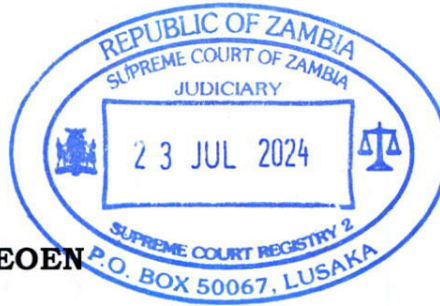


**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**APPEAL No. 11 OF 2022**

**B E T W E E N:**

**BILLIS FARM LIMITED  
ABRAHEAM LODEWIKUS VILEOEN**



**1<sup>st</sup> APPELLANT  
2<sup>nd</sup> APPELLANT**

**AND**

**MOLOSONI CHIPABWAMBA AND 12  
OTHER DISPLACED VILLAGE OWNERS  
YSSEL ENTERPRISES LIMITED  
KAITE JOHN KAKUNGU  
BLUE VEIN INVESTMENTS LIMITED  
SERENJE DISTRICT COUNCIL  
THE ATTORNEY GENERAL  
THE COMMISSIONER OF LANDS**

**RESPONDENTS  
1<sup>ST</sup> INTERESTED PARTY  
2<sup>ND</sup> INTERESTED PARTY  
3<sup>RD</sup> INTERESTED PARTY  
4<sup>TH</sup> INTERESTED PARTY  
5<sup>TH</sup> INTERESTED PARTY  
6<sup>TH</sup> INTERESTED PARTY**

**Coram: Malila CJ, Hamaundu and Chisanga, JJS  
on 7<sup>th</sup> March, 2023 and 23<sup>rd</sup> July, 2024**

For the Appellants: *Ms. A. B. A. Theotis and Ms. N. Mutambo of Mesdames  
Theotis Mutemi Legal Practitioners*

For the Respondents: *Mr. C. M. Sianondo and Ms. M. S. Tembo of Messrs  
Malambo and Company*

For the 1<sup>st</sup> and 4<sup>th</sup>  
Interested Party: *No Appearance*

For the 5<sup>th</sup> and 6<sup>th</sup>  
Interested Party: *Mr. M. Muchende, SC, Solicitor General, Ms. A.  
Chisanga State Advocate and Ms. N. K. Chongo – State  
Advocate – Attorney General’s Chambers*

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

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**Malila, CJ** delivered the judgment of the court.

**Cases referred to:**

1. *Hakainde Hichilema v. The Attorney General*, Appeal No. 4 of 2019
2. *Richard Nsofu Mandona v. Total Aviation and Export Limited and Others*, Appeal No. 82 of 2009
3. *Zlatan Zlatko Arnautovic v. Stanbic Bank Zambia Limited*, SCZ/08/14/2020
4. *Hakainde Hichilema and Geoffrey Mwamba v. The Attorney General*, SCZ Appeal No. 25 of 2017
5. *Antonio Ventriglia and Another v. Finsbury Investments Limited*, SCZ Appeal No. 2 of 2019
6. *JCN Holdings Limited v. Development Bank of Zambia* (2013) 3 ZR 299
7. *New Plast Industries Limited v Commissioner of Lands and Another* (2001) Z.R. 51
8. *Chikuta v. Chipata Rural District Council* (1974) Z.R. 241
9. *Elias Kundiona v. The People* (1993-1994) ZR 59
10. *Republic v. Karisa Chengo and Others*, Petition No. 5 of 2015
11. *Attorney General v. Donald Siakakole and Others*, SCZ Appeal No. 4 of 2021
12. *Godfrey Miyanda v. The High Court* (1984) Z.R. 62
13. *Corpus Legal Practitioners v. Mwanandani Holdings Limited*, SCZ Judgment No. 50 of 2014

**Legislation and other works referred to:**

1. *The Constitution of Zambia, Chapter 1 of the Laws of Zambia*
2. *The Lands Act, Chapter 184 of the Laws of Zambia*
3. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*
4. *Bryan A. Garner (Ed.), Black's Law Dictionary, 9<sup>th</sup> Edition, 2009*
5. *Lord Hailsham (Ed.), Halsbury's Laws of England, Volume 10, 4<sup>th</sup> Edition, Butterworth, 1982.*

**1. INTRODUCTION AND BACKGROUND FACTS**

- 1.1. The respondents had, for a long time, settled in the Luombwa area in Chief Muchinda's Chieftdom in Serenje District located in the central part of Zambia. For some of them, their roots could be traced from there from as far back

as 1969. For all that period, the respondents enjoyed quiet possession of the area which was under customary tenure.

