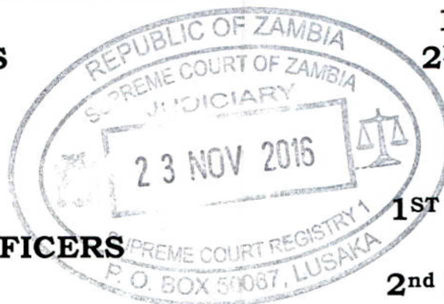
IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(*Civil Jurisdiction*)

SCZ/8/075/2013
APPEAL No.96/2013

BETWEEN:

UNITED NATIONAL UNION OF PRIVATE SECURITY EMPLOYEES — **1st APPELLANT**
SAILAS KUNDA AND 156 OTHERS — **2ND APPELLANT**

AND



PANORAMA SECURITY — **1ST RESPONDENT**
ZAMBIA UNION OF SECURITY OFFICERS AND ALLIED WORKERS — **2nd RESPONDENT**

CORAM: **Mwanamwambwa, DCJ, Hamaundu and Wood, JJS**
On 2nd September, 2014 and 27th October, 2016

For the 1st Appellant : In person (represented by Assistant General Secretary)

For the 2nd Respondents: In Person

For the 1st respondent : Mr C. Kaela, Messrs Katongo & Co

For the 2nd respondent : In person (represented by Senior Trustee)

J U D G M E N T

HAMAUNDU, JS, delivered the Judgment of the Court

Cases referred to:
Mutale and Chomba v Newstead Simba [1988-1989] ZR, 64

Legislations referred to:

Industrial and Labour Relations Act, Chapter 268 of the Laws of Zambia

This is an appeal against a judgment of the Industrial Relations Court which dismissed the appellants' complaint on the ground that the employees of Panorama Security Limited, the 1st respondent herein, did not withdraw their membership from the Zambia Union of Security Officers and Allied Works (ZUSAW) in the manner stipulated by law.

The background leading up to this appeal is thus:

The 2nd appellant, Sailas Kunda and 156 others were employees of the 1st respondent. During their employment, they belonged to the ZUSAW, the 2nd respondent herein. Between the 4th February, 2012 and the 28th February, 2012, the 2nd appellants on divers dates, and in groups, signed membership withdrawal notices. These were addressed to the 1st and 2nd respondents. The notices stated that the 2nd appellants had decided to withdraw their membership from ZUSAW due to the Unions poor performance and lack of respect for the tenets of trade union democracy. Within the same period, that is between the 2nd February, 2012 and the 2nd March, 2012, the second appellants, in groups again, signed membership consent forms which were on the headed paper of the United National Union of Private Security Employees (UNUPSE), the 1st appellant herein.

The consent forms authorized the 1st appellant to deduct 2% of each employee's gross pay and remit the deduction to UNUPSE's head office. Armed with those two documents, UNUPSE wrote on the 1st June, 2012 to the 1st respondent, inviting the latter to enter into a recognition agreement with UNUPSE. The 1st respondent responded on the 5th June, 2012, stating that it was not yet in a position to sign a recognition agreement with the 1st appellant. The 1st respondent went on to request the 1st appellant to advise those employees who had purportedly joined it to follow the right procedure when resigning from one Union to another.

On the same day, the ZUSAW, the 2nd respondent, communicated to the 1st appellant, stating that the reasons indicated by the 2nd appellants on the membership withdrawal notices were those of the 1st appellant as a union and did not reflect the individual minds of the employees. The 2nd respondent went on to state that it expected to receive individual letters of resignation from the employees as required by law and not names and signatures on a designated form.

The two appellants then filed a complaint in the Industrial Relations Court against the 1st respondent, charging that the

refusal by the 1st respondent to accept the 2nd appellant's withdrawal from ZUSAW and to enter into a recognition agreement with UNUPSE was an infringement of the 2nd appellants' freedom of association. The appellants sought; a declaration that they no longer belonged to ZUSAW; an order that the 2nd appellants' union subscriptions should not be remitted to ZUSAW; an order that the 1st respondent sign a recognition agreement with the 1st appellant; an order that the 2nd appellants' union subscriptions should be remitted to the 1st appellant; and a declaration that the withdrawal notices that the 2nd appellants signed were appropriate and sufficient.

