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

Appeal No. 145 of 2020

BETWEEN:

OLIVER INAMBAO SITALI & 16 OTHERS Appellants

AND

ZAMBIA AIRFORCE 1st Respondent
ATTORNEY GENERAL 2nd Respondent

CORAM: Chishimba, Siavwapa and Sharpe-Phiri, JJA on 17th February 2022 and 17th March 2022

For the Appellants: In Person
For the Respondents: Ms. S.K. Mofya and Ms. K.F. Mumba, State Advocates, Attorney Chambers

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JUDGMENT

SHARPE-PHIRI, JA, delivered the Judgment of the Court

Legislation referred to:

1. *The Societies Act, Chapter 119 of the Laws of Zambia*
2. *The Clubs Registration Act, Chapter 162 of the Laws of Zambia*
3. *The Defence Act, Chapter 106 of the Laws of Zambia*
4. *The Sports Council of Zambia Act, Chapter 142 of the Laws of Zambia*

Authorities referred to:

1. *Galaunia Farms Limited v National Milling Company Limited And National Milling Corporation Limited (2004) ZR 1*
2. *A.M.I. Zambia Vs Peggy Chibuye – SCZ Judgment No. 8 of 1999-1999 ZLR 50*

3. *National Airport Corporation Limited v Reggie Ephraim Zimba and Saviour Konie – SCZ Judgment No. 34 of 2000 ZLR 154*
4. *Royal British Bank v Turquand (1856) 6, E & B. 327 EXCH.CH*
5. *Simnida Instrumentation Services v Hotel Intercontinental – 2000/HP/1151 (Unreported)*
6. *Rosemart Investment Limited v ZANACO – SCZ Appeal No. 59/2000 (Unreported)*
7. *South African Veterinary Counsel and Registrar v Greg Syzmanski, Case No. 70 of 2001*
8. *Martha Muzithe Kangwa and Others v Environmental Council Of Zambia Nasala Cement Limited Attorney-General (2011) Vol. 2 ZR*

1.0 **INTRODUCTION**

1.1 This is an appeal against the judgment of Justice S. K. Newa delivered at the Lusaka High Court on 27th April 2020. The Appellants were the Plaintiffs before the lower Court, while the Respondents were the Defendants.

2.0 **BACKGROUND**

2.1 The Appellants commenced the action against the Respondents in the lower Court on 11th October 2017 by way of writ of summons and statement of claim filed.

2.2 In the pleadings in the Court below, the Appellants contended that they were members of the Red Arrows Karatakers Club under the Zambia Airforce, having joined the club in 2003 after a promise was made to them that they would be employed by the 1st Respondent.

2.3 The Appellants averred that there was a procedure in the Zambia Air force of recruitment directly from clubs for those not undergoing military training and that there was precedence to this effect.

2.4 The Appellants stated that the Red Arrows Karate Club was a recognized club under the Zambia Airforce and that the 1st Respondent had made recommendations for some of its members to open up accounts, on account of its membership to the club. That every year the Airforce had invited them to participate in various tournaments under the Karate Club, which they had undertaken, with the Airforce facilitating payment of their participation fees.

2.5 The Appellants further contended however, that from the time that they joined the Karate club, they had paid their own transport to and from such tournaments and the Airforce had not paid them any allowance or upkeep.

2.6 The Appellants further averred that they had not received any form of assistance from the 1st Respondent whatsoever, and despite efforts to resolve matters with the Respondents, nothing had been forthcoming.

2.7 The Appellants claimed for the following reliefs, namely:

i. An order or refund for the purchase of training kits.

ii. An order for the refund of transport money used to and from training and participation places.

iii. An order and declaration that the plaintiffs are employed as promised.

iv. Payment of upkeep and any other allowances for a period of fourteen (14) years.

v. Interest on the sums found due.

vi. Any other relief the court may deem fit.

vii. Costs.

2.8 The Respondents entered a defence on 30th January 2018 in which they confirmed that the Red Arrows Karate Club is a recognized club under the Airforce and that the Appellants were volunteer members thereof, having joined in 2003.

2.9 The Respondents however, denied that the Appellants were promised that they would be employed by the Zambia Airforce if they were members of the club or that it was procedure to recruit directly if one joined the Club.

3.0 DECISION OF THE COURT BELOW

3.1 After hearing the matter, the Judge in the lower Court found that the Appellants joined the Red Arrows Karate Club, under the Zambia Airforce, as civilians on a voluntary basis and that the Appellants had clearly admitted this in cross examination.

