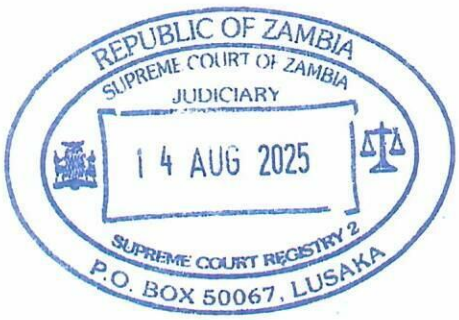
IN THE SUPREME COURT OF ZAMBIA **SCZ/7/25/2024**
HOLDEN AT LUSAKA
(Civil Jurisdiction)



B E T W E E N:

EMMANUEL TUMBA	**1ST APPLICANT**
DESMOND BANDA	**2ND APPLICANT**
WILLIAM SINKALA	**3RD APPLICANT**
LIHWALII SIMASIKU	**4TH APPLICANT**
AARON LUNGU	**5TH APPLICANT**
WILLIAM CHILUFYA	**6TH APPLICANT**
GREVASIUS TEMBO	**7TH APPLICANT**

AND

ZAMBIA BATA SHOE COMPANY PLC **RESPONDENT**

Coram: **Malila CJ, Mutuna and Chisanga JJS**
On 6th May 2025 and 14th August, 2025

For the Applicants: In person (Mr. Desmond Banda)

For the Respondent: Mr. P. Yangailo – P. H. Yangailo and Company

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RULING

Malila CJ, delivered the ruling of the court.

Cases referred to:

1. *Guardall Securities Group Limited v. Rainford Kabwe (Appeal No. 44 of 2019)*
2. *Citibank Zambia Limited v. Suhayl Dudhia (SCZ Appeal No. 6 of 2022)*
3. *Davis Kasote v. The People (1997) ZR 75*

4. *ZCCM v. Jackson (2004) ZR 193*
5. *Bank of Zambia v. Vortex Refrigeration Company and Dockland Construction Company Limited (Appeal No. 004/2013)*
6. *Martin Nyambe and Others v. Konkola Copper Mines Plc (Appeal No. 2 of 2022)*
7. *Savenda Management Services v. Stanbic Bank Zambia Limited (Selected Judgment No. 10 of 2018)*
8. *Bidvest Food Zambia Limited (Appeal No. 50 of 2017)*
9. *R v. Governor of Brockhill Prison: Ex parte Evans (No.2) (2000) 3 WLR 843*
10. *Chevron Oil Co. v. Huson (404 US (1991)*

Legislation referred to:

1. *Industrial and Labour Relations (Amendment) Act of 2008*
2. *Court of Appeal Rules*
3. *Supreme Court Rules*

1.0. INTRODUCTION AND PROCEDURAL HISTORY

1.1. This case has a chequered history. It was commenced twenty years ago in 2005. It survived the transition of the Industrial Relations Court (IRC) into a Division of the High Court; saw the creation of the Court of Appeal and more significantly featured in all these courts. This is the second time it is gracing the Supreme Court.

1.2. The applicants are ex-employees of the respondent company. They were dismissed from employment for their alleged involvement in illicit trade union activities. They were obviously

angry at that development and protested that their dismissals were unlawful.

1.3. They launched a challenge of their dismissals in the IRC, grumbling that the respondent did not follow the correct procedure in dismissing them, thus making their dismissals unfair. They argued that the nature of the charges against them were baseless and could not warrant summary dismissal. They sought, among other relief, damages.

1.4. The court, upon consideration of the parties' respective positions, delivered its judgment on 6th February 2008. It found that the applicants (as complainants) had established their case on a balance of probabilities. They were awarded six months salary, allowances and other perks, as damages. The same was to carry interest.

1.5. Following the judgment, the respondent promptly computed what it considered was the judgment sum and paid it into court on 5th March 2008. Meanwhile, the applicants had taken the judgment award to assessment before the deputy director, IRC. There they sought to be awarded service benefits they would

have received had they worked to the age of retirement (i.e. 55 years). In so claiming, they relied on their understanding of Clause 27 of the Collective Agreement applicable to them.

1.6. The deputy director was not persuaded to depart from the clear statement on what was awarded by the IRC and thus, in her brief ruling given on 5th February 2010, gave short thrift to the applicants' contention. She, however, held that the applicants were entitled to all 'perks' as signed to in their Collective Agreement.

1.7. Subsequent to the ruling of the deputy director, the applicants made another application for re-assessment of what they considered due to them. That application was heard by a different deputy director of the IRC. Meanwhile the respondent deposited into court an additional sum of money deemed by it to be outstanding to the applicants' credit.

