

My Lady the Chief Justice

My Lord the Former Chief Justice, Hon. Mr. Justice Annel Silungwe

My Lord the Former Chief Justice Hon. Mr. Justice M.M.W.S. Ngulube

My Lord the Former Chief Justice Hon. Mr. Justice Ernest L. Sakala

My Lord Hon. Deputy Chief Justice, Mr. Justice M.S. Mwanamwambwa

My Lady Hon. Justice E.N.C. Muyovwe, Chairperson Training Committee

All Supreme Court Judges present

Hon. Lady Justice Chisanga, President of the Court of Appeal

Hon. Mr. Justice C.F. Mchenga, Deputy President of the Court of Appeal

All Judges of the Court of Appeal present

All Protocol observed

I am exceedingly, humbled and honoured for this opportunity to share my thoughts with this distinguished audience.

As already acknowledged and recorded this is an historic and momentous occasion as it is the first time, that an intermediate court, between the High Court for Zambia and the Supreme Court of Zambia, has been established.

Our expectations as Legal Practitioners and indeed the Public at large are undoubtedly extremely high. The interim report of the Constitution Review Commission dated the 29th day of June, 2005 issued pursuant to the provisions of A. Commission, Statutory Instrument No. 84 of 2004.

“Two petitioners said that a Court of Appeal should be re-established and be placed between the Supreme Court and High Court. The reason advanced for this submission was that there was a need for at least two stages of appeal from the High Court. The other reason was that the Supreme Court handles too many

appeal cases to operate efficiently and therefore there is a need for a Lower Court to screen them.”

The two petitioners were clear in their quest for a Court of Appeal to hear appeals from the High Court. The establishment of the Court of Appeal was to operate as a sieving mechanism for non-meritous Appeals and most importantly to ease the workload on the Supreme Court.

The Court of Appeal of Zambia is established by Article 130 of the Constitution of Zambia, Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia which provides as follows:

130. There is established the Court of Appeal which consists of such number of judges as prescribed.

It is important to note that the current Court of appeal is not the final Court of Appeal or indeed the Court of last resort. Articles 125 (2) (a) and 131 (2) of the Constitution of Zambia provide as follows:

125. (1) *Subject to Article 128, the Supreme Court is the final court of appeal.*

(2) **The Supreme Court has—**

(a) **appellate jurisdiction to hear appeals from the Court of Appeal;** and

(b) *jurisdiction conferred on it by other laws.*

(3) *The Supreme Court is bound by its decisions, except in the interest of justice and development of jurisprudence.*

131. (1) *The Court of Appeal has jurisdiction to hear appeals from—*

(a) *the High Court;*

(b) *other courts, except for matters under the exclusive jurisdiction of the Constitutional Court; and*

(c) *quasi-judicial bodies, except a local government elections tribunal.*

(2) **An appeal from a decision of the Court of Appeal shall be**

made to the Supreme Court with leave of the Court of Appeal.

Further Section 13 of the Court of Appeal Act No.7 of 2016 provides as follows:

13. (1) *An appeal from a judgment of the Court shall lie to the Supreme Court with leave of the Court.*

The predecessor Court to the present Supreme Court of Zambia was the Court to the present Supreme Court of Zambia was the Court of Appeal of Zambia which replaced the Federal Supreme Court after the abolition of the Federation of Rhodesia and Nyasaland in 1963.

That Court of Appeal of Zambia was established by the Zambia Independence Act, 1964 and Zambia Independence Order, 1964.

In 1973 the Chona Constitutional Review Commission recommend as follows:

JUDICATURE

96. We discussed the position of the Court of Appeal and the High Court of Zambia in relation to the Judicial Committee of the Privy Council to which appeals from the Court of Appeal might be referred. We came to the conclusion that time had come to remove even the permissive references to the appellate jurisdiction of the Judicial Committee of the Privy Council.

The Constitution should provide for a final Zambian Court of Appeal in line with our status as a Sovereign State.”

The Supreme Court of Zambia was first established by Article 107 of the Constitution of Zambia, Constitution of Zambia Act No. 27 of 1973 as read together with the Supreme Court of Zambia Act No. 1 of 1973. Article 92 of the Constitution of Zambia Act No. 1 of 1991 as amended by Act No. 18 of 1996 under the current legal regime the Supreme Court of Zambia is established by the provisions of Article 124 of the Constitution of Zambia, Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia as read with the Supreme Court of Zambia Act, Chapter 25, Volume 3 of the Laws of Zambia.

Pursuant to the provisions of Article 121 of the Constitution of Zambia, Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia, the Supreme Court of Zambia and the Constitutional Court rank equivalently.

It is on expectation that the Court of Appeal which is currently in Lusaka will devolve to the provinces and progressively to the districts in terms of Article 120(5) of the Constitution of Zambia. And Section 5(1) of the Court of Appeal Act No.7 of 2001 which provide as follows:

5. (1) The sittings of the Court shall, before its devolution to the provinces and districts, usually be held at Lusaka but may be held at such other place as may be specified in a circuit schedule issued by the Chief Justice

JURISDICTION OF THE COURT OF APPEAL OF ZAMBIA

Before approaching any Judicial forum, it is the duty or a Legal Practitioner to examine the Statutory provisions that vest jurisdiction in a particular court. Article 131 of the Constitution of Zambia provides for the Jurisdiction of the Court of Appeal for Zambia, which provides as follows:

131. (1) The Court of Appeal has jurisdiction to hear appeals from—

- (a) the High Court;*
- (b) other courts, except for matters under the exclusive jurisdiction of the Constitutional Court; and*
- (c) quasi-judicial bodies, except a local government elections tribunal.*

(2) An appeal from a decision of the Court of Appeal shall be made to the Supreme Court with leave of the Court of Appeal.

