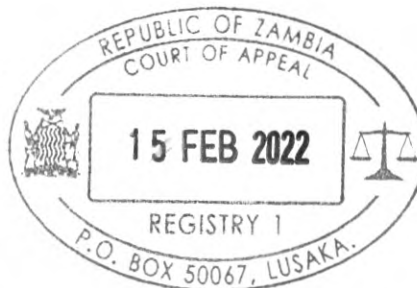


**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA**

Appeal No. 111/2020

BETWEEN:

**LAZAROUS NDHLOVU
CLEIN SITIYA
PAUL SITIYA**



**1st APPELLANT
2nd APPELLANT
3rd APPELLANT**

AND

**HEADWOMAN PWALAKASA
MARY NCUBE**

**1ST RESPONDENT
2nd RESPONDENT**

Appeal No. 128/2020

BETWEEN:

MULENGA KACHEMBA

APPELLANT

AND

RICHARD SIKAZWE

RESPONDENT

**CORAM : Chashi, Chishimba, Siavwapa, Banda-Bobo
and Sharpe-Phiri, JJA**

On 26th January, 2022 and 15th February, 2022

For the Appellant : Mr. A.M. Chimembe of Messers JMC
Advocates

For the Respondents: Mr. R. Sikazwe in Person

J U D G M E N T

Chishimba JA, delivered the Judgment of the Court.

CASES REFERRED TO:

- 1) Lt. General Wilford Joseph Funjika v The Attorney General (2005) ZR 97
- 2) Webby Mulubisha v Attorney General 2018/CC/0013
- 3) Thomas Mumba v The People (1984) ZR 38
- 4) Abdul Rwigara Simwaya v Commissioner of Lands and 2 Others Appeal 92 Of 2017 CA
- 5) Davidson Mkandawire and Others v Malembeka and Another (CAZ Appeal no. 47 of 2019)
- 6) Zambia national Holdings Limited and UNIP v Attorney General (1994) SJ 22
- 7) Zambia Revenue Authority v Professional Insurance Corporation Appeal 34/2017
- 8) Young v Bristol Aeroplane Co- Ltd (1944) KB 718 CA

LEGISLATION AND OTHER WORKS REFERRED TO:

1. The Constitution of Zambia (Amendment Act No. 1 of 2016)
2. The Court of Appeal Act No. 7 of 2016
3. The Tax Appeals Act No. 39 of 2010

1.0 INTRODUCTION

1.1 This is a consolidated appeal emanating from decisions made by the Lands Tribunal. Being dissatisfied, with those decisions the appellants appealed to the Court of Appeal. The appeal deals with the issue of whether the Court of Appeal has jurisdiction to hear and determine appeals from the Lands Tribunal.

2.0 BACKGROUND FACTS

2.1 The appellants had filed complaints in the Lands Tribunal in respect of disputes relating to land. We will not recite the facts

in the pleadings for reasons that will become clear. Save to state that the Lands Tribunal accordingly heard, determined and delivered judgments in relation to those complaints.

2.2 At the hearing of the appeal, we invited the Learned Counsel and the respondents who appeared in person, to address the court on whether the Court of Appeal has jurisdiction to hear and determine appeals from the Lands Tribunal, an issue that the court has been grappling with. We adjourned the hearing of appeals to 26th of January 2022 to enable the parties file in written arguments on the issue of jurisdiction.

3.0 **ARGUMENTS ADVANCED:**

3.1 Mr. A. M Chimembe, Counsel for the appellant (Appeal 128) relied on the heads of argument dated 19th January 2022. In submitting that the Court of Appeal has jurisdiction to hear and determine appeals from the Lands Tribunal, Learned Counsel referred us to the provisions of the **Article 1(1) of the Constitution of Zambia**, on it being the supreme law of the Republic of Zambia and that *“any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.”*

3.2 We were also referred to **Article 131 (1) of the Constitution of Zambia Act No. 1 of 2016** on the jurisdiction of the Court of Appeal to hear appeals from the High Court and Quasi-judicial bodies except a Local Government Election Tribunal, as well **Section 22 of the Court of Appeal Act** which provides that appeals in civil matters, lie to the Court from a judgment of the High Court or quasi-judicial body.