3.2 The learned trial Judge also held that although club members were considered for recruitment in the Zambia Airforce, being a member of a sports cub was not the sole criteria to be employed with the 1st Respondent.

3.3 The Court below held that the provisions of **Section 13 of the Defence Act** require other necessary conditions to be met for employment in the Zambia Airforce.

3.4 The lower Court also held that Clubs have rules that govern them, and it was imperative that the leaders of the Clubs under the Zambia Airforce ought to have taken time to explain to their members on what to expect from their membership.

3.5 The Judge further held that one of the elements for an expectation to be legitimate, is that the representation must be one which it was competent and lawful for the decision maker to make, without which the reliance cannot be legitimate. She referred to the case of **Southern African Veterinary Council and Registrar vs Greg Syzmanski**.

3.6 The lower Court highlighted that the onus of proving that the Appellants were entitled to various payments in terms of refunds for transport, upkeep and trainings lay with them, but from the evidence before her, the Appellants had failed to prove that they were so entitled.

3.7 The Judge however agreed with the evidence adduced on behalf of the Respondents that it would be an abuse of public resources to pay Appellants who were not employees of the 1st Respondent from such resources, adding that even equity would not allow for such claim to succeed. The Court dismissed the Appellants' claims and ordered that each party bears their own costs.

4.0 THE APPEAL

4.1 Being dissatisfied with the judgment of the High Court, the Appellants filed an appeal before this Court advancing five grounds of appeal namely:

i. The Court below erred and misdirected itself by ignoring the recorded evidence which was played in Court which revealed that sports is a criterion of being employed by the 1st Respondent.

ii. The Court below erred and misdirected itself by ignoring that the Appellants were outsiders, and they may not know that the station Commander who is the 1st Respondent's spokesperson made the statement without the consent of person in authority.

iii. The Court below erred and misdirected itself by dismissing the Appellant's claim for refund of monies they purchased the training kits and for transport to and from training and participation places on the bases that they did not produce receipts when there is no dispute that training kits were purchased by the Appellants and when it is not in dispute that the Appellants were attending training and incurred transport costs and when such claims were liable to be assessed.

iv. The Court below erred and misdirected itself by ignoring that verbal agreements are enforceable.

v. **The Court below erred and misdirected itself by holding the Respondent's Defence without supporting evidence.**

5.0 ARGUMENTS IN SUPPORT OF THE APPEAL

5.1 The Appellants filed their heads of argument on 10th August 2020 in which they argued five grounds of appeal.

5.2 In relation to ground 1, the Appellants argued that the Station Commander of the 1st Respondent had stated in a speech made on behalf of the Air Commander aired on ZNBC TV1 that sports was part of the selection criteria for employment at the Zambia Air force.

5.3 The Appellants drew the Court's attention to the testimony of the Appellants' 1st witness appearing at lines 15 to 23 of page 11 of the Record of Appeal, J4 of the judgment of the lower Court which states as follows:

'In 2002, there was an article on Zambia National Broadcasting Services (ZNBC) sports news, where sports men and women were being rewarded by the Station Commander of the Zambia Air Force. He stated that the Station Commander encouraged servicemen to take interest in sports for their physical wellbeing and health. The Station Commander has also encouraged youths to engage in sports as a source of income, stating that sports was a way in which the Zambia Air Force recruited personnel...'

5.4 The Appellants argued that the Court below captured the evidence on page J12 of the judgment on page 19 of the record of appeal lines 5 to 7, as follows:

'The recording was played in court showing the Station Commander on behalf of the Air Commander Muma stating that sports is a means of being employed in the Zambia Air Force.....'

5.5 The Appellants argued further that the Respondents' 2nd witness confirmed the Plaintiffs' evidence as shown on page J17 of the judgment on page 24 of the Record of Appeal lines 7 to 10 and 13 and 14 as follows:

'When the video recording at pages 1-3 of the plaintiffs' supplementary bundle of documents was played DW2 agreed that the Station Commander had in that video stated that sports was part of the selection criteria for employment at the Zambia Air Force.....
When cross examined further DW2 agreed that the Station Commander spoke on behalf of the Air Commander.'

