

IN THE COURT OF APPEAL FOR ZAMBIA Appeal No. 57/2020

HOLDEN AT LUSAKA

CAZ/08/33/2020

(Civil Jurisdiction)

BETWEEN:

YOGESH KUNTAWALA (*Suing as* **APPELLANT**
Secretary of Trackers Association of Zambia)



AND

CHIRUNDU DISTRICT COUNCIL

RESPONDENT

Coram: Makungu, Sichinga and Banda-Bobo, JJA

17th June 2021 and 29th April 2022

*For the Appellants: Mr. M. Chiteba and Mr. M. Nalishuwa of Messrs Mulenga
Mulenga Mundashi Legal Practitioners*

*For the Respondent: Mrs. Y. Mulenga-Muwowo- Director Legal Services,
Luanshya Municipal Council*

JUDGMENT

Sichinga JA, delivered the Judgment of the Court.

Legislation referred to:

1. *Local Government Act, Chapter 281 of the Laws of Zambia*
2. *Tolls Act No. 14 of 2011*
3. *Rules of the Supreme Court, 1965, White Book, 1999 Edition*
4. *The Constitution of Zambia Act, Chapter 1 of the Laws of Zambia (As amended by Act No. 2 of 2016)*

Cases referred to:

1. *Bank of Zambia v Tembo and Others* 2002 Z.R. 103
2. *Muyawa Liuwa v Attorney General* SCZ Judgment No. 38 of 2014
3. *Chama Mutambalilo v Attorney General* 2019 CCZ 008
4. *Zambia National Commercial Bank PLC v Musonda and 58 Others* SCZ selected Judgment No. 24 of 2018
5. *The People v Director of Public Prosecutions (Ex-parte Rajan Mahtani)* SCZ Selected Judgment No. 21 of 2019
6. *Christine Mulundika and 7 Others v The People* (SCZ Judgment No. 25 of 1995) [1996] ZMSC 26
7. *BP Zambia Plc v Interland Motors Limited* (2001) ZR 37

Other works:

1. *Patrick Matibini, Zambian Civil Procedure- Commentary and Cases* (2017) Lexis Nexis

1.0 Introduction

- 1.1 This is an appeal against the Ruling of the High Court (*Yangailo J*) dated 14th January 2020, pursuant to which the learned Judge in the court below dismissed the action for want of prosecution as a result of a determination on a preliminary issue raised by the respondent.

2.0 Background

- 2.1 The appellant commenced this action on 30th January, 2019 by originating summons against the Attorney-General and twenty other district councils, mainly claiming the following reliefs:

- a) A declaration that the imposition of transit, motor vehicle, cargo and product levies by the councils on the appellant's members is *ultra vires section 69 of the Local Government Act¹* and therefore null and void.
- b) A declaration that the imposition of the toll levies by the councils on the appellant's members is *ultra vires section 6 of the Tolls Act²* and therefore null and void.

2.2 The record shows that between 29th January, 2019 and 15th May, 2019 the Attorney-General and some of the other respondents in the court below filed notices to raise preliminary issues pursuant to *Orders 33 Rule 3 and 14A of the White Book³*. On 25th June 2019, the learned Judge in the court below delivered a Ruling dismissing all but the Attorney-General's preliminary issues for incompetence. The said issues were particularised as follows:

- i) Whether this court has jurisdiction to entertain this matter on grounds that the applicant is trying to move the court to declare null and void by-laws duly confirmed by the Minister without first comprehensively engaging the Minister in charge and showing convincing proof that such efforts have failed to yield positive fruit and it has now become necessary to move this court by way of Originating Summons to declare null and void *By-Laws 13.1 to 13.22* referred to in the affidavit of Robert Mtonga.

ii) That the applicant has not exhausted his opportunity to engage the Minister so that he can comprehensively elucidate on how the 21 By-Laws have specifically affected him and his association or made proposals of changes or adjustments that can be made to assist his association. The result of the applicant's failure or neglect to comprehensively engage the Minister is that the Minister in charge has not been given an opportunity to cogently appreciate the applicant's needs and ascertain a solution which the applicant can point to as being dissatisfied with.

iii) Without showing or proving that the efforts to engage the Minister in charge have failed, the applicant through this action is trying to move this court to usurp the powers of the Minister in charge to declare null and void duly confirmed By-Laws instead of seeking for amendment or exemptions where the applicants qualify.

2.3 In summation, the Attorney-General applied for the dismissal of the originating summons for want of jurisdiction, prematurity and incompetence.

2.4 In a Ruling dated 25th June, 2019 (the first ruling), the lower court found that the applicant's engagement of the Permanent Secretary for the Ministry of Local Government was sufficient effort to engage the Minister concerning toll fees and levies charged by the respondent councils. She held