3.3 The Learned Counsel went on to refer to the case of **Lt. General Wilford Joseph Funjika v The Attorney General** ⁽¹⁾ in which it was held that;

“The issue of conflict between an Act of Parliament and the Constitution is very basic. We know that the Constitution is the Supreme Law of Zambia and that if any other law is inconsistent with the Constitution that other law is, to the extent of inconsistency void.”

3.4 The case of **Webby Mulubisha v Attorney General** ⁽²⁾ was cited on the supremacy of the constitutional provisions that, it is beyond question. In addition, our attention was drawn to the case of **Thomas Mumba v The People** ⁽³⁾ in which it was held that;

“Unless the Constitution is specifically amended, any Act that is in contravention of the constitution is null and void.”

3.5 It was submitted that on the basis of the above cited authority, **Article 131(1) of the Constitution** prevails over the provisions of **Section 16 of the Lands Tribunal Act No. 39 of 2010**, hence the doctrine of supremacy of the Constitution.

3.6 In addition, reference was made to **Section 6 of the Constitution of Zambia** which provides as follows:

1. Subject to the provisions of this Act, and in so far as they are not inconsistent with the Constitution as amended, existing laws shall continue in force after the commencement of this Act as if they had been made in pursuance of the constitution as amended, but shall be construed with such modifications, adoptions, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution as amended.

2. Parliament shall, within such period as it shall determine, make amendments to any existing law to bring that law into conformity with, or to give effect, to this Act and the Constitution as amended

3.7 The appellant, submitted in the alternative, that since the enactment of the **Constitution of Zambia (Amendment) Act No. 1 of the 2016**, the Court of Appeal has rightly entertained and adjudicated over appeals emanating from decisions of the Lands Tribunal. The cases on point being **Abdul Rwigara Simwaya v Commissioner of Lands and Others** ⁽⁴⁾ and

Davidson Mkandawire and Others v Malembeka and Another

⁽⁵⁾ where we entertained appeals from the judgments of the Lands Tribunal.

3.8 In conclusion, Learned Counsel submitted that we have jurisdiction to hear and determine appeals from the Lands Tribunal as conferred by the **Constitution of Zambia and the Court of Appeal Act**. The definition of jurisdiction as ascribed to in the case of **Zambia National Holdings Limited and UNIP v Attorney General** ⁽⁶⁾ was referred to. That jurisdiction in one sense can be understood as the authority the court has to determine matters and that the limits of such authority will be stated in the relevant legislation. Therefore, this court has jurisdiction to hear appeals from the Lands Tribunal.

3.9 The respondents appeared in person and did not submit on the issue and left it to the wisdom of the court.

4.0 **DECISION OF THE COURT**

4.1 We have considered the issue of jurisdiction *rationale materiae* which we are confronted with and the arguments advanced as well as the authorities cited. The issue to be determined is whether the Court of Appeal has the jurisdiction to entertain

appeals from the Lands Tribunal; or whether Appeals from the Lands Tribunal should lie to the High Court: This is in view of the seemingly conflicting provisions of the Law which will be highlighted.

- 4.2 It is not in issue that from inception, the Court of Appeal has assumed jurisdiction and entertained appeals from the Lands Tribunal. However, we are now confronted with the question of whether the court does indeed have jurisdiction to entertain appeals from the Court of Appeal.
- 4.3 Jurisdiction of courts means or includes any authority conferred by the law upon the court, tribunal or judge to decide or adjudicate disputes between the parties. It goes to the root of the matter. Any decision rendered by a court without jurisdiction becomes a nullity and not enforceable by law.
- 4.4 We shall begin by citing the relevant provisions in issue. **The Constitution of Zambia (Amendment) Act of 2016** under Article 131(1) Provides as follows that:

“The Court of Appeal has jurisdiction to hear appeals from;

(A) The High Court

(B) Other courts, except for matter under the exclusive jurisdiction of the Constitution Court

(C) Quasi-Judicial bodies, except a local government tribunal

4.5 Section 4 of the **Court of Appeal Act No 7 of 2016** on the jurisdiction of court provides that :

“The Court has jurisdiction to hear appeals from judgments of the

(a) The High Court; and

(b) A quasi-judicial body, except a local government elections tribunal.

