

IN THE COURT OF APPEAL FOR ZAMBIA

SP 56/2023

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

EMERGENCY RESPONSE ZAMBIA LIMITED

APPLICANT

AND

FIRST QUANTUM MINERALS LIMITED

RESPONDENT

CORAM: SIAVWAPA JP, CHISHIMBA AND PATEL SC, JJA

On 26th June and 22nd August 2024

FOR THE APPLICANT: Miss S. Mvula and Miss B. Nachimba both of
Messrs. J and M Advocates

FOR THE RESPONDENT: Mr. M. J. Kawana of Messrs. B&M Legal
Practitioners

R U L I N G

SIAVWAPA, JP, delivered the Ruling of the Court.

Cases Referred to:

- 1. Bidvest Food Zambia Ltd & Others v CAA Import and Export SCZ Appeal No 56 of 2017*
- 2. Standard Chartered Bank Limited v Celine Nair SCZ/32/2019*
- 3. Cavmont Bank Limited v Spancrete Zambia Limited and 2 Others SCZ/08/16/19*

4. *Kekelwa Samuel Longwa v Meamui Georgina Kongwa*
(SCZ/8/05/2019)

Legislation referred to:

1. *Court of Appeal Act No 7 of 2016*
2. *Court of Appeal Rules, 2016*
3. *Supreme Court Act Chapter 25 of the Laws of Zambia*
4. *Supreme Court Rules*

1.0 INTRODUCTION

1.1 This Ruling arises from an application for leave to appeal to the Supreme Court against our Judgment dated 22nd November 2023.

1.2 The Applicant filed a Notice of Motion on 5th December 2023 pursuant to Section 13 of the Court of Appeal Act, No 7 of 2016, Orders XI and X of the Court of Appeal Rules as read together with Rule 51 of the Supreme Court Rules and Section 24(b) of the Supreme Court Act Chapter 25 of the Laws of Zambia.

2.0 ARGUMENTS IN SUPPORT

2.1 The grounds on which the Applicant seeks leave to appeal to the Supreme Court are that the intended appeal raises novel issues of public importance and has prospects of success.

2.2 The basis of the argument on novel issues of public importance is that the intended appeal raises a question

on the interpretation of parties' conduct in contracts that arise from corporate social responsibility and involve the Government of the Republic of Zambia.

- 2.3 Calling in aid the cases of *Bidvest Food Zambia Limited and Four (4) Others v CAA Import and Export Limited*¹, *Standard Chartered Bank Limited v Celine Nair*² and *Cavmont Bank Limited v Spancrete Zambia Limited and 2 Others*³, the Applicant argues that the intended appeal, although arising from private interests of a company seeking to enforce its rights under a contract, can still be of public importance for the reasons stated above.
- 2.4 The Applicant has also argued that the issues we determined in our Judgment on whether or not the Respondent's conduct amounted to a notice of termination has not been extensively adjudicated upon by the Supreme Court.
- 2.5 For the above stated reasons, the Applicant is of the view that the Supreme Court ought to pronounce itself on the issues.
- 2.6 As regards prospects of the intended appeal succeeding, The Applicant has pointed to the intended grounds of appeal exhibited in the Applicant's draft memorandum of appeal.

2.7 The two proposed intended grounds of appeal impugn our findings of fact that the contract between the parties was not extended and that the Applicant was not entitled to payment on quantum meruit basis.

3.0 ARGUMENTS IN OPPOSITION

3.1 In opposition to the arguments on point of law of public importance, the Respondent, equally relied on the *Bidvest and Kekelwa Samuel Longwa v Meamui Georgina Kongwa*⁴ cases.

3.2 It argued that the intended appeal relates to a simple contract between two private entities that does not transcend the private interests of the parties and that it raises principles of law that have been decided in a plethora of cases.

3.3 The Respondent contends that although the dispute relates to the Respondent's Corporate Social Responsibility, it is purely contractual in nature.

3.4 With regard to prospects of success, the Respondent submitted that the intended appeal is hopeless and has no prospects of success.

4.0 OUR ANALYSIS AND DECISION

4.1 We have considered the Record of Motion, and the arguments in support and in opposition to the Motion. The

arguments are similar to most other applications for leave to appeal to the Supreme Court.

