IN THE SUPREME COURT OF ZAMBIA HOLDEN AT NDOLA (CIVIL JURISDICTION) **APPEAL NO. 170/2015**

B E T W E E N:

G4S SECURE SOLUTIONS ZAMBIA LIMITED **APPELLANT**

AND

LUPUPA KABEZYA LEWIS **RESPONDENT**

CORAM: MAMBILIMA, CJ, MWANAMWAMBA, DCJ AND MUTUNA JS,
On the 5th and 8th days of June 2018

For the Appellant: **Mr. J. Kawana, of Corpus Legal Practitioners**
For the Respondent: **Mr. F.S. Kachamba of EBM Chambers**

JUDGMENT

MAMBILIMA, CJ delivered the Judgment of the Court.

CASES REFERRED TO:

1. **HINCKLEY AND SOUTH LEICESTERSHIRE PERMANENT BUILDING SOCIETY V. FREEMAN (1940) 4 ALL ER 212;**
2. **DIRECTOR OF PUBLIC PROSECUTIONS V. MARGARET WHITEHEAD (1977) ZR 181;**
3. **DIRECTOR OF PUBLIC PROSECUTIONS V. DERRICK MUHAU SIKATEMA & 5 OTHERS (1987) ZR 90;**
4. **UNDERHILL V. MURDEN (2007) NSWSC 761;**

5. **ZAMBIA CONSOLIDATED COPPER MINES V. JACKSON MUNYIKA SIAME AND 33 OTHERS (2004) ZR 193;**
6. **ZAMBIA CONSOLIDATED COPPER MINES LIMITED V. RICHARD KANGWA AND OTHERS (2000) ZR 109;**
7. **BOB ZINKA V. ATTORNEY GENERAL (1990-1992) ZR 73;**
8. **LIPEPO AND OTHERS V. THE PEOPLE (2014) 2 ZR 1;**
9. **SULTAN HARDWARE LIMITED V. WILLIAM MURITHI KIMANI AND CHARLES ODONGO, CIVIL APPEAL NO. 150 OF 2012;**
10. **BRIMBANK AUTOMOTIVE PTY LTD AND JEFFREY MOLONEY V. PATRICIA MURPHY AND MAGISTRATES' COURT OF VICTORIA (2009) VSC 26;**
11. **CHELLARAMS PLC V. PASHTUN NIGERIA LIMITED AND UMARU FAROUK ALIYU (2014) LPELR-23623; AND**
12. **MAXWELL V. KEUN (1927) ALL ER 335.**

LEGISLATION REFERRED TO:

a. **INDUSTRIAL RELATIONS COURT RULES, CHAPTER 269 OF THE LAWS OF ZAMBIA, RULES 49(2) & 55**
b. **INDUSTRIAL AND LABOUR RELATIONS ACT, CHAPTER 269 OF THE LAWS OF ZAMBIA, SECTIONS 49(2) & 85(5)**
c. **CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA, ARTICLE 18(1) AND (2(C)**

This appeal is from the Ruling of the Industrial Relations Court (IRC), delivered on 24th June, 2015. The said Ruling followed an *ex-parte* application made by the Appellant to stay proceedings and/or discharge or review the Court's ruling dated 11th June, 2015. The application was made pursuant to Rules 33, 34 and 38 of the **INDUSTRIAL RELATIONS COURT RULES**[a]. In its short Ruling, the Court stated:-

> **"We have heard the application. We are unable to stay the proceedings because of the following reason:-**

1. **Proceedings are normally stayed pending something, i.e. pending appeal to the Superior Court. There is nothing in this case which is pending for which the stay should be ordered.**

   We are unable to discharge our order which adjourned the matter for Judgment because no new evidence has been adduced to persuade us otherwise. The effect is, therefore, that we have reviewed our order but have found no reason to discharge our earlier decision."

