

**IN THE COURT OF APPEAL FOR ZAMBIA      APPEAL 254/2022**  
**HOLDEN AT NDOLA**  
*(Civil Jurisdiction)*

**BETWEEN:**

**AMELIA DEMBE TOCO BATISTA**

**APPELLANT**

**AND**

**ZAMBIA NATIONAL COMMERCIAL BANK PLC**

**RESPONDENT**

**CORAM: Kondolo, SC., Majula and Banda-Bobo JJA,  
on 15<sup>th</sup> August, 2024 and 22<sup>nd</sup> August, 2024**

**For the Appellant:**

Mr. C. Matibini of Messrs Matibini and  
Company-Standing in for Mesdames Kate  
Weston Legal Practitioners.

**For the Respondent:**

Mrs. E. Mwalula of Messrs Ndemanga  
Mwalula and Associates

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**JUDGMENT**

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**Banda-Bobo JA, delivered the Judgment of the Court.**

**Cases Referred to:**

1. Wise v E.H. Harvey Limited (1985) ZR 179
2. Letung v Cooper [1965] 1 Q.B. 232
3. Jere v Shamayuwa and another (1985) Z.R 175
4. Barclays Bank Plc v Quincecare [1988] 2 WLUK 252
5. Singularis Holdings v Daiwa Capital Judge [2019] UKSC (30th October, 2019)

6. Joachimson v Swiss Bank Corporation [1921] 3 KB 110
7. Royal Products v Midland Bank Ltd [1981] 2 Lloyds Rep 194
8. Baden and others v Societe Pour Favoriser le' de Development Du Commerce et de Industrial en France SA (1992) 4 ALL ER
9. Donoghue v Stevenson [1932] AC 562
10. Mwansa v Zambian Breweries Plc Appeal No. 153 of 2014
11. Michael Chilufya Sata v Zambia Bottlers Limited (2003) Z.R. 1
12. Continental Restaurant and Casino Limited v Aridah Mercy Chulu (2000) ZR 128
13. Kitwe City Council v William Ng'uni (2005) Z.R 57
14. The Attorney General v George Mwanza and Whiteson Mwanza, Selected Judgement No. 38 of 2017
15. Minister of Home Affairs, the Attorney General v Lee Habasonda (Suing on his behalf and on behalf of the Southern African Centre for Constructive Resolution of Disputes (2007) Z.R 207
16. Solomon Jumbe and 8 Others v Hope Chanda and Focus Financial Services Limited Appeal No. 001/2021
17. Zambia Telecommunications Company (Zamtel) v Aaron Mweene Mulwanda and Paul Ngandwe (2012) 1 Z.R 404
18. Carlson v King (1947) 64 WN (NSW) 65
19. Pettit v Dunkey (1971) 1 NSWL 376
20. Granduare Property Development Ltd v Emporium Fresh Foods Limited T/A Food Lovers Market (in Receivership) Appeal No. 138/2020
21. Peebles v Dairiboard (Private) Limited 1999 (1) ZLR 41 (H)
22. Abrahamse & Sons v SA Railway and Habours 1933 CPD 626
23. Michael Mbuyu Mutwena v Attorney General 2021/CCZ/0038
24. Lochgelly Iron & Coal Co. v M'Mullan (1934) A.C 1; 149 L. T. 526
25. Bourhil v Young (1943) 2 All ER 396
26. Roe v Ministry of Health [1954] 2 All E.R 131

### Other Works Referred to:

1. Ellinger's Modern Banking Law, 5th Edition, Oxford University Press, 2011 at page 119
2. Paget's Law of Banking 13<sup>th</sup> Edition 2007, at page 408 and 413
3. Ross Cranton, Principles of Banking Law at page 73
4. Learned editors of McGregor on Damages
5. Learned Authors of Clerk and Lindsell on Torts 17th Edition (1995)

## **1. INTRODUCTION**

1.1. This is an appeal against the Ruling of Honourable Lady Justice Mikalile delivered in the High Court at Lusaka on 5<sup>th</sup> June, 2022. The Notice and Memorandum of Appeal were filed into Court on 3<sup>rd</sup> June, 2022.