Examination of the provisions of Article 131 (1) of the Constitution:

(a) Article 131(1) (a) of the Constitution of Zambia states that the Court of Appeal has jurisdiction to hear Appeals from the **High Court**. In my view this provision is clear.

(b) Article 131 (1) (b) of the Constitution of Zambia states that the Court of Appeal has jurisdiction to hear Appeals from **other Courts**. This provision is

potentially problematic as it seems envisage appeals from other Courts other than the High Court.

The provision for DIRECT APPEALS is not new. The Supreme Court of Zambia Act had provisions for DIRECT APPEALS.

Your kind attention is invited to the Supreme Court of Zambia case of DIRECTOR OF PUBLIC PROSECUTIONS V NGANDU AND OTHERS [1975] ZR 253 where Baron, DCJ (as he then was) held as follows:

“When the Court of Appeal for Zambia Act was repealed and replaced by the Act in September 1973 the opportunity was taken to rationalise the position and remove one or two of the anomalies that had been created by the introduction of direct appeals in the case of specified offences. Sub section (2) of the previous section 12 was replaced by subsection (4) of the new section 12, which reads:

“(4) If the Director of Public Prosecutions is dissatisfied with a judgment of the High Court in the exercise of its original jurisdiction, or of a subordinate court in respect of a specified offence, upon a point of law, he may appeal against such judgment to the Court”

The changes effected were that the Director of Public Prosecutions was given the same right of appeal direct to the Supreme Court as he previously had from a judgment of the High Court, and secondly the proviso to the previous section 12 (2) was deleted.”

Interestingly, the Court of Appeal Act No. 7 of 2016 does not provide for jurisdiction to hear Appeals from other Courts.

Section 4 (1) of the Court of Appeal Act, No. 7 of 2016 which governs jurisdiction of the Court provides as follows:

4. (1) The Court has jurisdiction to hear appeals from
Judgments of—

- (a) the High Court; and*
- (b) a quasi judicial body, except a local government elections tribunal.*

It will be observed that the provisions of section 4 (1) of the Court of Appeal Act No. 7 of 2016 are almost *Ipsissima verba* the provisions of Article 131 (1) of the Constitution of Zambia, Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia save that jurisdiction to hear appeals from other courts which is contained in the Constitution of Zambia is not contained in the Court of Appeal Act.

What is not clear is whether the omission was the draught persons mistake or an attempt to cure a potential mischief.

Sadly, the Constitution of Zambia, cannot be amended by implication.

Your kind attention is also invited to the case of IN THE MATTER OF SECTION 53 (i) OF THE CORRUPT PRACTICES ACT, NO. 10 OF 1980 AND IN THE MATTER OF ARTICLES 20 (7) AND 29 OF THE CONSTITUTION AND IN THE MATTER BETWEEN: THOMAS MUMBA - APPLICANT AND THE PEOPLE - (1984) Z.R. 38- is very instructive Chirwa, J (as he then was) opined as follows:

“There can be no implied amendment of the constitution.”

“...In countries like Zambia where there is a written constitution, the Constitution is the supreme law, any other laws are made because the Constitution provides for their being made; and are therefore subject to it. It follows therefore that unless the Constitution is specifically amended, any Act that is in contravention of the Constitution is null and void.”

“...As I said that the Corrupt Practices Act itself does not purport to amend the Constitution.”

(c) Article 131 (1) (c) of the Constitution of Zambia states that the Court of Appeal has jurisdiction to hear Appeals from *quasi-judicial* bodies, except a local government elections tribunal. This provision will clearly be a challenge for the Court of Appeal, the Legal Practitioners, Litigants and the General public.

Maybe the DIRECT APPEALS are those envisaged in circumstances as those provided for by Section 15(3) of the Court of Appeal Act which provides as follows:

15(3) *Where under section three hundred and twenty-four of the Criminal Procedure Code an application for an appeal to be heard out of time has been*

refused by the High Court, the applicant may apply to the Court for the appeal to be heard by the Court, and if such application is granted, the appeal shall be heard by the Court as if it lay direct to it.

Quasi-Judicial bodies are not defined.

Article 266 of the Constitution of Zambia, Constitution of Zambia Act, Chapter 1, Volume 1 of the Laws of Zambia, which is the definitions does not define *quasi-judicial* bodies.

Conversely, Article 266 of the Constitution of Zambia defines the following:

- (i) "Supreme Court" means the Supreme Court established in This Constitution;*
- (ii) "Constitutional Court" means the Constitutional Court established in this Constitution;*
- (iii) "Court of Appeal" means the Court of Appeal established in this Constitution;*
- (iv) "High Court" means the High Court established in this Constitution;*
- (v) "Subordinate court " means a court subordinate to the High Court;*
- (vi) "Superior court " means the Supreme Court, Constitutional Court, Court of Appeal and High Court established in accordance with this Constitution;*
- (vii) "Court" means a court of competent jurisdiction established by or under this Constitution; and*
- (viii) "Local government elections tribunal" means a tribunal established in accordance with Article 159.*

Equally, section 3, which is the Interpretation Section, of the Interpretation and General Provisions Act, Chapter 2, Volume 2 of the Laws of Zambia does not define *quasi-judicial* bodies.

