

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

SCZ/8/29/2021

B E T W E E N:

K. V. WHEELS AND CONSTRUCTION LIMITED

APPLICANT

AND

INVESTRUST BANK PLC

RESPONDENT



**Coram: Malila CJ, Kaoma and Kabuka, JJS on 1st November,
2022 and 24th May, 2023**

For the Applicant: Mr. B. A. Sitali of Messrs Butler & Co. Legal Practitioners

For the Respondent: Mr. N. Nchito, S.C. and Mr. C. Hamwela of Nchito & Nchito Legal Practitioners

R U L I N G

Malila CJ, delivered the ruling of the court.

Cases referred to:

1. *Bidvest Food Zambia Limited & 4 Others v. CAA Import & Export Limited* (Appeal No. 56/2017)
2. *R.D. Harbottle (Mercantile) Limited v. National Westminster Bank* (1978) 146, 155
3. *Bulgaris and Co. Ltd v Shinhama Bank* (2013) ALL ER (D)339
4. *Hermanus Philipus Steyn v Giovanni Grecchi Ruscone* (Appeal No. 4 of 2012)

5. *Southland Rubber Co. Ltd v Bank of China* (1997) HKLRD 1300
6. *Equitable Trust Company of New York v Dawson Partners Ltd* (1927) 27 Ll.L Rep.49
7. *Savenda Management Services Limited v. Stanbic Bank (Z) Limited* (Selected Judgment No. 10 of 2018)
8. *Kekelwa Samuel Kongwa and Meamui Georgina Kongwa* (SCZ/8/05/2019)

Legislation referred to:

1. *Court of Appeal Act No. 7 of 2016*
2. *Court of Appeal Rules, Statutory Instrument No. 65 of 2016*
3. *Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia*
4. *Zuckerman on Civil Procedure Principles of Practice*, 3rd ed. (Sweet & Maxwell) (2013)
5. *Article 34 of the Uniform Customs and Practices for Documentary Credit Rules (UCP) 600 Rule 34*

1.0. BACKGROUND

1.1. The delay in rendering this ruling is sincerely regretted.

It was caused by an administrative oversight on our part.

1.2. The present motion is a renewed application for leave to appeal to the Supreme Court. This follows a refusal by a single judge of this court to grant the applicant's application for leave to appeal against a decision of the Court of Appeal handed down on 1st December 2021.

- 1.3. The background facts are that the applicant engaged an Italian company known as Sparts International SRL ('Sparts') for the supply of a block and paver making machine whose purchase price was US\$900,000.
- 1.4. The terms and conditions of sale stipulated that a 30% deposit, being US\$270,000, was payable to Sparts upfront, while the remaining 70%, translating to US\$630,000, was to be paid by way of an irrevocable letter of credit.
- 1.5. A loan facility of US\$1,179,296.00 was procured by the applicant from the Development Bank of Zambia (DBZ). The latter then instructed the respondent bank to open a letter of credit in favour of Sparts for the sum of US\$630,000. Upon receiving the shipping documents, DBZ instructed the respondent to make payment to Sparts, whereupon the respondent issued a letter of credit in the said sum of US\$630,000, being the balance payable on the purchase price for the equipment.

- 1.6. Sparts, however, failed to deliver the entire consignment of the equipment. It was subsequently declared bankrupt for reasons unrelated to the sale and purchase of the paver making machine.
- 1.7. The applicant then instituted proceedings against the respondent in the High Court by Writ of Summons and Statement of Claim, claiming among other things, the sum of US\$630,000, being the amount paid by the respondent to Sparts and debited to the applicant's account held at DBZ on 26th April 2013; damages for loss of business suffered, as a result of the incomplete delivery of the machine by Sparts, as well as special damages in respect of the applicant's assets which were pledged as security for the loan facility and seized by DBZ.
- 1.8. The High Court dismissed the applicant's claims, holding that on their face, the documents were compliant with the letter of credit. The appeal by the applicant to the Court of Appeal, was equally unsuccessful.

- 1.9. Unhappy with this outcome, and still desiring to escalate the grievance further, and in obedience to section 13(1) of the Court of Appeal Act, the applicant proceeded to apply for leave to appeal before the Court of Appeal.
- 1.10. It was the applicant's assertion that the intended grounds of appeal raised points of law of public importance relating to letters of credit; that such points of law were novel in nature and that the appeal had good prospects of success in any event.
- 1.11. By a ruling dated 1st December 2021, the Court of Appeal dismissed the application for leave to appeal, holding that the application was devoid of merit.
- 1.12. Dissatisfied with that outcome, the applicant renewed its application for leave before a single judge of this court pursuant to Order XI Rule 1 (4) of the Court of Appeal Rules, 2016 and Rules 50(3) and 48 of the Supreme Court Rules, Chapter 25 of the Laws of Zambia.