The background to this Ruling is that on 19th May, 2015, the lower Court issued a Notice of Hearing scheduling this matter for 9th June, 2015 at 11:30 hours. On that date, Counsel for the Respondent indicated that the Respondent would give evidence on her own behalf and call one other witness. She did not finish giving her testimony on that day, necessitating an adjournment to the next day which was 10th June, 2015. On 10th June, 2015 the Respondent concluded giving her evidence and called her second witness, Mr. Stewart John Scot (CW2). He gave his evidence in chief and the matter was adjourned to 11th June, 2015 for cross-examination. Before rising, the Court warned CW2 to attend and also ordered the Appellant to avail its witnesses, if any.

When the matter came up on 11th June, 2015, CW2 was cross-examined after which the Respondent closed her case. The learned Counsel for the Appellant then indicated to the Court that he was

not ready to proceed with the defence because the Appellant's witnesses were not ready. He stated that the notice of hearing which was issued on 19th May, 2015 was for the hearing scheduled to take place on 9th June, 2015. That thereafter, the matter was adjourned to the subsequent dates and that consequently, the Appellant's witnesses could not make it on 11th June, 2015. Counsel, accordingly, applied for an adjournment to enable the Appellant organise and present its witnesses before the Court; emphasizing that this was the first time that the Appellant was asking for an adjournment and also because that was a Court of substantial justice. Counsel for the Respondent did not have any objection to the application for the adjournment.

Delivering its ruling, the lower Court stated that this was a bad application because it demonstrated that the Appellant did not prepare for its case despite having had enough time to do so. That the Appellant had almost nine months from the time that it filed its Answer to the Complaint and the date on which it was required to present its witnesses. That the presiding Judge, having travelled all the way from the Ndola, caused the notice of hearing to be issued early enough so as to enable the parties organise their witnesses.

Further, that when the matter was adjourned from 9th June, 2015 to 10th June, 2015, for continued hearing, that was an indicator to the Appellant to start organizing its witnesses; that when the matter was adjourned to 11th June, 2015 for cross-examination of CW2, the last witness for the Respondent, it was a further indicator that the Appellant should position itself with its witnesses.

The Court, at the end of the day concluded that the Appellant's application for an adjournment was not well founded because the Appellant had enough time to organize its witnesses and present them before Court. That to fail to present even one witness even after sufficient notice had shocked and disappointed the Court. That being a court of substantial justice included dispensing justice without undue delay. The Court observed that although that was the first application for an adjournment on the part of the Appellant in the matter, it did not see any merit in the application. The Court, instead, adjourned the matter for judgment, and gave the parties dates on which to file their respective submissions.

The Appellant contested this Ruling of the Court refusing its application for an adjournment by filing an ex-parte summons to

stay proceedings and/or discharge or review that Ruling pursuant to rule 33, 34, and 38 of the **INDUSTRIAL RELATIONS COURT RULES[a].** The ex-parte summons was supported by an affidavit deposed to by Counsel for the Appellant. In that affidavit, Counsel recounted the facts leading to the refusal of the application for an adjournment and indicated that the Appellant was still desirous of exercising its right to call witnesses and, that Counsel believed that if the Appellant was allowed to call its witnesses, the Respondent would not be prejudiced. Counsel, accordingly, prayed that the Court would stay the proceedings and/or discharge or review the order of 11th June, 2015 to allow the Appellant to proceed to call its witnesses.

In its Ruling delivered on 24th June, 2015 reproduced above, the lower Court refused to stay the proceedings on the ground that proceedings are normally stayed pending something, like an appeal to a superior court. That in the matter before it, there was nothing which was pending for which the stay could be ordered. The Court refused to discharge its order adjourning the matter for judgment because no new evidence had been adduced to persuade it to discharge the order. The Court explained that the effect of its Ruling

was that it had reviewed its order but had found no reason for discharging its earlier decision.