5.6 The Appellants argued that the Court stated on page J22 of the judgment on page 29 of the record of appeal lines 10 to 13, as follows:

'A reading of the video clip aired of the station Commander speaking on behalf of the Air Force Commander who is the head of the Zambia Air Force shows that there was encouragement given to the youths to engage in sports as a way of being recruited by the Zambia Air Force.'

5.7 The Appellants argued that DW1 testified in his evidence which was captured by the Court below on page 169 lines 1 to 4 of the Record of Appeal that:

'Court plays video in supplementary bundle of documents in which ZAF Commander General Muma has encouraged sports through Station Commander. I have listened to the clip. It says joining sports is criteria for employment.'

5.8 The Appellants contended that from the quotation above, the 1st Respondent made it clear that sports are a criterion of being employed by the 1st Respondent. Further, in the evidence quoted above, the 1st Respondent did not state that there are other criteria apart from sports for being employed by the 1st Respondent.

5.9 The Appellants argued that the Court below therefore, erred and misdirected itself by holding on page J22 of the Judgment page 29 of the Record of Appeal lines 19 to 24 that:

'To this end, it is desirable to state that while engagement in sports is a way in which personnel are recruited by the Zambia Air Force, there are other criteria that also need to be satisfied in order for sports persons to be eligible to be recruited by the Zambia Air Force. This will avoid unfounded expectation of recruitment based only on one being a sports person.'

5.10 The Appellants further stated that according to the evidence of DW2 in his evidence shown at page 170 of the Record of Appeal lines 7 to 8, the Appellants were told to wait for vacancies. He said that:

'I explained that there were no vacancies for employment. I reasoned with them to be patient and wait for vacancies.'

5.11 The Appellants contended that the video recording played in Court did not reveal the provision of the Defence Act, Chapter 106 of the laws of Zambia on the requirements of joining the Airforce through sports. Hence, it was a serious misdirection by the Court below to rely on the provision of the Defence Act as the same was not brought to the attention of the Appellants. Further, that the Court ignored the fact that the Appellants were enticed by the condition set by the Station Commander in his speech.

5.12 The Appellants referred to the case of **A.M.I. Zambia Vs Peggy Chibuye**, where it was held on page 51 lines 4 to 9 that:

'The Appellant sought to rely on an exemption clause which said that goods would be stored "at owner's risk", the learned trial Judge heard the evidence and found that the exemption clause had not been brought to the respondent's attention on his point, the learned judge said he was resolving on issue of credibility between two sets of witnesses and accepted the evidence of the Respondent and her witness.'

5.13 The Appellants argued that the Supreme Court further held at lines 18 to 22 of the same page that:

'The first hurdle controlling the Appellants was the finding on an issue of credibility that the exemption clause was not brought to the attention of the Respondent at the time of entering in the contract.'

5.14 The Appellants argued further that the Supreme Court held at lines 23 to 25 that:

'If the case had been that the exclusion clause was brought to the Respondent's attention at inception, then, of course, it would have been necessary to all at some length on the second ground of appeal which was argued before us.'

5.15 The Appellants further stated that the Supreme Court on page 52 lines 4 to 7 held that:

'On the fact, we do not see how the appellants could have exemption from their own wrongdoing by the misconduct of their stuffs. "At owner's risk" in the circumstances would have to exclude wrongdoing and conduct of the party seeking exemption and that of his stuffs.'

5.16 The Appellants argued that the Respondents had deliberately misled the Court by notifying the Court that sports were not the only criteria for being employed by the 1st Respondent, but that they were bound by other criteria.

5.17 The Appellants further contended that there was evidence on record showing that the 1st Respondent never retracted the speech made by its Station Commander on behalf of the Air Commander before the Appellants joined its Karate Club to correct the situation.

5.18 Further, that the evidence of PW1. PW2 and DW2 shown on pages 153 lines 14 to 16, 159, lines 6 to 8 and 171 lines 2 and 3 of the Record of Appeal confirmed that some of the Appellants had qualifications which were made known to the 1st Respondent via General Sinyangwe and Lt. Colonel Nabusangu in 2013 and 2016.

5.19 The Appellants further contend that this Court should consider that the 1st Respondent held onto the Appellants for 14 years with an assurance of employing them and that during this period the Appellants had suffered loss of employment.

5.20 In relation to ground 2, the Appellants contended that as outsiders they trusted the statement made by 1st Respondent's Station Commander and believed that he made such statements with the consent of persons in authority. They alleged further that it was a misdirection for the Court below to dismiss the Appellants' claim on the ground that sports were not the sole criteria for the Appellants to be in employment by the 1st Respondent.

