

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



Appeal No. 004/2023

BETWEEN:

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|--|---------------------------------|
| SIGMA FINANCIAL SOLUTIONS LIMITED | 1ST APPELLANT |
| YIELD GROUP OF COMPANIES LIMITED | 2ND APPELLANT |
| DAVID MWAMBAZI | 3RD APPELLANT |
| LUMBIWE NYALUNGWE | 4TH APPELLANT |
| AND | |
| CHONGO KALELA SINYANGWE | RESPONDENT |

CORAM : Siawwapa JP, Chishimba, and Banda - Bobo

On 23rd April, 2024 and 13th June, 2024

For the Appellant : No appearance by Messrs. Abercorn
Chambers

For the Respondents : Mr. L. Kasali of Messrs. Ferd Jere & Co.

JUDGMENT

CHISHIMBA JA, delivered the judgment of the Court.

CASES REFERRED TO:

- 1) Axiz (Pty) Limited v Cloudtech Zambia Limited & Another Appeal 221 of 2020 (CA)
- 2) Chansa Chipili Powerflex v Wellingstone Kashimike & Wilson Kalumba SCZ No 27 of 2012
- 3) Godfrey Miyanda v The High Court (1984) ZR 62
- 4) Zambia National Holdings Limited and Another v Attorney-General (1993-1994) Z.R. 115
- 5) Zambia Revenue Authority v T & G Transport SCZ Appeal No. 183A/2003
- 6) Palsco Stores Ltd v Ramanbhai Patel (1987) Z.R. 108
- 7) National Drug Company Limited & Zambia Privatization Agency v Mary Katongo SCZ Appeal No. 79/2001



- 8) Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172
- 9) Sablehand Zambia Limited Vs Zambia Revenue Authority (2005) Z.R. 109
- 10) Kalusha Bwalya v Chadore Properties & another SCZ Appeal No. 222 of 2013
- 11) Donough v Armco Inc & Others (200) 1 Loyd's Rep 579
- 12) Spiliada Maritime Incorporation v Consulex Limited 1986 3 ALLER 625
- 13) Lloyds Bank Limited v Bundy 1974 1 ALLER 757
- 14) India TV Independent News Services (P) Ltd v India Broadcast live LLC & LLC & other (2008) 22 CLA BL SUPP 37
- 15) Steak Ranch Limited v Steach Ranches International BV 2011/HP 188
- 16) Lubbe v Cape PLC (20000) WLR 1545

LEGISLATION CITED:

- 1) The Rules of the Supreme Court of England, 1999

OTHER WORKS CITED

1. Halsbury's Laws of England. 4th Edition. Reissue. Volume 1(1)

1.0 INTRODUCTION

1.1 This is an appeal against the ruling of Judge Charles Zulu dated 21st October, 2022 in which he rejected the application by the appellants to dismiss the action for want of jurisdiction and held that there was a cause of action against the first, third and fourth appellants. And that the court had the jurisdiction to hear and determine the matter in spite of the agreement that the governing law and forum is United Arab Emirates.

- 1.2 The court upheld the objection relating to the failure of the respondent to state the appellants' address for service and the issuance and service of the writ of summons without leave of court. And granted them leave to issue and serve the writ of summons out of jurisdiction.
- 1.3 The appeal deals with the jurisdiction issue of forum conveniens / forum non conveniens. Simply put whether the Zambian Courts have jurisdiction to determine the matter in view of the clause in the agreement between the parties consenting to the exclusive jurisdiction and venue in the courts of Emirate of Dubai.

2.0 BACKGROUND

- 2.1 The respondent on the 20th of April, 2020, issued a writ of summons and statement of claim against the appellants seeking the refund of the sum of US\$30,000.00 being a deposit paid on a failed agreement for provision of facilitation of letters of credit.
- 2.2 On 3rd May, 2022, the appellants filed a defence and counterclaim they averred that the 2nd appellant is a company registered in the United Arab Emirates and disputed the claims by the respondent.