Further Section 22 of the Court of Appeal Act also stipulates that:

“subject to section twenty three, an appeal in a civil matter shall lie to the Court from a judgment of the High Court or a Quasi-Judicial body.”

4.6 The **Lands Tribunal Act No 39 of 2010** on the other hand provides that:

“A person aggrieved with the decision of the Tribunal may within thirty days appeal to the High Court.”

4.7 In determining the issue of jurisdiction, we place reliance on the Supreme Court decision of **Zambia Revenue Authority v Professional Insurance Corporation** ⁽⁷⁾. The case dealt with the issue of whether the Supreme Court had jurisdiction to hear an appeal from the **Tax Appeals Tribunal** or whether the appeal ought to have been lodged in the Court of Appeal in accordance

with the provisions of the **Constitution of Zambia Act and the Court of Appeal Act**. In that case, the Court reviewed the provisions of Article 125(2) b of the Constitution Act which state as follows:

“The Supreme Court has jurisdiction conferred on it by other laws.”

4.8 The Supreme Court held that it had jurisdiction to hear appeals from the **Tax Appeals Tribunal** because ‘*other laws*’ namely **Section 15 of the Tax Appeals Tribunal** gives it such jurisdiction. It also found that it derived jurisdiction from Article 125 (2) of the **Constitution of Zambia Act**.

4.9 Though the above decision dealt with appeals from Tax Appeals Tribunal, the Supreme Court discussed at length the provisions of **Article 131(1) of the Constitution, as well as Sections 4 and 22 of the Court of Appeal Act**, by which the Court of Appeal is enjoined to hear and determine appeals from the High Court and quasi-judicial bodies.

4.10 The Supreme Court in reference to **Sections 4 and 22 of the Court of Appeal Act** stated that:

“In their present formulation, empower the Court of Appeal to hear appeals from quasi-judicial bodies generally Any

quasi-judicial body except the quasi-judicial body specifically identified in Article 131(1) of the Constitution..... This provision does not in our view, give the Court of Appeal exclusivity in hearing appeals from quasi-judicial bodies.”

4.11 The Supreme Court further stated that section 15(1) of the **Tax Appeals Act** directing that appeals shall lie to the Supreme Court “*creates a second exception to the quasi-judicial bodies whose appeals are within the jurisdictional mandate of the Court of Appeal to determine*” and found no conflict in the provisions in issue.

4.12 The Apex Court went on to state, in our view, a cardinal point quoted herein under that:

“The Court of Appeal, on the other hand, has the mandate (though not an exclusive one) to hear appeals from all quasi-judicial bodies (except a Local Government Electoral Tribunal and all other tribunals in respect of which other laws give such jurisdiction to the Supreme Court under Article 125(2)(b). To the extent that no exclusivity of jurisdiction is reserved for the Court of Appeal to hear and determine all appeals arising from quasi-judicial bodies, an interpretation that implies that position would to us be plainly absurd.”

4.13 Adhering to the doctrine of *stare decisis* (vertical stare decisis), in determining the point/issue of jurisdiction according to precedent, standing by things decided; we are of the view that the Court of Appeal does not have the requisite jurisdiction to hear and determine appeals from the Lands Tribunal. **Section 16 of the Lands Tribunal Act** specifically stipulates that appeals shall lie to the High Court. This qualifies as an exception to appeals from quasi-judicial bodies that are not within the jurisdictional mandate of the Court of Appeal, bearing in mind that we do not have exclusive power to hear all appeals from quasi-judicial bodies (Courts emphasis).