5.21 In support of their contention, the Appellants referred to the case of **National Airport Corporation Limited Vs Reggie Ephraim Zimba and Saviour Konie**.

In the National Airports case, the Court held that:

'An outsider dealing with a company cannot be concerned with any alleged want of authority or standing for the class or of transaction.'

5.22 The Appellants further cited the case of **Royal British Bank Vs Turquand** where it was held that:

'An outsider will not necessarily lose his protection because the ostensible officer, he dealt with had not been validly appointed. On the other hand, the officer must at least have been held out in some way as an authorized officer of the company by the one of the regularly appointed organs of the company.'

5.23 The Appellants also referred to the case of **Simnida Instrumentation Services Vs Hotel Intercontinental,** where the Court held that:

'Indeed, it appears that the Defendant were bent on ensuring that the Plaintiff does not eat the fruits of his labour. Their argument that procedure was not followed cannot be entertained. This was an internal matter which did not involve the Plaintiff. If indeed procedure was not followed, I agree with the Plaintiff's Counsel, that the Plaintiff cannot be blamed. The person to blame was the Chief Engineer under whose supervisor PW1 was working. If the Defendant's system had some loopholes or weaknesses PW1 had nothing to do with these procedures as an outsider.'

5.24 The Appellants contention was that from the authorities cited, it was clear that the Appellants cannot be blamed for following what the Station Commander of the 1st Respondent had said in his speech on behalf of the Air Commander.

5.25 In ground 3, the Appellants submitted that the Court below stated on page J11 of its Judgment on page 18 of the Record of Appeal lines 4 and 5 that:

'In cross examination, PW2 agreed that he voluntarily joined the Karate Club and that he was not forced.'

5.26 The Appellants stated that the proceedings of the Court below do not reveal that PW2 testified as afore stated by the Court.

5.27 The Appellants argued that page J11 of the Judgment on page 18 of the Record of Appeal line 12 clearly show that PW2 testified that the Appellants purchased secondhand kimonos and that the evidence of PW2 on 158 of the Record of Appeal lines 1 to 2 demonstrate that he presented the kimonos in the Court below.

5.28 The Appellants further contended that the Respondents did not dispute that the Appellants had purchased training kits and incurred transport costs to and from training and participation place. Further, that the evidence of the Defendants DW2 on page 170 of the record of appeal lines 18 and 19, shows that it was the responsibility of the 1st Respondent to supply the kit.

5.29 The Appellants further submitted that DW2 testified that:

'It was kit that would be supplied as ZAF karate club falls under the Zambia National Arts Federation.'

5.30 The Appellants argued that the Court below ought to have entered judgment in favour of the Appellants and ordered assessment of damages. In support of this submission, the Appellants relied on the Supreme Court decision in the case of **Rosemart Investment Limited v Zanaco** where it was held that:

'We have considered the submission made by the Appellant and Counsel for the respondent. The Appellant's main claim in the proceedings was for loss of business occasioned to it by the failure of the Respondent to remit the money its Mansa Branch. If the learned trial Judge felt that the Appellant had not adduced evidence to support its claim for loss of business, it was upon for the learned trial Judge to have referred the matter to the Deputy Registrar for assessment of damages as he had already found for the Appellant on the issue of liability. For this reason, we would allow the appeal and remit the matter to the Deputy Registrar for assessment of damages for loss of business. We also award the Appellant costs, to be taxed in default of agreement.'

5.31 In relation to ground 4, the Appellants argued that the evidence of their witnesses clearly show that the 1st Respondent verbally promised the Appellants employment, payment of upkeep and transport allowances.

5.32 The Appellants contended that the Respondents' witness, DW1 had conceded in his evidence shown at pages 268 and 169 lines 26 that:

'For Club members, they are paid allowances depending on the arranged merit.'

5.33 The Appellants contended further that it was clear that club members were paid allowances and transport money. They also contended that it was trite that verbal agreements or contracts are enforceable as written ones. They also stated that Karate was a risky sport and that there was no way any reasonable person could risk joining the 1st Respondent's Karate Club without any benefit.

5.34 The Appellants further argued that the Station Commander had stated in his speech, that sports was a source of income and that the Respondents were using Karatakers as a free source of income for their Club members.

