

IN THE COURT OF ZAMBIA  
HOLDEN AT LUSKA  
(Civil Jurisdiction)

APP. NO. 77/2020



**BETWEEN:**

**APEX LOANS SOLUTIONS (Z) LIMITED**

**APPLICANT**

**AND**

**FSG LIMITED**

**1<sup>ST</sup> RESPONDENT**

**FSG (ZAMBIA) LIMITED**

**2<sup>ND</sup> RESPONDENT**

**Coram: Mchenga, DJP, Ngulube and Siavwapa, JJA.**

**On 8<sup>th</sup> April 2021 and 3<sup>rd</sup> June 2021.**

**For the Applicant: W. Mhanga, Messrs AKM Legal Practitioners**

**For the Respondent: C.M. Sianoondo, Messrs Malambo & Company**

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## **RULING**

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Mchenga, DJP, delivered the ruling of the court.

**Legislation referred to:**

1. The Court of Appeal Act, No. 7 of 2016
2. The Court of Appeal Rules Statutory Instrument No. 65 of 2016

**Cases referred to:**

1. Savenda Management Services Limited v Stanbic Bank (Z) Limited, Selected Judgment No. 10 of 2018.

2. Bidvest Food Zambia Limited, Chipkins Bakery Supplies (PTY) Limited, Crown National (PTY) Limited, Bidfood Ingredients (PTY) Limited and Bidvest Group Limited v CAA Import and Export Limited, SCZ Appeal No.56/2017

1. The applicants, have, pursuant to **section 13 of the Court of Appeal Act and Order XI rule 1 (1) as read with Order VII rule 1 (1) of the Court of Appeal Rules**, moved this court for leave to appeal to the Supreme Court.
2. The background to the motion is that the applicant, who was plaintiff in the court below, by writ of summons commenced proceedings against the 2<sup>nd</sup> respondent, the defendant in the court below, seeking a number of reliefs. In the course of the proceedings, the applicant applied for joinder of the 1<sup>st</sup> respondent to the proceedings.
3. The basis for the application being that it was the parent company of the 2<sup>nd</sup> respondent and would be affected by the outcome of the proceedings. In addition, it was contended that since the agreement which was at the centre of the proceedings was executed in the 1<sup>st</sup>

respondent's name, it was appropriate to give it an opportunity to be heard.

4. The 1<sup>st</sup> respondent opposed the application on the ground that no person signed that agreement on its behalf. That being the case, they would not be affected by the outcome of the proceedings and had no interest in the matter.
5. The High Court granted the application for joinder and the 1<sup>st</sup> respondent was joined to the proceedings.
6. The respondents, displeased with that ruling, appealed to this court.
7. On 16<sup>th</sup> November 2020, this court allowed the appeal and reversed the ruling of the High Court joining the 1<sup>st</sup> respondent to the proceedings. It was our view that it had no interest in the matter and was unlikely to be affected by the proceedings before the High Court.
8. Aggrieved with the judgment of this court, the applicant now seeks leave to appeal to the Supreme Court. The intended grounds of appeal have been set out in the motion and we do not find it necessary to replicate them. Suffice to mention that it is contended that we made findings of fact not supported by evidence; we



erroneously concluded that the trial judge had made findings of fact; we failed to take into consideration the general principles of the legal capacity of contracting parties; and we also failed to take into account the standards set by the Supreme Court for the joinder of parties.

9. In addition to considering the intended grounds of appeal, consideration has also been given to the affidavit in support of the motion and arguments in support thereof. We have also considered the contents of the affidavit in opposition to the motion and the arguments against the motion.

10. The gist of the applicant's case is that the intended appeal raises points of law of public importance and that the appeal has reasonable prospects of success.

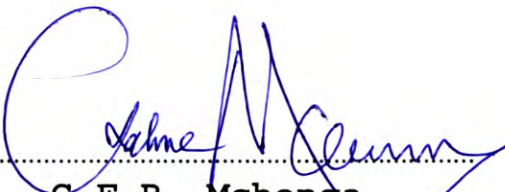
11. **Section 13(3) of the Court of Appeal Act**, provides that in civil cases, leave to appeal may be granted when:


- (a) **The appeal raises a point of law of public importance;**
- (b) .....
- (c) **The appeal has reasonable prospects of success; or**
- (d) **There is some other compelling reason for the appeal to be heard.**


12. In the cases **Savenda Management Services Limited v Stanbic Bank (Z) Limited<sup>1</sup>** and **Bidvest Food Zambia Limited, Chipkins Bakery Supplies (PTY) Limited, Crown National (PTY) Limited, Bidfood Ingredients (PTY) Limited and Bidvest Group Limited v CAA Import and Export Limited<sup>2</sup>**, the Supreme Court set out the threshold that must be met before leave to appeal, can be granted under any one of the three heads.

13. Having considered the intended grounds of appeal, we find that the thresholds have not been met. It is our view, that the intended appeal does not raise any point of law of public importance, nor does are there any reasonable prospects of it succeeding. Neither are there other compelling reasons for the appeal being heard

14. Consequently, we dismiss the motion, with costs.

  
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**C.F.R. Mchenga**  
**DEPUTY JUDGE PRESIDENT**

  
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**P.C.M. Ngulube**  
**COURT OF APPEAL JUDGE**

  
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**M.J. Siavwapa**  
**COURT OF APPEAL JUDGE**