## **2. BACKGROUND**

2.1. The antecedents to this appeal are that on 4<sup>th</sup> February, 2020 the Appellant filed into the High Court a Writ of Summons accompanied by a Statement of Claim seeking the following reliefs:

- i. A declaration that the defendant's negligence caused the Plaintiff's loss of employment;**
- ii. Damages for the Plaintiff's loss of employment;**
- iii. Damages for mental anguish and distress;**
- iv. Interest on all amounts found due;**
- v. Further and other reliefs as the Court may deem fit.**

2.2. In the statement of claim, the Appellant averred that she was an employee of the Angolan Consulate which held an account

with the Respondent Bank and she was a joint signatory to this account.

- 2.3. She claimed that the Respondent Bank processed forged instructions involving the sum of EUR40.000 purporting to come from the Appellant, relating to her employer's said Bank account. That as a result of the said transaction, her employer incurred financial loss which resulted in her dismissal.
- 2.4. She therefore contended that had the Defendant exercised due diligence by verifying the signatures or the stamp, and investigated the Appellant's complaint, the Appellant's employer would not have lost its money and prevented the Appellant's loss of employment.
- 2.5. According to the Ruling on page 9 of the Record of Appeal, the Respondent Bank entered a Conditional appearance on 17<sup>th</sup> February, 2020 and filed Summons to set aside originating process and dismiss action pursuant to Order 18 Rule 19 (1) (a) of the Supreme Court, 1999 edition (the "**White Book**"). The gist of the Respondent Bank's arguments were that the pleadings did not disclose a reasonable cause of action on the basis that the Appellant

did not establish existence of a duty of care owed to her by the Respondent Bank.

- 2.6. The Appellant on the other hand, contended that the Respondent Bank owed a duty of care to the Consulate to investigate the authenticity of the instruction before disbursing funds. Also, that the Respondent Bank owed a duty of care to the Appellant to investigate the forgery immediately it was reported. That she was owed a duty of care by the Respondent Bank by virtue of being a Signatory to the Angolan Consulate account held by the Respondent Bank.

### **3. DECISION OF THE HIGH COURT**

- 3.1. The Application was first heard by a District Registrar who on 26<sup>th</sup> January, 2021 found that the pleadings had disclosed a cause of action and dismissed the Application with costs. Aggrieved by the said decision, the Respondent appealed to a Judge at Chambers, pursuant to Order 30 Rule 10(1) of the High Court Rules, Chapter 27 of the Laws of Zambia.
- 3.2. On appeal to a Judge at Chambers, the Learned Judge found that the Respondent did not owe a duty of care to the Appellant as there was no banker-customer relationship.

That a duty of care had not been established and as such the injury that was suffered by the Appellant was too remote.

- 3.3. The lower Court also found that there was no causal link between the alleged negligence and the Appellant's dismissal. The Learned Judge concluded that a reasonable cause of action had not been established and set aside the Writ of Summons and Statement of Claim, and dismissed the action with costs.

#### **4. THE APPEAL**

- 4.1. Dissatisfied with the Judgement of the Court below, the Appellant launched the present appeal advancing the following two (2) grounds of appeal:

- i. The erudite Judge erred on a point of law and fact when she found in her Ruling that the Appellant had failed to disclose a reasonable cause of action against the Respondent in the Court below; and**
- ii. The Judge below erred on a point of law and fact when it determined, considered, and adjudicated upon the merits of this matter by addressing evidential issues at the preliminary stage which ought to be addressed at trial.**

## **5. ARGUMENTS IN SUPPORT OF THE APPEAL**

- 5.1. Counsel for the Appellant filed into Court Heads of Argument on 28<sup>th</sup> October, 2022. In support of ground 1, it was submitted that a reasonable cause of action merely means an action which has some chances of success when only the allegations in the Plaintiff's pleadings are considered. Recourse was had to Order 18/19/10 of the White Book to cement this position.
- 5.2. Counsel also cited the cases of **Wise v E.H. Harvey Limited**<sup>1</sup> and **Letung v Cooper**<sup>2</sup>, where a cause of action was defined as an existence of an alleged factual situation upon which a party can attach liability to the other person or which entitled a person to obtain from the court a Judgement in his favour against the other person. That the cause of action is disclosed by the pleadings. For this position, Counsel took refuge in the case of **Wise v E.H. Harvey Limited**<sup>1</sup> and **Jere v Shamayuwa and another**<sup>3</sup>.
- 5.3. On the strength of the above authorities, it was submitted that in the present case, a reasonable cause of action was disclosed by the averments that the Appellant failed to act on the notice and complaint regarding forgery of the Appellant's

signature and the Appellant's subsequent loss of employment. Counsel cited the case of **Barclays Bank Plc v Quincecare**<sup>4</sup>, to posit that there is an implied term in a customer-bank relationship that a bank should not execute an order where it has been put to an enquiry, namely that reasonable grounds existed that an order is an attempt to misappropriate the customer's funds. According to counsel, this is referred to as the Quincecare duty.

