

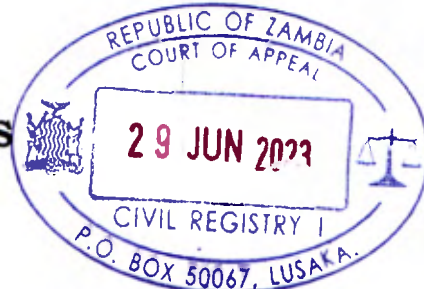
**IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA**

Appeal No. 11/2022

*(Civil Jurisdiction)*

**BETWEEN:**

**STEPHEN MITI & 5 OTHERS**



**APPELLANT**

**AND**

**LOCAL AUTHORITIES SUPERANNUATION  
FUND**

**RESPONDENT**

*Coram: Chashi, Majula and Patel, JJA  
On 14<sup>th</sup> June, 2023 and 29<sup>th</sup> June, 2023*

*For the Appellant : Mr. H. Chinene of Lumangwe Chambers*

*For the Respondent : Mrs. M. L. Mudenda— In House Counsel*

---

## **J U D G M E N T**

---

MAJULA JA, delivered the Judgment of the Court.

**Cases referred to:**

- 1. Zambia Breweries Plc vs Lameck Sakala (2012) ZR 460 (vol. 2)*
- 2. Attorney-General vs Kang'ombe (1973) ZR 114 (CA)*
- 3. Wilson Masauso Zulu vs Avondale Housing Project Limited (1982) ZR 172.*
- 4. Kitwe City Council vs Wilson Nguni (2005) ZR 57 (SC)*
- 5. Zacharia Titus Zandamela vs Management Board of the Local Authorities Superannuation Fund (1970) ZR 144.*
- 6. Zambia National Holdings Limited & Another vs The Attorney-General (1994) SJ 22 (SC).*

7. *Martin Mailon Kakokanya vs Local Authorities Superannuation Board (2016/HN/305)*.
8. *Sanat Limited vs Shailesh Kumar Suryakant Amin (CAZ Appeal No. 137/2019)*.
9. *Water Resources Management Limited vs Chimsoro Farms Limited & 18 Others (CAZ Appeal No. 24/2021)*.

**Legislation referred to:**

1. *The Local Authorities Superannuation Fund Act, Chapter 284 of the Laws of Zambia*

**1.0 Background**

- 1.1 This is an appeal against the decision of the lower court that was presided by Y. Chembe J. (as she then was). In the court below the appellants filed an originating summons seeking payment of retirement benefits in the sum of K4,937,143.20 as well as damages for inconvenience.
- 1.2 The respondent filed its memorandum of appearance and defence and further filed an application for determination of the matter on questions of law and construction of a statute in which it was argued that the appellant's matter was before a wrong forum. The respondents contended that the matter ought to have been referred to the Board of the respondent and subsequently to the Minister in accordance with sections 40 and 43 of **The Local Authorities Superannuation Fund Act** (The Act).
- 1.3 In a ruling delivered on 16<sup>th</sup> December, 2021, the court below found in favour of the respondent and consequently

dismissed the appellants' action. The Judge further ordered that the matter be referred to the Board of the respondent in line with the grievance set out in the Act. The appellants were unsatisfied with the ruling, hence the appeal anchored on two grounds set out as follows:

*“1. The court below erred in law and in fact by not taking into account the facts and pleadings of the appellant’s case in constructing the provisions of the law in sections 40 and 43 of the Local Authorities Superannuation Fund Act.*

*2. The court below misapprehended the law when it held at page J12 that the Act lays down a grievance procedure for any dispute between the Fund and a member which the plaintiffs ought to have followed when this did not apply to the appellants.”*

## **2.0 Appellant’s arguments**

2.1 Both grounds were argued together and the gist of the appellant’s submission was that the court below did not take into account the facts and evidence of the appellants' case in construing the provisions of sections 40 and 43 of the Act. Counsel pointed out that the court below had all the pleadings and exhibits before it in order for it to take into account before arriving at the decision. The case of **Zambia Breweries Plc vs Lameck Sakala**<sup>1</sup> was cited for the proposition that a Judgment must reveal a review of the

evidence, summary of arguments, findings of fact, and the application of the law to the facts.