1.8. In a judgment on re-assessment, the deputy director found that the applicants were entitled to whatever perks an employee who was not dismissed, would get. This finding had the effect of

expanding the scope of the perks payable to the applicants. The respondent was unhappy.

1.9. An appeal was thus launched by the respondent to the full court of the IRC, alleging errors and misdirections on the part of the deputy director when, under the heading 'termination entitlements' in his judgment on re-assessment, he allegedly went beyond the scope of his authority in undertaking the assessment exercise. The IRC agreed with the respondent that the deputy director had indeed misdirected himself by holding that the term 'perks' includes service benefits. The court thus reversed the decision of the deputy director.

1.10. The applicants were in turn dissatisfied with the decision of the IRC. They appealed to this court. In a judgment dated 18th September 2020, we dismissed the appeal on grounds that the procedure taken by the parties and the IRC, as it relates to re-assessment, was not provided for in the Industrial and Labour Relations Act, or any other law for that matter. We noted that re-assessment was an alien feature to our law. In our view, as

the IRC had no jurisdiction to undertake a re-assessment, the whole exercise undertaken by the deputy director was a nullity.

1.11. Instead of making an application for re-assessment, we guided that the applicants should have appealed the decision of the deputy director to the full court of the IRC. We accordingly set aside the deputy director's judgment on re-assessment and the resultant IRC's judgment on appeal. The net result was that the judgment on the initial assessment still stood.

1.12. Did that apex court judgment put an end to this matter? Far from it. The parties could still not conclusively agree on the quantum to be paid.

1.13. Following our judgment the applicants wrote to the respondent claiming K2,345,110.92 to which the latter responded that it had already paid the sum due into court and that in fact it had over paid.

1.14. Predictably, the matter was not concluded with the initial assessment by the High Court. The respondent filed another application before the registrar of High Court Industrial Relations Division (IRD) which the IRC had by then become

seeking an order to confirm that the two sums of money paid into court by the respondent on 5th March 2008 and 10th June 2010 satisfied in full the judgment on assessment given on 5th February 2010.

1.15. In his ruling given on 15th March, 2021, the registrar painstakingly broke down the amounts due to each of the applicants by category of the perks payable. He came to the conclusion that the sums deposited into court by the respondent was short of the total amount outstanding. He, however, ruled that some of the claims made by the applicants were un-awardable.

1.16. The applicants were aggrieved with the ruling of the registrar. As by the time the ruling of the registrar was passed, the Court of Appeal had been established and was operational, the applicants filed a notice of appeal to the Court of Appeal on 13th April 2021, raising various grounds of disagreement with the ruling. Key among the issues raised were that the registrar contradicted himself in material respects; that he considered

aspects of the claim that were undisputed and that he failed to grant others that the applicants were entitled to.

1.17. The respondent, for its part, filed an application before a judge of the High Court for the dismissal of the applicants' notice of appeal for irregularity. The irregularity alleged was that the notice of appeal was filed in the absence of leave to appeal being granted.

1.18. The applicants conceded that they did not obtain leave but prayed that the same be granted by the court so that the appeal is allowed to proceed to be heard on the merits.

1.19. The High Court granted the respondent's application and thus set aside the notice of appeal. Did the applicants give up? Not at all. Exactly a fortnight after the ruling setting aside their notice of appeal, they filed another notice of appeal in the Court of Appeal (on 14th November 2022), this time against the very decision of the High Court setting aside their earlier notice of appeal.

1.20. The applicants' grievance against the ruling of the High Court setting aside the notice of appeal was that it was delivered outside the mandatory one-year time limit prescribed by section 19(3)(b)(ii) of the Industrial and Labour Relations (Amendment) Act of 2008 and was therefore void.

1.21. The applicants relied on the Court of Appeal decision in **Guardall Securities Group Limited v. Rainford Kabwe**[1] wherein it was held by the Court of Appeal that a failure to render judgment within one year as prescribed by section 19(3)(b)(ii) of the Industrial and Labour Relations Act implied a termination of jurisdiction on the part of the handling judge.

1.22. The Court of Appeal decided, appropriately so in our view, to deal with the applicants' application on paper, that is to say, without having to hear the parties or their representatives in person. The application was dismissed. The court recalled our decision in **Citibank Zambia Limited v. Suhayl Dudhia**[2] in which we held, *inter-alia*, that **Guardall Securities Group Limited v. Rainford Kabwe**[1] was not properly decided and should be overturned. We stated in specific terms that:

We accordingly hold that the case of *Guardall Securities Group Limited v. Rainford Kabwe*[1] is bad law and is hereby reversed. This by necessary implications means that all other decisions based on the *Guardall*[1] case can suffer no better fate.