Section 3 of the Interpretation and General Provisions Act defines the following:

- (i) "High Court" means the High Court for Zambia; and*
- (ii) "Supreme Court" means the Supreme for Zambia.*

Section 2, which is the Interpretation Section, of the Court of Appeal Act No. 7 of 2016 defines *quasi-judicial* body as follows:

“ quasi-judicial body ” means a body, other than a court, exercising a judicial function.

Section 2 of the Court of Appeal Act further defines Local government elections tribunal as follows:

“local government elections tribunal ” means a tribunal established in accordance with Article 159 of the Constitution;

Quasi- Judicial bodies are defined as follows:

“quasi-judicial body ” means a body, other than a court, exercising a judicial function;

Judicial body as Collins Dictionary of law defines quasi – Judicial body

“A quasi – judicial body is an entity such as an arbitrator or tribunal, generally of a public administrative agency, which has powers and procedure resembling those of a Court or a Judge.”

A quick legislative audit of the Statute Book reveals that the Legislature has established or has provided for the establishment of the following quasi-judicial bodies:

1. THE TAX APPEALS TRIBUNAL

The Tax Appeals Tribunal is established by the Tax Appeals Tribunal Act No. 1 of 2015. Section 3 of the Tax Appeals Tribunal Act renames the Revenue Appeals Tribunal and provides for the continuation of the Tribunal under a new name. Section 3 of the Tax Appeals Tribunal Act provides as follows:

“The Revenue Appeals Tribunal established under the repealed Act continues to exist as if established under this Act and is for purposes of this Act re-named the Tax Appeals Tribunal.”

The jurisdiction of the Tax Appeals Tribunal is governed by section 5 of the Tax Appeals Tribunal Act which provides as follows:

“Section 5. The functions of the Tribunal are to hear and determine-

- a) Appeals from decisions of the Commissioner-General under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act and other tax legislations; and
- b) Any matter prescribed by the Ministry, by statutory instrument, to be a matter against which an appeal may be made under the Acts referred to in paragraph (a).”

An Appeal from the Tax Appeals Tribunal lies to the Supreme Court of Zambia. Section 15 of the Tax Appeals Tribunal Act provides as follows:

“Section 15(1) A party to an appeal to the Tribunal may appeal to the Supreme Court from the decision of the Tribunal on a question of law or question of mixed law and fact but not on a question of fact alone.

(2) The Supreme Court shall hear and determine any appeal and may refer the matter back to the Tribunal for re-hearing, confirmation, reduction, increment or annulment of the assessment or decision made by the Tribunal and may make such further or order an appeal, whether as to costs or otherwise, as the Supreme Court consider necessary.”

Prior to this legislation the Tax Appeals Tribunal was regulated by the Revenue Appeals Tribunal Act No. 11 of 1998. Section 3 of the Revenue Appeals Tribunal Act provided as follows:

“Section 3. There is hereby established the Revenue Appeals Tribunal whose functions shall be-

(a) to hear and determine appeals under the Customs and Excise Act in the following circumstances:

(i) where an importer of any goods is of the opinion that the goods are incorrectly classified by the Commissioner-General under any item of the Customs Tariff and the importer, pays the amount demanded as duty by the Commissioner-General or furnishes security to the satisfaction of the Commissioner-General for the payment of the amount, and the importer

appeals to the Tribunal against such classification within three months after the payment of such amount or furnishing of such security;

(ii) where a person who intends to import goods or manufacture goods within Zambia and is of the opinion that the goods of the class or kind that the person intends to import or manufacture, as the case may be, are incorrectly classified by the Commissioner-General under any item of the Customs Tariff and that person appeals to the Tribunal against such classification; or

(iii) where the Commissioner-General has determined the value of any goods intended for importation into Zambia or manufactured within Zambia and any person aggrieved by such determination appeals to the Tribunal;

(b) to hear appeals under the Value Added Tax Act in respect of any of the following matters:

(i) the registration, or the cancellation, of registration of a supplier;

(ii) the refusal to register a supplier;

(iii) the tax assessed to be payable on any supply of goods or services or on the importation of any goods;

(iv) the amount of any input tax that may be credited to any taxable supplier;

(v) the application of any administrative rule providing for the apportionment or disallowance of input tax;

(vi) any notice under section twenty-five of the Value Added Tax Act;

(vii) the requirement of the Commissioner-General for the provision of security;

(c) to hear appeals against assessment of tax under the Income Tax Act; and

(d) to hear and determine any matter prescribed by the Minister, by regulation, to be a matter against which an appeal may be made under this Act.”

2. THE MINING APPEALS TRIBUNAL

The Mining Appeals Tribunal is established by the Mines and Minerals Development Act No. 11 of 2015. Section 3 of the Mines and Minerals Development Act defines Tribunal as follows:

“Tribunal” means the Mining Appeals Tribunal established under section ninety-eight.