3.0 PRELIMINARY ISSUES RAISED IN THE COURT BELOW

3.1 On the even date, the 2nd appellant filed a notice of motion to raise preliminary issues pursuant to **Order 14A and 33 rule 3 and 7 of the Rules of the Supreme Court of England, 1999 Edition**. The 2nd appellant sought the determination of the following points of law:

- 2) *Whether or not the plaintiff's writ of summons can be dismissed for irregularity for not containing the defendant's address?*
- 3) *Whether or not the Court is clothed with the requisite jurisdiction to hear and determine this matter viz-a-viz the parties' agreed that the governing law and forum for resolution of disputes is (sic) the Courts of the United Arab Emirates?*
- 4) *Whether or not the plaintiff has a cause of action against the 1st, 3rd and 4th defendants?*
- 5) *Whether or not the plaintiff sought leave of court to issue and serve writ of summons outside jurisdiction? and*
- 6) *If all the questions or one of them is answered in the affirmative, then the defendant cause in this matter should stand dismissed with costs.*

3.2 The contention by the appellants was as follows; that the writ of summons is defective and irregular because it does not contain the address of the appellants and that the claim does not disclose a cause of action against the 1st, 3rd and 4th appellants as they are neither parties nor privy to the agreement between the 2nd appellant and respondent.

3.3 Thirdly, that the agreement in issue contains a clause stipulating that the agreement shall be governed and construed in accordance with the laws of the United Arab Emirates, and that the parties consented to the exclusive

jurisdiction and venue in the courts of the Emirate of Dubai. Therefore, the court below lacked jurisdiction to hear and determine the matter. The fourth issue was that the respondent did not obtain leave to issue and serve the writ of summons outside Jurisdiction prior to issuing the writ of summons.

- 3.4 The respondent in her affidavit in opposition, stated that the failure to include the address for service of the appellants is not fatal but curable. She maintained that the 1st, 3rd and 4th appellants are proper parties to the action as they are privy to the agreement, being agents of the 1st and 2nd appellants who dealt with her. That, there is a cause of action against the 1st, 3rd and 4th appellants as they jointly colluded to defraud her. The deponent averred that the agreement in issue, was procured, signed and executed in Zambia, as such, the court has jurisdiction.

4.0 DECISION OF THE COURT BELOW

- 4.1 In his ruling, the Learned Judge considered the cases of **Axiz (Pty) Limited v Cloudtech Zambia Limited & Another** ⁽¹⁾ and **Chansa Chipili Powerflex Limited v Wellingstone Kashimike Wilson Kalumba** ⁽²⁾ and stated that the court's jurisdiction cannot generally be ousted by a foreign jurisdiction clause. On the basis that the parties to the action

are Zambian save for the 2nd appellant, and that the agreement was executed in Zambia, the learned Judge held that Zambia is the appropriate forum.

4.2 The court accepted that the 2nd appellant was domiciled, incorporated and ordinarily resident in the United Arab Emirates. As such, leave of the court to issue and serve the court process out of jurisdiction was a procedural requirement in terms of **Order 10 rule 16 of the High Court Rules Chapter 27** of the Laws of Zambia. The breach was however, not fatal but curable and no prejudice would be occasioned to the respondent.

4.3 Equally, the failure to state the addresses for service of the appellants on the writ of summons was held not fatal but curable by way of an amendment of the pleadings. In that regard, the court below granted leave to the respondent to take out ex parte summons to amend the writ and statement of claim, and to concurrently seek leave of court to issue and serve the amended writ of summons and statement of claim out of jurisdiction on the 2nd appellant within 14 days.