5.35 The Appellants further submitted that the evidence of DW1 showed on page 168 line 24 to 26 of the Record of Appeal was that:

'We employ people from other discipline apart from karate. Red Arrows Karate Club is ZAF Club. There is football, rugby, volleyball among others. We employ football and rugby mainly. We do not employ from other disciplines.'

5.36 The Appellants further contended that DW2 conceded in his evidence on page 169 of the Record of Appeal lines 18 and 20 testified that:

'I was a director of sports; I passed the senior staff course at Kamwala. All the clubs under red arrows falls under directorate of sports.'

5.37 The Appellants argued that the Air Commander in his statement in the video dated 1st April 2019, stated that the Air Force would continue to give equal financial support to all sports disciplines and that karatakers had not been given equal financial support from the Respondents.

5.38 In relation to ground 5, the Appellants argued that there was no evidence on record supporting the Respondents' defence. Therefore, the Court below erred and misdirected itself by upholding the Respondents' defence without any evidence.

6.0 ARGUMENTS OPPOSING THE APPEAL

6.1 The Respondents opposed the appeal and filed their heads of argument on 17th February 2022.

6.2 In relation to ground one, in which the Appellants argued that the Judge in the Court below erred in ignoring the evidence on record which showed that sports is a criterion of being employed by the 1st Respondent, the Respondents argued that the Appellants had not revealed a cause of action.

6.3 The Respondents argued that the Appellants could not, in 2019, rely on a representation made in a video, as the basis for their responding to news that was purportedly aired in 2002.

6.4 The Respondents submitted that a party who brings an action must show that there is a cause of action cognizable in law. The Respondents referred to the book of Dr Patrick Matibini entitled 'Zambia Civil Procedure Commentary and cases, Volume 1 at page 139 where the learned author states that:

'A cause of action means any fact or series of facts, which found a claim or relief that is the basis of the claim or relief. Alternatively stated, a cause of action is a factual situation, the existence of which entitles one person to obtain from the court, a remedy against another person.'

6.5 The Respondents argued that the Court below was on firm ground when it held that no cause of action had been revealed. In this regard, the Respondents referred the Court to the case of **Wise v EF Harvey (1985) Z.R. 179** where the Court held that:

'A cause of action is disclosed only when a factual situation that is alleged which contains acts upon which a party can attach liability to the other or upon which he can establish a right or entitlement to a judgment in his favour against the other.'

6.6 The Respondents further submitted that the Court below had applied its mind to the facts as brought by the Appellants and the video recording played into Court. Further, that the Court below rightly held that the Appellants could not rely on the 2019 video as their basis for responding to the news that was aired in 2002. They further argued that this was a proper case in which the Court should not reverse the findings of fact of the trial judge.

6.7 The Court's further attention was drawn to the case of **Zulu v Avondale Housing Project Limited (1982) ZR 172** where it was held that:

'It is trite law that this Honourable Court can only reverse findings of fact made by the trial Court if it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of facts.'

6.8 Under ground two, the Appellants contended that the Judge in the Court below erred and misdirected himself by ignoring the fact that the Appellants were outsiders and could not have known that the Station Commander, as 1st Respondent's spokesperson, made the statement he did, without the consent of the persons in authority.

6.9 The Respondents argued that the Appellants were raising new issues on appeal which were not raised during the trial. It is trite law that a party cannot do this.

6.10 The Court was referred to the case of **Buchman v Attorney General** and further applied in **Mususu Kalenga Building Limited and Another v Richmans Money Lenders Enterprises Limited** wherein the Court stated:

'***We have said before and we wish to reiterate here that where an issue was not raised in the Court below, it is not competent for any party to raise it as a ground of appeal in this Court.***'

6.11 The Respondents therefore asserted that ground two of the appeal must fail as the issues raised are not capable of being subject of an appeal.

6.12 In relation to this ground three, the Respondents disputed the Appellants arguments that the Court below erred and misdirected itself by dismissing the claim for refund of monies for the training kits that they had purchased as well as for transportation costs of traveling to and from training and participation in events on the basis that the Appellants had not produced receipts. The Respondents argued that it was not erroneous for the Court to refuse to grant refunds despite there being no dispute that the training kits were purchased by the Appellants and there being no dispute that the Appellants attended training and had incurred transport costs.