Section 98 of Mines and Minerals Development Act establishes the Mining Appeals Tribunal and also governs its jurisdiction. Section 98 provides as follows:

98. (1) *There is established the Mining Appeals Tribunal.*
- (2) *The Tribunal shall consist of five members appointed by the Minister as follows:*
- (a) the Chairperson, who is a legal practitioner of at least ten years legal experience;*
 - (b) the Vice-Chairperson, who is a legal practitioner of at least ten years legal experience; and*
 - (c) three other members who are experts with not less than eight years experience and knowledge in matters relevant to mining or licensing under this Act.*
- (3) *The Tribunal has jurisdiction to—*
- (a) inquire into and make awards and decisions in any dispute relating to exploration, gold panning and mining under this Act;*
 - (b) inquire into, and make awards and decisions relating to, any dispute of compensation to be paid under this Act;*
 - (c) generally to inquire into and adjudicate upon any matter affecting gold panning, the mining or non-mining rights and obligations of any person or the Government under this Act, except for matters under Part VII which shall be heard and determined by the Tax Appeals Tribunal; and*
 - (d) perform such other functions as may be prescribed under this Act or any other written law.*

(4)The powers, rights and privileges of the Tribunal shall be the same as those conferred upon Commissioners by the Inquiries Act, and the provisions of that Act shall apply in relation to the hearing and determination of an appeal by the Tribunal under this section and to a person summoned to give evidence before the Tribunal.

An Appeal from the Mining Appeals Tribunal lies with the High Court. Section 100 of the Mining and Minerals Development Act provides as follows:

100. A person aggrieved with a decision of the Tribunal may, within thirty days of receiving the decision, appeal to the High Court.

3. THE LANDS TRIBUNAL

The Lands Tribunal is established by the Lands Tribunal Act No. 39 of 2010. Section 3 of the Lands Tribunal Act provides as follows:

“The Lands Tribunal established under the Lands Act, 1995, shall continue to exist as if established under this Act.”

The Lands Tribunal Act No. 39 of 2010 has to be read together with:

- i) the Lands and Deeds Registry (Amendment) Act No. 40 of 2010;
- ii) the Lands (Amendment) Act No. 41 of 2010; and
- iii) the Lands Act Chapter 184, Volume 12 of the Laws of Zambia.

The jurisdiction of the Lands Tribunal is governed by the provisions of section 4 of the Lands Tribunal Act No. 39 of 2010 which provides as follows:

“4(1) Subject to the Constitution, the Tribunal shall have jurisdiction to hear and determine disputes relating to land and in particular-

- a) To inquire into, and make awards and decisions in, any dispute relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act or any other law;*

- b) *To inquire into, and make awards or decisions in any dispute relating to land under customary tenure;*
- c) *To inquire into, and make awards or decisions relating to, any dispute of compensation to be paid in relation to land under the Lands Act, the Lands Acquisition Act or any other law;*
- d) *To inquire into, and adjudicate upon, any matter affecting the land rights and obligations, under the Lands Act, of any person or the Government;*
- e) *to hear and determine appeals against a direction of decision of a person in authority relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act or any other law;*
- f) *to make orders for the rectification of entries made in the Lands Register;*
- g) *to make orders for the cancellation of certificates of title that it considers to have been erroneously issued or to have been obtained fraudulently, or that it otherwise considers necessary to cancel;*
- h) *to make any declaration that it considers appropriate and issue any order for the implementation of the declaration;*
- i) *subject to the State Proceedings Act, to grant injunctive relief or any other interlocutory relief that it considers appropriate; and*
- j) *to perform such acts and carry out such functions as may be prescribed under any other written law.”*

The jurisdiction of the Lands Tribunal was exceedingly enhanced by legislative intervention.

An Appeal from the Lands Tribunal lies to the High Court. Section 16 of the Lands Tribunal Act provides as follows:

“A person aggrieved with the decision of the Tribunal may, within thirty days of the receipt of its decision, appeal to the High Court.”

Nota Bene: Section 16 of the Lands Tribunal Act in the ARRANGEMENTS OF SECTIONS

refers to “*Appeal to the Supreme Court*”.

Prior to this legislation the jurisdiction of the Lands Tribunal was regulated, *inter alia* by section 22 of the Lands Act, Chapter 184, Volume 12 of the Laws of Zambia.

The following judicial precedents are instructive:

- i) KAWANA MWANGELA V RONALD BWALE NSOKOSHI AND NDOLA CITY COUNCIL (2000) ZR 131
- ii) THE ATTORNEY-GENERAL V. STEVEN LUGURU (2001) ZR 116
- iii) HUMPHREY BANDA V. CHONGWE DISTRICT COUNCIL, MPHANDE AND OTHERS (2008) ZR 96 VOLUME 1.

4. PLANNING APPEALS TRIBUNALS

Planning Appeals Tribunals are established by the Urban and Regional Planning Act, No. 3 of 2015, Section 62 of The Urban and Regional Planning Act provides as follows:

“62.(1) The Minister shall, by statutory instrument, constitute a planning appeals tribunal for each Province of the Republic which shall determine disputes and hear and determine appeals from the decisions of planning authorities in the Province.

(2) A planning appeals tribunal shall consist of the following members appointed by the Minister—

(a) a legal practitioner of seven years or more legal experience, recommended by the Law Association of Zambia, who shall be the Chairperson;

(b) a planner of five years or more planning experience, registered under the Urban and Regional Planners Act, 2011, who shall be the Vice-Chairperson; and

(c) three persons, one of whom shall be a registered land surveyor by the Surveyors Institute of Zambia.

(3) The Minister shall, in the appointment of the members of a planning appeals tribunal, ensure equitable gender representation.