5.4. It was further submitted that the Appellant by being a joint signatory to the Angolan Consulates Bank Account, was an agent of the consulate. The case of **Singularis Holdings v Daiwa Capital Judge**<sup>5</sup>, was cited to demonstrate that a corporate person operates through its agents and so does the Consulate. That the quincecare duty is also owed to an agent acting in his capacity as a signatory to reasonably foresee that an agent could be held personally liable if accused of fraud.

5.5. It was also submitted that the Respondent should have given attention to the Appellant after making the notice of complaint of alleged forgery of the signature and stamp. Reference was made to the cases of **Joachimson v Swiss**



**Bank Corporation<sup>6</sup>, Royal Products v Midland Bank<sup>7</sup>, Baden and others v Societe Pour Favoriser le' de Development Du Commerce et de Industrial en France<sup>8</sup> and Barclays Bank Plc v Quincecare Limited and Another<sup>4</sup>**, to highlight that the bank owes a duty of care to its customers in carrying out instructions.

- 5.6. Regarding the Lower Court's finding that the 3-part test of negligence failed because there was no contractual relationship between the Appellant and the Respondent Bank, it was submitted that in tort there is no need to show a contractual relationship. Counsel cited the cases of **Donoghue v Stevenson<sup>9</sup>** and **Mwansa v Zambian Breweries Plc<sup>10</sup>** to demonstrate the elements required for negligence, namely, duty of care, breach of duty of care and damage suffered. That all the 3 elements above were satisfied in the present case. That the Respondent owed a duty of care to the Appellant by virtue of her relationship with the Respondent's customer. That this duty was breached by not acting on the Appellant's complaint and investigating it, and that this resulted in her loss of employment.

5.7. In support of ground 2 of the appeal, it was submitted that the Appellant was not accorded an opportunity to adduce evidence at trial to prove that there was negligence on the part of the Respondent. To buttress this point, Counsel cited the case of **Mwansa v Zambian Breweries Plc<sup>10</sup>, Michael Chilufya Sata v Zambia Bottler<sup>11</sup>, Continental Restaurant and Casino Limited v Aridah Mercy Chulu<sup>12</sup>** and Order 18 Rule 7 (1) of the White Book, to the effect that negligence should be proved at trial. It was added that the Ruling of the Court below, delved into evidential and triable issues which were suitable for determination at trial, not at preliminary stage.

5.8. It was further contended that the decision of the Court below was influenced by the Respondent's submissions as opposed to the matter before the Court. **The case of Kitwe City Council v William Ng'uni<sup>13</sup>** was called to aid, to show that the Court is not bound by Counsel's submissions.

5.9. We were accordingly urged to uphold the appeal.

## **6. ARGUMENTS IN OPPOSITION TO THE APPEAL**

6.1. On behalf of the Respondent, Counsel filed Heads of Argument on 1<sup>st</sup> December, 2022. In response to ground 1, it

was submitted that there was no relationship between the Appellant and the Respondent Bank, either in contract or tort, so as to give rise to a duty of care by the Respondent Bank to the Appellant.

6.2. That a Bank-client customer relationship only exists when the Bank accepts to open an account in the customer's name and that this relationship is contractual in nature. That thus, the Respondent Bank only owed a duty of care to the Angolan Consulate and not a third party like the Appellant who was merely a signatory. In support of the above proposition, the **Learned authors of Ellinger's Modern Banking Law, 5<sup>th</sup> Edition, Oxford University Press, 2011 at page 119, Learned authors of Paget's Law of Banking 13<sup>th</sup> Edition 2007, at page 408 and 413, and the Learned Authors Ross Cranton, Principles of Banking Law at page 73**, were cited.

