

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

SCZ/8/08/2021

BETWEEN:

ROSEMARY NYANGU

APPLICANT

AND

PAMODZI HOTEL PLC

RESPONDENT

CORAM: Musonda, Ag. CJ, Wood and Kabuka, JJS,

On the 7th September, 2021 and 22nd September, 2021.

FOR THE APPLICANT: Mr. A. Wright, Messrs. Wright Chambers.

FOR THE RESPONDENT: Mr. P. C. Muya, Messrs. Chalwe and
Kabalata, Legal Practitioners.

RULING

KABUKA, JS, delivered the Ruling of the Court.

Cases referred to:

1. Zambia Telecommunications Company Limited v Muyawa Liyuwa, SCZ No. 16 of 2002.
2. Investrust Bank PLC v Build It Hardware Limited & Yousuff Essa, SCZ No. 3 of 2013.

Legislation referred to:

1. Supreme Court Act, Cap. 25 s. 4 (b)
2. Supreme Court of Zambia Rules, Cap. 25, r. 48
3. Court of Appeal Act No. 7 of 2016 section 13 (1), (3) (a), (b), (d)

1.0 Introduction

- 1.1 This ruling is on the applicant's application seeking leave/ permission to appeal to this Court against a Judgment of the Court of Appeal dated 21st September, 2020.
- 1.2 The application for leave was initially made before the Court of Appeal but was declined by that court. Pursuant to section 13 of the Court of Appeal Act No. 7 of 2016, the applicant came to renew her application before a single judge of this Court who equally declined to grant it.
- 1.3 The applicant has now moved the full Court on a motion seeking to vary, discharge, reverse or set aside the ruling of the single judge declining her leave to appeal. The motion is supported by an affidavit and skeleton arguments to which the respondent filed its own affidavit and Skeleton Arguments in opposition.
- 1.4 Our perusal of the documents alluded to at paragraph 1.3 above disclosed that the motion in substance and form, was presented as an appeal, faulting the ruling of

the single judge of this Court.

1.5 It is for the said reason that when the motion came up for hearing we invited learned counsel for the applicant to address us on the question of competency of the application, which he did, to some considerable detail.

1.6 The substance of his response was that in as much as he conceded that the motion appears to have been presented as an appeal, according to him, the same is in conformity with Supreme Court Form B which relates to rule 48 of the Supreme Court Rules Cap. 25 of the Laws of Zambia, pursuant to which it had been brought. For his part, learned counsel for the respondent left the question of competency of the motion for this Court to determine.

2.0 Consideration and determination of the issue of competence of the motion

2.1 The starting point in our view is section 4 (b) of the Supreme Court Act, Cap. 25 of the Laws of Zambia which, in providing for powers of a single Judge of the Court states that:

“4. A single judge of the Court may exercise any power vested in the Court not involving the decision of an appeal but-

(b) in civil matters any 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.”

2.2 The power granted in section 4 (b) above, is embodied in rule 48 (4) pursuant to which the motion now before us was brought. The rule reads as follows:

“48. (4) Any person aggrieved by a decision of a single judge who desires to have such decision varied, discharged or reversed by the Court under paragraph (b) of section four of the Act, shall in like manner file before the hearing by the Court three extra copies of the proceedings, including copies of affidavits filed by any other party prior to the single judge’s decision, for the use of the Court.” (underlining for emphasis supplied)

2.3 It is abundantly clear from the provisions quoted at paragraph 2.1 and 2.2 that an application or motion comes from a single judge to the full Court by way of renewal and ought to be presented as such. It is not an appeal requiring new grounds premised on the decision of the single judge for consideration by the full Court. When the issue arose in the case of **Zambia Telecommunications Company**

Limited v Muyawa Liyuwa¹ this Court underscored that position in the following observation:

“.....we want to state here for the benefit of litigants and advocates who appear before judges of this court at chambers, that when aggrieved, or dissatisfied by any decision of a single judge of this court, they come to a full court by way of renewal of the application or motion and not by way of an appeal. This is so because in terms of section 4 of the Supreme Court Act, Cap. 25 of the Laws of Zambia a single judge of the court may exercise any powers of the court not involving the decision of an appeal or a final decision in the exercise of his original jurisdiction.... It is precisely for this reason that a single judge may sit on the renewed application which was dealt with by himself or herself because the renewed application is not an appeal.”