1.23. That ruling by the Court of Appeal, delivered on 1st February 2024 not unexpectedly displeased the applicants. In fact, so annoyed were they with it that they decided to appeal it to the Supreme Court. There was, however, one fly in the ointment. By the time they crystalised their intention to appeal they had run out of the time prescribed for obtaining leave to appeal. In effect, the applicants now had two hurdles to surmount: first to obtain the permission of the Court of Appeal to file their request for leave to appeal out of time, and second, to obtain the leave of the Court of Appeal to appeal to the Supreme Court.

1.24. On 27th March 2024, they filed a notice of application for an order for extension of time within which to file for leave to appeal to the Supreme Court out of time. This was made pursuant to Order 13 rule 3(4) of the Court of Appeal Rules.

1.25. The reason for the applicants' delay, they submitted, was because the Court of Appeal did not avail them the ruling within

time, but only made it available to them on 4th March 2024 – some 34 days after it was delivered.

1.26. They contended that their intended appeal had reasonably strong prospects of success as the Court of Appeal did not, in dismissing their application, take note of the fact that their notice of appeal had been filed way before the Supreme Court set aside the Court of Appeal's decision in **Guardall**[1]. They further contended that in dismissing their appeal, the Court of Appeal recreated the mischief, the absurdity and the unconscionable result which the Supreme Court had cured when it set aside **Guardall**[1] in that the applicants' appeal was now locked out unresolved.

1.27. By order of a single judge of the Court of Appeal dated 8th April 2024, the applicants were granted permission to file their application to appeal to the Supreme Court out of time. They were to do so within 21 days. The applicants promptly filed their application for leave to appeal to the Supreme Court.

1.28. In their contention in support of the application for leave to appeal, the applicants submitted that their appeal has

reasonable prospects of success because, among other things, the Court of Appeal did not consider the fact that it was not the applicants' fault that the law on which they anchored their appeal changed after they had filed their appeal; that the Court of Appeal erred when it did not nullify the registrar's *ex-parte* order of 26th February 2021 for staying the judgment of the Supreme Court without jurisdiction.

1.29. In their arguments before the court, the applicants also hinted that their intended appeal raised "very important legal question of public interest and importance."

1.30. For their part, the respondent argued that the intended appeal has no prospects of success whatsoever. Upon assessment of the respective positions, the Court of Appeal agreed with the respondent that the proposed appeal does not have any prospects of success nor did it satisfy any other requirement for leave to be granted. It accordingly declined to grant leave to appeal.

1.31. Predictably, the applicants threw a Hail Mary, looking to the apex court. They renewed the application for leave to appeal

before a single judge. The summons, were filed on 9th December 2024. They set out six proposed grounds of appeal.

1.32. More relevantly they stated that the intended appeal had high prospects of success, raises a point of law of public importance, and that there are compelling reasons for it to be heard so that the Supreme Court is enabled to pronounce itself on whether:

(a) the Court of Appeal is allowed to apply the law retrospectively;

(b) the Court of Appeal is not bound by decisions of the Supreme Court of Zambia;

(c) a Registrar of the Industrial Relations Division has power to stay the decision of the Supreme Court;

(d) the Industrial Relations Division has authority to reverse the decision of the trial court; and

(e) the Industrial Relations Division of the High Court is not bound by decisions of the Constitutional Court of Zambia (Sic!).

1.33. The application was stoutly opposed, the opposing affidavit having been deposed to by the respondent's Head of Human Resource, Muonga Phoebe Kaunda.

1.34. A single judge of this court examined the documents and upon reflection, made an order on the 30th January 2025 in the following terms:

> **I have accordingly considered the summons for an order for leave to appeal to the Supreme Court and the supporting affidavit. I have also considered the affidavit in opposition and the respondent's skeleton arguments. The view I take is that this is a suitable matter for consideration by the court. Therefore, in accordance with Rule 48(3) of the Supreme Court Rules, Cap 25, I adjourn the application to the court for its consideration. The applicants are expected to file seven extra copies of the document filed prior to this date before the next hearing date.**

2.0. THE HEARING OF THE RENEWED APPLICATION

2.1. When the motion came up for hearing before the court on 6th May 2025, the applicants appeared in person with Mr. Desmond Banda, making oral representations on behalf of all the applicants. Mr. P. Yangailo represented the respondent.

2.2. Seeing as the applicants were not legally represented, we engaged Mr. Banda to ascertain whether he understood the distinction between an appeal and a renewed application for leave to appeal. He responded in the negative.