6.3. It was further argued that the two elements of remoteness were not satisfied, namely causation and foreseeability. That there must be a causal link between the Defendant's careless conduct and the damage and foreseeability that such conduct would have inflicted on the particular Plaintiff and the particular kind of damage which he complains of. To

cement this proposition, recourse was had to the **Learned editors of McGregor on Damages and Learned Authors of Clerk and Lindsell on Torts 17<sup>th</sup> Edition (1995)** at page **2019**.

- 6.4. Regarding causation, it was argued that the Appellant's dismissal could not be attributed to the Respondent Bank, as the Respondent Bank may only be liable to the Angolan Consulate, its customer. That the Quincecare duty established in the case of **Barclays Bank Plc v Quincecare<sup>4</sup>**, is only owed to the customer and an agent of the customer.
- 6.5. In relation to foreseeability, it was contended that the Defendant Bank in the performance of its functions could not have foreseen that any act of negligence would result in the Appellant's dismissal. That, therefore, the Plaintiff was not owed a duty of care as she was not reasonably foreseeable. The case of **the Attorney General v George Mwanza and Whiteson Mwanza<sup>14</sup>**, was cited to emphasise that there is no duty of care when one cannot reasonably foresee that another person might be injured by that person's conduct.
- 6.6. In response to ground 2 of the appeal, Counsel for the Respondent Bank contended that the Court below did not

delve into triable issues. Rather that the Court below simply determined completely and to finality the issues in controversy between the parties, which is a principle of Judgement writing.

6.7. Counsel cited the cases of **Minister of Home Affairs, the Attorney General v Lee Habasonda (Suing on his behalf and on behalf of the Southern African Centre for Constructive Dispute Resolution of Disputes<sup>15</sup>, Solomon Jumbe and 8 Others v Hope Chanda and Focus Financial Services Limited<sup>16</sup>, Zambia Telecommunications Company (Zamtel) v Aaron Mweene Mulwanda and Paul Ngandwe<sup>17</sup>, Carlson v King<sup>18</sup> and Pettit v Dunkey<sup>19</sup>**, to highlight the ingredients or structure of a good Judgement/ ruling. According to these authorities, a good judgement should include inter alia, a review of the evidence, findings of fact, applicable law and reasoning of the Court. In view of the above, it was submitted that the Lower Court's analysis of the case on pages R13 to R16 is in accordance with the acceptable standards of writing a ruling or judgement and did not amount to delving into evidential and triable issues.

6.8. On the strength of the above authorities, we were accordingly urged to dismiss the Appeal with costs and uphold the decision of the Court below.

## **7. HEARING**

7.1. At the hearing of this matter on 15<sup>th</sup> August, 2024 the Appellant's Counsel made an application to adjourn the matter, which application we did not grant. We therefore proceeded to hear the appeal based on the Heads of Arguments filed into Court. The Respondent relied entirely on the Heads of Argument filed into Court.

## **8. ANALYSIS AND DECISION**

8.1. We have taken due consideration of the Record of Appeal, the Grounds of Appeal and the Party's respective submissions. We will address the grounds of appeal in the order they have been presented.

8.2. Before we delve into the grounds of appeal, we are compelled to express our displeasure with the manner the Record of Appeal was prepared, which leaves much to be desired. The Record omitted important documents which made the court to agonise in understanding the background of this matter. It is disheartening that even the Summons to set aside

originating process and dismiss action, which led to the ruling subject of this appeal, has not been exhibited. This flies in the teeth of **Order X, Rule 9 (1) of the Court of Appeal Rules, Statutory Instrument no. 65 of 2016**. Be that as it may, we shall proceed to consider the appeal as there has been no objection raised by the Respondent.

8.3. Turning to ground 1 of the appeal, the Appellant contends that the pleadings disclosed a reasonable cause of action. That the pleadings disclosed that a duty of care was owed to the Appellant by the Respondent Bank by virtue of being a signatory to the Angolan Consulate's Bank account. Also, that this duty arose after she made a complaint to the Respondent Bank. The Respondent's counter view is that no reasonable cause of action was disclosed by the pleadings as the Appellant's claims are too remote.