1.13. Before the single judge, the applicant contended:

1. That the intended appeal raises the following points of law of public importance which have never been adjudicated upon by the Supreme Court in this jurisdiction;
 - (a) whether an issuing bank is at liberty to ignore the conditions stipulated in a letter of credit and proceed to make payment even if the presented documents are not compliant with the conditions stipulated in a letter of credit;
 - (b) whether an issuing bank that makes payment on non-compliant documents is not obliged to reimburse the applicant of a letter of credit for loss occasioned by such payment;
 - (c) whether Article 34 of the UCP 600 absolves an issuing bank which makes payment on non-compliant document from liability; and
 - (d) whether the doctrine of strict compliance is applicable to letters of credit in Zambia.
2. That considering that letters of credit are an important payment method especially in international commerce, the above points of law transcend this present case and are likely to affect and bind others in their commercial dealings.
3. That considering the fact that (the) law on letters of credit has not been adumbrated in this jurisdiction, the issues

sought to be raised in the intended appeal will contribute to the growth of case law on letters of credit in Zambia; and

4. That in addition to raising points of law of public importance, the grounds set out in the Memorandum of Appeal have reasonable prospects of success.

1.14. In determining the application, Chinyama JS, sitting as a single judge of this court, determined that the very essence of a point of law of public importance was that it was related to a matter of general public interest, which transcended the interests of the immediate parties to the dispute into the public realm. In this regard, the judge made reference to our judgment in **Bidvest Food Zambia Limited and 4 Others v CAA Import and Export Limited**⁽¹⁾.

1.15. As regards whether the proposed appeal raised any points of law of public importance, the learned judge found that the complexion of the issues in this matter fell within the private, rather than the public realm. He held that the grounds of appeal as articulated in the draft memorandum of appeal, did not support the argument

that points of law of public importance had been raised in the intended appeal.

- 1.16.** In addition to concluding that no points of law of public importance were manifest, the single judge was of the view that the proposed appeal disclosed no prospects of success. He also held that no novel issues had been brought to light by the proposed grounds of appeal. The application for leave to appeal was thus dismissed with costs to the respondent.

2.0. THE CURRENT MOTION

- 2.1.** The decision of the single judge so riled the applicant as to spur it to apply, by the current motion, to the full court to vary, discharge or reverse the decision of the single judge. The renewed application for leave has been made pursuant to Order 48(4) of the Supreme Court Rules, Chapter 25 of the Laws of Zambia.
- 2.2.** The affidavit in support of the motion was sworn by one Kennedy Nonde Simwinga, director of the applicant

company. In that affidavit, the deponent reproduced the intended grounds of appeal. For a clear appreciation of those grounds in relation to the arguments supporting the present motion, we reproduce them here. They read as follows:

- (i) **Having found that the goods bought by the Appellant from Sparts International SRI valued at US\$900,000.00 were supposed to be shipped as a single shipment, the court below erred in law and fact when it found that the insurance cover of only US\$693,000.00 was compliant with the conditions of the letter of credit of 20th December 2012 as read with Article 28 (f) (iii) of UCP 600 which required that the value of the goods being shipped be insured for 110% at the minimum, and that the Respondent was therefore entitled to make payment to Sparts International SRI.**
- (ii) **The court below misdirected itself in both law and fact when it failed to appreciate that despite the payment to Sparts International SRI being staggered, the commercial invoice furnished by Sparts International SRI was supposed to reflect US\$900,000 which is the full value of the goods which the Appellant had bought from Sparts International SRI in order to be compliant with the conditions of the letter of credit which stated that the commercial invoice be in accord with the Proforma Invoice No. 97b, and that the Respondent should**

therefore not have made payment to Sparts International SRI.