It is against the above decision of the lower Court delivered on 24th June, 2015, that the Appellant has now appealed to this Court advancing the following grounds of appeal:

1. **that the Court below erred in law and in fact when it held that the Appellant's application to stay proceedings and/or discharge or review the Ruling dated 11 June 2015 was misconceived when in fact, the Appellant attempted to justify its earlier application for an adjournment to allow the Appellant present its witnesses to Court;**
2. **that the Court below erred in law and in fact when it failed to take into account the circumstances that led to the Appellant's application for an adjournment on 11 June 2015, among them being that, the Notice of Hearing issued on 19 May 2015 scheduled this matter to come up for hearing on 9 June 2015 and the matter was subsequently adjourned to the 10 and 11 June 2015 by the Honourable Judge to allow the Respondent to call her witnesses and to close her case;**
3. **that the Court below erred in law and in fact when it failed to uphold substantial Justice by discharging its earlier order dated 11 June 2015 and according the Appellant an opportunity to call its witnesses whom it had indicated were out of jurisdiction when the matter came up on 11 June 2015; and**
4. **that the Court below erred in law and in fact when it failed to uphold the Appellant's right to a fair trial including the Appellant's right to call and examine witnesses and to be given adequate time to prepare its witnesses and present them to Court.**

In support of the above grounds of appeal, the learned Counsel for the Appellant filed written heads of argument on 5th November, 2015. The gist of Counsel's submissions on the first ground of appeal was that the refusal to allow the adjournment, which was properly sought on the basis of non-availability of

witnesses, amounted to substantial injustice. That this was compounded by the fact that the matter came up on a day which was not originally set for trial. Counsel contended that the lower Court has jurisdiction to adjourn a matter whenever a party requesting for the adjournment presents sufficient reasons. He referred us to Rules 49(2) and 55 of the **INDUSTRIAL RELATIONS COURT RULES**[a]. The said Rules respectively provide as follows:

> **"49(2) The Court shall have the power to adjourn any proceedings from time to time and from place to place."**
>
> **"55. Nothing in these Rules shall be deemed to limit or otherwise affect the power of the Court to make such order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.**

Counsel also referred us to a number of authorities on the exercise of discretion by a court to grant an adjournment. Among the cases cited by Counsel is the English case of **HINCKLEY AND SOUTH LEICESTERSHIRE PERMANENT BUILDING SOCIETY V. FREEMAN**[1] in which it was held that even in the absence of a statute conferring express power on the Court, the Court has inherent power to adjourn the hearing of any matter in order to do justice between the parties.

Counsel also referred us to two criminal cases decided by this Court. These are the cases of the **DIRECTOR OF PUBLIC PROSECUTIONS V. MARGARET WHITEHEAD[2],** and **THE DIRECTOR OF PUBLIC PROSECUTIONS V DERRICK MUHAU SIKATANA & 5 OTHERS[3]**. In the case of **MARGARET WHITEHEAD[2]** this Court held that the exercise of the judicial discretion to adjourn a matter depends very much on the circumstances of the case in question, while in the case of **DERRICK SIKATANA & 5 OTHERS**, we stated the following:-

> **"In this particular case, we appreciate what prompted the learned trial commissioner to take offence when counsel chose to proceed to Livingstone instead of giving preference to the superior court. We sympathise with the learned trial commissioner more especially that he had to travel specially from Kitwe to Lusaka to attend to this case. However, we do have to agree that the discretion which the courts enjoy in matters of granting or refusing to grant adjournments must be exercised in such a way that the broader interests of justice are served."**

Counsel also cited on the case of **UNDERHILL V. MURDEN[4]**, where the Court decided that although a refusal to grant an adjournment is a decision wholly within the discretion of the judicial officer, an appellate court will intervene if the refusal will result in a denial of justice to the applicant and the adjournment will result in injustice to the other party. Counsel concluded his submissions on the first

ground of appeal by contending that the lower Court failed to exercise its discretion judicially. In his view, it was irregular for the lower Court to adjourn the matter for judgment without affording the Appellant an equal opportunity to present its case.