8.4. The Court is empowered at any stage of the proceedings to strike out pleadings for failure to disclose a reasonable cause of action. This power is drawn from **Order 18/19/1 (a) of the White Book**. In the case of **Granduare Property Development Ltd v Emporium Fresh Foods Limited T/A Food Lovers Market (in Receivership)**<sup>20</sup>, this Court stated

that it is trite that a writ and statement of claim may at any stage of the proceedings be struck out or ordered to be amended by the Court on ground that it discloses no reasonable cause of action. It was also stated that a statement of claim must state in clear terms the material facts upon which the Plaintiff relies and show a clear cause of action failing which the statement of claim may be struck out or the action dismissed. This Court went on to guide that the test to be applied is whether it is “plain and obvious” that the Plaintiff’s statement of claim discloses no reasonable claim. That only if the action is certain to fail, should the statement of claim be struck out, or where it is plain and obvious that allowing the action to proceed, would amount to an abuse of process. This Court cautioned that it is not for the Court on a motion to strike out pleadings, to reach a decision as to the Plaintiff’s chances of success.

8.5. The law provides sufficient guidance on what constitutes a reasonable cause of action. As a starting point, in the Zimbabwean cases of **Peebles v Dairiboard (Private) Limited**<sup>21</sup> and **Abrahamse & Sons v SA Railway and Habours**<sup>22</sup>, a cause of action was said to be an entire set of



facts upon which the relief sought stands. A similar view was expressed by the Constitutional Court of Zambia in the case of **Michael Mbuyu Mutwena v Attorney General**<sup>23</sup>, where the Court expressed the view that a cause of action encompasses facts or a combination of facts that a person must establish in order to demonstrate that he/she has *inter alia* a right to sue. Further, that a cause of action arises from some acts, and where a legal relationship exists between the parties. That a cause of action is said to exist if, among other things, there exists facts which would enable a person to obtain a remedy against another.

8.6. Additionally, the definition of cause of action in the English case of **Letang v Cooper**<sup>2</sup> was adopted by the Zambian Supreme Court in the case of **Wise v E.H. Harvey Limited**<sup>1</sup>, where it was stated that a cause of action refers to the existence of an alleged factual situation upon which a party can attach liability to the other person or which entitles a person to obtain from the court a Judgement in his favour against the other person.

8.7. What then is a reasonable cause of action? The answer lies in **Order 18/19/10 of the White Book**. According to this

provision, a reasonable cause of action is a cause of action with some chance of success when only the allegations in the pleading are considered.

8.8. What is clear from the above is that a reasonable cause of action can be said to exist where there are facts alleged which when proven or established would entitle the claimant to obtain a favourable judgement. Additionally, that a cause of action should only be dismissed where it is certain that it will fail, or that letting it go to trial amounts to abuse of Court process.

8.9. The question we ask ourselves is whether the Appellant's pleadings on their face disclose a cause of action with some chance of success. In other words, whether the appellant's pleadings allege facts, which when proven at trial would entitle the Appellant to a favourable judgement.

8.10. It is uncontested that the Plaintiff's claim as per the pleadings is negligence. It is trite law that in order for a claimant to succeed in a claim for negligence, three (3) elements must be established, namely that the Plaintiff is owed a duty of care by the Defendant, that there was a breach of that duty by the Defendant and that as a result of the

breach, the Plaintiff suffered injury. We are fortified by the cases of **Lochgelly Iron & Coal Co. v M'Mullan**<sup>24</sup>, **Donoghue v Stevenson**<sup>8</sup> and **the Attorney General v George Mwanza and Whiteson Mwanza**<sup>13</sup>, where the above elements were pronounced.

8.11. The present appeal hinges on duty of care, that is whether the pleadings disclose that the Appellant was owed a duty of care by the Respondent. The question we are confronted with is whether the facts as alleged in the pleadings, when so established, give rise to a duty of care, being the first test for negligence. The Appellant's claim of duty of care is as a result of the relationship she had with a customer of the Respondent Bank, the Angolan Consulate. Put differently, will proving that the Appellant was a signatory to the Bank account of the Respondent's customer and that the Respondent Bank failed to investigate the Appellant's complaint, establish a duty of care?

8.12. It is trite that there is no duty of care owed to the entire world. Rather the guiding principle is the neighbour principle, as established by Lord Atkin, in **Donoghue v Stevenson**<sup>8</sup>. Accordingly, one's neighbours are persons closely and

directly affected by one's acts that one ought to have them in contemplation.

8.13. In the present case, as rightfully found by the Court below, the Appellant was not a customer of the Respondent Bank. Thus, a Bank-customer relationship, which gives rise to the quincecare principle does not arise.