- 1.2.** A seed of turmoil appears to have been sown when, in 1997, the 1<sup>st</sup> interested party applied to Serenje District Council (the 4<sup>th</sup> interested party) for the land in issue to be converted into statutory tenure. The application was successful. The extent of the land involved was about 2071.35 hectares.
- 1.3.** The 1<sup>st</sup> interested party was subsequently given a 14-year occupancy licence. The following year, the 1<sup>st</sup> interested party was issued a certificate of title in respect of that land.
- 1.4.** The said land was later sold to the 1<sup>st</sup> appellant. Subsequently, title was issued mandating the 1<sup>st</sup> appellant to occupy the land for the unexpired residue of a term of 99 years. Soon thereafter, it was established into a commercial farm. This move, as alleged by the respondents, resulted into destruction of their houses, fields, crops, fruit trees and forests, as well as the closing of access roads used by them. This turn of events forced the respondents to vacate the land. They sought sanctuary in nearby Musangashi Forest

Reserve where they stayed under what they described as difficult living conditions.

- 1.5. The discomfort of life in the forest reserve compelled the respondents to move the High Court, in December 2017, by way of a petition, challenging what they termed as their “forced eviction” from Luombwa area.
- 1.6. For reasons that will become apparent later in this judgment, we shall reproduce verbatim the claims made by the respondents in the High Court. These were as follows:
  - i. **An order and a declaration that the taking over of the Petitioners’ customary land without following the required procedure is unconstitutional and is therefore null and void.**
  - ii. **A declaration and an order that the petitioners are to continue enjoying their land in accordance with the customary law of the area and its attendant rights.**
  - iii. **An order directed at the 3<sup>rd</sup> and 5<sup>th</sup> respondents to cancel any allocation, assignment, or Certificate of Title that was issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, which covers the land that is occupied, used, and enjoyed by the petitioners under customary tenure.**
  - iv. **An order for the restoration of the land back to the petitioners of the same extent that they had historically enjoyed [sic!].**

- v. An order and declaration that the taking, destruction of houses, fields, crops, fruit trees, forests and closing of the roads used by the petitioners violates their rights to dignity, life, personal liberty, protection from torture, inhuman and degrading punishment or treatment, property, not to be subjected to entry by others on their premises, freedom of association, freedom of movement and residence and not to be treated in a discriminatory manner.
- vi. A declaration that section 33 of the Lands and Deeds Registry Act is unconstitutional as it results in the diminishment or termination of customary land rights without the provision of adequate compensation.
- vii. A declaration that sections 33, 34, and 35 of the Lands and Deeds Registry Act are unconstitutional as they discriminate against the rural communities occupying, using, and enjoying customary land rights and interests.
- viii. An order and declaration that sections 33, 34, and 35 of the Lands and Deeds Registry Act are incompatible with section 7 of the Lands Act and are therefore invalid.
- ix. An order and declaration that the land was acquired or obtained under fraud, mistake, and/or misrepresentation and thus null and void and should be canceled [sic!]
- x. In the alternative, a declaration that sections 33, 34, and 35 of the Lands and Deeds Registry Act have been repealed by the Lands Act.
- xi. An order for damages and compensation for the destroyed properties, houses, crops, and fruit trees (both planted and

from nearby forests) and for depriving the petitioners and their families and households, access and use of their customary land for the period the 4<sup>th</sup> and 5<sup>th</sup> respondents have been in possession and use of the property, contrary to Article 16 of the Constitution and section 7 of the Lands Act.

