

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

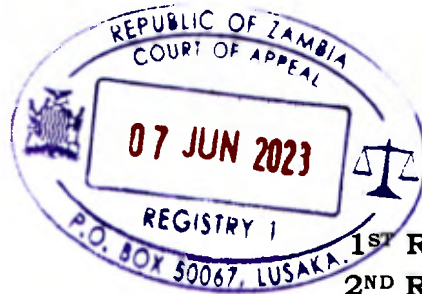
**APPEAL NO. 048/2021
CAZ/08/46/2021**

BETWEEN:

MOPANI COPPER MINES PLC

AND

**ESNART TEMBO KATONGO
MIRRIAM BANDA**



APPLICANT

**1ST RESPONDENT
2ND RESPONDENT**

Coram: Makungu, Ngulube and Sharpe-Phiri, JJA

On the 17th January, 2023 and 7th June, 2023

For the applicant: Mr. A. Imonda of Imonda & Co

For the respondents: Mrs. M.M. Chabala of Messrs Muya & Co

RULING

MAKUNGU, JA delivered the ruling of the Court

Cases Referred to;

- 1. Guardall Security Group Limited v Reinford Kabwe, CAZ Appeal no. 44 of 2019*
- 2. Citibank Zambia Limited v Suhayl Dudhia, CAZ Appeal no. 16 of 2020*
- 3. Citibank Zambia Limited v Suhayl Dudhia SCZ Appeal No.6 of 2022*

Legislation Referred to;

1. *The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia*

1.0 INTRODUCTION

1.1 Appeal No. 048/2021 between the same parties, was scheduled for hearing on 17th January, 2023. On that date, both parties were before us but the appeal was not heard due to the preliminary objection raised by the appellant which is yet to be determined. The Notice of Motion to raise a preliminary issue on a point of law pursuant to **Order VII Rule 1 (1) of the Court of Appeal Rules-2016** was filed on 22nd December, 2022. The objection raised was as follows:

1.2 ***The complaint having been presented to the court on 5th October, 2018 (page 11 line 14-18 of the Record of Appeal) and the judgement having been delivered on 22nd day of January 2021 (page 47 line 5 of the Record of Appeal) after one year period fixed by the provisions of section 85 (3) (b) (ii) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia had elapsed, the court had no jurisdiction to hear and determine the complaint.***

2.0 BACKGROUND

- 2.1 On 5th October, 2018, the respondents commenced an action in the Industrial Relations Division of the High Court against the applicant. Judgment was delivered on 22nd January, 2021. The appeal before us (Appeal No. 048/2021) is against that judgment.
- 2.2 On 17th January, 2023, when the matter came up for the hearing of the main appeal, counsel for the applicant informed us that he had filed a motion on 22nd December, 2022 which was electronically served on the respondents' counsel the following day. The respondent's counsel acknowledged receipt of the same on 10th January, 2023.
- 2.3 The respondents' counsel applied for an adjournment as he required time to file an affidavit in opposition. We therefore granted the respondents 7 days within which to file an affidavit in opposition and skeleton arguments if any, and to serve the same on the applicant. We gave the applicant 5 days from the date of receipt of the affidavit in opposition within which to file a reply. However, the respondents did not file any document in opposition to the preliminary application.

2.4 The affidavit in support of the application filed on 22nd December, 2022 was sworn by Prince Sinkala, the Legal Officer for the applicant company. The gist of his affidavit is that; On 5th October 2018, the complainants Esmart Tembo Katongo and Mirriam Banda, presented the complaint before the High Court, Industrial Relations Division, pursuant to **section 85 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**

2.5 That the trial commenced on 18th January, 2021. After trial, the matter was adjourned to Friday 22nd January, 2021 for judgment.

2.6 He went on to state that, two years and three months had elapsed between 5th October, 2018 when the complaint was presented to the court and 22nd January, 2021 when the matter was disposed of. That this entails that the matter was disposed of out of time.

3.0 APPLICANT'S SKELETON ARGUMENTS

3.1 In the Skeleton Arguments filed herein on 22nd December, 2022, counsel for the applicant referred us to **Section 85 (3)**

(b) (ii) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, which provides as follows:

“The court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it.”

3.2 He further referred us to our decisions in the cases of **Guardall Limited v Reinford Kabwe¹**, and **Citibank Zambia Limited v Suhayl Dudhia²** where the judgments of the Industrial Relations Division were declared null and void and set aside on account that the cases were disposed of after the expiry of one year from the day the complaints were presented to the Court.

3.3 On the basis of the above authorities, counsel submitted that as the Industrial Relations Court delivered the judgment out of time, the same should be set aside for want of jurisdiction.

4.0 OUR DECISION

4.1 We have considered the preliminary objection to the appeal, the applicant’s affidavit evidence and the written submissions.

- 4.2 We have had occasion to deal with the provisions of the Industrial and Labour Relations Act, which sets the time frames within which the Industrial Relations Division should dispose of cases.
- 4.3 In the **Guardall Case**¹ relied on by the applicant, we had occasion to interpret **Section 85(3)(b) (ii) of the Industrial and Labour Relations Act** which provides that cases before the Industrial Relations Division of the High Court must be dealt with within one year from the day that the complaint is filed. We also **interpreted section 94(1)** of the same act provides that a court shall deliver judgment within sixty (60) days of hearing the case.
- 4.4 The brief facts of the case were that: the complaint was presented to the Industrial Relations Court on 6th September, 2017 and the court had only upto 6th September, 2018 to dispose of the matter. Trial took place on 5th December, 2018. However, the court only delivered judgment on 14th December, 2018 about 3 months outside the prescribed period of time.
- 4.5 On appeal, we set aside the judgment for want of jurisdiction on the part of the High Court. We held that;

“Failure to comply with section 85 (3) (b) (ii) of the Industrial Relations Act stripped the dealing judge of jurisdiction to continue dealing with the matter. Further that, whether or not the non-compliance had been caused by the Court or other players is immaterial as the cesser of jurisdiction is by act of law.”

4.6 In the case of **Citibank Zambia Limited v Suhayl Dudhia²**, where the complaint was filed on 23rd July 2013 and judgment was delivered on 29th November, 2019. The delay in this case exceeded 6 years. We nullified the judgment, as it was delivered outside the period prescribed by law.

4.7 When the above matter went on appeal, in **SCZ Appeal No.6 of 2022³**, the Supreme Court using the purposive rule in interpreting **section 85 (3) (b) (ii) of the Industrial and Labour Relation Act**, held as follows;


“The court does not lose jurisdiction after one year. To hold otherwise would in our view create a result which is absurd in light of the intention of parliament to curb delays in concluding matters of an industrial relations nature.


A purposive approach would in our view be in keeping with the general tone of the Industrial and Labour Relations Act, which in section 85 (5) enacts that the main object of the court is to do substantial justice between the parties before it.”

4.8 In essence, the Supreme Court overruled our judgment in the Guardall case. By necessary implication, all the other decisions based on the Guardall case are now bad law. Consequently, the judgment in this matter cannot be nullified on the basis of the Guardall case.

5.0 CONCLUSION

5.1 In sum, we find no merit in this notice of motion and it is dismissed with costs. The same may be taxed in default of agreement between the parties.


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C.K. MAKUNGU
COURT OF APPEAL JUDGE


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P.C.M. NGULUBE
COURT OF APPEAL JUDGE


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N.A. SHARPE-PHIRI
COURT OF APPEAL JUDGE