

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

Appeal No. 178 of 2022

BETWEEN:

**ROYAL MINES LIMITED**

Appellant

AND

**TAWAKKAAL GEMS INVESTMENTS  
COMPANY LIMITED**

1<sup>st</sup> Respondent

**ATTORNEY GENERAL**

2<sup>nd</sup> Respondent

**Coram: Makungu, Sichinga and Sharpe-Phiri, JJA  
On 21 May 2024 and 29 August 2024**

For the Appellant: Mr. D. Tambulukani of D.T Legal Practitioners

For the 1<sup>st</sup> Respondent: No appearance

For the 2<sup>nd</sup> Respondent: Mr. N. K. Chongo, Principal State Advocate and Mr.  
B. M. Kamuwanga, Senior State Advocate, Attorney General's Chambers

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## J U D G M E N T

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**SHARPE-PHIRI, JA, delivered the judgment of the Court**

Legislation referred to:

1. *The Rules of the Supreme Court of England (White Book) 1999 Edition*
2. *The Mines and Minerals Development Act, No. 11 of 2015, Section 76(3)*
3. *The High Court Act, Chapter 27 of the Laws of Zambia*
4. *The Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition*

Other works:

1. *S.A. de Smith on Judicial Review of Administrative Action, Sweet & Maxwell, 8<sup>th</sup> ed, 4<sup>th</sup> supplement, Lord Harry Woolf 2021,*

Cases referred to:

1. *Abel Mulenga & Others v Mabvuto Chikumbi and Others* (2006) ZR 33
2. *Clementina Banda and Another v Boniface Mudimba* (HP/A 39 of 2010) [2011] ZMHC 75 (8 September 2011)
3. *The Republic of Botswana, Ministry of Works, Transport and Communications, Rinceau Designs Consultants (sued as a firm T/A KZ Architects v Mitre Limited*, SCZ Judgment No. 2 of 1995
4. *Dean Namulya Mungomba and Two Others V Peter Machungwa and Others*, SCZ Judgment No. 3 of 2003
5. *African Banking Corporation Zambia Limited T/A Atlas Mara v The Inspector of Police, The Attorney General and Rajan Lekhraj Mahtani*, CAZ Appeal No. 177 of 2023
6. *Mwamba v Attorney General* (SCZ Judgment 10 of 1993) [1993] ZMSC 76 (31 August 1993)
7. *Frederick Jacob Titus Chiluba v Attorney General* (2003) Z.R 153
8. *William Harrington v Dora Siliya and The Attorney General*, SCZ Judgment No. 14 of 2011

1. **INTRODUCTION**

- 1.1 This appeal originates from a Ruling of Judge Chembe of the Ndola High Court, as she then was, delivered on 26 May 2022.
- 1.2 By that Ruling, the Judge refused to allow the Appellant, Royal Mines Limited to join the High Court proceedings for Judicial Review brought by the 1<sup>st</sup> Respondent, Tawakkaal Gems Investments Company Limited (as Applicant therein) against the Attorney-General.

## 2. **BACKGROUND TO THE MATTER**

- 2.1 In the lower Court, the contentions of the 1<sup>st</sup> Respondent were that it had, on 17 May 2018, obtained Mining licence No. 22678-HQ-SEL over Plot 5A, Lufwanyama encompassing approximately 135.51 hectares, valid for a period of 4 years from the date of issuance.
- 2.2 Under the terms of the mentioned licence, it conducted an environmental impact assessment and submitted the report to the Zambia Environmental Management Agency. Approval for the project was granted via letter dated 25 January 2019. Subsequently, the 1<sup>st</sup> Respondent proceeded with exploratory activities, development exploration, and the construction of staff residences and other infrastructure on the premises.
- 2.3 On 27 May 2019, the Minister of Mines issued correspondence to Royal Mines Limited, opting to restore its expired Gemstone licence No. 8362-HQ-SGL, which encompassed the identical mining area as the 1<sup>st</sup> Respondent's licence. The communication, also transmitted to the 1<sup>st</sup> Respondent, indicated that the licence issued to the 1<sup>st</sup> Respondent had been erroneously granted, promptly revoked, and directed the 1<sup>st</sup> Respondent to locate alternative land without existing mining entitlements.
- 2.4 The 1<sup>st</sup> Respondent contended that the Minister issued the communication with full awareness that the licence reinstated to Royal Mines Limited encompassed the mining area under the 1<sup>st</sup> Respondent's licence No. 22678-HQ-SEL. The 1<sup>st</sup> Respondent appealed the Minister's decision in

a letter dated 18 November 2019, asserting that the mining licence issued to the Appellant had lapsed in 2016 and had not been subsequently renewed.