(4) The Minister may, by statutory instrument, provide for—

- (a) the tenure of office of members of the planning appeals tribunals;*
 - (b) the payment of expenses of the planning appeals tribunals;*
 - (c) the payment of allowances to the members, advisers, assessors and the secretariat to the planning appeals tribunals; and*
 - (d) any other matter relating to the planning appeals tribunals and the performance of functions for purposes of this Act.*
- (5) The Secretary to a planning appeals tribunal shall be a public officer seconded from the Ministry responsible for urban and regional planning.*
- (6) A planning appeals tribunal shall have jurisdiction over the Province for which it is established.*
- (7) A planning appeals tribunal shall convene at least four sessions per year.*
- (8) The Chief Justice may, by statutory instrument, make rules relating to—*
- (a) the manner and form for lodging of appeals to planning appeals tribunals;*
 - (b) the mode of summoning persons before a planning appeals tribunal;*
 - (c) the form and manner of service of summons requiring the attendance of witnesses and the production of any book, record, document or other information;*
 - (d) the procedure to be followed and the rules of evidence to be observed in proceedings;*
 - (e) the records of a planning appeals tribunal;*
 - (f) the notification of decisions of a planning appeals tribunal;*
 - (g) the functions of advisers and assessors to a planning appeals tribunal; and*
 - (h) such other matters necessary for the performance of the functions of a planning appeals tribunal.”*

The functions of the Planning Appeals Tribunal are stipulated in section 62(1) of the Urban and Regional Planning Act.

THE TOWN AND COUNTRY PLANNING TRIBUNAL, which was the predecessor TRIBUNAL of the PLANNING APPEALS TRIBUNALS, was abolished by the repeal of the Town and Country Planning Act. Section 75 of the Urban and Regional Planning Act provides as follows:

“Section 75. The Town and Country Planning Act, 1962, and the Housing (Statutory and Improvement Areas) Act, 1975, are repealed.”

5. THE RATING VALUATION TRIBUNAL

The Rating Valuation Tribunal is established by the Rating Act No. 12 of 1997. Section 28 of the Rating Act provides as follows:

“28. (1) There is hereby constituted the Rating Valuation Tribunal to which all objections under section seventeen shall be referred for determination.

(2) The Tribunal shall consist of-

(a) a Chairperson who shall be a legal practitioner;

(b) a Vice Chairperson who shall be a representative of the Attorney-General;

(c) two other members who shall be registered valuation surveyors;

(d) a representative from the Ministry responsible for local government;

(e) a representative from the Ministry responsible for lands

(f) a representative of the Government Valuation Department and

(g) one other person.

(3) There shall preside at all sittings of the Tribunal the Chairperson-

(a) in the absence of both the Chairperson, the Vice Chairperson; and

(b) in the absence of both the Chairperson and the Vice Chairperson, such member as the members present may elect for the purposes of that sitting.

(4) Members shall be appointed by the Minister.

(5) Members shall hold office for a term of three years or for such further term, and shall serve on such conditions, as the Minister may determine.”

Section 30 of the Rating Act governs the jurisdiction of the Rating Valuation Tribunal.

An Appeal from the Rating Valuation Tribunal lies to the High Court. Section 36 of the Rating Act provides as follows:

“36. (1) A person aggrieved by an award made by the Tribunal may appeal to the High Court.

(2) An appeal under subsection (1) shall be made within thirty days from the date of the Tribunal's decision.

(3) An appeal shall not be made to any court against the amount of any award made by the Tribunal or against a decision of the Tribunal as to whether an objection has or has not been properly made.

(4) A person who has appealed to the High Court against a decision of the Tribunal shall not be liable to pay rates until the appeal is heard by the High Court and the High Court finds against that person."

6. THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL

The Competition and Consumer Protection Tribunal is established by the Competition and Consumer Protection Act No. 24 of 2010. Section 67 of the Competition and Consumer Protection Act provides as follows:

"67. (1) There is hereby established the Competition and Consumer Protection Tribunal

which shall consist of the following part-time members appointed by the Minister:

(a) a legal practitioner of not less than ten years legal experience, who shall be the Chairperson;

(b) a representative of the Attorney-General, who shall be the Vice-Chairperson; and

(c) three other members who shall be experts, with not less than five years experience and knowledge, in matters relevant to this Act.

(2) Subject to subsection (5), a member of the Tribunal shall hold office for a period of four years from the date of appointment and may be re-appointed for a further term of four years.

(3) The Minister may appoint alternate members of the Tribunal referred to in paragraph (c) who shall have, and may perform, the functions of a member during a member's absence.

(4) A person shall not be appointed as a member of the Tribunal if the person-

- (a) is an undischarged bankrupt;*
- (b) is insane or of unsound mind;*
- (c) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside Zambia; or*
- (d) has been convicted of an offence under any law.*

(5) The office of a member of the Tribunal shall become vacant-

- (a) upon the member's death;*
- (b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;*
- (c) if the member is removed by the Minister;*
- (d) if the member is adjudged bankrupt;*
- (e) if the member becomes mentally or physically incapable of performing the duties of a member;*
- (f) if the member is convicted of an offence under any law and sentenced therefore to imprisonment for a period exceeding six months; or*
- (g) in the case of a member referred to in paragraphs (a) and (b) of subsection (1), if that member ceases to practise as a legal practitioner on disciplinary grounds confirmed by the Law Association of Zambia.*

(6) If a vacancy occurs in accordance with subsection (5), the Minister may appoint a new member in accordance with subsection (1), but the member shall hold office for the unexpired period of the term.”