5.0 GROUND OF APPEAL

5.1 Being dissatisfied with the ruling of the court below, the appellant appealed advancing four grounds as follows,

- 1) *The learned trial Judge erred both in law and fact when he found that the court had jurisdiction to hear and determine the matter despite the parties having agreed to the exclusive jurisdiction of the United Arab Emirates;*
- 2) *The learned trial Judge erred both in law and fact and misapprehended the reliefs sought by the respondent when he found that the nature of the claim did not fall within the ambit of what was contemplated in Article 12 of the Agreement, when the reliefs sought emanated from the Agreement;*
- 3) *The learned trial Judge erred both in law and fact when he held that the court had jurisdiction to hear and determine the matter given the nature of the claim bordering on fraud and misrepresentation when the respondent neither pleaded fraud nor misrepresentation; and*
- 4) *The learned trial Judge erred both in law and in fact when he made a finding of fact that the agreement incidental to the dispute was executed in Zambia in the absence of any evidence to support the finding.*

6.0 APPELLANT'S HEADS OF ARGUMENTS

- 6.1 The appellant filed heads of argument on 6th January, 2023. In ground one, the appellant contends that the court below had no jurisdiction to hear and determine the matter in view of Clause 12 of the agreement which provided for exclusive jurisdiction of the court of Emirate of Dubai.
- 6.2 The appellant submitted that jurisdiction does not occur as a matter of right but must be conferred on a court by the applicable legislation. That while clothed with unlimited

jurisdiction, such jurisdiction is not limitless but should be exercised within the confines of the law.

For the above proposition, the court was referred to the cases of **Godfrey Miyanda v The High Court** ⁽²⁾ and **Zambia National Holdings Limited and Another v Attorney-General** ⁽³⁾.

6.3 Counsel argued that, the lower court was welded and shackled from proceeding in the manner it did and exercised jurisdiction beyond the extent to which it was conferred. That the agreement between the parties ousted the jurisdiction of the lower court to hear and determine the matter when the parties agreed to submit the disputes to the courts in the United Arab Emirates.

6.4 To fortify this position, we were referred to the learned authors of **Halsbury's Laws of England. 4th Edition. Reissue. Volume 1(1)**, who at paragraph 355 state as follows:

“The court may stay proceedings in England where these are brought in breach of an agreement to refer disputes to the exclusive jurisdiction of a foreign tribunal. The court is not bound to grant a stay but has a discretion whether to do so or not. Although the factors relevant to the exercise of the court's discretion are broadly similar to the criteria considered under the doctrine of forum non conveniens, the position is not precisely the same, for it is a prima facie rule that the parties should honour their agreement to refer

disputes to the foreign tribunal, and accordingly the burden is on the plaintiff (or in the case of a counterclaim, on the defendant) to show a strong cause for a stay to be refused.

6.5 The appellant submitted that the court below should have honoured the intention of the parties to have their dispute resolved by the courts in the United Arab Emirates because the respondent did not discharge her burden of proof to show why the matter should not be heard and determined in the courts of the United Arab Emirates. The cases of **Zambia Revenue Authority v T & G Transport** ⁽⁴⁾ and **Palsco Stores Ltd v Ramanbhai Patel** ⁽⁵⁾ were cited for the principle that jurisdiction is not a matter of right but that it must be conferred by statute.

6.6 The parties having agreed to resolve their disputes in the courts of the United Arab Emirates, the court must enforce the agreement of the parties as guided in the case of **National Drug Company Limited & Zambia Privatisation Agency v Mary Katongo** ⁽⁶⁾ that:

“It is trite law that once the parties have voluntarily and freely entered into a legal contract, they become bound to abide by the terms of the contract and that the role of the Court is to give efficacy to the contract when one party has breached it by respecting, upholding and enforcing the contract”