- (iii) The Court below misdirected itself in fact and law when it held that the Respondent was not to be guided by the value on the certificate of insurance, but rather it was to be guided by the instruction of Development Bank of Zambia to pay upon sight of the bill of lading and packing list, a holding which ignores the fact that, having opened a letter of credit for the Appellant, the Respondent was now bound to make payment only upon Sparts International SRL presenting documents which strictly complied with the conditions of the letter of credit as embodied in the letter of credit of 20th December 2012.
- (iv) The Court below misdirected itself in law and fact when it held that Article 34 of the UCP 600 absolved the Respondent of liability under the letter of credit despite the Respondent having made payment on the non-compliant documents presented by Sparts International SRL under the letter of credit.
- (v) The Court below misdirected itself in law and in fact when it held that the Respondent could not be held liable for the failure of Sparts International SRL to ship or deliver the entire consignment at once.
- (vi) The Court below erred in fact and law when it stated that Development Bank of Zambia, which was neither a confirming bank nor party to the Letter of Credit of 20th December 2012 had confirmed the documents presented

by Sparts International SRL as being compliant in spite of the evidence showing that DBZ did not confirm the letter of credit.

- (vii) The court below erred in law and in fact when it failed to apply the doctrine of strict compliance, in determining whether the Respondent was justified in making payment under the letter of credit of 20th December 2012 to Sparts International SRL.

3.0. THE APPLICANT'S CASE

3.1. Mr. Butler Sitali, learned counsel for the applicant, argued that these intended grounds of appeal all disclose points of law of public importance. He relied on the criteria set out in the **Bidvest⁽¹⁾** case to argue that the intended appeal raised points of law of public importance using the yardstick of 'public importance' as explained in that case.

3.2. The learned counsel adverted to the case of **R.D. Harbottle (Mercantile) Limited v. National Westminster Bank⁽²⁾** in which letters of credit were described as the 'lifeblood' of international commerce. He argued, that it was imperative that all the conditions stipulated in a letter of

credit are fulfilled to the letter, as this facilitates certainty in the realm of international commerce. He observed that in this instance, the requirement to ensure strict compliance had not been followed, hence the applicant's application to be granted leave to appeal in order that the point regarding compliance and its impact on international commerce, may be clarified by the Supreme Court.

3.3. Turning to the grounds of the proposed appeal, Mr. Sitali argued, in relation to proposed grounds 1, 2 and 3, that they raise a point of law of public importance, that is, whether an issuing bank can ignore terms and conditions set out in a letter of credit and issue payment based on non-complaint documents.

3.4. He contended that the insurance certificate was not compliant as it did not reflect an insurance cover amounting to 110% of the total value of the goods.

- 3.5.** Furthermore, counsel submitted that there was a disparity between the sum indicated on the commercial invoice and the sum reflected on the proforma invoice No. 97b, as the commercial invoice bore the sum of US\$ 630,000, while the proforma invoice reflected the sum of US\$900,000. In counsel's view, this raised issues as to the certainty and reliability of letters of credit as a system of payment.
- 3.6.** In the applicant's estimation, a point of law of public importance was notable from the intended grounds of appeal, as the respondent's payment was based on non-compliant documents, which was in violation of the terms and conditions of the letter of credit.
- 3.7.** In relation to ground 4, Mr. Sitali challenged the notion that Article 34 of the Uniform Customs and Practices for Documentary Credit Rules (UCP) 600 does not hold liable an issuing bank which has effected payment on non-complaint documents. Counsel asserted that the UCP 600, Article 34, does not completely immunise the

respondent from liability, as this would be contrary to the doctrine of compliance, which according to counsel, is the bedrock of letters of credit. Counsel cited the case of **Bulgaris and Co. Ltd v Shinham Bank**⁽³⁾ in aid of this submission.

- 3.8. In respect of ground 5, counsel for the applicant contended that the lower court erred in failing to hold the respondent accountable for the failure by Sparts to deliver the entire consignment.
- 3.9. Under ground 6, it was contended that DBZ had not been designated as the confirming bank in the letter of credit and therefore, it cannot claim that it had confirmed the documents received by the respondent.
- 3.10. In relation to ground 7, the applicant's counsel alleged that the lower court had failed to apply the doctrine of strict compliance. Counsel argued that this position has to be rectified by this court on appeal, given the

usefulness of letters of credit in the sphere of international trade.

4.0. THE RESPONDENT'S CASE

4.1. In opposition to the application for leave, the respondent filed an affidavit sworn by one Brigitte Njovu, a legal assistant in the respondent bank. The sum of Ms Njovu's deposition is that the intended grounds of appeal raise neither points of law of public importance, nor novel issues, nor indeed are there any prospects of success in the intended appeal. She therefore, urges this court to dismiss the motion before it.