Coming to the second ground of appeal, we note that the submissions advanced in fact speak to the third ground of appeal in the memorandum of appeal. Also, that Counsel's submissions under the subheading 'Ground Three' in the heads of argument relate to the fourth ground of appeal in the memorandum of appeal. No arguments have been advanced in support of the second ground of appeal as it appears in the memorandum. We will assume, therefore, that the Appellant has abandoned the second ground of appeal, but for the sake of orderliness, we will refer to the grounds of appeal as they have been numbered in the memorandum of appeal.

On the third ground of appeal, Counsel has contended that the Industrial Relations Court is required by Section 85(5) of the **INDUSTRIAL AND LABOUR RELATIONS ACT**[b] to do substantial justice between the parties. The said Section 85(5) provides that-

> **"(5) The Court shall not be bound by the rules of evidence in civil or criminal proceedings, but the main object of the Court shall be to do substantial justice between the parties before it."**

Counsel submitted that the lower Court did not do substantial justice between the parties in this matter when it afforded the Respondent an opportunity to call her witness but denied the Appellant the opportunity to do so. According to Counsel, substantial justice includes affording parties opportunities to present their cases. In support of the foregoing submission, Counsel relied on, among others, this Court's decision in the case of **ZAMBIA CONSOLIDATED COPPER MINES V. JACKSON MUNYIKA SIAME AND 33 OTHERS**[5]. In that case, this Court held, *inter alia*, that ***"the Industrial Relations Court has a mandate to administer substantial justice unencumbered by rules of procedure."*** He also cited the case of **ZAMBIA CONSOLIDATED COPPER MINES LIMITED V. RICHARD KANGWA AND OTHERS**[6], in which this Court held that ***"the Industrial Relations Court is mandated to do substantial justice unfettered by legalistic niceties...."***

On the strength of the above submissions, Counsel urged us to allow the third ground of appeal.

With regard to the fourth ground of appeal, Counsel advanced the argument that litigants have the right to a fair trial. That this right inevitably includes the right to call and examine witnesses. To buttress his arguments, Counsel referred us to the case of **BOB ZINKA V. ATTORNEY GENERAL**[7], where this Court stated:-

> **"The principles of natural justice - an English law legacy - are implicit in the concept of fair adjudication. These principles are substantive principles and are two-fold, namely, that no man shall be a judge in his own cause, that is, an adjudicator shall be disinterested and unbiased (*nemo judex in causa sua*): and that no man shall be condemned unheard, that is, parties shall be given adequate notice and opportunity to be heard (*audi alteram partem*). As was quaintly stated by an eighteenth-century judge, Fortescue, J., in R v Chancellor of the University of Cambridge (8) at P. 567:**
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> > **'Even God himself did not pass sentence on Adam before he was called upon to make his defence.'"**

Counsel also invoked the provision of Article 18(1) and (2)(c) and (e) of the **CONSTITUTION OF ZAMBIA CHAPTER** 1 of the Laws of Zambia to underscore the right to a fair trial. According to Counsel, the right to a fair trial is enveloped by the rubric of a "fair hearing" as enshrined in Article 18 of the **CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA**[b]. In support of his argument, Counsel referred us to the case of **LIPEPO AND OTHERS V. THE PEOPLE**[8], where this Court stated:-

"It is our firm belief and conviction that any person charged with a criminal offence must be accorded a fair trial. The right to a fair trial is an internationally accepted standard which all states which observe the rule of law must give effect to. To this extent the Universal Declaration of Human Rights (UDHR) provides in Article 10 that:

> **'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his right and obligations and of any criminal charge against him.'**

It is common knowledge that Zambia is one of the countries in the international community which prides in the observance of the rule of law. We understand the right to a fair trial to mean a neutral trial conducted to accord each party to the proceedings their due process rights. The right to a fair trial applies to civil and criminal proceedings."

Counsel argued that an unfair trial warrants intervention by this Court which should order a retrial of the matter or deem the trial null and void. He, accordingly, prayed that the fourth ground of appeal too, should succeed. He urged us to allow the entire appeal with costs to the Appellant.