6.13 The Respondents drew the Court's attention to the evidence of DW2 at lines 3 to 18 of page 32 of the Record in which the defence witness had testified that public resources could not be utilized to pay the Appellants who were not Zambia Air Force employees.

6.14 The Respondents submitted that DW2 had highlighted the distinction between sponsored and non-sponsored sports clubs and clarified that payment of allowance and provisions of kits were made for sponsored clubs only. The witness concluded that the Red Arrows Karate Club was not a sponsored club and that funds had to be raised from members subscriptions.

6.15 The Respondents further argued that the onus of proving the assertions lay on the Appellants as guided by the learned authors of Phipson on Evidence, 17th Edition, paragraph 6-06 at page 151 where they stated:

'So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issue. If, when all the evidence is adduced by all parties, the party who has this burden has not discharged it, the decision must be against him. It is an ancient rule founded on considerations of good sense and should not be departed from without strong reason.'

6.16 The Respondents further argued that the Appellants had failed to discharge the burden of proving that they were entitled to a refund of monies they used to purchase the training kids and for transport to and from training. Therefore, the judge in the court below was on firm ground when he held at page 32 of the Record of appeal, lines 12-16 that:

'The plaintiff did not adduce any evidence to rebut the evidence raised by the Defendants. Thus, the only conclusion I can draw is that the Red Arrows Karate Club was not a sponsored club, that had the provision for

the plaintiffs to be provided with training kits and the members being paid the allowances claimed.'

6.17 In relation to the fourth ground of appeal where the Appellants had argued that the Court below erred and misdirected itself by ignoring the fact that verbal agreements are enforceable, the Respondents argued that the issue was whether an agreement existed and not whether a verbal agreement was enforceable.

6.18 The Respondents argued that there was no evidence produced before the lower Court that a verbal agreement was made and therefore the Court could not apply its mind to enforcement of an agreement that never existed. We were urged to dismiss this ground.

6.19 In relation to ground five, the Respondents submitted that the Appellant's argument that the Court below erred by upholding the Respondent's defence without supporting evidence, lacked merit. The Respondents urged this Court to dismiss all grounds of appeal.

7.0 DECISION OF THIS COURT

7.1 In considering the grounds of appeal, we shall determine grounds 1 and 2 together as the 2 grounds relate to the legality or validity of the recorded statement made by the Station Commander of the 1st Respondent purporting that sports or club membership was a pre-condition to employment in the 1st Respondent.

7.2 The argument by the Appellants is that the lower Court did not fully consider the recorded evidence where the Station Commander was recorded as saying that sports was part of the selection criteria for employment in the 1st Respondent.

7.3 A perusal of the judgment of the lower Court particularly at pages J22 to J23 shows that the learned trial Judge did consider that the statement by the Station Commander aroused a lot of interest among the youths in need of jobs. However, the trial Judge noted that **Section 13 of the Defence** Act which provides for operations and other ancillaries of the 1st Respondent requires that is there are several criteria that must be satisfied for one to qualify for recruitment and employment in the Zambian Airforce. The said **Section 13** provides that:

'Any person authorised in that behalf by regulations, in this Act referred to as a recruiting officer, may enlist recruits in the regular force in the prescribed manner.'

7.5 Evidently, recruitment in the 1st Respondent considers many credentials for a candidate to be eligible for employment such as sports and/or physical acumen, medical predisposition and academic achievement attained.

7.6 Further, the criteria considered for recruitment with the 1st Respondent could be varied from time to time depending on the areas of need for human resources in the 1st Respondent.

7.7 The said audio recording was aimed at encouraging prospective applicants for recruitment and employment in the 1st Respondent to participate in sports clubs as sporting was one, among the several other considerations, that the 1st Respondent considered in its recruitments. We therefore agree with the position of the lower Court on this point.

7.8 The further argument by the Appellants was that this audio statement bound the 1st Respondent to employ them as they had joined the Red Arrows Karate Club governed under the 1st Respondent with the legitimate expectation of being employed in the 1st Respondent.

7.9 The lower Court relied on the case of **South African Veterinary Counsel and Registrar vs Greg Syzmanski** where it was held that one of the elements for an expectation to be legitimate is that the representation made ought to be one which was competent and lawful, without which, reliance cannot be legitimate.

7.8 The requirement for the expectation to be legal was also affirmed by the High Court in the case of **Martha Muzithe Kangwa and Others V Environmental Council of Zambia Nasala Cement Limited Attorney-General** where it was held that:

'The second defendant legitimately expected that no other Minister could reverse that decision which was a legal legitimate expectation.'