4.2. In the heads of argument in opposition to the motion, counsel called our attention to the case of **Hermanus Philipus Steyn v Giovanni Grecchi Ruscone**⁽⁴⁾, where a Kenyan court gave guidance on the meaning of 'a matter of general public importance'. She distilled from that case the point made by the court that in order for a matter to be one of general public importance, the vital

elements to be considered are that the matter be of wider public significance; that it be based on uncertain points of law and must transcend beyond the rights or interests of the parties to the dispute.

- 4.3. Counsel for the respondent took a holistic approach to responding to the applicant's arguments. She observed in relation to grounds 1, 2, 3, 4, 5 and 7, that the chief argument being advanced by the applicant, was whether an issuing bank is at liberty to ignore terms and conditions set out in a letter of credit and effect payment on non-compliant documents.
- 4.4. She contended that no point of law of public importance arises under these grounds as the obligation placed upon the respondent, vis-à-vis a letter of credit, was limited in ambit. Counsel placed reliance upon the case of **Southland Rubber Co. Ltd v Bank of China**⁽⁵⁾ in making this assertion.

- 4.5. In rebutting the argument made in relation to Article 34 of the UCP 600, counsel reiterated that payment had been made on sight of compliant documents, as no disparities were observed on the face of the documents. On this basis, the respondent was absolved from liability in terms of Article 34 of the UCP 600.
- 4.6. Ground 6 was argued in isolation. In response to the contention that DBZ was not designated as a confirming bank in the letter of credit, the respondent referred to the finding of the Court of Appeal that the respondent was obligated to act on the instructions of DBZ and that in making payment on the letter of credit, the respondent was merely doing as it was instructed. The case of **Equitable Trust Company of New York v Dawson Partners Ltd**⁽⁶⁾ was cited in support of the general argument that a paying bank was not in those circumstances liable.
- 4.7. It was argued by Counsel that there was no correlation between the payment made by the respondent, on the instructions of DBZ and the failure by the supplier to

ensure full delivery of the equipment. In her view, the loss or damage suffered by the applicant cannot be attributed to the respondent as the respondent had fulfilled its duty to pay upon sight of compliant documents.

- 4.8. In relation to the applicant's argument that leave be granted on the basis of the novelty of the issues the intended appeal raised, the respondent submitted that the proposed grounds of appeal did not, in fact, disclose the existence of any novel issue to support the applicant's submission.
- 4.9. As regards the applicant's argument that the intended appeal had prospects of success, the respondent asserted that this point would no longer, by itself, suffice as a basis for the grant of leave. Counsel referred to the **Bidvest**⁽¹⁾ case in this regard and posited that prospects of success needed to be buttressed by the other prerequisites as provided in section 13(3)(a) or (b) or (d) of the Court of Appeal Act.

4.10. Counsel concluded her submissions by imploring us to dismiss the application with costs as it had failed to satisfy the requirements as envisioned in section 13 (3)(a) and (b) of the Court of Appeal Act.

5.0. THE APPLICANT'S REPLY

5.1. In reply to the opposing heads of argument, the applicant's counsel, by and large, rehashed his earlier arguments in support of the motion. Counsel asserted that the respondent had misconstrued the meaning of Lord Viscount's dictum in the case of **Equitable Trust Company**⁽⁶⁾, where it was stated that "if the bank does as it is told, it is safe".

5.2. In the assessment of Counsel, the proper interpretation of this statement is that the respondent ought to do as it was told vis-à-vis the letter of credit and not other ancillary documents. We were therefore urged to vary the ruling of the single judge and grant leave to the applicant to appeal to the Supreme Court.

6.0. ANALYSIS AND DECISION

6.1. We are indebted to counsel for both parties for their submissions. Long and winding as those submissions were, the motion before us raises two fairly narrow issues, namely: first, whether the intended grounds of appeal reveal a point or points of law of public importance, and second, whether the intended appeal has prospects of success in terms of section 13(3)(b) of the Court of Appeal Act.

6.2. The questions for determination are ones that have received almost exhaustive treatment by this court in various case authorities since our decision in **Bidvest**⁽¹⁾. Before that decision we had in **Savenda Management Services Limited v. Stanbic Bank (Z) Limited**⁽⁷⁾ seized the first opportunity to provide some guidance on the applicability of section 13(3) of the Court of Appeal Act.