In its answer the 1st respondent maintained its stance stating that, in its view, the 2nd appellants had not properly withdrawn from the 2nd respondent.

The 2nd respondent was subsequently joined to the action. In answer to the complaint, the 2nd respondent urged the court to dismiss the complaint because the 2nd appellants did not give three months notice of their withdrawal as required by law.

The resolution of the dispute at the trial pivoted around the question whether or not the 2nd appellants had followed the law in

their purported withdrawal of their membership from the 2nd respondent union. Hence, the facts were, largely, not in dispute.

The court below found as a fact that both the membership withdrawal notices and the membership consent forms were designed by the 1st appellant and were given to the 2nd appellants to fill in their names and sign.

The court below considered the provisions of **Section 22 (2)** of the **Industrial and Labour Relations Act, Chapter 268** of the **Laws of Zambia** and held that for the withdrawal of an employee from a union to be valid, the employee must give the union three months notice of his intended withdrawal.

With that holding, the court below looked at the membership withdrawal notices and found that they did not provide any notice at all. On that ground alone the court held that the 2nd appellants did not give the notice required by law.

The court also held that the provisions of **Section 22 (2)** of the **Act** required the withdrawing employee to personally write to the union, in his individual capacity. In this case the court found that the withdrawal of the employees was promoted and spearheaded by the 1st appellant union. The court pointed out that the issue of

withdrawal of membership under the section was one between the member and the union and did not accommodate the assistance of third parties, especially if those third parties were competing trade unions. Consequently, the court held that the 2nd appellants did not withdraw their membership in the manner stipulated by the section. With that holding, the court declined to make the declarations sought and instead dismissed the complaint.

The appellants have filed six grounds of appeal. The grounds are as follows:

(i) **(a) The trial court fell in error at law by holding that the jointly signed withdrawal notices are not permissible and are illegal documents likely to cause squabbles and chaos amongst competing unions if permitted.**

(b) The holding by the court that the complainant employees are still members of the 2nd respondent union and should continue remitting subscriptions to it is erroneous, oppressive and unfair: The trial court failed to recognize that the complainant employees have the right to stop paying subscription fees at any time.

(ii) **The court below erred in fact when it said "the complainants more in number or less, signed against their names listed on forms... informing the 1st respondent, their employer, of their withdrawal from the 2nd respondent union."**

(iii) **The trial court acted with bias by re-awarding and resurrecting an ex parte order of interim injunction to the respondent company dated 17th July, 2013 after the application was**

struck out on 7th August, 2012 and the order discharged for non- attendance by the respondent of the inter-parte hearing.

(iv) The lower court erred by holding that a member intending to leave a union must write unaided and that the law does not accommodate the assistance of a third party especially if they are a trade union intending to get the membership of the same employees.

(v) The court below misled itself when it held that the required three months notice stipulated under section 22(2) of the Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia needed to be written on the withdrawal notices as opposed to just observing the three months notice as required and that the failure to write the words *'three months notice'* on the notice made the withdrawal ineffective

(vi) The whole judgment stands in conflict with Section 5 of the Industrial and Labour Relations Act which is in conformity with the Constitution of Zambia on freedom of association and worker's rights.

In the first ground of appeal, the appellants argued that **Section 22(2)** of the **Industrial and Labour Relations Act** only requires the withdrawal to be in writing and does not make reference to squabbles between competing unions.

The second ground of appeal is entirely an appeal against a finding of fact by the court below. Under the provisions of the **Industrial and Labour Relations Act** no appeal against findings of

fact only shall lie. Therefore we dismiss this ground of appeal right away.

The third ground of appeal relating to the interim order of injunction is of no relevance to the issue in this appeal. Consequently, we, outrightly, dismiss it as well.

In the fourth ground of appeal the appellants argued as follows: A trade union is a workers representative representing employees in all matters regarding their employment, trade union rights and workers rights in general. This is a legal duty of trade unions. In this vein the relationship between a member and a trade union is the same as that of a client and his lawyer. Therefore, it was a misdirection for the court below to hold that the 1st appellant as a union could not aid its members to withdraw from the other union.