- xii. **An order for damages and compensation for all the suffering that the petitioners have been unlawfully and unjustifiably subjected to pursuant to Articles 8, 12, 13, 15, 17, 22, 23, 28, 256, and 266 of the Constitution of Zambia.**
- xiii. **An order of mandatory relief requiring the 4<sup>th</sup> and 5<sup>th</sup> respondents to undertake reasonable and necessary remedial action in relation to the environment and other damages to the land, air, water, and other environmental aspects of the petitioners' natural resources or alternatively, damages in lieu of the same.**
- xiv. **Costs.**
- xv. **Further or other relief that the court may deem fit.**

1.7. The matter was tried by Newa J., of the High Court. Having heard varied accounts from the witnesses called by the parties, she found that the procedure relating to the change in land tenure was not followed insofar as consultations with local communities were concerned. Consequently, she concluded that the series of steps taken to alienate and

subsequently convert the land in question into statutory tenure was null and void.

- 1.8.** The trial judge did not end there. She opined that the conversion of the land in dispute from customary to statutory tenure and its allocation to the 1<sup>st</sup> interested party amounted to compulsory acquisition and ordered the 4<sup>th</sup> and 5<sup>th</sup> interested parties, in consultation with the local Chief, to grant the respondents alternative land.
- 1.9.** Newa J. further held that the forced eviction of the respondents was a violation of their constitutional rights and ordered that they be compensated. In addition, she was of the view that it would not be in the public interest to cancel the certificate of title issued to the appellants because they had already settled on the land as commercial farmers. She noted that their occupation of the land as commercial farmers was in furtherance of the Government policy, at the time, to create commercial farm blocks in that area.

- 1.10.** Infuriated by the decision handed down by the High Court, the respondents appealed to the Court of Appeal. They were particularly aggrieved by the trial court's refusal to cancel the certificate of title issued in respect of the disputed land despite having found that the necessary procedure was not followed when converting the land.
- 1.11.** In the Court of Appeal, the respondents argued that because the conversion of the land was found to be a nullity, it followed that the certificate of title issued in respect of the land should have been cancelled and the respondents allowed to occupy the land.
- 1.12.** The Court of Appeal agreed with the respondents. Its view was that having found that the conversion of the land was contrary to the law, the trial court ought to have ordered cancellation of the certificate of title. Accordingly, the Court of Appeal ordered that the certificate of title be cancelled.
- 1.13.** The appellants were unhappy with the position taken by the Court of Appeal and launched an appeal before us.



## **2.0. GROUNDS OF APPEAL AND THE APPELLANT'S CASE**

**2.1.** The appellants fashioned their grounds of appeal in the following manner:

- 1. The Court of Appeal erred in law when it heard and determined an appeal from the decision of the High Court for Zambia under Article 28 of the Constitution without jurisdiction and contrary to the provisions of Article 28 (2)(b) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.**
- 2. The Court of Appeal erred in law when it cancelled the Certificate of Title for Farm F/9597 Serenje District contrary to the public interest on the strength of authorities that are distinguishable from the case *in casu* as the land in question was designated as a farm block by the government of Zambia and consent from the Chief was subsequently obtained.**
- 3. The Court of Appeal erred in law when it cancelled the Appellants' Certificate of Title for Farm No. F/9597 in ignorance of the already existing High Court Order awarding compensation to the Respondents for the loss of their land, with the result that the respondents have been unjustly enriched.**
- 4. The Court of Appeal erred in law and in fact when it overturned the decision of the High Court to deem the acquisition of the land in question as a compulsory acquisition in public interest when in fact, the conversion of land was done by the state for the public interest in line with the government policy to create farm blocks.**

**5. The Court below erred in law when it held that the action in the High Court based on statute should not have been determined using the principles of equity pursuant to Section 13 of the High Court Act Chapter 27 of the Laws of Zambia contrary to binding judicial precedent and thus abrogating the principle of stare decisis and in ignorance of the fact that a Petition is not a Pleading.**