- 2.5 The 1<sup>st</sup> Respondent stated that its appeal to the Minister of Mines and Mineral Development was successful, and the Minister communicated this decision through a letter dated 10 August 2020, confirming that the appeal was upheld, and its licence reinstated.
- 2.6 In February 2021, the Minister purportedly renewed Royal Mines's licence, specifying that it would be effective retrospectively from 2016. This renewed licence encompassed the area that overlaps with the 1<sup>st</sup> Respondent's licence issued on 17 May 2020, valid for a period of 4 years.
- 2.7 It was further contended that after the Minister's decision in February 2021, Royal Mines Limited, acting under the direction of its principal Director, Senior Chief Inshindi instructed its agents to forcefully expel employees of the 1<sup>st</sup> Respondent from the mining area.
- 2.8 The 1<sup>st</sup> Respondent also alleged that its workers were subjected to harassment and instructed to vacate the mine. Additionally, it asserted that the Chief ordered the demolition of the housing unit erected by the 1<sup>st</sup> Respondent at the mine. The 1<sup>st</sup> Respondent argued that the actions of Royal Mines Limited, its employees and agents, including trespassing on the 1<sup>st</sup> Respondent's mining area and causing disturbances, have significantly impeded its operations and exploration activities.

- 2.9 These actions prompted the 1<sup>st</sup> Respondent to file an action in the High Court under cause number 2021/HN/183 seeking permission to commence Judicial Review proceedings.
- 2.10 The 1<sup>st</sup> Respondent contested the decision of the Minister of Mines and Minerals Development, as outlined in the letter dated 27 May 2019 addressed to the Appellant, which reinstated Gemstone Licence No. 8362-HQ-SGL to Royal Mines Limited. This licence extends into the mining area covered by the 1<sup>st</sup> Respondent's Mining licence No. 22678-HQ-SEL, situated in Plot 5A, Lufwanyama spanning approximately 135.51 hectares.
- 2.11 The 1<sup>st</sup> Respondent further objected to the decision of the Minister, communicated to it in a letter dated 10 August, which revoked the Appellant's Gemstone licence No. 8362-HQ-SGL
- 2.12 The additional complaint pertains to the Minister's decision to renew a licence for the Appellant in February 2021, retrospectively effective from 2016, following its expiry and subsequent revocation. This decision disregarded the fact that the 1<sup>st</sup> Respondent is the company currently situated at the mine and holder of a valid licence thereof.
- 2.13 The 1<sup>st</sup> Respondent also raised a complaint regarding the Minister's failure, neglect and/or refusal to establish the Mining Appeal Tribunal as required by **Section 98 of the Mines and Minerals Development Act**, This Tribunal is mandated to hear appeals from decisions made by the Minister.

2.14 The 1<sup>st</sup> Respondent obtained leave to initiate Judicial Review proceedings in the Ndola High Court against the Attorney General on 20 September 2021. The 1<sup>st</sup> Respondent sought the following remedies:

- i) *An order granting the Applicant leave to apply for Judicial Review out of time.*
- ii) *Leave to move in Judicial Review and which leave to act as an order for stay of the Minister's decision as well as an injunction and a restraining order in terms of **Order 53 Rule 3(10) of the Rules of the Supreme Court, 1965 (White Book, 1999 Edition)** and to carry the effect as therein stated and that the stay and restraining order in any case and at this stage be granted to the Applicant.*
- iii) *A declaration and order that the decision of the Minister renewing the Royal Mines Limited's Licence in February 2021 and indicated as running in 2016 is unlawful for:*
  - a) *patent unreasonableness and malafide.*
  - b) *being ultra vires the enabling statutory provisions.*
- iv) *A declaration that the Minister's refusal, neglect and/or failure to constitute and appoint the Mining Appeals Tribunal is unreasonable and in breach of the Act.*
- v) *An order directing the Minister to constitute and appoint the tribunal.*
- vi) *A declaration that the renewal of Royal Mines Limited's Licence No. 8362-HQ-SGL in February 2021 and indicating as running from 2016 is null and void.*

- vii) *An order directing the Minister to revoke the renewed Licence of Royal Mines Limited.*
- viii) *Any other and/or further consequential reliefs the court shall deem appropriate and fit.*
- ix) *Damages and costs.*

### 3.0 **APPLICATION FOR JOINDER**

- 3.1 Upon receiving notice of the action, the Appellant filed an application to join in the High Court proceedings, as an interested party.
- 3.2 The application for joinder was accompanied by an affidavit from the Managing Director of the Appellant, asserting that the 1<sup>st</sup> Respondent had initiated Judicial Review proceedings challenging several actions of the Minister of Mines. These included the renewal of the Appellant's mining licence, the revocation of the 1<sup>st</sup> Respondent's licence, and the Minister's failure to constitute a Mining Appeals Tribunal as required by the Mines and Minerals Development Act. The affidavit further stated that the Court had granted the 1<sup>st</sup> Respondent permission to initiate Judicial Review proceedings, which resulted in a stay against the Minister's decision. This stay restrained and prohibited the Appellant from interfering with the 1<sup>st</sup> Respondent's lawful operations on the mine.
- 3.3 The deponent asserted that the stay order issued against the Minister's decision violated principles of natural justice, as the Appellant was not afforded an opportunity to be heard by the Court. Additionally, he contended that the exploration licence of the 1<sup>st</sup> Respondent fell within

the scope of the mining licence held by the Appellant's predecessor since 1983. Consequently, the deponent argued that the Appellant had a vested interest in the matter, as its mining licence predates the 1<sup>st</sup> Respondent's exploration licence, establishing precedence for the validity of the Appellant's licence.