- 2.2 Counsel further observed that the appellants retired under **section 26** of the Act and the respondent was obliged to pay their terminal benefits. In default, the appellants were entitled to sue the respondent. It was submitted that in this case the respondent made computations of the appellants' terminal benefits which was communicated by the letters they wrote. They however failed to pay and it would have been an academic exercise to go to the Minister.
- 2.3 That there was, therefore, never any dispute envisaged under section 43 of the Act to trigger section 45. Counsel further submitted that the respondent became *functus officio* after it wrote letters to the appellants which were exhibited in the affidavits.
- 2.4 As authority for this position, Counsel referred to the case of ***Attorney-General vs Kang'ombe***<sup>2</sup> where it was held that:

*“The principle that there must be finality to proceedings applies equally to judicial and administrative proceedings.”*

### **3.0 Respondent's arguments**

- 3.1 The respondent argued the two grounds separately. The thrust of the submission on ground one was that the appellant's contention that the court below did not take into

account the facts and evidence of the appellant's case in construing the provision of sections 40 and 43 of the Act is flawed. Counsel referred us to page R7 of the ruling in which the lower court expressed as follows:

*"I have carefully considered the affidavit evidence and " the arguments from both sides for which I am grateful."*

3.2 Counsel pointed out that the appellants' facts and evidence leading to the action in the court below was primarily a claim for the payment of retirement benefits by the respondent who sought to challenge the mode of dispute resolution adopted by the appellant.

3.3 The learned Judge in her ruling applied the facts as set out in the pleadings and evidence when she stated at page R12 that:

*"The plaintiff's claim is for the payment of their retirement benefits which payment is supposed to be authorized by the Committee as per section 40 of the Act."*

3.4 Counsel went on to observe that it is not in dispute that the appellants are members of the respondent and that their retirement benefits were calculated by the respondent and some portions were payable by the respondent. What is in issue is whether the appellants could seek redress before the court below before exhausting the administrative resolution. It was contended that the court below was on firm ground when she held that:

*“Section 43 clearly provides that any dispute between the committee and a member or former member should be decided by the committee. There is no evidence to show that the plaintiff had referred the matter to the committee or requested the committee to refer that matter to the Minister.”*

3.5 It was asserted that ground one should be dismissed as there is no evidence to show that the lower court’s decision was perverse as made in the absence of evidence or was based on a misappropriation of facts. The case of ***Wilson Masauso Zulu vs Avondale Housing Project Limited***<sup>3</sup> was cited as authority.

3.6 On ground two, Counsel stoutly argued that the true bone of contention by the appellant is that the court below was not persuaded by the appellants’ submissions. That this position is flawed on the basis that the court is not bound to consider Counsel’s submissions. Our attention was drawn to the case of ***Kitwe City Council vs Wilson Nguni***<sup>4</sup> where it was held as follows:

*“The court is not bound to consider Counsel’s submissions because submissions were only meant to assist the court in arriving at a Judgment.”*

3.7 Counsel went on to submit that the circumstances of the present case would be likened to that of an arbitration, clause in a contract between two parties. If the parties agree for

their disputes to be referred to arbitration but one party decides to commence legal proceedings before the court, the court usually stays the proceedings to allow for the determination of the matter on the merits by the appropriate body.

- 3.8 Counsel stated that, where a statute equally provides a dispute resolution mechanism, the court is bound by what the law provides. To support his proposition, Counsel called in aid the case of **Zacharia Titus Zandamela vs Management Board of the Local Authorities Superannuation Fund**<sup>5</sup> where the court held:

*“Where the legislature has thought it proper to lay down that “the determination of a certain question should be made by an authority other than jurisdiction to determine that which parliament has used shall be determined by some other person or body.”*

- 3.9 We were also referred to the Supreme Court decision of **Zambia National Holdings Limited & Another vs The Attorney-General**<sup>6</sup> where the principles of law were articulated as follows:

*“Although Article 94 of the Constitution gives the High Court unlimited jurisdiction that court is bound by all the laws which govern the exercise of such jurisdiction.”*

- 3.10 On ground two, Counsel pointed out that the appellants informed the court that they retired members of the

respondent who were making monthly contributions towards their retirement benefits. They further laid evidence to the effect that they retired under the provisions of Section 26 of the Act.

3.11 Counsel observed that the trial Judge found that the appellants are members of the respondent and their claims arise from the provisions of section 40 of the Act. It was vehemently submitted that the court below was therefore on firm ground when she held that they were supposed to explore the grievance procedure laid down in the Act.

#### **4.0 Appellant's Arguments in Reply**

4.1 Heads of argument in reply were filed on 2<sup>nd</sup> March, 2022 by the appellant's advocates. The main points in the argument was that the respondent produced documents called LASF Computation of payment to the appellants which were authorized by the Committee under section 40 (e) of the Act. Counsel stated that the question that arises is whether those documents constitute a dispute and if so by who under section 43.