An Appeal from the Competition and Consumer Protection Tribunal lies to the High Court. Section 75 of the Competition and Consumer Protection provides as follows:

“Section 75. A person aggrieved with a decision of the Tribunal may appeal to the High Court within thirty days of the determination.”

Prior to this legislation Competition and Consumer Protection issues were governed by the Competition and Fair Trading Act, Chapter 417, Volume 23 of the Laws of Zambia.

7. THE LIQUOR LICENSING TRIBUNAL

The liquor licensing Tribunal is established by the Liquor Licensing Act No. 20 of 2011. Section 23 of the Liquor Licensing Act provides as follows:

“23. (1) The Minister shall appoint an Appeal Tribunal consisting of-

- (a) a chairperson, who shall be a legal practitioner of not less than ten years legal experience; and*
 - (b) two other members;*
- for the purpose of hearing appeals under the provisions of this Act.*

(2) The Minister shall appoint a person to be secretary of the Tribunal.”

An Appeal from the Tribunal lies to the High Court. Section 25 of the Liquor Licensing Act provides as follows:

“25. (1) A person aggrieved with the decision of the Tribunal may appeal to the High court on a question of law but not on a question of fact, and notice of the appeal shall be given to the High Court within thirty days of the decision of the Tribunal.

(2) On the hearing of an appeal under the provisions of this section, the High Court may-

- (a) allow the appeal and direct the licensing committee concerned accordingly;*
- (b) dismiss the appeal; or*
- (c) refer the matter back to the Tribunal or the licensing committee for re-hearing in accordance with the direction of the High Court.”*

Prior to this legislation Liquor Licensing was governed by the liquor Licensing Act, 1959.

8. WORKERS' COMPENSATION TRIBUNAL

The Workers' Compensation Tribunal is established by the Workers' Compensation Act No. 10 of 1999. Section 117 provides as follows:

“There is hereby established a Tribunal to be known as the Worker’s Compensation Tribunal.”

The functions of the Workers' Compensation Tribunal are stipulated in Section 123 of the Workers' Compensation Act which provides as follows:

“Section 123. All the functions of the Tribunal shall be –

(a) to hear any appeal made to it under this Act;

(b) to perform such other function as are assigned to it under this Act;

(c) generally, to deal with all matters necessary or incidental to the performance of its functions under this Act.”

An Appeal from the Workers' Compensation Tribunal lies to the High Court. Section 133 of the Workers' Compensation Act provides as follows:

“133. (1) Any person who being a party to any appeal before the Tribunal, is dissatisfied –

(a) with the determination of the Tribunal as being erroneous in point of law or fact; or

(b) with any decision of the Chairperson of the Tribunal as to whether the matter for determination by the Tribunal is a matter of fact or a matter of law;

may appeal there from to the High Court within thirty days of the determination.

(2) The Court may permit a further period within which to appeal against a determination of the Tribunal, in terms of subsection (1), as it may consider fit.

(3) Upon the hearing of an appeal under this section, the high Court may–

(a) confirm, vary or reverse the decision of the Tribunal;

(b) refer the matter back to the Tribunal with instructions for the taking of further evidence or the setting out of further information;

(c) make such order as to costs as it may consider just; or

(d) take any other course which may lead to the just, speedy and inexpensive settlement of the matter. ”

9. ROAD SERVICE APPEAL TRIBUNAL

The Road Service Appeal Tribunal is established by the Road Traffic Act No. 11 of 2002 section 111 of the Road Traffic Act provides as follows:

“111. (1) There is hereby established the Road Service Appeal Tribunal whose functions shall be to hear and determine appeals under this Act.

(2) The Tribunal shall consist of the following part-time members appointed by the Minister:

(a) a Chairperson who shall be a legal practitioner of not less than ten years standing recommended by the Judicial Service Commission and who, in the opinion of the Judicial Service Commission, has experience qualifying that person to be appointed judge of the High Court for Zambia; and

(b) two other persons.

(3) A member of the Tribunal shall, subject to subsection (4), hold office for a period of four years from the date of appointment but may be eligible for re-appointment for one further term.

(4) The office of a member of the Tribunal shall become vacant—

(a) upon the member's death;

(b) if the member is absent without reasonable excuse from three consecutive meetings of the Tribunal of which the member had notice;

(c) if the member is an undischarged bankrupt; or

(d) if the member who is a legal practitioner ceases to practice as such on disciplinary grounds confirmed by the Law Association of Zambia.

(5) If a vacancy occurs in accordance with subsection (4), a new member may be appointed in accordance with subsection (2), but such member shall hold office only for the unexpired part of the term.

(6) The Minister may appoint alternate members of the Tribunal who shall have and may perform the functions of a member during the member's illness or absence.

(7) A member of the Tribunal shall be paid such allowances as the Minister may determine.

(8) The Minister may, by regulations, regulate the procedure of the Tribunal.

(9) The Minister shall appoint a Secretary to the Tribunal who shall have such functions as may be conferred by regulations made under subsection (8).

The functions of the Road Service Appeal Tribunal are stipulated in Section 111(1) of the Road Traffic Act which provides as follows:

“Section 111 (1) There is hereby established the Road Service Appeal Tribunal whose functions shall be to hear and determine appeals under this Act.”

Appeal from the Road Service Appeal Tribunal lies to the High Court. Sections 112(5) and (6) of the Road Traffic Act provides as follows:

“Section 112. Any person who—

(5) Either party to an appeal to the Tribunal may appeal to the High Court from the decision of the Tribunal on any question of law or question of mixed law and fact but not on a question of fact alone.