- 3.4 It was affirmed that predecessors of the Appellant acquired a mining licence for Plot 5A Kamakanga area in Lufwanyama on 16 September 1986, which underwent several renewals until 2006, when it was renewed to the Appellant for a duration of 10 years. Additionally, it was stated that the mining licence held by the Appellant expired in 2016, following which a renewal application was submitted to the Ministry of Mines. Moreover, an environmental project brief was submitted to the Zambia Environmental Management Agency (ZEMA) on 4 February 2016.
- 3.5 Furthermore, it was asserted that during the pendency of the renewal of the Appellant's mining licence and the review of the environmental project brief, the Appellant received correspondence from the 1<sup>st</sup> Respondent indicating that the 1<sup>st</sup> Respondent had been granted a mining licence for Plot 5A, Lufwanyama. Consequently, the Appellant was instructed to vacate its properties on the land.
- 3.6 The deponent stated that the Appellant lodged an appeal against the Ministry of Mines' decision, leading to the Minister revoking the 1<sup>st</sup> Respondent's licence and reinstating the Appellant's longstanding licence. This action was taken on the basis that the licence granted to the 1<sup>st</sup> Respondent had been issued erroneously. Additionally, it was deposed



that the Ministry of Mines advised the 1<sup>st</sup> Respondent to seek an alternative piece of land not subject to existing mining rights. The deponent further asserted that the 1<sup>st</sup> Respondent was directed to settle all charges for the period during which the licence was pending renewal, and subsequently upon approval of its environmental project brief by ZEMA.

3.7 It was further deposed that the Chief Registrar of Mining Rights from the Mining Cadastre Department unlawfully reinstated the 1<sup>st</sup> Respondent's Small-Scale exploration licence by letter dated 10 August 2020, without the Appellant's consent, despite the Appellant holding mining rights over the land in question. The deponent stated further that by letter dated 29 August 2020 addressed to the Minister, the Appellant protested the Chief Registrar's decision, which disregarded the Minister's earlier decision in the letter dated 27 May 2019. He further deposed that, by letter dated 10 September 2020, the Appellant appealed to ZEMA against its decision to approve the 1<sup>st</sup> Respondent's environmental project brief, despite having already approved the environmental project brief for the interested party.

3.8 By a subsequent communication dated 26 November 2020, the Chief Registrar notified the Appellant that its pending application for the renewal of the mining licence, dating back to 2016, had been approved, extending the licence for an additional period of 10 years. It was asserted that the Appellant was the beneficial owner of the mine located at Plot 5A Lufwanyama. Despite the Minister's revocation of its licence, the 1<sup>st</sup> Respondent unlawfully took possession of the property and commenced unauthorized mining activities.

- 3.9 In conclusion, the Appellant's affidavit emphasized the potential irreparable harm it would suffer due to the 1<sup>st</sup> Respondent's interference, citing investments totaling up to US\$2.5 million. The affidavit detailed the mine's infrastructure, including two pits, a mine storeroom, and over 20 semi-permanent houses for workers. It was stated that the Appellant's longstanding application for the renewal of its mining licence had never been officially declined.
- 3.10 Additionally, it was asserted that the 1<sup>st</sup> Respondent had not completed the administrative procedure, as the Minister had not appointed the Mining Appeals Tribunal to resolve the dispute. The Appellant underscored its substantial interest in the matter, highlighting the significant impact of the Minister's decisions and the outcome of the proceedings would have on its operations.
- 3.11 In opposing the application for joinder, the 1<sup>st</sup> Respondent submitted an affidavit in opposition sworn by Quri Bismillah Hedayatullah, its manager. He deposed that the 1<sup>st</sup> Respondent was granted a Small-Scale exploration licence on 17 May 2018, for the emerald restricted area in Lufwanyama District, covering approximately 135.51 on Plot 5A. He further stated that the Court granted leave to commence Judicial Review proceedings which operated as a stay of the Minister's decision, and the Appellant was not party to these proceedings.
- 3.12 The 1<sup>st</sup> Respondent's deponent further stated that the subject of these Judicial Review proceedings was the legality of the Minister's decision, and the appropriate party with sufficient interest and *locus standi* to

address that decision was the 2<sup>nd</sup> Respondent. He stated that the Appellant had not demonstrated sufficient interest to be joined to these proceedings, as it was the Minister who made the decisions under challenge, specifically, those made on 27 May 2019 and 17 February 2021, and the failure to constitute the Mining Appeals Tribunal.

