IN THE SUPREME COURT OF ZAMBIA **SCZ/8/27/2021**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

RAZAK IBRAHIM KASSAM ABBA	**1ST APPLICANT**
JAN WESSER JACOBUS BOTHA	**2ND APPLICANT**
W.J.N CONTRUCTION COMPANY	**3RDAPPLICANT**
GROVENOR RESOURCES ZAMBIA LIMITED	**4TH APPLICANT**

AND

FANAMU MINING LIMITED	**1ST RESPONDENT**
ATTORNEY GENERAL	**2ND RESPONDENT**

Coram: E. M. Hamaundu, JS

For the applicants : Mr B. Sitali, Messrs Butler & Company Legal Practitioners
For the 1st respondent: Mr C. Chilekwa, Messrs C.C. Gabriel & Co

For the 2nd respondent: Attorney General (Not present)

RULING

Case referred to:
Bidvest Food Zambia Limited and Others v CAA Import and Export Limited, Appeal No.56/2017

This purports to be a renewed application, before a single judge of this court, of an application for an interlocutory injunction pending the hearing of an appeal by the applicants which is currently before the Court of Appeal. The application is made under the following peculiar circumstances: The applicants and the 1st respondent are engaged in a dispute over a mining area in Mumbwa. The applicants took the dispute before the High Court, and, on the strength of that, applied for an interlocutory injunction; that application was dismissed. The main action also was later dismissed on a point of law. The applicants then appealed to the Court of Appeal. Before that court, the applicants applied before a single judge for an interlocutory injunction. The single judge dismissed the application. The applicants then took it to the full bench of that court, where it met the same fate. The applicants are now here.

Counsel for the 1st respondent, at the hearing of this application, raised a preliminary objection regarding the propriety of the applicant's application. It was counsel's argument that the applicants should have first sought leave to appeal. Counsel relied

on the provisions of **Section 24** of the **Supreme Court Act, Chapter 25** of the **Laws of Zambia**.

In response, however, counsel for the applicants argued, on the other hand, that leave would have only been required if what had come to this court was an appeal; he submitted that in this case what is here is merely a renewed application for an interlocutory injunction, for which the applicants do not need to seek prior leave before it can be heard.

In my view, the reliance by the applicants on **Section 24** of the **Supreme Court Act** is misconceived because a reading of its provisions shows that it was only relevant prior to the creation of the Court of Appeal, when all appeals against High Court decisions used to come to the Supreme Court. Now, the section is applicable, to a limited extent, only in very few matters whose appeals lie directly to this court from the High Court: this matter is not one of those. Be that as it may, the objection, however, is not without substance because the creation of the Court of Appeal as an intermediate appellate court between the High Court and the Supreme Court has created a new role for this court. Prior to the creation of the Court of Appeal in 2016, appeals came to this court

from the High Court without leave, except in a few instances set out in **Section 24** which the respondent has relied on. What is important to note, for the purpose of this application, is that parties could come to this court on renewed applications to seek to reverse interlocutory orders made by the High Court in matters which were still running before that court. Now all that has changed.

In the case of **Bidvest Food Zambia Limited and Others v CAA Import and Export Limited**[1], the full bench of this court said;

> **"When considered in context, therefore, the creation of the Court of Appeal by the Constitution of Zambia (Amendment) Act No.2 of 2016, was not intended merely to add another layer in the structure of the courts or the appellate process. Rather, the Constitution elevated the Supreme Court to a level above an ordinary appellate court. Its original role of hearing appeals from the High Court and other quasi-judicial bodies having effectively been assumed by the newly created Court of Appeal, means that its role in the appellate structure has necessarily changed. In our view, even without the benefit of learning from the experience of other jurisdictions with court structures such as our country has now adopted following the enactment of the amended constitution, it would not have been the intention of the framers of the amended constitution that the Court of Appeal and the Supreme Court should be performing the same or even a similar function.**

> **Our view is that the role of the Supreme Court is now informed by the restriction of appeals it will hear in the manner and for the reasons that courts at the equivalent level in jurisdictions such as the United Kingdom do. These restrictions were eloquently articulated by Lord Bingham in the case of** *R v Secretary of State for Trade and Industry, Exp. Eastway*, **as we have quoted him earlier, as well as in the passage of** *Zuckeman on Civil Procedure* **which we have also freely quoted earlier on.**
>
> **It is in that spirit that** *Section 13* **of the** *Court of Appeal Act*, **restricting access to the Supreme Court by deferring to the apex court only weighty issues in the most deserving of cases, should be understood**" (*underlining mine for emphasis*).

So, as the above passage says, the purpose of **Section 13** of the **Court of Appeal Act** is to restrict what should come to the Supreme Court. When read together with **Order X1 rule 1** of the **Court of Appeal Rules**, it appears to me that the matters that are allowed to come to the Supreme Court are those in which the Court of Appeal has delivered final judgment; and even then it is only those matters where the intended appeal meets the threshold set out in the provisions of **Section 13**. In my view, therefore, a renewed interlocutory application before the Supreme Court, after the same has been declined by the Court of Appeal, in a matter that

has not yet been concluded in that court, or High Court, is not among the matters that **Section 13** contemplates to be brought to the Supreme Court. So where a party, as in this case, applies for an interim injunction before the Court of Appeal, pending the determination of an appeal before that court, and that court declines to grant the application then that is the end of the road as far as that application is concerned; until after he has successfully obtained leave, on the substantive matter, to appeal to this court. Then of course, when that matter is active in this court, the party may apply afresh for any interim relief, such as an injunction. On this point alone, my view is that this application is misconceived.

However, even assuming that this application was properly before me and I were to consider it on merit, I find a very serious flaw in the application itself. As I have said earlier, the application is said to be a renewal of the applicants' request for an injunction. Yet the motion does not set out the terms of the injunction which they seek. Instead, the motion is couched as follows:

> **"TAKE NOTICE that the applicants' application for an order of interim injunction HAVING BEEN REFUSED by the Court of Appeal as stated in the Ruling of the Court of Appeal dated 3rd November, 2021, COUNSEL for the above-named Applicants**

will apply to the Supreme Court for an order of interim injunction pending the determination of their appeal;
AND FURTHER TAKE NOTICE that the grounds for the said application are:

1. **That the Court of Appeal misdirected itself in law and fact when it held that restoration of a situation whereby the applicants take charge of the mining area is untenable and would be unjust in the circumstances.**
2. **The Court of Appeal misdirected itself in law and fact when it held that since the applicants' licence has been suspended by the Ministry of Mines, the right to relief is unclear and the applicants would not possibly suffer irreparable damage**
3. **The Court of Appeal misdirected itself in law and fact when it held that there are no special circumstances to warrant the grant of an interim injunction pending appeal; the applicants would not possibly suffer irreparable injury and that the appeal will not be rendered nugatory in the absence of an injunction."**

Clearly, this application is brought here in the form of an appeal from the Court of Appeal's decision. A single judge of this court has no power to exercise appellate jurisdiction over the Court of Appeal.

Further, it is important to set out the terms of the injunction sought because it is those terms that define the nature and extent of the injunction. So, without those terms, it is difficult to consider

the application on any of the principles that are applicable to injunctions. For the foregoing reason, this application would fail on merit, as well.

In the circumstances, I dismiss this application with costs to the 1st respondent.

Dated the 23rd day of February 2022

.....
E. M. Hamaundu
SUPREME COURT JUDGE