

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

DEAN MWACHILENGA

APPLICANT

AND

ALISTAIR LOGISTICS (Z) LIMITED

RESPONDENT

CORAM: Chashi, Sichinga and Ngulube, JJA

ON: 8th and 23rd April 2021

*For the Applicant: J. Mataliro, Messrs James and Doris Legal
Practitioners*

For the Respondent: M. Nyirenda, Messrs Kafunda and Company

R U L I N G

CHASHI JA, delivered the Ruling of the Court.

Cases referred to:

- **Bidvest Food Zambia Limited and Four (4) Others v CAA Import and Export Limited - SCZ Appeal No. 50 of 2017**

Legislation referred to:

- **The Court of Appeal Act, No. 7 of 2016**

This motion is for an Order for leave to appeal to the Supreme Court against our Judgment which was delivered on 20th November 2020.

The application is premised on Section 13 of **The Court of Appeal Act (CAA)**. Reliance in that respect has been placed on the following grounds:

- (1) That the appeal raises a point of law of public importance;
- (2) That the intended appeal has reasonable prospects of success

Pages 12-13 of the record relating to the motion, contains the intended memorandum of appeal, with five (5) grounds of appeal. The first and second grounds of appeal attacks the Court for not upholding the issues raised by the Respondent, in respect to the manner the grounds of appeal were couched and the failure by the appellant to file the list of authorities together with the heads of argument.

Ground three alleges that the Court gave a contradictory Judgment by upholding ground three which attacked liability and proceeded to award damages to the Respondent (now Applicant) under ground four.

The fourth and fifth grounds of appeal attacks the Court for interfering with the award of damages of 36 months and reducing it to 3 months.

The application is opposed. Mr. Nyirenda, Counsel for the Respondent submitted that the application does not meet the threshold in Section 13 **CAA**.

That the motion is devoid of merit as the Applicant has not demonstrated that the intended appeal raises a point of law of public importance and has reasonable prospects of appeal. It was further argued that it does not pass the test set in the case of **Bidvest Food Zambia Limited and Four (4) Others v CAA Import and Export Limited** where the Supreme Court gave guidance on applications relating to leave to appeal from the Court of Appeal to the Supreme court.

We have considered the motion, the arguments by the parties and the record. As regards issues relating to non-compliance to the rules, we fully considered the issues in our Judgment and opined that the breach

' was not fatal to the appeal and proceeded to determine the appeal on its merits.

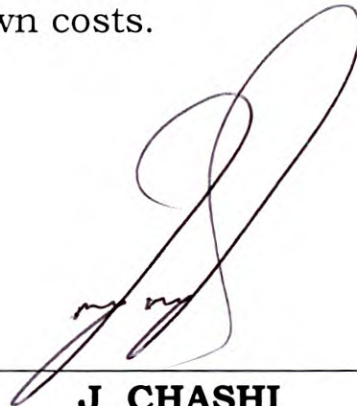
As regards the intended third ground, although we do not agree with the allegation by the Applicant, the Supreme Court in the **Bidvest Food Zambia Limited** case observed that, a Judgment of the Court of Appeal may well raise doubts as to its rationalisation, application of legal principles or some aspects of it. That those misapprehensions or misapplications or liberal doubts as to its correctness may however, not be sufficiently weighty to justify an appeal.

On damages, we considered various cases in which damages awarded should exceed the notice period and the facts and circumstances of this particular case and took the view that the award of 36 months damages came to us with a sense of shock as there were no exceptional circumstances to justify the award.

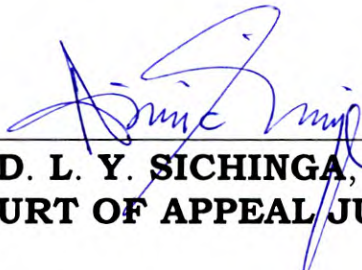
Our view of the intended grounds of appeal is that they neither raise a point of law of public importance, nor do they have a reasonable prospect of success. Taking into consideration the **Bidvest Food Zambia Limited** case, they do not raise issues which fall within the ambit of Section 13 CAA.

In the view that we have taken. This is not a proper case for granting the Applicants leave to appeal to the Supreme Court. The same is accordingly dismissed.


Each party shall bear its own costs.

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J. CHASHI
COURT OF APPEAL JUDGE

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D. L. Y. SICHINGA, SC
COURT OF APPEAL JUDGE

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P. C. M. NGULUBE
COURT OF APPEAL JUDGE