- 3.13 It was further argued that the Appellant could not assert a legal or equitable interest over the mining area, as its licence had expired, thus lacking sufficient grounds for joinder. He further deposed that the Appellant's application was misconceived, as these proceedings did not necessitate the Court to adjudicate on the merits of the Minister's decision but rather its lawfulness. The 1<sup>st</sup> Respondent's deponent added that the Mining Appeals Tribunal had not been constituted at the time of the Minister's challenged decision.
- 3.14 The Appellant had appealed against the revocation of its licence, and the Minister reinstated the licence in total disregard of legal norms and procedure. He further deposed that it would not serve the interests of justice to join the interested party to the proceedings, as it would imply the interested party speaking on behalf of the 2<sup>nd</sup> Respondent, the Attorney General.
- 3.15 In the affidavit in reply filed in the High Court on behalf of the Appellant, it was stated that the Appellant was the proper party to participate in these proceedings due to its significant interest arising from the competing mining licence issued by the Ministry of Mines. The deponent asserted that the purpose of these proceedings was not solely to challenge the Minister's decision, but also to ensure that the Appellant could exercise

its legal rights under the mining licence, without being deprived of the opportunity to be heard.

3.16 It was further asserted that the Appellant's participation in the Judicial Review proceedings was predicated not on being the decision-maker but on possessing sufficient legal standing that justified its involvement in the proceedings. The affidavit clarified that the Appellant had acquired and renewed a Small-Scale mining license for Gemstone, which formed a central aspect of the Minister's decision dated 27 May 2019. It was asserted that this decision did not demonstrate any signs of illegality, unreasonableness, or procedural impropriety. Additionally, it was underscored that the Minister's establishment of a Mining Appeals Tribunal constituted a governmental function in which the Appellant had a vested interest.

3.17 The Appellant reiterated that the decision under scrutiny in these proceedings would have a substantial impact on its interests, highlighting the necessity for its participation in the case. The affidavit highlighted the Appellant's familiarity with the Minister's decision-making process, illustrating its ability to provide valuable contributions to the proceedings. It was affirmed that the Appellant's involvement would not prejudice the 1<sup>st</sup> Respondent, who would have ample opportunity to rebut any arguments presented. Furthermore, the affidavit clarified that the Appellant's role would primarily involve examining the legality of the Minister's decision and advocating on behalf of the 2<sup>nd</sup> Respondent.

#### 4.0 **DECISION OF THE TRIAL COURT**

- 4.1 Justice Chembe, presiding as a High Court Judge in Ndola, determined that the question of whether an individual possesses sufficient interest to be joined in Judicial Review proceedings involves both legal principles and factual assessments. The Judge observed that there was no dispute regarding the conflicting interests between the Appellant and the 1<sup>st</sup> Respondent concerning the subject land, given that the Appellant held a valid mining licence for it.
- 4.2 The Judge further noted that the Minister's decision, which the 1<sup>st</sup> Respondent contested favoured the Appellant. This formed the basis of the Appellant's contention that it would be directly affected by the Minister's decision and the outcome of the Judicial Review proceedings, necessitating its inclusion in these proceedings.
- 4.3 The Judge additionally observed that the focus of the Judicial Review application by the 1<sup>st</sup> Respondent concerned the Minister of Mines's decision to renew the Appellant's mining licence and to revoke the 1<sup>st</sup> Respondent's licence, which was deemed to have been erroneously issued. The Court recognized that the primary reliefs sought included a declaration that the Minister's decision to renew the Appellant's mining licence was unlawful and exceeded the statutory authority, as well as an order compelling the Minister to establish and appoint the Mining Appeals Tribunal.

4.4 The Court noted that it did not perceive how mandating the Minister to constitute the Mining Appeals Tribunal would adversely affect the Appellant beyond inconvenience. However, the Court acknowledged that if it were found that the Minister's decision was unlawful and contravened statutory provisions, the Appellant would unquestionably be impacted by the Court's ruling, although this alone did not establish sufficient interest.

4.5 The Court relied on the precedent established in the case of **Abel Mulenga & Others v Mabvuto Chikumbi and Others**<sup>1</sup> where the Supreme Court held that:

*“In order for the Applicant to be joined as a party in the action, the Applicant ought to have shown that they have an interest in the subject matter of the action and that the mere fact that the Applicants may have been affected by the decision of the court below does not clothe them with sufficient interest or locus standi entitling them to be joined in the dispute.”*

4.6 The Court proceeded to determine that the present action was initiated to challenge the legality of the Minister's decision, with the Attorney General representing the Minister, safeguarding public interest in the proceedings. It was reasoned that any arguments advanced by the Appellant could be adequately presented by the Attorney General; thus, the Appellant had not demonstrated sufficient interest. Consequently, the application for joinder was dismissed.