2.3. We explained, for the benefit of Mr. Banda and his co-applicants, that a motion is structured differently from an appeal and that what is set out in their application for leave to appeal as well as the arguments around it are in the format of an appeal rather than a motion for leave.

2.4. We pointed out that of the six grounds of motion, five read like grounds of appeal while only one appeared to speak to the factors that go to the assessment of an application for leave to appeal in terms of section 13 of the Court of Appeal Act.

2.5. In the end, Mr. Banda saw the light and appreciated the point we were making about grounds of motion not being equal to grounds of appeal and accepted our direction to focus on the one ground of motion number 6, the substance of which we have paraphrased at paragraph 1.32 of this ruling.

2.6. We made it clear that we would ordinarily be inclined to dismiss outrightly any non-compliant motion. On its own peculiar circumstances, particularly noting that the applicants are not legally represented, the time it has taken to conclude this matter and the tenacity manifested in its pursuit by the

applicants, we exercised our discretion in the interest of justice to excuse the non-conforming grounds of motion and focus solely on the relevant one.

3.0. THE APPLICANTS' CASE

3.1. Mr. Banda submitted that he was relying on the documents that had been filed before us in the record of motion and did not wish to augment.

3.2. As explained elsewhere in this ruling, the applicants have argued that the intended appeal has prospects of success, raises points of law of public importance, and there are other compelling reasons for the appeal to be heard by the Supreme Court.

3.3. We suppose that the applicants well-understand that the onus is upon them to demonstrate that the thresholds prescribed in section 13 of the Court of Appeal Act for the grant of leave to appeal, are satisfied. In this motion, it is thus for the applicants to show that the proposed appeal does indeed have prospects of success, or raises a point of law of public important or there are other compelling reasons why the appeal should be heard.

3.4. What we discern from the applicants' skeleton arguments is that the applicants contend that the reasoning of the Court of Appeal in its decision rejecting the grant of leave ignored the principle of *stare decisis* and brought the administration of justice into disrepute granted that it is at variance with Supreme Court decisions. The applicants cited the cases of **Davis Kasote v. The People**[3] and **ZCCM v. Jackson**[4] which speak respectively to the significance of the doctrine of *stare decisis*, and non-retroactivity of the law.

3.5. They contend that their application for leave to appeal was dismissed on the basis of a Supreme Court decision in **Citibank Zambia Limited v. Suhayl Dudhia**[2] which was passed on 10th March 2023 after they had already lodged their appeal on 14th November 2022. That judgment, according to the applicants, does not apply to their situation which was governed by the law as it stood then. To this end they cited a statement in the case of **Bank of Zambia v. Vortex Refrigeration Company and Dockland Construction Company Limited**[5] where a single judge of this court stated as follows:

> **...the law is not intended to trap the unwary or the unsuspecting by insisting that today's relationship shall, without more, be governed and determined on the basis of a future law, or conversely, that a law that comes into effect today shall generally apply to relations of parties consummated in the previous year.**

3.6. They also cited the case of **Martin Nyambe and Others v. Konkola Copper Mines Plc**[6] where we stressed that the law does not apply retrospectively.

4.0. THE RESPONDENT'S CASE

4.1. The respondent maintained that the Court of Appeal was right in holding that the intended appeal has no prospects of success. It was submitted that the applicants have not demonstrated sufficient cause to warrant being granted leave to appeal. Their view is that the proposed grounds of appeal do not meet the threshold set out in section 13 of the Court of Appeal Act.

4.2. Citing our decisions in **Savenda Management Services v. Stanbic Bank Zambia Limited**[7] and **Bidvest Food Zambia Limited**[8], the respondent submitted that the new role of the Supreme Court as explained in those cases does not allow it to routinely deal with appeals such as the present one.

4.3. The short point made by the respondent is that the intended appeal neither has prospects of success nor raises any point of law of public importance.

5.0. ANALYSIS AND DECISION

5.1. We have carefully considered the ground of motion advanced by the applicants in the current renewed application for leave to appeal.

5.2. As we have stated earlier, the only valid ground of motion before us is ground 6 which we have paraphrased at paragraph 1.32. That ground sets out a number of questions.

5.3. From that ground of appeal, we are being urged to discern from the answers to the questions posed that the appeal possesses high prospects of success, raises points of law of public importance and there are compelling reasons for the appeal to be heard.

5.4. We intend to examine the individual questions posed by the applicants in their sole valid ground and locate the answers to

those questions in the factual matrix of this case as well as within the intendment of section 13 of the Court of Appeal Act.