4.2 Counsel submitted that there is absolutely no dispute at all in those documents. That the refusal to pay did not attach to the respondent any legal rights. It was contended that the court below did not address itself to the documentary evidence before it, to determine whether or not those



documents constituted a dispute under sections 40 and 43 of the Act.

## **5.0 Hearing of the Appeal**

- 5.1 When the matter came up for hearing, counsel for the appellant entirely relied on the arguments that were filed in support of the appeal. On behalf of the respondent, Mrs. Mudenda equally placed reliance on the respondent's heads of argument but also made brief oral submissions. She reiterated that the court below addressed its mind to the facts and evidence and came to the conclusion that the case for the appellant is governed by **section 40** of the **Act**. If any member is aggrieved, he must follow the grievance procedure set out in **section 43** of the **F Act**. She sought refuge in the case of *Water Resources Management Limited vs Chimsoro Farms Limited & 18 Others*<sup>9</sup> where we held that the court below did not have jurisdiction to proceed with the matter on account of the fact that the statutory laid down grievance procedure had not been exhausted.
- 5.2 Counsel contended that in the case before us, the appellant did not exhaust the grievance procedure in **section 43** of the **Act**, hence the court below was on firm ground to dismiss the appellants' action.
- 5.3 On ground two, counsel submitted that the appellants are members who retired under **section 26** of the **Act** and thus amenable to the provisions of the **Act**, including **section 43**.

They cannot cherry pick which provisions are applicable to them and decide which ones are inapplicable. We were urged to dismiss the appeal with costs.

## **6.0 Decision of the Court**

- 6.1 We have pondered over the issues that have been raised in this appeal and taken into account the opposing arguments by the respondent and the authorities cited herein. The hotly contested issue in this appeal is whether the court below had jurisdiction to determine the dispute between the parties in light of the provisions of **sections 40 and 43** of the Act.
- 6.2 The appellants in their view have argued that there was no dispute between the parties and therefore the provisions of **sections 40 and 43** did not apply. They have gone further to argue that these sections of the Act no longer applied to them after they received letters of calculation of terminal benefits by the respondent. As far as the appellants are concerned, they were simply pursuing a debt and likened it to any creditor owing money like an independent contractor seeking redress in the Court of law.
- 6.3 They have further argued that the respondent by having issued a document indicating the terminal benefits owing and payable to the appellants, there was no dispute as envisaged under **sections 40 and 43** of the **Act**. That in actual fact the respondent had become *functus officio* after having written the said letters.

- 6.4 We have found the submission by the appellants to be very interesting to say the least. They are actually seeking not to be governed by their **Act**. The issue really can be placed in a very narrow compass which is whether or not the provisions of the law i.e. **sections 40 and 43** are applicable to the appellants.
- 6.5 A brief recap, there is no denying that the appellants were members of the respondent and claimed for their retirement benefits. The respondent proceeded to make some computations and gave the said computations to the appellants (see pages 170 to 179 of the record of appeal). Armed with these documents the appellants sought payment from the respondents. Upon unsuccessfully pursuing the respondents, they proceeded to institute legal proceedings against them claiming for payment of retirement benefits.
- 6.6 The respondent reacted by raising a preliminary issue pursuant to **Order 14A Rule 1** of the **White Book** to dispose of the matter on a point of law. After having reviewed the merits of the application, the court concluded that the appellants had jumped the gun by coming to court instead of going through the procedure set out in the **Act** in **sections 40 and 43**. For ease of reference **sections 40 and 43** provide as follows:

*40. The Committee shall, subject to the provisions of this Act, have power:-*

*(e) to authorise the payment of claims made upon, or benefits payable out of, the Fund.*

*43. Any dispute that may arise between the Committee and an associated authority or a member or a former member or any person deriving the claim from a member about any matter under this Act or any rules made thereunder shall be decided by the Committee and, if any party to the dispute is dissatisfied with the decision or the failure of the Committee to come to a decision, the Committee shall, on the request of the dissatisfied party, refer the dispute to the Minister for his determination and the decision of the Minister upon any such matter shall be final.*

6.7 The unhappiness has been triggered by the court's decision to dismiss the appellants' claims for want of jurisdiction. Our meticulous reading of the above provisions makes it abundantly clear that the appellants ought to have followed the grievance procedure. The case of ***Martin Mailon Kakokanya vs Local Authorities Superannuation Board***<sup>6</sup> although decided by the High Court is insightful where it was held:

*"With regard to the second claim, it is the duty of the Committee to authorize the payment of claims made upon or benefits payable out of the fund... Even if the amount of the benefits was known, the Committee is the rightful authority that ought to have decided to pay or not pay the*