4.14 As regards the argument raised by the appellants that the **Constitution of Zambia Act** is the supreme law, therefore it prevails over section 16 of the **Lands Tribunal Act**, we are of the view that there is no issue of conflict between an Act of Parliament and the Constitution. It is trite that the Constitution is Supreme, hence the doctrine of supremacy of the constitution. As earlier stated, the provisions above do not conflict. The power under **sections 4 and 22 of the Court of Appeal Act** that empowers us to hear appeals from quasi-

judicial is general and not specific. Where a quasi-judicial body's Act specifically stipulates the forum to appeal, we cannot assume that jurisdiction. Forum goes to jurisdiction.

- 4.15 The appellant also raised an alternative argument that we have previously entertained and adjudicated over appeals emanating from the decisions of the Lands Tribunal, therefore, we should continue to do so.
- 4.16 It is not in issue that we had assumed jurisdiction to entertain appeals from the Lands Tribunal since inception of the Court of Appeal in 2016. Save for one appeal, the issue of jurisdiction was not raised in the said appeals. In CAZ 08/187/2021 where the issue of jurisdiction was raised as a preliminary issue, we stated that the court had jurisdiction to entertain appeals from the Lands Tribunal.
- 4.17 We cannot, in our view, continue to assume jurisdiction on the basis that we have in the past entertained appeals from the Lands Tribunal. Our assumption of jurisdiction was based on our honest held view that only appeals from a Local Government Electoral Tribunal were an exception to the court's jurisdiction as provided for by Article 131(1) of the constitution.

4.18 The next issue to be determined, having held that we have no jurisdiction to entertain appeals from the Lands Tribunal, is whether we have power to over-rule ourselves on this issue of jurisdiction.

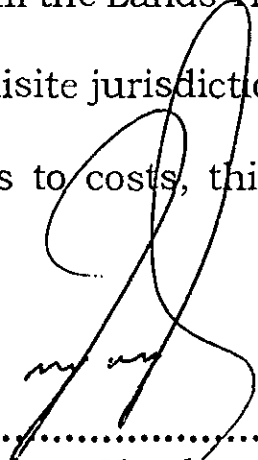
4.19 The Court of Appeal is bound to follow its own decisions and the full court is in the same position in this respect as a division court consisting of three members. The only exceptions to the rule are as follows: where there are two conflicting decision of its own, or where the court is bound to refuse a decision on its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the Supreme Court and thirdly where the decision was made per incuriam. We refer to the English case of **Young v Bristol Aero Plane Co- Ltd** ⁽⁸⁾ where the Court of Appeal (UK) considered the question whether it was bound by its previous decisions and stated that there are exceptions to the principle that the Court of Appeal is bound to follow its decision as stated above.

4.20 We are of the view that we are not bound by our earlier decision to entertain appeals from the Lands Tribunal. This is on the basis of our conclusion that our previously assumed

jurisdiction, cannot stand in view of the Supreme Court decision of the **Zambia Revenue Authority v Professional Insurance Corporation** ⁽⁷⁾ (supra). The Supreme Court, having covered and determined the point, we are bound by the decision of the Supreme Court.

4.21 For the forgoing reasons, we hold that the Court of Appeal does not have jurisdiction to entertain appeals from the Lands Tribunal. Appeals from the Lands Tribunal lie to the High Court reposed with the requisite jurisdiction.

4.22 We make no order as to costs, this being a matter of public importance.



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J. Chashi
COURT OF APPEAL JUDGE



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F. M. Chishimba
COURT OF APPEAL JUDGE



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M.J. Siavwapa
COURT OF APPEAL JUDGE



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A. M. Banda -Bobo
COURT OF APPEAL JUDGE



.....
N. A. Sharpe-Phiri
COURT OF APPEAL JUDGE