8.14. It is clear that in a Bank-customer relationship, the duty of care arises from the contractual relationship. Thus, notwithstanding the fact the Appellant was a signatory to the Angolan Consulate's bank account, she is a third party to the contract between the Appellant Bank and her former employer. It follows that the Appellant does not fall within any of the categories of legally recognised duty of care. However, as rightfully put by Lord Atkin, in the case of **Donoghue v Stevenson**<sup>8</sup>, "the categories of negligence are never closed."

8.15. Of greater importance in the present circumstances is remoteness of the injury alleged to have been suffered. The Appellant claims that she lost her employment as a result of her then employer losing money from the Respondent Bank's negligent act of processing a fraudulent instruction

purporting to come from the Appellant. It is clear that even assuming that the Respondent Bank was found wanting, according to the Appellant's claims, she was not directly affected by the Respondent Bank's alleged negligent act. Rather, she was indirectly, that is, as a result of her employer's loss of funds, she lost her employment. Put differently, the Appellant is not a primary victim of the Respondent Bank's alleged negligence. Rather she is a secondary victim.

8.16. It is trite that a duty of care is restricted to the people within one's reasonable contemplation. Accordingly, there is no duty of care if the reasonable man would not foresee the risk of harm to the claimant. This was established in the English case of **Bourhil v Young**<sup>25</sup>. Similarly, in the case of **Roe v Ministry of Health**<sup>26</sup>, it was held as follows:

**“The first question is whether there was duty of care owed to the plaintiff, and the test of duty depends, without doubt, on what you should foresee. There is no duty of care owed to a person when you cannot reasonably foresee that he might be injured by your conduct. The second question is whether the neglect of duty was a “cause” of the injury in the proper sense of that term...the chain of causation is broken when there is an intervening action which you could reasonably be expected to see.”**

8.17. The above position was endorsed by the Supreme Court of Zambia in the case of **the Attorney General v George Mwanza and Whiteson Mwanza**<sup>13</sup>, cited by the Appellant.

8.18. In view of the above authorities, would it be said that the Respondent reasonably foresaw that the Appellant would be dismissed from her employment when it processed an alleged fraudulent instruction purporting to come from the Appellant? We answer in the negative. The Respondent Bank was not privy to the contract of employment between the Appellant and her former employer. As such they could not reasonably be expected to foresee what would happen to a contract to which they were not privy. We thus agree with the lower Court that the Appellant's claim is too remote and as such no duty of care existed.

8.19. The effect of the above finding is that, in accordance with our decision of **Granduare Property Development Ltd v Emporium Fresh Foods Limited T/A Food Lovers Market (in Receivership)**<sup>19</sup>, this matter is bound to fail should the statement of claim be struck out and allowing it to proceed to trial would amount to abuse of court process. We therefore

find no merit in ground 1 of appeal and accordingly dismiss it.

8.20. Turning attention to ground 2 of the appeal, given the position we have taken in ground 1 above, ground 2 of appeal is bound to fail. As demonstrated above, striking out pleadings for failure to disclose a cause of action does not require a full trial. The decision is based on the pleadings as they are placed before the Court. This was the case in the present case. In fact, Order 18/19/2 proscribes adducing evidence in support of an application to strike out pleadings for failure to disclose a reasonable cause of action. There is therefore no need for the matter to go to trial to prove negligence when it is clear that there was no duty of care. Proceeding to trial would be a mere academic exercise.

8.21. We also do not find merit in the Appellant's assertions that the Court below delved into evidential issues that need to be proven at trial. It is evident from the record that the Court below did not evaluate the veracity of the averments in the pleadings. Rather, the Court's concern was whether the facts as alleged in the statement of claim disclosed a reasonable cause of action. The Court below cannot therefore be faulted.

8.22. Additionally, the Appellant's claim that the Court below decided based on counsel's submissions as opposed to the matter before her is devoid of merit. It is trite that counsel's submissions are not binding on the Court and are merely persuasive. However, it is clear from the Ruling of the Court below that the Learned Honourable Judge took into account the pleadings as well as the arguments by the parties. We accordingly dismiss ground 2 of appeal as well.

## 9. CONCLUSION

9.1. In a nutshell, we find no merit in the appeal and we accordingly dismiss it with costs to be taxed in default of agreement.



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**M.M. KONDOLO, SC**  
**COURT OF APPEAL JUDGE**



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**B.M. MAJULA**  
**COURT OF APPEAL JUDGE**



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**A.M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**