In response to the Appellant's heads of argument, Counsel for the Respondent filed the Respondent's heads of argument on 4th February, 2016. Counsel simply submitted that the Respondent would accept whatever decision this Court would make. He, however, prayed for costs regardless of the outcome of the appeal because the Respondent cannot be faulted for what transpired in the lower Court.

We have carefully considered the issues that have been raised in this appeal particularly the events which led to the appeal. We have also considered the Ruling appealed against and the submissions of Counsel.

Although Counsel for the Appellant has argued three grounds of appeal in their heads of argument, we are of the view that the said grounds have raised only one broad issue for our determination, that is- **"whether the lower Court properly exercised its discretion when it dismissed the Appellant's application for an adjournment."**

The gist of the submissions by Counsel for the Appellant on the three grounds of appeal which he has argued before us is that the lower Court misdirected itself when it dismissed the Appellant's application for an adjournment, because Section 49(2) of the **INDUSTRIAL AND LABOUR RELATIONS ACT**[b] empowers the IRC to adjourn proceedings from time to time. Counsel has maintained that since that was the first time that the Appellant was asking for the postponement of the hearing in the matter, the Court should have exercised its discretion to allow the application. He argued that the refusal by the Court to grant the application for an

adjournment constituted substantial injustice and it was contrary to Section 85(5) of the **INDUSTRIAL AND LABOUR RELATIONS ACT**[b]. Further, that by failing to grant the application for an adjournment, the lower Court failed to uphold the Appellant's right to a fair trial including the Appellant's right to call and examine its witnesses.

The notice of appeal and the memorandum of appeal on record show that this appeal is against the Ruling of the lower Court delivered on 24th June, 2015 refusing to stay proceedings, review or discharge its earlier Ruling of 11th June 2015. In the Appellant's grounds of appeal, it is also attacking the lower Court's Ruling of 11th June, 2015 where the Court refused to grant the Appellant an application for an adjournment. The Appellant is contesting the lower Court's exercise of discretion in refusing its application for an adjournment, which decision the lower Court refused to stay, discharge or review in its Ruling of 24th June, 2015.

We have scrutinised the proceedings of the Court below leading up to the time that the Appellant's application for an adjournment was refused by that Court. The record shows that the Court issued the notice of hearing on 19th May, 2015, setting 9th

June, 2015 for the hearing and determination of this cause. The Respondent and her only witness (CW2) testified on 9th and 10th June, 2015 but as CW2 had not concluded his testimony, and the matter was adjourned to 11th June, 2015 for cross-examination of CW2. The record shows that at the close of the hearing on 10th June, 2015, the Court ordered the Appellant to avail its witnesses, if any, on 11th June, 2015. The Appellant failed to bring its witnesses as ordered but instead applied for an adjournment. The Court rejected the application and instead adjourned the matter for judgment. In the intervening period, Counsel for the Appellant applied to the Court for stay or discharge or review of its decision to refuse to adjourn the matter but the Court dismissed that application in its Ruling of 24th June, 2015.

The question, therefore, is- **'on the basis of the facts and circumstances of this case, can the lower Court be faulted for having refused to adjourn the matter?'**

Most, if not all the reported cases, dealing with the exercise of discretion by a Court to adjourn a matter in this jurisdiction relate to applications for adjournments in criminal cases. It is our view, nevertheless, that the underlying principles and considerations

regarding the exercise of discretion to grant or refuse an application for an adjournment are the same in both civil and criminal cases. The leading case, on the exercise of discretion to grant an adjournment, is that of the **DIRECTOR OF PUBLIC PROSECUTIONS V. MARGARET WHITEHEAD**[2]. In that case, the Respondent was charged with causing death by dangerous driving. The information was signed on 5th October, 1976, and the notice of trial endorsed thereon informed the Respondent that she would be tried at the High Court Sessions to be held on the 1st of November, 1976. When the sessions opened on that day, the hearing was fixed for 3rd November, 1976. On 3rd November 1976, some prosecution witnesses were called, after which the State applied for an adjournment to enable it to call two principal prosecution witnesses; the driver and the passenger in the police Land Rover with which the Respondent had collided. The application was refused. The Director of Public Prosecutions appealed to this Court and asked for a declaration that the refusal to grant an adjournment was not a proper exercise of the Court's discretion. Delivering our decision in that case, we said the following:

"Mr. Ponnambalam has invited us to lay down guidelines as to the granting of adjournments generally. It would in our view be most undesirable for us to accept this invitation. The exercise of this particular judicial discretion depends very much on the circumstances of the case in question; the decision will be affected by whether or not the accused is in custody, how long he has been in custody, the seriousness of the offence with which he is charged and the probable sentence if he should be proved to be guilty, whether or not the application is the first of its kind or whether there have been previous adjournments, the reasons why the witnesses are not in court, and so on. The overriding principle must always be whether the interests of justice demand that an adjournment be granted, but the courts must not lose sight of the fact that justice must be done to the society as well as to the individual, it is in the interests of justice that persons who have committed offences be convicted of those offences, subject always of course to the qualification that there should be no unnecessary delays or harassment of accused persons."

We have visited some decided cases in some countries in the Commonwealth on this subject and they reveal that the considerations that should guide a court when deciding applications for adjournments are substantially the same. What comes out clearly from most of the said cases is that the decision as to whether to grant an adjournment is entirely in the discretion of the court. Further, that an appellate court must be very slow to interfere with the exercise of that discretion by a trial court. That appellate courts should only interfere in exceptional cases where the interests of justice demand such interference. For instance, in the case of **SULTAN HARDWARE LIMITED V. WILLIAM MURITHI**

KIMANI AND CHARLES ODONGO[9], the High Court of Kenya stated that-

> **"An adjournment is granted by a court in the exercise of its judicial discretion. Such discretion will be based on the reasons given by the party applying and on the particular circumstances of the case. An appellate court will not normally interfere with the exercise of such discretion unless it has been shown that the discretion was not exercised judiciously .... In Mbogo & Another v. Shah (1968) EA 93 it was held that the appellate court will not interfere with the exercise of discretion of a court unless it is satisfied that it misdirected itself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the court was clearly wrong in the exercise of the discretion and that as a result there had been injustice. The elements the trial court should take into consideration in dealing with the question of adjournment are adequacy of reasons given for the application, how far, if at all, the other party is likely to be prejudiced by the adjournment, and how far such other party can be suitably compensated by an order against the applicant to pay costs."**

The Supreme Court of Victoria at Melbourne, Australia in the case of **BRIMBANK AUTOMOTIVE PTY LTD AND JEFFREY MOLONEY V PATRICIA MURPHY AND MAGISTRATES COURT OF VICTORIA**[10] had this to say:-

> **"It is fundamental to the present application to bear in mind that a decision by a trial Judge, as to whether to grant an adjournment, is a discretionary decision. Appellate courts, and this Court on review of such a decision, have repeatedly emphasized that the Court should only interfere with such a decision in exceptional circumstances."**

The Court of Appeal in Kaduna State of Nigeria, in the case of **CHELLARAMS PIC V PASHTUN NIGERIA LIMITED AND UMARU FAROUK ALIYU**[11] echoed the general principle that refusal or grant

of an adjournment in a case is subject to the discretion of the Court. The Court observed:-

> **"However, it is settled law that the exercise of the discretion depends on the facts and circumstances of each case."**

It is thus clear, from the above authorities that the decision to grant an adjournment is entirely in the discretion of the court. An appellate court should be very slow to interfere with the exercise of that discretion. However, where it appears to the appellate court that the exercise of the discretion has caused injustice to the party applying for the adjournment, the appellate court would interfere with the decision of the trial court to ensure that the interests of justice are served.

