the relevant arms of government is to consider amendments to the provision that has brought about such a significant amount of confusion in interpretation.

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Mumba Malila
CHIEF JUSTICE

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E. M. Hamaundu
SUPREME COURT JUDGE

.....
R. M. C. Kaoma
SUPREME COURT JUDGE