(underlining for emphasis supplied)

2.4 We re-iterated the position that an application declined by a single judge of this court is escalated as a renewed application to the full Court in another case, **Investrust Bank PLC v Build It Hardware Limited & Yousuff Essa**² when we said that:

“We agree.... with Counsel for the respondent that upon the High Court declining, the appropriate thing for the appellant to have done should have been to renew the application before a single judge of this court, with the prospect of escalating the application to the full court, in the event that the single judge declined to grant it. By lodging an appeal rather than a renewed application before a single judge, the

procedure adopted by the appellant was, therefore wrong and is bound to fail on that basis alone.”

2.5 Reverting to the motion now before us, we note that the issue before the single judge was simply, whether the applicant's intended grounds of appeal satisfied the section 13 threshold as to warrant granting her leave to appeal. Upon considering the proposed grounds of appeal that were put before him, the single judge in his ruling dated 30th June, 2021 determined that the intended grounds of appeal did not meet the section 13 (3) threshold. Substantively, the single judge found that the appeal did not: (a) raise a point of law of public importance; (c) have reasonable prospects of success; or that (d) there was some other compelling reason for it to be heard. It is for those reasons that leave to appeal was declined.

2.6 In escalating the matter to the full Court as a renewed application however, the applicant has departed from focusing on the proposed grounds of appeal that were put before the single judge to convince us that they in fact do meet the threshold in section 13 as to justify the grant of leave to appeal. The new grounds raised in the motion are wholly directed at faulting the single judge's analysis and determination of the application. The grievances are most

certainly presented as an appeal anchored on three grounds that are couched in the following terms:

“Ground 1

That the Learned Single Judge of the Supreme Court misdirected himself at law when he construed Order 37 Rules 1 and 2 of the Supreme Court Rules [1999] Edition (Order II Rule 3 of the High Court Rules), albeit wrongly; to mean that a party against whom judgment is granted is not restricted and/or is entitled to move the Court for assessment of damages, in the same manner as the party in whose favour the judgment was granted.

Ground 2

The Learned Single Judge misdirected himself at law when he failed to appreciate that the issues of jurisdiction can be raised for the first time on appeal even if not raised in the court below.

Ground 3

That the Learned Single Judge misdirected himself at law when he ruled that there are no conflicting and/or contradictory precedents and that the lower court failed to appreciate that it was not all allowances that were incorporated into the salary.”

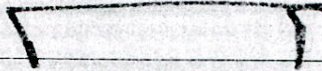
2. 7 The grounds as set out at paragraph 1.4 above, in our view, undoubtedly raise the issue of whether or not the motion is competently before us. In his arguments filed in support of the motion the approach of learned counsel for the applicant was to devote his entire submissions addressing the three grounds attacking the ruling of the single judge as opposed to focusing on advancing arguments in support of the

proposition that the applicant's intended grounds of appeal in fact do satisfy the Court of Appeal Act, section 13 threshold.

- 2.8 Learned counsel for the applicant in trying to justify the approach of advancing grounds attacking the single Judge's ruling as though he was appealing the said ruling, when the motion was a mere renewal of the application that was before the single judge sought refuge in Form 2 which relates to the motions under rule 48. His argument was that he cannot be faulted as he complied with that format. Our short reaction to that proposition is that as the motion comes by way of renewal, it must speak to the same grounds that were before the single judge and not be premised on challenging the ruling of the single judge.
- 2.9 On the facts of this case the applicant's arguments should have focused on demonstrating that the proposed grounds of appeal that were before the single judge in fact satisfy the requirements of section 13 (3) and that the applicant is entitled to be granted leave to appeal.
- 2.10 It is for the reasons given that we find the applicant's notice of motion in the manner presented, incompetent and the

motion fails on that score alone. On the issue of costs, we find an appropriate order in the circumstances, is for each party to bear their own costs of the motion.

Motion dismissed.



M. MUSONDA
Ag. CHIEF JUSTICE



A. M. WOOD
SUPREME COURT JUDGE



J. K. KABUKA
SUPREME COURT JUDGE