- 6.7 As regards the principle of *forum conveniens*, the appellant submitted that the reliance and application of this principle was wrongly done by the court below in light of the agreement of the parties that the applicable law and forum for dispute resolution should be the United Arab Emirates.
- 6.8 In ground two, the appellant contends that the court below misapprehended the reliefs sought by the respondent when it found that the nature of the claim did not fall within the ambit of what was contemplated in clause 12 of the agreement, when the reliefs sought emanate from the agreement. That the dispute arises from and is centered on the agreement to provide facilitation services which the respondent alleges were never provided.
- 6.9 It was submitted that clause 12 of the agreement does not limit the type of disputes which would be referred to the courts of the United Arab Emirates. We were urged to set aside the decision of the court on the authority of the case of **Wilson Masauso Zulu v Avondale Housing Project Limited**⁽⁷⁾.
- 6.10 In ground three, the appellant argues that the respondent neither pleaded fraud nor misrepresentation for the court below to find that the nature of the claim bordered on fraud

and misrepresentation. The allegation of fraud was never specifically pleaded by the respondent in its pleadings for the lower court to hold that it was clothed with jurisdiction given the nature and character of the claim bordering on fraud or misrepresentation.

6.11 The court was referred to several cases, including **Sablehand Zambia Limited v Zambia Revenue Authority** ⁽⁸⁾ on the position of law that where fraud is an issue in the proceedings, a party wishing to rely on it must ensure that it is clearly and distinctly pleaded. That in any case, the learned Judge excluded oral submissions on fraud, there being no particulars in the statement of claim.

6.12 Lastly, in ground four, the appellants submit that there is no evidence on record which is suggestive that the agreement in issue was executed in Zambia. That it is clear that the 2nd appellant, who is party to the agreement, is based in the United Arab Emirates and the evidence on record shows that the agreement was entered into in Dubai, United Arab Emirates.

6.13 We were urged to disturb the finding of the court below.

7.0 ARGUMENTS BY THE RESPONDENT

7.1 The respondent filed heads of argument dated 17th October, 2023 and submits that notwithstanding the jurisdiction

clause of the agreement between parties, the court had discretion to decline the exercise of jurisdiction premised on the doctrine of convenience, since the parties are based in Zambia. The case of **Donough v Armco Inc & Others** ⁽¹¹⁾ was cited on the overriding consideration of forum conveniens as the basis to decline to the exercise that jurisdiction.

7.2 The respondent contends that jurisdiction clauses are not cast in concrete, and can be waived depending on the circumstances of the case. In *casu*, it has not been demonstrated that the Dubai forum is more appropriate than the Zambian forum. As Authority, reference was made to the case of **Spiliada Maritime Incorporation v Consulex Limited** ⁽¹²⁾ where it was stated that the defendant must establish that there is another available forum more appropriate than the English Forum aside from showing that the forum is not the natural or appropriate one.

7.3 The appellant's position is that the appellant has not established that the UAE is the more distinctive and appropriate forum than the Zambian one. Further, no regard has been paid to the implication of clause 12, such as the cost of prosecuting in the UAE, the legal system and accessibility of legal representation by the respondent. The cases of **Axiz PTY Limited v Cloudtech Zambia Limited**

and Another as well as **Chansa Chipili Powerflex (supra)** were cited where in the latter case the Supreme Court held **“what must be understood in the appeal is that the governing law of the contract is a different legal issue from Jurisdiction.”** Further, it was argued that the respondent has no financial muscle to have the case prosecuted in a foreign jurisdiction.

- 7.4 It was argued that the case be heard in the jurisdiction where the contract was executed in view of the principle of Lexi Loci contractus notwithstanding clause 12 of the contract. That the contract is closely connected to Zambia. In addition, that the appellant took advantage of the ignorance of the respondent on a matter of law, being made to sign a contract containing a disadvantageous clause. Reference was made to the case of **Lloyds Bank Limited v Bundy** ⁽¹³⁾ on the relief given on a contract entered into on unfair terms or where a property is transferred for a consideration which is grossly inadequate and where the bargaining power is impaired.
- 7.5 We were implored to give relief to the respondent by ignoring the jurisdiction clause in question so the matter is determined in Zambia. The respondent went on to refer to the Principle of Lexi Loci Contractus under International Private Law, the law of the place where the contract is made