In the fifth ground of appeal, the appellants argued that the period of notice can be either indicated on the notices of withdrawal or not because the parties are familiar with the provisions of **Section 22 (2)** of the **Act**; that this can be evidenced by the fact that they 1st appellant waited for three months to elapse before it

approached the 1st respondent to enter into a recognition agreement with it.

The sixth ground of appeal has no relevance with the real issue in this appeal. We dismiss it outrightly.

With those arguments, we were urged to allow the appeal.

The 1st respondent argued the first, fourth and fifth grounds together. Then the 1st respondent argued the second and sixth grounds together. The third ground was argued separately.

We have dismissed the second ground of appeal on the ground that it is entirely against findings of fact. We have also dismissed the third and sixth grounds of appeal for being completely irrelevant to the issue in this appeal. Therefore, we shall only consider the 1st respondent's arguments on the first, fourth and fifth grounds. In that regard we shall look at the arguments on those three grounds and summarise the points that came out of them as a whole.

The 1st respondent argued that it was clear that the membership withdrawal notices did not mention the required three months period. It was argued that a person giving notice must clearly state the date of commencement of the notice and the period which is to be taken as the period of notice. The respondent pointed

out that the appellants did not follow that procedure. Consequently, the 1st respondent argued that the court below was on firm ground when it held that the correct procedure provided in **section 22** was not followed.

We were referred to the case of **Mutale and Chomba v Newstead Simba**[1] in which we stated that the issue of withdrawal of membership from a union is between the member and the union concerned. Relying on that authority it was argued that the withdrawal of membership ought to be done individually, unaided and not as a group.

With those arguments, the 1st respondent urged us to dismiss the appeal.

In its arguments the 2nd respondent supported the trial court's judgment and insisted that withdrawal notices signed collectively were not permitted under **Section 22 (2)** of the **Industrial and Labour Relations Act**. The 2nd respondent insisted also that the said section required that three months notice of the withdrawal should be given.

The 2nd respondent, too, urged us to dismiss the appeal on those arguments.

The dispute in this case boils down to simply a question of interpretation of **Section 22** of the **Industrial and Labour Relations Act, Chapter 269** of the **Laws of Zambia**. That section provides:

> **"22(1) An employer may, by agreement with an eligible employee, deduct the amount of subscription prescribed by the constitution of the trade union from the wages of such eligible employee if the employee is a member of such trade union.**
> **(2) An eligible employee may, at anytime, withdraw the agreement referred to in subsection (1) by giving three months notice, in writing, to the trade union concerned."**

In this case, the 2nd appellants did send notices to both respondents of their withdrawal from the 2nd respondent union. However, the notices were composite ones; where on one notice the names of employees giving that notice together with their signatures were indicated. In our view that notice was in writing and the signatures of the employees named thereon signified that they had adopted that notice in their individual capacity. Certainly, the 2nd respondent was left in no doubt that those employees had decided to withdraw their membership. When we read **Section 22**, we do not see the provision that stipulates that each employee who

intends to withdraw must write his own letter. Neither do we see any provision which bars employees from writing a composite notice.

Coming to the provision that requires three month's notice, the fact that the composite notices did not provide for three months notice was not fatal. The two respondents should have merely reminded the employees that, in accordance with the law, their withdrawal would only take effect after three months. Therefore, when the 1st appellant approached the 1st respondent to enter into a recognition agreement on 1st June, 2012, there ought not to have been any impediment since, in almost every case, the period of three months had elapsed from the time the composite notices were brought to the attention of the two respondents.

Accordingly we allow this appeal. We set aside the judgment of the court below and order that if there is no other legal impediment, the 1st respondent and the 1st appellant should proceed to sign a recognition agreement and thereafter the 1st respondent will agree with the affected employees what deductions are to be made and remitted to the 1st appellant.

All parties will bear their own costs in the appeal.

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M. S. Mwanamwambwa

SUPREME COURT JUDGE

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E. M. Hamaundu

SUPREME COURT JUDGE

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A. M. Wood

SUPREME COURT JUDGE