**6. The Court of Appeal erred in law when it nullified the 1<sup>st</sup> appellant's Certificate of Title for reasons of an irregularity in the acquisition process at the instance of the 1<sup>st</sup> and 4<sup>th</sup> interested parties to the appeal.**

**2.2.** Our perusal of the grounds of appeal revealed that the first ground of appeal quizzes the Court of Appeal's jurisdiction to hear and determine the appeal. The other grounds of appeal, as can be gleaned from the appellants' filed heads of argument, are all in the alternative. In the premises, we propose to consider the narrow question of jurisdiction that ground one raises before we deal with the other grounds of appeal.

**2.3.** On behalf of the appellants, Ms. Theotis contended that the Court of Appeal did not have jurisdiction to hear and determine the appeal before it as it lacked jurisdiction. According to the learned Counsel, her view was fortified by

the fact that the appeal emanated from a matter commenced by petition under Article 28 of the Constitution.

2.4. The learned Counsel argued that the respondents had, in the High Court, alleged that several provisions under the bill of rights had been violated. She submitted that the respondents, in their petition, went to great lengths to illustrate and substantiate how the provisions of the bill of rights were flouted. According to Ms. Theotis, the cornerstone of the respondents' argument in the High Court was that their rights under Article 16 of the Constitution had been violated.

2.5. Counsel passionately argued that a person aggrieved by a determination of the High Court arising out of a matter commenced under the umbrella of Article 28 of the Constitution must appeal to this Court. She sought solace in the provisions of Article 28 (2)(b) of the Constitution which stipulates that:

**(b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court: ...**

2.6. To further cement her view, Ms. Theotis referred us to the case of **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup> where we held that:

**It is our considered view therefore, that in the process of giving effect to the rights of a person under Article 28 of the Constitution, the High Court has power to make any orders or directions whether or not they are substantive in nature. The appeal process following such a determination is provided for under section 28 (2)(b) of the Constitution which stipulates that:**

*Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court*

**This provision uses plain language. It is not ambiguous. Recourse to the Supreme Court on appeal is the right of any person aggrieved by the High Court.**

2.7. The learned Counsel was quick to remind us that we had occasion to deal with the appeal procedure under Article 28 of the Constitution in **Richard Nsofu Mandona v. Total Aviation and Export Limited and Other**<sup>(2)</sup>. She referred us to an extract from our judgment in that case where we stated that:

**Granted that matters dealing with the bill of rights are constitutionally still very much within the jurisdictional ambit of the High Court to determine at first instance, with appeals on any such matters determined by the High Court**

**lying to the Supreme Court under Article 28 (1)(b) (*sic!*), we are in no doubt that this court has jurisdiction to determine any issue raised touching on the bill of rights in the Constitution provided, of course, it comes to us by way of appeal from the High Court.**

- 2.8.** Ms. Theotis maintained that an appeal from the High Court arising under Article 28 of the Constitution must lie to the Supreme Court. In her estimation, the inevitable conclusion is that the Court of Appeal lacked the requisite jurisdiction to hear and determine the appeal.
- 2.9.** The learned Counsel informed us that the question of jurisdiction was addressed before a single judge of the Court of Appeal, when the judge asked the parties to address the court on the issue of jurisdiction.
- 2.10.** Ms. Theotis referred us to a ruling made by the single judge where the judge held that the Court of Appeal had jurisdiction to hear and determine the appeal because it did not raise questions hinging on the provisions of the bill of rights.