A court should not refuse an application for an adjournment if such refusal would lead to an injustice to the party making the application unless the grant of the adjournment would occasion irreparable prejudice to the other party and that prejudice cannot be atoned for in costs. Another factor that the Court is permitted to take into account when deciding whether to allow an application for an adjournment is the demands of case management but again, such demands should not override the overall objective of doing

justice to the parties. The interests of justice in the case management scenario encompasses the need to administer justice in a case in a timely and cost effective manner because it is trite that justice delayed is justice denied.

Applying the above principles to the instant case, we are of the firm view that the lower Court properly exercised its discretion when it rejected the Appellant's application for an adjournment. This is because the record of appeal shows that the Appellant had ample time to prepare its witnesses. The notice of hearing was issued on 19th May, 2015 scheduling the matter for 9th June, 2015. The Appellant, therefore, had close to twenty days from the date of the notice of hearing, to organize its witnesses.

Counsel for the Appellant has, however, contended that the notice of hearing only gave one day, the 9th June, 2015 as the date of hearing and that the subsequent dates to which the matter was adjourned were used by the Respondent to conclude her evidence and that of her witness. That by the time that the Respondent closed her case on 11th June, 2015, the Appellant was not ready with its witnesses, giving an impression that had the Appellant's case been called on 9th June 2015, the witnesses would have been

ready. We have failed to appreciate the logic in this submission. The notice of hearing that was issued stated:-

> **"TAKE NOTE that the cause <u>will be heard and determined</u> by the Industrial Relations Court.**
> **At Lusaka on the 9th day of June 2015 at 11:30 hours Before Hon. Judge E. L. Musona."** (Emphasise ours)

This notice notified both parties to prepare for the hearing and determination of the matter on 9th June, 2015. The adjournment of the matter to 10th and 11th June, 2015, was on account of completing the Respondent's case. If anything, it gave the Appellant more time to prepare its witnesses. And it is on record that on 10th June, 2015, before adjourning the matter to 11th June, 2015, the Court ordered the Appellant to avail its witnesses when the matter came up on 11th June, 2015. Counsel for the Appellant did not make any indication to the Court, at that point, that the Appellant's witnesses would not be available.

Counsel for the Appellant has also argued that the Appellant could not bring its witnesses to Court because the said witnesses were based outside the country. A scrutiny of the record of appeal establishes that this argument was not advanced before the lower Court and has only been raised before us. In any case, a look at the Appellant's Affidavit in Support of the Answer establishes that the

deponent to that Affidavit, Sidney Odoi, was based in Zambia. The said Affidavit shows that, at the time that Mr. Odoi swore his Affidavit, he was the Appellant's Acting Managing Director and resided at Plot No. 14035, off Katima Mulilo Road, Olympia, Lusaka. Even assuming that all the witnesses for the Appellant were based outside the country, the Appellant had close to twenty days from the time that the notice of hearing was issued to the date of hearing on 9th June, 2015 to round up its witnesses. This was more than sufficient time for the Appellant's witnesses to travel from whichever country they were based to Zambia. There was an extra two days, up to 11th June 2015 for the Appellant to prepare its case.

Accordingly, in view of these circumstances, we hold that the refusal by the lower Court to allow the application for an adjournment did not occasion any injustice to the Appellant since it had adequate time to prepare for, and present, its defence. No plausible reason was given for its failure to present the witnesses other than that it was the first time it was making such an application. A party is not entitled as of right to the first adjournment in a case. We hold that the Appellant was not ready

and was just trying to buy time and in the process delay the conclusion of the matter. In so holding, we take a leaf from the decision of the Supreme Court of Victoria in the case of **BRIMBANK AUTOMOTIVE PTY LTD AND JEFFREY MOLONEY V. PATRICIA MURPHY AND MAGISTRATES' COURT OF VICTORIA**[10] already referred to above. In that case, the Supreme Court of Victoria pronounced itself on the factors that a Court should take into account when exercising its discretion relating to an application for an adjournment when it said-