7.9 Legitimate expectation can therefore only be upheld if such decision is legal or lawful.

7.10 In the case in casu, the pronouncement in the audio recording cannot be said to be a legally binding statement against the 1st Respondent, as it was simply encouraging people to participate in sports which is one of the consideration the 1st Respondent uses to meet the manner prescribed under Section **13 of the Defence Act**.

7.11 Further to the foregoing, the Appellants did indicate that they joined the Club as far back as 2003 yet the audio they seek to rely on was only uttered as late as 2019. The Appellants also did not show that the 1st Respondent had advertised for recruitment, as is normally the practice widely known in the public domain, and that they had responded to such advertisement by way of application for consideration and availing their credentials in compliance with such recruitment advert.

7.12 For the foregoing reason, we find that the learned trial Judge was on firm ground in dismissing the Appellant's claim for an order to be employed in the 1st Respondent and the grounds 1 and 2 are dismissed accordingly for lack of merit.

7.13 Grounds 3 and 5 of the appeal will be considered together as the 2 grounds purport to question the criteria used by the lower Court in dismissing the Appellant's claims in the Court below in apparent favour of the Respondents whom it claims had not adduced sufficient evidence to warrant sustaining of the defence. The Appellants claimed various payments in form of refund for purchase of training kits, and allowances for transport expenses incurred in representing the Club at various tournaments.

7.14 The lower Court considered this claim and found that sporting clubs have rules that govern their operations and expectations of members, and that it was incumbent upon the leadership of the Karate Club to explain such expectations to its members. That notwithstanding, the lower Court agreed that it would be unjustified both at law and equity to expect the Appellants who are not employees of the Respondents to be paid from public resources. The trial Court found that Appellant's claims for refund for training kits and various allowances against the 1st Respondent could not be sustained.

7.15 There is no doubt that the Appellants were not employees of the 1st Respondent but were members of the Red Arrows Karate Club which was operated under the auspices of the Zambia Airforce. It was not revealed whether the Red Arrows Karate Club is one recognized under the **Societies Act, Sports Council of Zambia Act** or under **the Clubs Registration Act**, but there is no dispute as to its existence. We know for certain that membership to this Club is distinct from employment with the 1st Respondent and that the 1st Respondent's existence and operation are founded under **the Defence Act.**

7.15 Club membership implies adherence to certain rules and regulations pertaining to any given Club. It is evidence of such rules and regulations which ought to have been provided as the basis for remuneration of members and provision of training kits. However, no such evidence was adduced in the Court below and the trial Court could not be faulted for finding no basis for upholding the Appellant's claim for payments for various allowances and refunds for training kits. The onus to prove their case on a balance of probabilities always lay with the Appellants.

7.16 The Supreme Court held in the case of **Galaunia Farms Limited v National Milling Company Limited and National Milling Corporation Limited** that:

'A plaintiff must prove his case and if he fails to do so, the mere failure of the opponents defence does not entitle him to Judgment.'

7.17 A civil Court is well within its right to dismiss a plaintiff's claim even if the defendant has not adduced any evidence in defence if the Court is satisfied that a Plaintiff has not proved his case on a balance of probabilities. For the said reasons, grounds 3 and 5 are dismissed accordingly.

7.18 The Appellant's fourth ground was that the Court below erred and misdirected itself by ignoring that verbal agreements are enforceable. It is trite law of contract that verbal agreements, if proved, are just as enforceable as written contracts. However, in the present case, the lower Court was on firm ground in dismissing the Appellant's claims in the lower Court as the Appellants had failed to prove their case on a balance of probabilities.

7.19 Like we have said above, the Appellants did not adduce any evidence whatsoever as to the rules of engagement with the said Red Arrows Karate Club which is a distinct entity from the 1st Respondent.

7.20 From what the record presents, there is no basis to justify the basis for the Appellant's claims against the Respondents as their membership was clearly with the said Red Arrows Karate Club.

8.0 CONCLUSION

8.1 All the grounds of appeal are dismissed accordingly with costs to the Respondents. The costs are to be agreed and in default to be taxed.

F.M. Chishimba
COURT OF APPEAL JUDGE

M.J. Siavwapa
COURT OF APPEAL JUDGE

N.A. Sharpe-Phiri
COURT OF APPEAL JUDGE