- 2.11. The learned Counsel did not agree with the single judge's view. Instead, she contended that the Court of Appeal clothed itself with jurisdiction in total disregard of the provisions of the Constitution and the decision in **Richard Nsofu Mandona v. Total Aviation and Export Limited and Others**<sup>(2)</sup>. She added that the question of the jurisdiction of a court is critical and cannot be waived by either party.
- 2.12. To buttress her point, the learned Counsel relied on the case of **Zlatan Zlatco Arnautovic v. Stanbic Bank Zambia Limited**<sup>(3)</sup> where a single judge of this Court stated that jurisdiction goes to the core of a matter and it cannot be presumed or corrected by a court order, nor can it be waived by a party.
- 2.13. It was Counsel's view that the Court of Appeal could not clothe itself with jurisdiction that it did not have. She added that the single judge of the Court of Appeal relied on the order (the Kabwe Order) we made in the case of **Hakaide Hichilema and Geoffrey Mwamba v. The Attorney General**<sup>(4)</sup> which, according to her, was still good law at the time of the Court of Appeal's ruling on jurisdiction. For the sake of

completeness, we shall reproduce our Kabwe Order which was couched in the following terms:

**WHEREAS by virtue of the creation of the Court of Appeal vide the Constitution amendment Act No. 2 of 2016 all appeals against decisions made by the High Court lie to the Court of Appeal, save for substantive decisions made on questions regarding the rights of individuals under Article 13 to 28 of the Constitution inclusive;**

**WHEREAS the appellants herein commenced a petition in the High Court pursuant to Articles 18 and 28 of the Constitution and the said petition is still pending before that Court; and**

**WHEREAS the appellants have appealed to this Court against an interlocutory decision of the High Court which does not involve the final determination of their petition. NOW THEREFORE this Court lacks the jurisdiction to entertain this appeal as the same ought to have been filed in the Court of Appeal. CONSEQUENTLY, this appeal stands dismissed, with costs to the respondent.**

- 2.14. Ms. Theotis contended that the import of the Kabwe Order was that interlocutory appeals arising out of matters commenced under Article 28 of the Constitution would lie to the Court of Appeal while substantive appeals would lie to this court. According to her, the Kabwe Order did not invite the Court of Appeal to consider how the grounds of

appeal were couched in a substantive appeal to determine whether or not an appeal would lie to it. This was the approach taken by the single judge of appeal. By that course, according to Ms. Theotis the single judge of the Court of Appeal overextended the import of the Kabwe Order.

- 2.15. Counsel's argument, in a nutshell, was that the appeal before the Court of Appeal was not an interlocutory appeal to justify the Court's assumption of jurisdiction.
- 2.16. It was Counsel's view that where a court purports to exercise jurisdiction which it does not have, its decision amounts to nothing. The learned Counsel called in aid the cases of **Antonio Ventriglia and Another v. Finsbury Investments Limited**<sup>(5)</sup> and **JCN Holdings Limited v. Development Bank of Zambia**<sup>(6)</sup> where we discussed the question of jurisdiction and the effect of a court deciding a matter when it is bereft of jurisdiction.



- 2.17. At the hearing of the appeal, Ms. Mutambo concurred with Ms. Theotis and recapped most of the arguments already filed into Court. However, to the question put to her by the court whether, if this court determines that the Court of Appeal had no jurisdiction to hear the appeal, this court can legitimately hear the appeal since the record is before it, her response was that the same would prejudice the appellants.
- 2.18. Her view was that the record was not prepared for the court to hear the appeal from the High Court. Therefore, certain documents essential to the appeal are missing from the record of appeal in its current form.
- 2.19. In sum, the learned counsel urged us to deem the decision of the Court of Appeal a nullity for want of jurisdiction.

### **3.0. THE 5<sup>TH</sup> AND 6<sup>TH</sup> INTERESTED PARTY'S CASE**

- 3.1. The learned Solicitor General, Mr. Marshal Muchende SC, generally agreed with the arguments canvassed by the appellants, at least with regard to the Court of Appeal's jurisdiction to hear and determine the appeal.

- 3.2. However, in support of his position, the Solicitor General drew our attention to the cases of **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup> and **Richard Nsofu Mandona v. Total Aviation and Export Limited and Others**<sup>(2)</sup> where we guided that appeals arising from the High Court's determinations on the bill of rights under Article 28 of the Constitution lie to the Supreme Court.
- 3.3. According to State Counsel Muchende, the question of jurisdiction in this matter stems from as far back as the mode of commencement adopted by the respondents in the High Court. He urged us to examine the reliefs that the respondents initially sought from the High Court. In his view, those reliefs show that the respondents' claims went beyond the scope of Article 28 of the Constitution to warrant the High Court being moved by way of petition.
- 3.4. It was State Counsel's contention that the petition referred to issues alien to Article 28 of the Constitution. Some of the issues raised related to fraud, allegations of impropriety in procedure, and allegations on the constitutionality of some

provisions of the Lands and Deeds Registry Act as well as the Lands Act.