(6) The High Court shall hear and determine any such appeal and may make any order on such appeal including an order as to costs or otherwise, as the High Court may consider fit.”

10. THE INFORMATION AND COMMUNICATION TECHNOLOGIES APPEALS TRIBUNAL

The Tribunal is established by the Information and Communication Technologies Act No. 15 of 2009.

An Appeal from the Tribunal lies to the High Court. Section 73 of The Information Communication Technologies Act provides as follows:

“73. (1) A person who is aggrieved with the any decision of the Authority may appeal to the Tribunal within thirty days of such decision.

(2) A person who is aggrieved with the decision of the Tribunal may appeal to the High Court within thirty days of the Tribunal’s decision.”

Quasi-Judicial Bodies also include Disciplinary Committees of various Professional Bodies. Examples include the following:

Health Professions Act 24 of 2009, section 29;

“29. (1) A person aggrieved with a decision of the Council may, within thirty days of receiving the decision, appeal to the Minister.

(2) A person aggrieved with a decision of the Minister may, within thirty days of receiving the decision, appeal to the High Court.”

Teaching professions Act No.5 of 2013, section 53

“53. (1) A person aggrieved with a decision of the Disciplinary Committee may, within thirty days of service of the decision, appeal to the High Court.”

Engineering Institution of Zambia Act, Act 17 of 2010, Section 53

“53. (1) A person aggrieved with a decision of the Disciplinary Committee may, within thirty days of receiving the decision, appeal to the High Court.”

Estate agents Act 21 of 2000, section 42

“42. An estate agent or a member of the institute aggrieved by the decision of the Council or of the Disciplinary Committee may, within thirty days of the notification of the decision to that person, appeal to the High Court.”

The Zambia Institute of Human Resources Management Act No.11 of 1997, section 26

“26. (1) Where the Disciplinary Committee-

(a) makes a finding and imposes a penalty on a registered member;

(b) direct the de-registration of a member from the register, or

(c) rejects an application for the re-registration of a member on the register;

the Registrar shall give the member to whom the proceedings relate, notice in writing and such member may, within thirty days of the date on which the notice was given, appeal to the council.

(2) The Council may, on appeal against the findings or orders of the Disciplinary Committee.

(a) confirm, vary or set aside any findings made, penalty imposed or direction given by the committee; or

(b) refer the matter back to the Disciplinary Committee for further consideration.

(3) A direction for the de-registration of a registered member from a register shall not take effect until the expiration of the time for appealing or, if any appeal is brought, until the appeal is disposed of, withdrawn or struck out for want of prosecution, as the case may be.

(4) Any member who is still aggrieved by the decision of the Council may within thirty days appeals to the High Court.”

Zambian Institute of Chartered Accountants and Accountants Act No. 13 of 2008, section 68

“68. (1) Where an investigating authority receives a disclosure that relates to an unlawful reprisal, it shall provide the Member who made the disclosure with information about the protection and remedies available under this Act in relation to an unlawful reprisal.

(2) An investigating authority shall provide any Member who has suffered an unlawful reprisal with access to counseling services where requested by the Member to do so.”

Zambia Institute of Marketing and Zambia Institute of Marketing Act No.14 of 2003, section 26

“26. (1) A person aggrieved by a decision made by the Council may within thirty days of the Council’s decision, appeal to the Minister.

(2) A person aggrieved with the decision of the Minister may, within thirty days of the Minister’s decision appeal to the High Court.”

The provisions of Article 131 (1) (c) of the Constitution of Zambia effectively elevates all the quasi-judicial bodies and ranks them *pari passu* with the High Court of Judicature for Zambia Appeals from the High Court and the quasi-judicial bodies lie to the Court of Appeal. It must be observed that as at now there have been no consequential amendments to the various statutes which in the main still provide that Appeals from the quasi-judicial bodies lie to the High Court.

According to section 15 of the Tax Appeals Tribunal Act No. 1 of 2015 provides that an appeal from the Tribunal lies to the Supreme Court.

The provisions of the Statutes that have established or provide for the establishment of quasi-judicial bodies are clearly in conflict with the provisions of Article 131(1)(c) of the Constitution of Zambia.

In my view there is need for legislative intervention to provide for clear and consistent provisions dealing with the jurisdiction of the Court of Appeal.

RENEWAL OF APPLICATIONS IN THE COURT OF APPEAL OF ZAMBIA.

As legal Practitioners it is our understanding that applications which are made to the High Court for Zambia as a Court of first instance and are refused by that Court, can be renewed in Court of Appeal.

Previously such renewals were made in the Supreme Court.

A typical example would be an *ex parte* application for leave to commence Judicial Review Proceedings made pursuant to the provisions of ORDER 53 of the Rules of the Supreme Court, 1965 (WHITE BOOK) RSC 1999 Edition Volume 1.

In case of DERRICK CHITALA (Secretary of the Zambia Democratic Congress) v. ATTORNEY -GENERAL [1995-1997] ZR 91

Per NGULUBE CJ (as he then was)

“Under the Supreme Court of Zambia Act, this is an appeal against the decision of a High Court Judge refusing to grant leave to bring judicial review proceedings. Under the Rules of the Supreme Court of England which apply to supply and cassus omisus in our own rules of practice and procedure, this would be a renewal of the application for leave to the appellate court. The issue was whether the learned judge below was wrong to refuse to grant leave and whether we should now do so in the particular circumstances of this case.”