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5.0 **APPELLANT'S GROUNDS OF APPEAL**

5.1 Being dissatisfied with the above Ruling of 26 May 2022, the Appellant filed a Notice and Memorandum of Appeal on 15 June 2022 advancing 2 grounds of appeal:

- (i) *That the Judge in the Court below erred in law and fact when she made an order against the Appellant when the Appellant was not a party to the proceedings and without hearing the Appellant on the matter when the Appellant is a holder of a mining license on the land in dispute.*
- (ii) *The Judge in the Court below erred in law and fact when she held that the Appellant did not show that it had sufficient interest to join the proceedings contrary to the evidence.*

6.0 **ARGUMENTS OF THE PARTIES**

6.1 The Appellant filed its heads of argument on 15 August 2022 and its reply on 14 May 2024. The Respondents filed their heads of argument on 14 September 2022. The arguments will not be reproduced here but referred to where necessary in the analysis section of the judgment.

## 7.0 HEARING OF THE APPEAL

7.1 The appeal was heard on 21 May 2024. The Appellant and 2<sup>nd</sup> Respondent were represented by their legal representatives as shown above. There was no appearance for the 1<sup>st</sup> Respondent. Counsel relied on the arguments on record.

## 8.0 DECISION OF THE COURT

8.1 We have carefully reviewed the evidence on record, the Ruling being assailed, the arguments and the submissions of the respective parties. In the arguments filed in support of the appeal, the Appellant advanced two grounds of appeal as stipulated at paragraph 5.1 above.

8.2 Before considering the grounds of appeal, we will address the contention of the 1<sup>st</sup> Respondent that the Court erred in considering the Appellant's application for joinder under **Order 14 Rule 5(1) of the High Court Rules**, which provision was inapplicable.

8.3 Regarding the application for joinder in Judicial Review proceedings brought under **Order 14 Rule 5(1) of the High Court Rules**, the learned trial Judge in the lower Court stated at pages J13 and J15, which correspond to page 20 and 22 of the record of appeal, as follows:

*“I have considered the affidavit evidence and the submissions from both sides. The Application for joinder was made pursuant to Order XIV Rule 5 (1) of the High Court Rules.... it is apparent*



*from the above authority [Mungomba & Others v Peter Machungwa & Others (2003 Z.R. 17)] that the application for joinder made by the Interested Party made pursuant to Order XIV of the High Court Rules is procedurally wrong and liable to be dismissed on this technicality. Order XIV is not applicable to Judicial Review.”*

- 8.4 The 1<sup>st</sup> Respondent contended that the lower Court, having recognized that the Appellant’s application was procedurally incorrect for Judicial Review proceedings, ought to have dismissed the application accordingly.
- 8.5 In response, the Appellant argued that the 1<sup>st</sup> Respondent’s assertion - that the Appellant’s application for joinder was premised on an incorrect legal provision and should have been dismissed – constituted an issue not previously raised before the lower Court. The Appellant referenced the case of **Clementina Banda and Another v Boniface Mudimba**<sup>2</sup> to support its position that matters not addressed in the lower Court should not be introduced on appeal.
- 8.6 The Appellant further noted that the issue of the application for joinder being made pursuant to an incorrect provision was acknowledged by the trial Judge, who chose to proceed with the consideration of the application. The Appellant argued that this was not a misdirection, as the Court possess inherent jurisdiction to rectify procedural defects or irregularities, thereby ensuring that a party directly affected by the outcome is afforded an opportunity to be heard.

- 8.7 The Appellant added that it had relied on other legal provisions in its skeleton arguments, specifically **Order 53 Rule 9(1) and Order 53 Rule 14 (76) of the Rules of the Supreme Court**. Therefore, it was inaccurate to assert that it relied solely on the wrong law for its application, as this would imply that the arguments and authorities were not considered in the determination of the application.
- 8.8 The Appellant further asserted that, in any event, it is a well-established principle of law that justice should be administered without undue emphasis on technicalities, in accordance with **Article 118 (2) (e) of the Constitution of Zambia (Amendment) Act**.
- 8.9 The Appellant also directed the Court's attention to **Order 2 Rule 1 of RSC** which specifically addresses consequences of non-compliance with procedural rules. The Appellant further contended that any irregularity arising from initial non-compliance with procedural requirements should not nullify the proceedings to the extent of the irregularity.
- 8.10 We were also referred to the case of **The Republic of Botswana, Ministry of Works, Transport and Communications, Rinceau Designs Consultants (sued as a firm T/A KZ Architects v Mitre Limited**<sup>3</sup> and various other authorities, in which the Courts have established that, as a rule, breaches of regulatory rules are curable and not fatal. It was argued that a Court may rectify procedural defects or irregularities provided such rectification does not result in prejudice. In this case, the argument is that the 1<sup>st</sup> Respondent had failed to demonstrate any prejudice resulting from the consideration of the joinder application.