- 3.5.** In the learned Solicitor General's view, an examination of the reliefs sought by the respondents in the High Court reveals that the petition did not distinctly raise issues relating to the violation of the respondents' rights.
- 3.6.** Mr. Muchende SC, argued that the High Court ought to have restricted itself to the determination of issues within the ambit of Article 28 of the Constitution. He added that the appeal procedure under Article 28 (2)(b) was in force when the respondents were appealing against the decision of the High Court.
- 3.7.** The learned State Counsel submitted that this court has jurisdiction to determine whether or not the Court of Appeal had the requisite jurisdiction to hear and determine the appeal before it. Further, State Counsel Muchende contended that the correct mode of commencement of a matter seeking a combination of different reliefs is by way of a writ of summons and statement of claim. To reinforce

his point, he referred us to our decisions in **New Plast Industries Limited v Commissioner of Lands and Another**<sup>(7)</sup> and **Chikuta v. Chipata Rural District Council**<sup>(8)</sup> where we stated that if a wrong procedure has been used to commence an action, the court will have no jurisdiction to hear and determine the matter.

- 3.8.** Ms. A Chisanga and Ms. Chongo who appeared with the learned Solicitor General also made brief oral submissions. The gist of Ms. Chisanga's arguments is that for a court jurisdiction is everything. Without it, a court cannot hear and determine a matter. Ms. Chongo on the hand argued, in summary, that the question of jurisdiction can be raised and addressed by the Court at any time.
- 3.9.** In crowning the arguments by the 5<sup>th</sup> and 6<sup>th</sup> interested parties, the learned Solicitor General urged the court to sustain the appeal on ground one alone.

#### **4.0. THE RESPONDENTS' CASE**

- 4.1.** Counsel for the respondents, Mr. Sianondo, held a different view from the appellants and the 5<sup>th</sup> and 6<sup>th</sup> interested

parties regarding the question of jurisdiction. He set off his arguments by contending that the grounds of appeal presented before the Court of Appeal showed that the respondents were aggrieved by a decision of the High Court not to cancel the certificate of title, having found that the correct procedure was not followed when converting the land in question from traditional tenure.

- 4.2.** Mr. Sianondo argued that the appeal did not challenge any of the High Court's findings on the provisions of the Constitution under the bill of rights. Therefore, according to the learned counsel, the matter was properly before the Court of Appeal.
- 4.3.** The learned counsel refuted the appellant's claim that there was a finding by the trial court that the respondents' land was compulsorily acquired. Counsel, while directing us to an extract from the judgment of the trial court, argued that the High Court's holding was in fact to the effect that there was no intention to compulsorily acquire the land in issue. He added that the upshot of the trial court's holding was to dismiss the respondents' claims that hinged on Article 16 of

the Constitution and Sections 3, 5, 6, 7, and 25 of the Lands Acquisition Act, Chapter 189 of the Laws of Zambia.

- 4.4.** Mr. Sianondo contended that the trial court held that the procedure relating to alienating and converting the disputed land was not followed. Counsel contended that there is a distinction between alienation and acquisition of land. He referred to the definitions of the words 'alienation' and 'acquisition' in Black's Law Dictionary where alienation is defined as *conveyance or transfer to another*. Acquisition on the other hand, is defined as *the gaining of possession or control over something*.
- 4.5.** According to counsel, the appellants only took issue with the fact that the trial court did not cancel the title deeds despite making a finding that the procedure set out in the law on the conversion of land tenure was not followed.
- 4.6.** On the question of the appeal before the lower court, Mr. Sianondo agreed with the reasoning employed by the single judge of the Court of Appeal. His view was that the Court of Appeal had jurisdiction to hear the appeal as it did not

call upon the court to determine issues under the bill of rights. He went on to argue that the single judge of the Court of Appeal properly relied on the case of **Hakainde Hichilema and Geoffrey Mwamba v. The Attorney General**<sup>(4)</sup> which was good law at the time.