6.3. In **Bidvest**⁽¹⁾ we considered at great length the meaning of 'a point of law of public importance' as envisaged in

section 13(3)(a) of the Court of Appeal Act and the conditions to be satisfied if that provision is raised as a basis for seeking leave to appeal. We also considered prospects of success as a basis for granting leave as well as the other two factors set forth in section 13(3)(c) and (d).

6.4. In considering whether a point of law of public importance exists so as to justify the granting of leave for an appeal to be heard by the Supreme Court, we widely approved the observation by a single judge of this court in **Kekelwa Samuel Kongwa and Meamui Georgina Kongwa**⁽⁸⁾ that a point of law of public importance arises where the determination of a legal question extends beyond the rights and interest of the immediate parties to the appeal and the circumstances of a particular case and are general in nature.

6.5. The single judge in the **Kekelwa Samuel Kongwa**⁽⁸⁾ case explained the point in the following words:

I apprehend that for an appeal to satisfy this requirement, it must raise a legal question with a public or a general character rather than one that merely affects the private rights of the parties to the dispute ... An intended appellant ought to demonstrate that the point of law raised is a substantial one the determination of which will have a significant bearing on the public interest.

6.6. Similarly, in the Kenyan case of **Hermanus Philipus Steyn v. Giovanni Grecchi Ruscone**⁽⁴⁾ which was cited by the learned counsel for the respondent, the Supreme Court amplified on the meaning of the phrase 'a matter of general public importance' in the following terms:

- (1) The importance of the matter must be public in nature and must transcend the circumstances of the particular case so as to have a more general significance.
- (2) Where the matter involves a point of law, the applicant must demonstrate that there is uncertainty as to the point of law and that it is for the common good that such law should be clarified so as to enable courts to administer that law, not only the case at hand, but other cases in future.

- 6.7. The authorities on the point agree that for an appeal to be regarded as one raising a point of law of public importance it need not necessarily be one that raises a difficult question of law; it must raise important questions of law, that is to say, a question that presents uncertainty on the state of the law requiring authoritative clarification. Such question must additionally affect a wider audience of the public than the immediate litigants in the appeal.
- 6.8. In the present case, the question can then be narrowed down to whether the issues in this appeal, which are doubtlessly arising from a contractual relationship between private entities, can indeed be regarded as raising points of law of public importance.
- 6.9. We must point out that as we observed in the **Bidvest**⁽¹⁾ case,
- many cases of a purely private nature including many in contract and tort are unlikely to raise a point of law of public interest since they quite often are designed to resolving the dispute to the satisfaction only of one or**

the limited parties to a particular dispute. This, however, is not in any way to suggest that such dispute would never transcend or snowball into the public arena or arouse or engage broader public interest or concern. To be certain, where there is a discernable public interest or public policy concern in the anticipated elucidation by the Supreme Court of a point of law in what is otherwise litigation between private parties, there is a definite possibility that such point of law would be one of public importance notwithstanding its private genesis.

- 6.10. The learned counsel for the applicant contends that the intended appeal raises points of law of public importance namely, first, whether an issuing bank can ignore terms and conditions set out in a letter of credit and issue payment based on non-compliant documents and second, granted that there was disparity between the sum indicated on the commercial invoice and that reflected on the proforma the issues of certainty and reliability of a letter of credit do not affect the validity of the letter of credit and the attendant obligations of the parties. According to counsel, the two issues raised on the facts are ones of law of public importance.

- 6.11. To us, it is not obvious what aspects of this appeal borne out of purely private treaty have transcended into the public realm. The arguments of the learned counsel for the applicant should have defined or identified precisely what becomes of public importance in resolving those questions. As it is, those arguments have not been helpful in this regard.
- 6.12. Taken in the round we do not consider that any of the grounds of appeal raises any point of law of public importance as the learned counsel for the applicant would like us to believe. We thus do not fault the single judge in his findings in this regard.
- 6.13. The questions that fall to be determined in the intended appeal are not extra-ordinary nor do they reveal uncertainties in the law so as to pass the qualifying test of being ones of public importance. Indeed, the case of **Southland Rubber Co. Ltd. v. Bank of China**⁽⁵⁾ endorsed the view that the obligation upon an issuing bank is one that is qualified as it merely requires that the documents

‘appear on their face’ to be compliant with the terms of the letter of credit.

- 6.14. Having carefully scrutinised the arguments of the parties to the dispute and more importantly, the findings of the Court of Appeal, we are of the unwavering viewpoint that the single judge was on firm ground in his holding. Indeed, as he pointed out at R28, and in our view correctly,

there is clearly no room for holding that an issuing bank is at liberty to ignore the conditions stipulated in a letter of credit and pay on non-compliant documents.