- 8.11 It is apparent that the question of whether the Appellant had properly filed an application before the lower Court and invoked the correct legal provisions for the joinder application, as well as the 1<sup>st</sup> Respondent's suggestion that the lower Court should have dismissed the Appellant's joinder application on the grounds of technicality for being based on an incorrect legal provision, was not contested by the 1<sup>st</sup> Respondent during the lower Court proceedings. Nevertheless, given that the trial Judge addressed this matter, we consider it necessary to reiterate the correct procedures regarding Judicial Review proceedings.
- 8.12 Upon reviewing the application filed by the Appellant, in its capacity as an Interested Party before the lower Court, the summons, as recorded on page 76 of the record of appeal, is captioned '*Summons for an order for joinder of a party to the action pursuant to Order 14 Rule 5(1) of the High Court Rules, Chapter 27 of the Laws of Zambia.*' The Appellant sought an order for joinder as an Interested Party to the Judicial Review proceedings, relying on the provisions of **Order 14 Rule 5(1) of the High Court Rules**.
- 8.13 The Supreme Court provided clear guidance on the appropriate legal provisions applicable to Judicial Review proceedings in Zambia in the case of **Dean Mungomba and Others v Peter Machungwa & Others**.<sup>4</sup> The Court acknowledged that there are no specific rules under the High Court Rules for conducting Judicial Review proceedings. Therefore, the Courts follow the procedure observed in England's High Court, as detailed in **Order 53 of the Rules of the Supreme Court (RSC)**. Order 53 provides a comprehensive guide on Judicial Review, including the basis,

parties involved, and available remedies. Since Order 53 is a complete code for Judicial Review, the local rules under Orders 14 and 18 of the High Court do not apply.

8.14 The guidance in the authority is unequivocal. There exists a lacuna in local legislation, as the High Court Rules do not address the practice and procedure for initiating or conducting Judicial Review proceedings. Consequently, with respect to Judicial Review proceedings before the High Court of Zambia, the provisions of the High Court Rules are not applicable, and we are compelled to rely exclusively on **Order 53 of the Rules of the Supreme Court of England**.

8.15 A review of the Appellant's submissions in the heads of argument discloses that the Appellant's application for joinder as an Interested Party was also made pursuant to **Order 15 Rule 6 (2), Order 53 Rule 9(1), and Order 53 Rule 14 (76) of the Rules of the Supreme of England, 1999 Edition**. Accordingly, we find no grounds to fault the lower Court for considering the application before it, based on the various legal provisions.

8.16 The next issue for consideration is the appropriate method for including a party (the Appellant) in the proceedings for Judicial Review. This Court has previously reviewed the provisions of **Order 53 Rule 9(1) of the Rules of the Supreme Court**, which stipulates that:

*“On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or*

*summons and appears to the Court to be a 'proper person' to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or summons."*

8.17 Further, **Order 53/14/76 of the Rules** of the afore mentioned Rules also prescribes that:

*"Opposition to application for judicial review (rule 9(1)). On the hearing of any motion or summons as the case may be, for Judicial Review, if it appears to the Court that 'a proper person' desires to be heard in opposition and that he is such a proper person, that person will be heard notwithstanding that he has not been served the notice of motion or summons (r. 9(1)). Thus, justices may show cause by affidavit though they may also show cause either by counsel or in person (R. v Field (1895) 11 T.L.R. 240)".*

8.18 Additionally, in the **African Banking Corporation Zambia Limited T/A Atlas Mara v The Inspector of Police, The Attorney General and Rajan Lekhraj Mahtani**<sup>5</sup> we said:

*"In our view, Order 53 Rule 9(1) of the RSC does not provide for the joinder of an interested party to Judicial Review proceedings. It merely empowers the Court, during Judicial Review proceedings, to hear any person who wishes to be heard in opposition to the motion or summons made under Order 53 Rule 5. This means that the person must communicate their desire to*

*be heard in opposition by filing an application, along with a supporting affidavit, seeking an order to be heard.”*

- 8.19 Evidently, **Order 53 Rule 9(1) of the Rules of the Supreme Court** does not contemplate the joinder of an Interested Party to Judicial Review proceedings. Rather, it confers upon the Court the discretion to hear any individual who wishes to be heard in opposition to the motion or summons brought under **Order 53 Rule 5 RSC**. Accordingly, such a person must formally convey their intention to the Court by filing an application, supported by an affidavit, seeking leave to be heard in opposition.
- 8.20 The Appellant’s primary grievance in the first ground of appeal is that the Judge in the lower Court issued an order against the Appellant, even though the Appellant was not formally a party to the proceedings. Additionally, the Appellant contends that it was denied the right to be heard, which is a fundamental aspect of justice, particularly given its vested interest as the holder of a mining licence over the land in dispute.
- 8.21 The essence of this argument is that by rejecting the Appellant’s application for joinder, the Appellant would be deprived of the opportunity to present its case in the lower Court. The Appellant asserted that the remedies sought by the 1<sup>st</sup> Respondent directly impact its interests, especially those seeking a declaration that the decision to renew the Appellant’s mining licence was unreasonable and unlawful, and requesting an order for the Minister to reverse the decision to reinstate the Appellant’s mining licence and to revoke the Appellant’s licence.