being applicable in resolving disputes between parties from different jurisdictions. Further, that the companies in issue are registered in Zambia and the witnesses based in Zambia, therefore, the issue of forum Conveniens must take precedent. Our attention drawn to the following cases, **India TV Independent News Service (P) Ltd v India Broadcast Live LLC & Others** ⁽¹⁴⁾ **Steak Ranch Limited v Steach Ranches International** ⁽¹⁵⁾ and **Lubbe v Cape PLC** ⁽¹⁶⁾ which dealt with the legal position in respect of forum non conveniens. We were urged to adopt the reasoning in the **Lubbe** case and dismiss the appeal.

8.0 ANALYSIS AND DECISION OF THIS COURT

8.1 We have considered the appeal, the authorities cited and arguments advanced by Learned Counsel. The undisputed facts are that Yield Financing Broker, a subsidiary of the 2nd appellant, and Extreme Trade Group run by Chongo Kalela Sinyangwe, entered into a Standard Conditions of Engagement for Consultancy Services on 11th January, 2021. A perusal of the said agreement at page 51 of the record of appeal shows that it was executed in Dubai, in the United Arab Emirates. Clause 12 of the agreement stipulated that the agreement shall be governed by and construed in

accordance with the laws of the United Arab Emirates and that the parties consent to the exclusive jurisdiction and venue in the courts of the Emirate of Dubai.

8.2 Following a dispute between the parties, the respondent commenced this action in the High Court of Zambia leading to this appeal. Though four grounds of appeal are raised, the main issue for determination is whether the court below had jurisdiction to determine the matter in view of Clause 12 providing for exclusive jurisdiction and venue of the disputes between parties, before the UAE Court. After determining the said issue the other grounds will be considered if not academic or otiose.

8.3 It is trite that the exclusive jurisdiction clause should normally be respected because the parties themselves fixed the forum for the settlement of their disputes and the courts should enforce the agreement, unless there is a strong reason to depart from it or there are exceptional circumstances. An applicant must satisfy the court that there is another forum having jurisdiction, in which the case would be suitably tried for all interests of the parties.

8.4 The applicant bears the burden of demonstrating that Zambia is on the balance, the more appropriate forum. Where the dispute raised has the most real and substantial

connection will be considered the appropriate forum. Connecting factors should be considered such as the personal connections of the parties, the witnesses to the competing fora, the connections between the transactions, the suitable place of trial for the interests of all the parties and ends of Justice.

8.5 Ground one was argued from two positions: the first being that the court below erred in arrogating jurisdiction to hear and determine the matter contrary to the intention of the parties as envisaged in the agreement, and secondly, that the court below wrongly applied the principle of *forum non conveniens* in arrogating jurisdiction to itself.

8.6 It is trite that parties are bound by the contracts freely and voluntarily entered into, and that courts shall enforce such contracts as held in the case of **Kalusha Bwalya v Chadore Properties & Another** ⁽¹⁰⁾. It is further trite that the jurisdiction of a court cannot be ousted by a foreign jurisdiction clause. The definition of the term jurisdiction was defined in the earlier cited case of **Godfrey Miyanda v The High Court**. Further, the foreign jurisdiction clause does not in effect confer jurisdiction on the chosen court. The court has discretion to decline to exercise that jurisdiction based on an overriding consideration of forum

conveniens. In the case of **Chansa Chipili & Powerflex (Z) Limited v Wellingtone Kanshimke & Wilson Kalumba** ⁽²⁾ at page 492, after reviewing some decided cases, the Supreme Court guided as follows:

“These three cases demonstrate that in business transactions, with foreign jurisdiction clauses, where business is partly conducted in foreign countries, settlement of the legal question on jurisdiction is based on circumstances supported by the evidence available. Thus, while parties may agree on foreign jurisdiction in an attempt to oust the jurisdiction of the state or country where they have business activities, such state or country may rightly claim jurisdiction depending on the circumstances in a given case.”