> **"The guiding principle for the exercise of the discretion is that a court should not refuse an application for an adjournment, where to do so would cause injustice to the party making the application, unless the grant of the adjournment would occasion irreparable prejudice to the other side, such prejudice not being capable of being remedied by an appropriate order as to costs or otherwise....**
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> **In determining whether to grant an adjournment, a court is entitled to take into account, as a relevant circumstance, the exigencies of case management. However, that consideration should not be permitted to prevail over the rights of the parties before the court, and in particular it should not predominate over the right of a particular party to be able to present its case properly to the court. The exercise by the court of its discretion in such a case is not the occasion to punish a party, or its practitioners, for oversight, mistake or tardiness. Rather, the overriding requirement is that the court must do justice between the parties."**

Counsel for the Appellant has maintained that no prejudice would have been occasioned to the Respondent had the application for an adjournment been allowed because the Respondent did not

even object to that application. We must stress that the mere fact that the opposing party has not objected to an application for an adjournment does not by itself entitle the applicant to the adjournment. The discretion to grant or not to grant the adjournment remains with the court which should take into consideration all other relevant circumstances in the case. The overriding consideration should be the need to do justice to the parties which broadly encompasses the need to deal with a matter expeditiously. In our view, allowing the application for an adjournment in the instant case would not have been in line with the broader interests of ensuring timely disposal of the matter in view of the fact that the Appellant had more than enough time to organize its witnesses and present its defence.

We must emphasise that proceedings before our courts are court-driven and the court is expected to be in control of the proceedings and ensure that matters are not delayed by unnecessary adjournments. It is trite that adjournments are one of the major causes of delays in the dispensation of justice. Proper case management, therefore, requires that the Court should only grant an adjournment in the most deserving of cases, bearing in

mind all the relevant circumstances of the case. An application for an adjournment should not be granted as a matter of course and neither should it be rejected without judicious consideration by the Court of all relevant circumstances in the case. A case on point in this regard is the decision of the Nigerian Court of Appeal in the case of **CHELLARAMS PLC V. PASHTUN NIGERIA LIMITED AND UMARU FAROUK ALIYU**[11], (referred to above) where the Court said-

> **"Thus adjournment of cases fixed for hearing are not obtainable as a matter of course or just for the asking, but must be based on some cogent reasons warranting the grant of same....**
>
> **However, it is settled law that the exercise of the discretion depends on the facts and circumstances of each case. This is because in matters of discretion, no one case can be authority for another and the court cannot be bound by a previous decision to exercise a discretion in a particular way, because that would be in effect, putting an end to the discretion."**

We, therefore, are of the view that this is not a proper case for this Court to interfere with the exercise of discretion by the lower Court to refuse to grant the adjournment that the Appellant sought. The refusal by the lower Court to give the Appellant time to present its witnesses was a judicious exercise of discretion against the back drop of the circumstances that we have already catalogued in this Judgment. In refusing to interfere with the lower Court's exercise of

discretion to refuse the application for an adjournment, we adopt the reasoning of Lord Atkin in the celebrated case of **MAXWELL V. KEUN**[12]. In that case, Atkin, LJ provided guidance on when an appellate Court should interfere with the exercise of discretion in relation to an application for an adjournment when he held-

> **"I quite agree that the Court of Appeal ought to be very slow, indeed, to interfere with the discretion of the learned Judge on such a question as an adjournment of a trial, and it very seldom does do so; but, on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the court has power to review such an order, and it is, to my mind, its duty to do so."**

In this case, we are of the firm view that no injustice was occasioned by the refusal by the lower Court to grant the Appellant an adjournment in view of the opportunity that the Appellant had to organize its case and present its witnesses before the Court.

We, therefore, hold that this appeal has no merit. We dismiss the appeal with costs to be taxed in default of agreement.

I.C. Mambilima
CHIEF JUSTICE

M.S. Mwanamwamba
DEPUTY CHIEF JUSTICE

N.K. Mutuna
SUPREME COURT JUDGE