- 8.22 The Appellant contended that on 20 September 2021, the lower Court granted the 1<sup>st</sup> Respondent leave to file a Judicial Review application, challenging the Minister's decision to renew the Appellant's mining license. The Court ordered that the leave would operate as a stay of the Minister's decision affecting the Appellant. In the same order, the Court prohibited and restrained the Appellant from blocking the 1<sup>st</sup> Respondent's access to the mining area and interfering with its operations at the mine until the proceedings in the lower Court were concluded.
- 8.23 The Appellant submitted that these directives were issued against it without it being a party to the proceedings and without affording it an opportunity to be heard, contravening the principles of natural justice. The Appellant added that the principles of justice dictate that the Court should refrain from issuing orders that directly impact individuals who are not parties to the proceedings without granting them a hearing. Reference was made to the precedent in **Mwamba v The Attorney General**<sup>6</sup> where Ngulube, C.J, articulated that, *'No Court of Justice can be called upon to make a declaration which is a discretionary remedy when obvious injustice would be visited upon persons who have not been heard, but who could be directly affected by the declaratory order.'*
- 8.24 The 1<sup>st</sup> Respondent contended that in both the affidavit supporting the joinder application and the skeleton arguments, the Appellant consistently maintained that it possessed a mining licence over the mine for the relevant time, whereas the 1<sup>st</sup> Respondent's exploration licence had been revoked. Conversely, with regard the first ground of appeal, the Appellant argued that the 1<sup>st</sup> Respondent misled the lower Court by incorrectly

- asserting that it held a mining licence for the area when it in fact held only an exploration licence.
- 8.25 The 1<sup>st</sup> Respondent further argued that the Appellant's assertions relate to the merits of the decision to award it the mining licence over the area in question. The 1<sup>st</sup> Respondent submitted that the Appellant argues that it had applied for the renewal of its licence when it expired in 2016 and that as per **Section 76(3) of the Mines and Minerals Act**, its mining licence was still in force when it applied for renewal or until the application for renewal was rejected.
- 8.26 It was additionally contended that the evaluation of the decision to grant the Appellant a mining licence for the area and to revoke that of the 1<sup>st</sup> Respondent does not fall within the scope of Judicial Review. Reference was made to the case of **Chiluba v Attorney General**<sup>7</sup> wherein the Court determined that Judicial Review focuses on scrutinizing the decision-making process rather than the substantive merits of the decision itself.
- 8.27 We have discussed that though a third party might have an interest in the subject under review in Judicial Review proceedings, such party need not necessarily be joined to Judicial Review proceedings but the Court may allow such interested party to file an affidavit before Court as an interested party in order to state its case and have the Court arrive at a just decision taking into account all interests, factors and evidence.
- 8.28 In the present case, we find no fault with the issuance of an order for a stay issued against the Minister of Mines pending resolution of the matter.



However, we take issue with the scope of the order for stay extending to restrain the Appellant from interfering with the operations of the 1<sup>st</sup> Respondent on a land tenement that is the subject to judicial review proceedings and over which both the Appellant and the 1<sup>st</sup> Respondent have a clear conflict of interest.

8.29 Given our analysis above, we are of the view that the trial Court should have exercised its discretion by allowing the Appellant as an interested party to file an affidavit in opposition while staying any activities taking place on the subject tenement or decision-making mechanism until the Judicial Review proceedings have been concluded. This would have maintained the status quo, and all interested parties would have had an opportunity to be heard before the Courts of law. For the said reason, we find merit in this ground of appeal. The first ground is accordingly allowed.

8.30 The second ground of contention asserts that the trial Judge erred in finding that the Appellant did not demonstrate sufficient interest to intervene in the proceedings, despite the evidence presented. The Appellant asserted that it possessed a substantial interest in the Minister's decision specifically because the area claimed under the exploration licence by the 1<sup>st</sup> Respondent overlaps with the area covered by the Appellant's mining licence.

8.31 Furthermore, it is asserted that the Appellant has sufficient standing to intervene in the proceedings challenging the Minister's decision. This assertion is based on the fact that the Appellant's action, as outlined in the

letter of 27 May 2019 (*page 63-64 ROA*), initiated the process leading to the decision currently contested by the 1<sup>st</sup> Respondent. Additionally, the Appellant has competing interests with the 1<sup>st</sup> Respondent concerning the mine for which the 1<sup>st</sup> Respondent was issued an exploration licence.

8.32 It is further contended that the lower Court erred in refusing to join the Appellant to the proceedings, despite the Appellant establishing that there is a question or issue arising from, related to, or connected with the remedy sought by the 1<sup>st</sup> Respondent. It was argued that such a joinder would be just and convenient for resolving the dispute between the Appellant and the 1<sup>st</sup> Respondent.