4.2 Unsurprisingly, there is always heavy reliance on the celebrated case of Bidvest Foods Zambia Limited & Others v CAA Import and Export Limited, (supra) by both parties to support their opposing positions.

4.3 Arguably, the Bidvest case (supra), is a landmark case in so far as the interpretation of Section 13 (3) of the Court of Appeal Act is concerned.

4.4 In a sense, the restrictive nature of Section 13 of the Act on the granting of appeals to the Supreme Court was underscored by the Judgment. In that regard, the Supreme Court stated as follows;

“It is in that spirit that Section 13 of the Court of Appeal Act restricting access to the Supreme Court by deferring to the apex Court only weighty issues in the most deserving of cases, should be understood” (see J23 of Bidvest).

4.5 Given the extensive guidance given in the said Judgment of the Supreme Court, it is expected that counsel representing parties aggrieved by our Judgments would take time to consider and understand Section 13 (3) of the Court of Appeal Act before filing Notice of Motion for leave to appeal.

4.6 We have noted one argument which comes up in most of the applications for leave to appeal to the effect that there is a novel point which requires that the Supreme Court pronounces itself on it.

4.7 In dealing with the issue, the Supreme Court had this to say in the Bidvest case (supra);

“Second, as regards the issue whether every novel point be viewed as raising a point of law of public importance and thus satisfying the threshold for the grant of leave to appeal, we must state that novelty of a matter does not in itself and of itself alone turn a matter into one that raises a point of law of public importance within the intendment of Section 13 (3) (a) of the Act.” (See J 39 of the Judgment).

4.8 As regards the argument on prospects of success, the Supreme Court was less enthusiastic about the relevance of Section 13 (3) (c). In its view, the same should be used warily to grant leave to appeal as it has the effect of undermining the spirit and purpose of Section 13 of the Act (J43 paragraph 2 of the Bidvest Judgment).

4.9 The Applicant argues that the intended appeal raises points of law which transcend the private interests of the parties thereby assuming the realm of public importance. The reason advanced for the argument is that the contract subject of the appeal originated from an act of Corporate Social Responsibility and involved the Government.

4.10 With the wealth of guidance from the Supreme Court, as set out in paragraphs 4.3 to 4.7, we are not persuaded that our decision that the contract between the parties was not extended and neither can it be inferred that it was from the conduct of the parties, raises a point of law of public importance fit for consideration by the Supreme Court. The fact that the Respondent was engaged in an act of Corporate

Social Responsibility does not negate the contractual nature of the Agreement.

- 4.11 In our Judgment, occurring at page 23 of the motion, not only have we stated that the issue of whether the contract was a product of corporate social responsibility was not an issue in the appeal but also that the Government was not a party to the action.
- 4.12 In addition, we do not appreciate how the principles relating to the interpretation of the conduct of the parties in contracts can be considered a novel issue as this is a recurring subject that has long been adjudicated upon by the Superior Courts in our jurisdiction.
- 4.13 As regards the prospects of the intended appeal succeeding, under the draft grounds of appeal, the Applicant argues that there was evidence that the Respondent agreed to finance the program beyond July 2020, but under different terms and also that the Applicant's claim based on the doctrine of *quantum meruit* should have succeeded.
- 4.14 We opine that the prospects of these grounds succeeding are dim owing to our finding in paragraph 8.12 of our Judgment that, following the offer to finance the program beyond July 2020, the Applicant's counter proposal culminated in the Respondent terminating its dealings with the Applicant.

4.15 Our position is fortified by the conditions precedent to the application of the principle of *quantum meruit* as set out in paragraph 8.27 of our Judgment which were not satisfied by the Applicant in the Court below.

5.0 CONCLUSION

5.1 The result of our discourse is that this motion has failed to satisfy any of the conditions under Section 13(3) of the Court of Appeal Act.

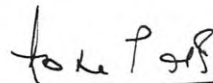
5.2 We accordingly dismiss the motion with costs to the Respondent to be taxed in default of agreement by the parties.



M.J. SIAVWAPA
JUDGE PRESIDENT



F.M. CHISHIMBA
COURT OF APPEAL JUDGE



A.N. PATEL SC
COURT OF APPEAL JUDGE