- 4.7. Mr. Sianondo pushed the argument further and contended that in line with the principles of *stare decisis* the Court of Appeal was compelled to follow the guidance in **Hakainde Hichilema and Geoffrey Mwamba v. The Attorney General**<sup>(4)</sup> in entertaining an appeal that did not substantially raise issues under the Bill of Rights.
- 4.8. The learned counsel pointed us to the case of **Elias Kundiona v. The People**<sup>(9)</sup> where we discussed the principle of *stare decisis* and the binding effect of our decisions on lower courts.
- 4.9. According to Mr. Sianondo, the decision by the lower court on jurisdiction stood because it was never challenged by any of the parties in the manner suggested in **Antonio Ventriglia and Another v. Finsbury Investments Limited**<sup>(5)</sup>. In

this case, we guided on the procedure to follow when a party was aggrieved by a decision of a single judge.

4.10. At the hearing, Mr. Sianondo echoed his filed arguments. However, in an effort to persuade us to accept his argument, he referred us to a decision by the Kenyan Supreme Court in **Republic v. Karisa Chengo and Others**<sup>(10)</sup> where that court held that its decisions are prospective and have no retrospective effect. This argument was in reaction to the argument by the appellants that the position on appeals under Article 28 of the Constitution was set out in **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup>. Mr. Sianondo argued that the fact that this Court reversed its Kabwe Order in **Hakainde Hichilema and Geoffrey Mwamba v. The Attorney General**<sup>(4)</sup> does not invalidate the ruling of the single judge of the Court of Appeal.

4.11. Mr. Sianondo concluded his arguments by submitting that should the court agree that the Court of Appeal had no jurisdiction, we should adopt the approach we took in **Attorney General v. Donald Siakakole and Others**<sup>(11)</sup> and deem



this appeal to have been made before us from the High Court and determine it.

- 4.12. In a nutshell, Counsel maintained that the Court of Appeal had the requisite jurisdiction to hear and determine the appeal.

#### 5.0. ANALYSIS AND DECISION OF THE COURT

- 5.1. We have painstakingly considered the appeal as well as the industrious arguments put forward by learned counsel for the parties.
- 5.2. We must mention from the outset that the cases in which we have given guidance on the question of jurisdiction are legion. They include **Zlatan Zlatco Arnautovic v. Stanbic Bank Zambia Limited**<sup>(3)</sup> and **Antonio Ventriglia and Another v. Finsbury Investments Limited**<sup>(5)</sup> cited by the parties.
- 5.3. Jurisdiction refers to the legal authority of a court to hear and decide a particular case or matter. The learned authors of Halsbury's Laws of England Volume 10 at paragraph 715 put it this way:

**By “jurisdiction” is [sic!] meant the authority which a court has to decide matters that are litigated before it ...**

- 5.4. This definition is the bedrock of many of our decisions which have stated that jurisdiction is everything, or at least for the courts it is. Without it, any exercise of authority by a court is in futility. The learned authors of Halsbury’s Laws of England, Volume 10, go on [at paragraph 715] to state the harsh ramifications that befalls a decision of a court made when the court is without jurisdiction. They state that “*where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing*”.
- 5.5. The record will show that when the matter was before the Court of Appeal, the question of jurisdiction was raised when the single judge of the Court asked the parties to address the question of jurisdiction. The single judge relied on our Kabwe Order and ruled that the Court of Appeal had the requisite jurisdiction to hear and determine the appeal.