8.33 We were referred to the case of **Dean Namulya Mungomba and Two Others v Peter Machungwa and Others** wherein the Supreme Court determined that the Appellants demonstrated sufficient interest in the matter by initiating the complaints that prompted the establishment of the tribunal, whose findings and recommendations were the subject of the Judicial Review. Similarly, the case of **William Harrington v Dora Siliya and The Attorney General**<sup>8</sup> was cited.

8.34 Furthermore, our attention was drawn to **Order 53 Rule 9(1) and Rule 14 (76) of the RSC** concerning the principles for joinder under Judicial Review proceedings. The Appellant referenced the learned author of **S.A. de Smith on Judicial Review of Administrative Action** regarding the issue of *locus standi* in administrative law. The author provided guidance on factors for Courts to consider when determining *locus standi* in Judicial Review proceedings.

- 8.35 In opposition to the second ground of appeal, the 1<sup>st</sup> Respondent argued that the Appellant's contentions are not based on the legality of the procedure undertaken to revoke the 1<sup>st</sup> Respondent's licence, but rather on the merits of the Minister's decision to grant the Appellant a mining licence for the disputed area. Consequently, these arguments do not provide a valid basis for the Appellant to be joined to the proceedings in the lower Court. Therefore, the 1<sup>st</sup> Respondent reiterated that the Appellant lacks *locus standi* and sufficient interest to be included in the Judicial Review proceedings.
- 8.36 The central issue in the second ground pertains to whether the Appellant has demonstrated significant interest justifying its participation in the Judicial Review proceedings initiated by the 1<sup>st</sup> Respondent. These proceedings aim to scrutinize the legality of the Minister's decision to revoke the mining licence granted to the 1<sup>st</sup> Respondent.
- 8.37 In dealing with the aforesaid issues, we wish to restate that we have addressed the issue in part under ground one. However, it is noteworthy that the licence in question covers the same land over which the Appellant asserts mining rights, both independently and through its predecessors since 1983.
- 8.38 Additionally, the Appellant provided evidence indicating that following the initial issuance of the licence to the 1<sup>st</sup> Respondent, it received instructions to cease operations and divest its assets on the said land. This prompted the Appellant to correspond with the Minister, resulting in the Minister rescinding the grant of the mining license to the 1<sup>st</sup> Respondent

and extending the duration of the Appellant's mining license. This decision was based on the contention that the licence issued to the 1<sup>st</sup> Respondent was mistakenly granted, thereby infringing upon the Appellant's existing license.

- 8.39 The proceedings before the High Court will primarily focus on reviewing the Minister's decision concerning the land tenement subject to the Appellant's mining rights. The central issue under examination will be the legality of the Minister's actions in revoking the 1<sup>st</sup> Respondent's mining licence and subsequently renewing the Appellant's mining licence. The Court will scrutinize the Minister's decision-making process, evaluating the procedural steps taken and the rationale behind these decisions.
- 8.40 In this context, the Court will inevitably scrutinize the applications submitted to the Minister by both parties, including their form, substance, and procedural adherence. The Appellant possesses unique insights crucial for safeguarding its interests in these proceedings. The assertion that the 2<sup>nd</sup> Respondent can adequately present the Appellant's arguments is therefore untenable.
- 8.41 In our considered view, the foregoing factors clearly establish that the Appellant has not only demonstrated a substantial interest in the matter but is also likely to be materially affected by the decision of the High Court as a relevant party.
- 8.42 Accordingly, we are of the opinion that the Appellant ought to have been included in the proceedings for Judicial Review as such interested party.

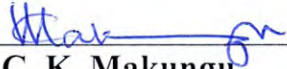
We find that the Court erred in holding otherwise. Following the guidelines under Order 53 Rule 14 (76), we accordingly order that the Appellant do file an affidavit in opposition in the application for Judicial Review in the lower Court and be heard as a proper person in opposition.

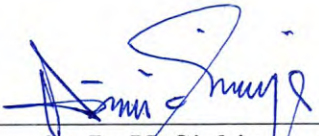
9.0 **CONCLUSION**

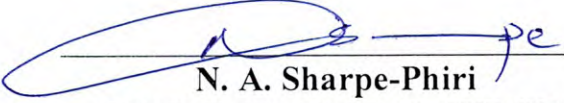
9.1 In view of the foregoing, the appeal is deemed meritorious, although not completely based on the specific arguments advanced by the Appellant. Accordingly, the Ruling of Judge Chembe of 26 May 2022 is hereby set aside.

9.2 We Order and direct that the Appellant be recognized as a '*proper person*' in the Judicial Review proceedings to be heard before a Judge of the High Court.

9.3 The costs of this appeal shall be borne by the 1<sup>st</sup> Respondent, to be taxed unless mutually agreed upon.

  
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**C. K. Makungu**  
**COURT OF APPEAL JUDGE**

  
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**D. L. Y. Sichinga, SC**  
**COURT OF APPEAL JUDGE**

  
\_\_\_\_\_  
**N. A. Sharpe-Phiri**  
**COURT OF APPEAL JUDGE**