The court went on to state that:

“One can see, therefore, that foreign jurisdiction clauses are not in themselves decisive of the legal point on jurisdiction.

...

Courts will still look at the jurisdiction with which the action has the most real and substantial connection. Courts will look for connecting factors which the learned trial judge is at liberty to explore in order to decide whether or not the Californian law should apply ...”

8.7 In the case of **Axiz (Pty) Limited v Cloudtech Zambia Limited & Another**⁽¹⁾, we held that it is trite law that the jurisdiction of a court cannot be ousted by a foreign jurisdiction clause. We further held that the South African ‘applicable law’ clause in the contract was different from the governing law of the contract and did not, by any

stretch of imagination, oust the inherent jurisdiction of the High Court in Zambia. The Axiz case is distinguishable from the facts herein in which there is a jurisdiction clause, expressly providing for the jurisdiction of UAE courts.

8.8 As regards the factors a court must take into account the **Chansa Chipili** case guides that:

“What must be understood in this appeal is that the governing law of a contract where that is spelt out, is a different legal issue from that of jurisdiction.

Regarding the Californian jurisdiction clause, factors such as residence, places where business is conducted, convenience in terms of expenses and availability of witnesses, should be canvassed. Besides, the contract might have been varied through conduct of the parties such that the original contract has been adapted to the variations and is no longer what it used to be.”

8.9 We have perused the contract in issue appearing at page 50 of the record of appeal, made between the 2nd Appellant and Extreme Trade Group/Chongo G. Kalela Sinyangwe. It was in respect of facilitating the issuance of letter of credit services. The engagement agreement was entered into on 11th January, 2021 “at Dubai, United Arab Emirates.”

It shows that the 2nd appellant was incorporated in Dubai and it’s registered office is in Dubai. The other party Extreme

Trade has its registered office in Angola. Extreme Trade is stated to be “represented by **CEO, Ms. Chongo Chinyangwa Kalela, Zambian National holding Passport No. N2044423**” herein after referred to as the Company. Clause 12 under the Governing Law and Dispute Resolution provides as follows:

“This agreement shall be governed by and construed in accordance with the laws of United Arab Emirates, without giving effect to any choice of law or conflict of law provisions. The parties consent to “exclusive” jurisdiction and venue in the court of the Emirate of Dubai”

8.10 The learned judge held that the agreement was executed in Zambia. We hold the view that the court below erred in law and fact by holding as such. We find that the contract at page 50 of the record reveals that it was entered into in “Dubai, United Arab Emirates.” The other party, Extreme Trade Group is registered in Angola, which was represented by its CEO the respondent, a Zambian National.

8.11 Having established the above facts, the question for determination is whether the court had jurisdiction to determine the matter in view of clause 12. The parties submitted at length citing cases on the doctrine of forum conveniens and the factors relevant to the exercise of the

court's discretion to determine a matter which is subject to the exclusive jurisdiction of a foreign tribunal/court.

8.12 It is trite as earlier stated that parties should honor their agreement to refer disputes to foreign tribunal/ court, unless it is shown that there is some other forum which is more appropriate. The respondent submitted that the Zambian court was the more appropriate forum, than the UAE Court on basis of cost, the contract is closely related to Zambia, that the jurisdictional clause was unfair, that the companies involved are registered in Zambia. Further, that the witnesses are based in Zambia.

8.13 We had earlier held that the companies are not registered in Zambia. Arguments relating to the fact that the appellant took advantage of the ignorance of the respondent on matters of law are untenable. Ignorance of the law is no defence.