The Court of Appeal is entitled to apply English Practice and procedure

Section 8 of the Court of Appeal Act No.7 of 2016 provides as follows:

“8. (1) The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the rules. (2) Despite subsection (1), where this Act or the rules do not provide for a particular point of practice or procedure, the practice of the Court shall be— (a) in relation to civil matters, in accordance with the Supreme Court Practice, 1999 (White Book) of England and the law and practice in the Court of Appeal in England in force up to 31st December, 1999; or (b) in relation to criminal matters, as nearly as may be

in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England.”

Further ORDER I Rule 1 of the Court of Appeal Rules; Statutory Instrument No. 65 of 2016 provide as follows:

“The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by the Act and these Rules, the Criminal Procedure Code or any other written law, or by such rules, orders or directions of the Court as may be made under the Act, the Criminal Procedure Code or any other written law, and default thereof in substantial conformity with the Supreme Court Practice, 1999 (White Book) of England and the law and practice applicable in England in the Court of Appeal up to 31st December, 1999 and in relation to criminal matters, as nearly as may in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England.”

APPEAL WHICH PREVIOUSLY SHOULD LIE TO THE SUPREME COURT

a) Appeals from assessment of damages by a Registrar or Deputy Registrar lies direct to the Supreme Court of Zambia. PRACTICE DIRECTION NO. 1 of 1979 provides as follows:

“ IT HEREBY NOTIFIED that all appeals from assessments of damages by a Registrar or Deputy Registrar shall lie direct to the Supreme Court. Further the provision of ORDER XXX RULE 10 (4) of the High Court Rules (as amended by the High Court (Amendment) Rules Statutory Instrument No. 71 High Court Act Chapter 27 Volume 3 of 1997, provides the laws follows:

“ An appeal from the decision or Order of the Registrar on assessment of damages shall lie to the Supreme Court”.

b) Section 15 of the Tax Appeals Tribunal Act No. 1 of 2015 provides that an Appeal from the Tribunal lies to the Supreme Court.

ENHANCING CAPACITY OF THE REGISTRY OR COURT OF APPEAL

There will be need to be enhance capacity in the Registry Staff, so that that they are familiar with the various Court documents that can competently be filed into Court. It is the duty of the Registry to closely scrutinize Court Process before accepting the same for filing.

The Supreme Court case of University of Zambia v Calder SCZ Judgment No.5 of 1998 is very instructive per SAKALA JS (as he then was)

“On 30th May,1997, a single judge was therefore perfectly entitled to hold the application misconceived and refusing it and in terms of Rule 12(4) the Master of Supreme Court should have not entertained the papers. The question for consideration by the full court is whether Section 4 and Rule 48 (4) of the Supreme Court Act are applicable to the facts of this application at this very late stage?”

From experience, where a matter has already been dealt with by a Junior Court, the Registry Staff will inevitably demand for a NOTICE OF APPEAL.

INTERLOCUTORY APPLICATIONS BY A SINGLE JUDGE

Apart from enjoying Appellate Jurisdiction the Court of Appeal has power to hear interlocutory matters. Article 132 of the constitution of Zambia provides as follows:

“(1) The Court of Appeal shall be constituted by an uneven number of not less than three judges except when hearing an appeal in an interlocutory matter”

(2) The Court of Appeal shall be constituted by the Judge when hearing an interlocutory appeal.”

Section 9 of the Court of Appeal Act No. 7 of 2016 provides as follows:

10. A single judge of the Court may exercise a power vested in the Court not involving the decision of an appeal, except that—

(a) in criminal matters, if a judge of the Court refuses an application for the exercise of any such power, the person making the application is entitled to have that person’s application determined by the Court; and

(b) in civil matters, an order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court

ORDER VII Rule 1(2) and ORDER VII Rule 2(1) and Rule 2(2) provide:

An interlocutory application may be heard and determined by a single judge, except that the direction or order made on an interlocutory application shall not operate so as to prejudice the Court from giving a decision on a case if the Court considers just.

An application to the Court not involving the decision of an appeal shall, unless made in the course of the hearing of an appeal, be made in the first place to a single judge.

An application to a single judge shall be heard in open court or in chambers as the single judge may direct.

ORDER XIII Rule 12

Where an application may be made to the Court or the High Court, it shall be made in the first instance to the High Court.

The lack of jurisdiction of a Sing Judge of the Court of Appeal to grant interim injunction relief remains a legitimate concern of both the legal Practitioner and members of the public. We echo the sentiments of the Supreme Court of Zambia in the case of *MANAL INVESTMENT LIMITED V LAMISE INVESTMENT LIMITED* (2001) ZR 24 Per SAKALA ACTING DCJ (as he then was)

“The point must however be emphasised that the grant or refusal of an injunction is a matter involving the decision of an appeal or a final decision. Thus a Sing Judge has no power to determine a matter involving the decision of an appeal of final decision (Section 4, Supreme Court Act Cap 25). We are mindful that this position is bound to cause difficulties in practice as the Supreme Court does not is everyday. Thus, in a case of urgency, where the High Court has refused to grant as interim injunction, the

aggrieved applicant may have no immediate remedy and by the time the appeal is heard, irreparable damage may already have been caused. There is therefore need to look at the provision relating to appeals in injunction matters”.

THANK YOU