- 6.15. These sentiments were equally echoed by the Court of Appeal in its judgment where it stated that in issuing payment, the respondent did not ignore the conditions stipulated in the letter of credit.

- 6.16. It would appear to us, therefore, that the issue of compliance upon which the action turned, was factual in nature, namely, whether or not the issuing bank ignored

the conditions stipulated in the letter of credit on the circumstance in which payment was to be done.

- 6.17. In the **Bidvest**⁽¹⁾ case, we explained quite clearly that for a point of public importance to provide a basis for granting leave to appeal, it ought to be a point of law – an arguable point of law. We stated as follows:

Two final point on section 13(3)(a). First, it is always critical to bear in mind that under section 13(3)(a), the three different facets of the qualifying criteria for leave to be granted must be satisfied. These are: (i) a point of law; (ii) of public importance; and (iii) raised in the appeal.

- 6.18. We went further to explain in that case that an appeal anchored on findings of fact alone, even if it is demonstrated that those findings were perverse or not borne out of evidence, does not qualify as raising a ‘point of law’ in the first instance. An ordinary finding of fact *ipso facto* fails the test on that account alone.

- 6.19. We thus reiterate that even if it were to be accepted that there was an element of public significance in the

questions to be decided on appeal, those questions, to the extent that they are factual in content, would fail the test that such questions ought to be ones of law, not fact.

- 6.20. We now turn to the question whether the issues raised in the appeal were novel and thus deserving of consideration by the Supreme Court.
- 6.21. We have taken note of the arguments of counsel on the point, which arguments seem to suggest that a novel point of law is necessarily one of public importance. It seems to us from the ruling of the single judge that he was equally of the same disposition.
- 6.22. The issue of novelty i.e. whether every novel point in the sense of being one that has never been adjudicated upon in this jurisdiction meets the threshold test of raising a point of law of public importance, was considered in the **Bidvest**⁽¹⁾ case. We recorded our view on this point in the following terms:

We must state that novelty of a matter does not in itself and of itself alone turn a matter into one that raises a point of law of public importance within the intendment of section 13(3)(a) of the Act ... Indeed, there are many new legal points frequently raised in the Court of Appeal which do not necessarily translate into points of law of public importance by their sheer novelty. Undeniably, a completely new point of law may arise in the Court of Appeal which may be insignificant and arousing no public curiosity or interest.

6.23. Our view, therefore, that the argument of the applicant, premised on the issue of novelty in this jurisdiction of questions involving letters of credit, cannot be considered in isolation from the separate and more important factor of it being one of public importance. The novelty of an issue cannot be substituted for the need for such issue to be of public importance. A question may be novel but may not necessarily be of public importance. In other words, novelty does not always translate into public importance.

6.24. We now consider the aspect of the appeal bearing on prospects of success. Indeed, we explained in **Bidvest**⁽¹⁾

that the criteria to be used for grant of leave to appeal as set out in section 13(3)(a), (b), (c) and (d) are to be considered disjunctively, that is to say, satisfying one or the other of that criteria suffices.

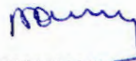
6.25. In **Savenda Management Services Limited v. Stanbic Bank (Z) Limited⁽⁷⁾**, we confirmed that satisfying one of the grounds as set out in section 13(3) of the Court of Appeal Act was sufficient to satisfy the requirement for grant of leave.

6.26. In **Bidvest⁽¹⁾** we observed that, that:

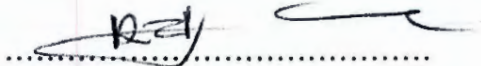
while section 13(3)(c) provides a stand-alone basis for granting leave to appeal against a judgment of the Court of Appeal, it should be resorted to very sparingly. If used liberally, the purpose of the restriction of appeals contemplated in section 13 of the Court of Appeal Act would be grossly undermined.

6.27. Our view in any case is that the present appeal presents no prospects of real success. In this regard, we are in agreement with the single judge.

6.28. The inevitable conclusion we come to is that this motion has no merit. It is thus dismissed with costs to be taxed in default of agreement.



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Mumba Malila
CHIEF JUSTICE



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R. M. C. Kaoma
SUPREME COURT JUDGE



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J. K. Kabuka
SUPREME COSRT JUDGE