8.14 We do not agree that the court below in which the matter was commenced has jurisdiction. In our view, the appellants have proved that the Zambian court is not the appropriate forum and that UAE Court is the court that exists with jurisdiction to deal with the dispute. We further hold that Clause 12 granting exclusive jurisdiction and venue in the courts of Dubai must be enforced. Further, the governing law of the agreement was to be construed in accordance with the United

Arab Emirates without giving effect to any choice of law or conflict of law provisions. The parties' expressly consented to the exclusive jurisdiction of the UAE Court. We must give effect to what the parties agreed to.

8.15 As regards the contention that the witnesses are located in Zambia, this in our view is not material due to the advent of video – link technology. The parties choice or consent to the exclusive jurisdiction and venue in the court of UAE assumed a greater degree of importance. The exclusive jurisdiction clause must be respected because the parties themselves agreed. We therefore find that the court below erred when it assumed jurisdiction over the matter.

8.16 The Zambian court, not being the appropriate forum to determine the matter for the reasons earlier advanced, court ought not to have granted leave to issue and serve the writ out of jurisdiction.

8.17 In ground two, the appellants argue that the whole action is centered on the agreement to provide facilitation services to the respondent which the respondent alleges, were never provided. A perusal of the writ of summons shows that it is endorsed with a claim for a refund of the sum of \$30,000.00 being a deposit paid on a failed facilitation of a letter of credit.

8.18 Further, a perusal of clause 1 of the agreement between the respondent and the 2nd appellant, shows that the purpose of the consultancy services “is for assisting the company in facilitating the issue of one or more letters of credit, bank guarantees, SWIFT Messages, facility letter” This clearly shows that the claims are within the ambit of the agreement. The holding of the court below to the effect that the dispute does not fall within the ambit of clause 12 of the agreement is accordingly set aside for having been made upon a misapprehension of facts.

8.19 In ground three, the appellants fault the court below for finding that it had jurisdiction to hear and determine the matter given the nature of the claim bordering on fraud and misrepresentation which were not pleaded.

8.20 Having perused the writ of summons and statement of claim at pages 20 to 23 of the record of appeal, we have no hesitation in finding that the respondent did not plead fraud or misrepresentation. She merely claimed for a “refund of the sum of US\$30,000.00 being deposit on a failed transaction of letter of credit.” In the statement of claim the respondent alleged that the appellant swindled her of the money purporting that they would facilitate issuance of letter of credit on behalf of her suppliers. Though the fraud was not

clearly and distinctly pleaded, in our view, this was an issue for trial. We will not belabor the point. Save to state that whether the claim bordered on fraud and misrepresentation, the court below had no jurisdiction to determine the matter which had a clause providing for the exclusive jurisdiction and venue in the court of Emirate of Dubai.

9.18 Ground four assails the finding of the court below that the agreement in issue was executed in Zambia. We earlier found that a reading of page 2 of the agreement at page 51 of the record of appeal, shows that the same was entered into on 11th January, 2021 in Dubai, United Arab Emirates. Therefore, the learned judge, as earlier held, misdirected himself in holding that the agreement was executed in Zambia. In any event, having held that the court had no jurisdiction to determine this claim, this ground is otiose.

10.0 CONCLUSION

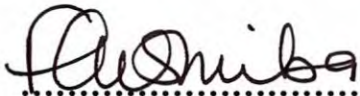
10.1 We reiterate that the court below had no jurisdiction to determine the matter in view of clause 12 of the agreement, in which the parties consented to the exclusive jurisdiction and venue in the courts of Emirate of Dubai. That the appellants did established that the appropriate forum is the UAE Court. We accordingly set aside the entire ruling of the court below and substitute it with the holding that the court

had no jurisdiction on the basis of the doctrine of forum non
conveniens. Costs follow the event.



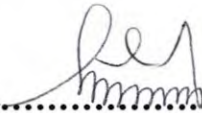
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M. J. Siavwapa

JUDGE PRESIDENT



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F. M. Chishimba

COURT OF APPEAL JUDGE



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A.M Banda Bobo

COURT OF APPEAL JUDGE