*claim at the first instance. Section 40(e) provides that the Committee has power to authorize the payment of claims made upon, or benefits payable out of the Fund. Therefore, the Court has a duty to respect the role of the Committee in the management of the Fund and allow it to do that which parliament has said it has power to do...*"

- 6.8 Based on the foregoing, it is clear that the procedure as stipulated in the **Act** is that it is the Board to authorize payment of claims.
- 6.9 Turning to the argument that there was no dispute and this was a debt collection, we take the view that this is a spurious argument. Whilst we appreciate the ingenuity of the argument by counsel, we are of the view that this does not hold water. One cannot pick and choose when the **Act** in issue applies to them. The argument that the respondent had become *functus officio* after it wrote letters of computation of their benefits is untenable to say the least.
- 6.10 In our decision, in the case of **Sanat Limited vs Shailesh Kumar Suryakant Amin**<sup>7</sup> we had this to say *on functus officio*:

*"Without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."*

- 6.11 We went further to hold that:

*“A matter must be heard and fully determined on its merits for a court to become functus officio.”*

6.12 The Supreme Court also had occasion to pronounce itself on *functus officio* in the case of ***Ituna Partners vs Zambia Open University***.<sup>8</sup> where it held:

*“A court becomes functus officio when all substantive issues in the cause are determined by it. In the instant case, the lower court did not rule on the issue as to who should bear the costs, therefore the lower court was not functus officio as to the issue of costs.”*

6.13 Therefore, the submission that the respondent had become *functus officio* cannot be sustained on the basis of the foregoing.

6.14 Furthermore, there are a plethora of authorities which allude to the fact that where there are statutory provisions, the courts are bound by those provisions. This entails that if the parties have reached an agreement on how they shall resolve their disputes, the court ought to let the matters be decided by the appropriate bodies. The case of ***Zacharia Titus Zandamela vs Management Board of the Local Authorities Superannuation Fund***<sup>4</sup> called in aid by the respondent the court stated:

*“Where the legislature has thought it proper to lay down that the determination of a certain question should be*

*made by some authority other than the courts, the court has no jurisdiction to override Parliament and jurisdiction to determine that which Parliament has said shall be determined by some other person or body.”*

6.15 In the case of **Water Resources Management Limited vs Chimsoro Farms Limited & 18 Others**<sup>9</sup> we equally addressed the issue of statutes being paramount in outlining the procedures to be adopted whenever there is a grievance. Further that the body which is conferred with the jurisdiction is determined by the statute. We expressed ourselves in the following terms:

*“Having pondered over these arguments, it is clear to us that the pertinent provision in the Water Resources Management Act is section 157 which outlines the procedure to be followed by a person aggrieved with the decision of the Director General. It is crystal clear that the statute has provided for a procedure and where a procedure has been stipulated, the parties should comply with that procedure.”*

6.16 There has been no departure from this position of the law and we uphold it. The appellants were members of the respondent and they cannot escape being subjected to the **Act** which has stipulated the procedure for any dispute.

6.17 At the expense of being repetitive, we find that the Judge cannot be faulted for finding that the appellants were

members of the respondent and therefore it was the appropriate body to adjudicate over the matter. We accordingly find ground one to be bereft of merit and we dismiss it.

- 6.18 Pertaining to ground two which relates to the procedure to be followed. That notwithstanding the fact that the computations were done by the respondent, they are still subject to the jurisdiction of the **Act**. The appellants have not exhausted the grievance procedure regarding payment of terminal benefits as earlier indicated.
- 6.19 When there is a statutory provision, a party must abide by the provision of the statute. In this case, the provisions namely **sections 40 and 43** articulated above, do make it clear that beyond the calculation of benefits, the Board has to authorize the payments. Since the step of authorization of the payments was missed, the appellants have to go back to the respondent in order to exhaust the remedy available to them as provided in the **Act**. Failure to follow this procedure means that the Court is wanting of jurisdiction to adjudicate over their grievances as clearly expressed in the principle of law articulated in the case of **Zacharia Titus Zandamela vs Management Board of the Local Authorities Superannuation Fund**<sup>4</sup> and the case **Water Resources Management Limited vs Chimsoro Farms Limited & 18 Others**<sup>9</sup>.



**7.0 Conclusion**

7.1 In light of the forgoing, we find no merit in the entire appeal and we dismiss it accordingly.

7.2 Costs to the respondent and to be paid forthwith but limited to out of pocket expenses. Same to be taxed in default of agreement.



.....  
J. Chashi

**COURT OF APPEAL JUDGE**



.....  
B.M. Majula

**COURT OF APPEAL JUDGE**



.....  
A.N. Patel SC

**COURT OF APPEAL JUDGE**