5.5. **(a) whether the Court of Appeal is allowed to apply the law retrospectively.**

This question raises a fairly common point which has been clarified by this court on numerous occasions. The applicants themselves have in their written submissions pointed to numerous case authorities in which it has been repeatedly asserted that laws do not generally apply retrospectively. We do not need to rehash those authorities save to state that legislation may in its provision state that it would apply retrospectively.

5.6. Here, the applicants are suggesting that judge made law, as in decisions of superior courts which overrule inferior courts, do not have retrospective effect. And it is important to be categorical in stating the distinction between legislation and court decisions and their retrospectivity.

5.7. The legal fiction is that when courts interpret the law, they merely declare what the law always has been and are not

making any new law. The practical implication of this is that when we interpret the law as we did in **Citibank v. Suhayl Dudhia**[2], the interpretation applies as much to past events and actions as it does to the current even if that interpretation is different from previous interpretations or understanding. The legal fiction is that courts find the law; they do not make the law. Thus, a precedent setting judgment legally clarifies the law that was already out there.

5.8. We must stress the point that judgments do have a retrospective effect. **(See R v. Governor of Brockhill Prison; Ex parte Evans (No.2)**[9] This is a logical consequence of the principle that courts only declare the true meaning of the law which already existed. Thus, in **R v. Governor of Brockhill Prison; Ex parte Evans (No.2)**[9] a majority of the English Court of Appeal, and subsequently the House of Lords held that it was no defence to an action for false imprisonment that the defendant Governor had acted as he did in reliance in, and in compliance with, the then current judicial interpretation of the relevant statute. A subsequent overruling

of that interpretation was held by the court as representing the law in force as from the time the statute was passed.

5.9. However, courts can provide the date from which the interpretation given by it is to come into effect, keeping in view the likelihood of possible prejudice which may be caused. In **Chevron Oil Co. v. Huson**[10] the United States Supreme Court elaborated on the circumstances in which it would be justifiable to place limitations of a judicial ruling on the state of the law such as the ruling establishing a new principle of law, either by overruling clear past precedence on which litigants have relied or by deciding on issue of first impression whose resolution was not clearly foreshadowed.

5.10. Our view is that there is no point of law of public importance in the first question posed, nor does it give the intended appeal prospects of success. It offers no compelling circumstances for the Supreme Court to deal with the proposed appeal.

5.11. (b) Whether the Court of Appeal is not bound by decisions of the Supreme Court of Zambia?

Emanating from the sole valid ground of motion, this is clearly a rhetorical question. The Court of Appeal is, of course, bound by decisions of the Supreme Court by operation of the doctrine of *stare decisis* which the applicants have well-articulated in their skeleton arguments. There is no doubt about that and there is nothing special or compelling to be determined or clarified in that question.

5.12. As we understand it the applicants' contention is that by holding that the Supreme Court decision in **Citibank v. Suhayl Dudhia**[2] was applicable to the situation, the court ignored binding authorities on non-retroactivity of law.

5.13. We have already explained that judicial decisions do apply retroactively. In any case the decision by the Court of Appeal to follow our decision in **Citibank v. Suhayl Dudhia**[2] is confirmation that the court is bound by the decision of the Supreme Court.

5.14. We discern no point of law of public importance arising from the question posed by the applicants in this connection, nor do we see the question shaping any prospects of success for the

intended appeal. It does not in any way constitute or bring about compelling circumstances either.

5.15. (c) Does a registrar of the Industrial Relations Division of the High Court have authority to stay a decision of the Supreme Court?

(d) Does he have power to reverse a decision of the trial court?

(e) Is the Industrial Relations Division of the High Court bound by decisions of the Constitutional Court?

These are all questions posed by the applicants giving an intimation of the issues the intended appeal is likely to raise.

5.16. The answers to all these questions lie in plain sight. They neither raise points of law of public importance nor do they give the intended appeal any prospects of success.

5.17. This case does not provide any compelling circumstances for the Supreme Court to hear the intended appeal. Indeed, as we have earlier stated, the onus of showing that the intended appeal satisfies any of the threshold tests set out in section 13 of the Court of Appeal Act and explained in the case of **Bidvest Foods Zambia Limited**[8], lies squarely on the applicants. Taken in the round, we are satisfied that the applicants have failed to discharge that onus.

5.18. In the result, we agree with the Court of Appeal. The motion is without merit and it is dismissed accordingly.

5.19. Each party shall bear own costs.

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Mumba Malila
CHIEF JUSTICE

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N. K. Mutuna
SUPREME COURT JUDGE

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F. M. Chisanga
SUPREME COURT JUDGE