- 5.6.** To determine the question of jurisdiction of the Court of Appeal at that time, we are of the view that the starting point was to unravel the effect of the Kabwe Order. Our understanding of that Order is that it guided that substantive appeals arising under Article 28 of the Constitution would lie to this court whereas those appeals arising out of interlocutory decisions would lie to the Court of Appeal.
- 5.7.** It is common cause that the appeal that was before the Court of Appeal did not emanate from an interlocutory decision of the High Court. The record will show that the petition was determined by the trial court and a final decision was rendered. Therefore, even with a strict reading of the Kabwe Order, the Court of Appeal did not have the requisite jurisdiction to hear and determine the substantive appeal before it.
- 5.8.** Our view is that the arguments by Mr. Sianondo that the appeal did not raise any issues relating to the Bill of Rights are neither here nor there, not even in the context of the Kabwe Order. We agree with the arguments advanced by

Ms. Theotis and Ms. Mutambo that the single judge of the Court of Appeal appears to have stretched the import of the Kabwe Order.

**5.9.** We did not state, in the Kabwe Order, that if an appeal is before the Court of Appeal, that court must then begin to decipher whether or not that particular appeal raises substantive questions arising under Article 28 of the Constitution before deciding whether the court has jurisdiction. The import of the Kabwe Order was simply that interlocutory appeals ought to have been heard by the Court of Appeal while the hearing of substantive appeals was the preserve of this Court.

**5.10.** We are alive to the fact that the Kabwe Order was vacated by our decision in **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup>. In that case, we made it clear that there should be no segregation of interlocutory and substantive appeals under Article 28 of the Constitution in its current form. All appeals, interlocutory or otherwise, from a decision of the High Court under Article 28 of the Constitution must come to our court.

- 5.11. We have taken note that our decision in **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup>, clarifying the route for all appeals under Article 28 of the Constitution, was rendered on 19<sup>th</sup> June, 2021. The Court of Appeal only heard this matter on 17<sup>th</sup> November, 2021 and its decision was delivered on 21<sup>st</sup> April, 2022. Our binding guidance in **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup> was in force long before the Court of Appeal heard the appeal, let alone determine it.
- 5.12. In any event, even with the Kabwe Order in force, the Court of Appeal was not entitled to entertain the appeal as it was not an interlocutory the appeal. As we have already pointed out, at the time the Court of Appeal was hearing the appeal the position regarding appeals under Article 28 of the Constitution was as enunciated in **Hakainde Hichilema v. The Attorney General**<sup>(1)</sup> where we were categorical regarding where appeals must lie *vis a vis* Article 28 of the Constitution.
- 5.13. We hold the view that the single judge and the full court of the Court of Appeal fell foul of the principle of *stare decisis* when they failed to give effect to existing binding authorities


on the matter. At no point did the Court of Appeal possess the requisite jurisdiction to hear and determine the appeal before it. The net effect is that the Court of Appeal exercised its powers in futility. The decision it rendered in this matter amounted to nothing.

- 5.14.** Therefore, we hold that ground one has merit and succeeds. Having allowed ground one on the question of jurisdiction, the other grounds of appeal have become otiose and we shall not deal with them.
- 5.15.** We have also taken note of the learned Solicitor General's arguments regarding the mode of commencement used to move the High Court by the respondents.
- 5.16.** The matter in the High Court was commenced by way of Petition under Article 28 of the Constitution. We agree with Mr. Muchende, SC's observations that the issues the petitioners sought the court to pronounce itself on go beyond the scope envisaged under Article 28. We deliberately reproduced, at paragraph 1.6, all the reliefs


that the respondents sought to highlight the diverse issues that they called upon the trial court to determine.

5.17. It is not our intention to delve into the authorities on the mode of commencement of actions which are in any case quite clear. In any case discussing those authorities would not change the conclusion we have made regarding the Court of Appeal lacking jurisdiction.

5.18. In the circumstances, the appeal is allowed to the extent discussed above. We vacate the judgments given by the Court of Appeal as it was borne out of the courts' lack of jurisdiction. Each party shall bear its own costs.

  
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Mumba Malila  
**CHIEF JUSTICE**

  
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E. M. Hamaundu  
**SUPREME COURT JUDGE**

  
.....  
F. M. Chisanga  
**SUPREME COURT JUDGE**