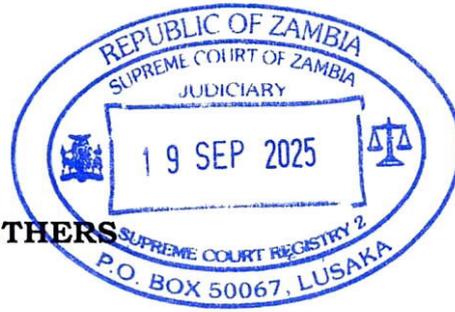


IN THE SUPREME COURT ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

SCZ/07/05/2024

BETWEEN:



COSMAS MWEEMBA AND 34 OTHERS

APPLICANTS

AND

CHIKANKATA DISTRICT COUNCIL

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

CORAM: Malila CJ, Wood and Kaoma, JJS

on 3rd December, 2024 and 19th September, 2025

For the Applicants:

Mr. C. M. Sianondo – Messrs Malambo & Co. with
Ms. E. Sakala – Lusitu Chambers

For the 1st Respondent:

Ms. N. Simachela and Mrs. N. Domingo – Messrs
Nchito & Nchito

For the 2nd Respondent:

Ms. M. Katolo, Assistant Senior State Advocate –
Attorney General's Chambers

R U L I N G

Malila, CJ delivered the ruling of the Court.

Cases referred to:

- Bidvest Foods & Others v. CAA Import & Export Ltd (Appeal No. 56/17)*
- Kekelwa Samuel Kongwa v. Meamui Georgina Kongwa (SCZ/8/05/2019)*

Other work referred to:

1. *Court of Appeal Act No. 7 of 2016*
2. *rule 48 of the Supreme Court Rules*

1.0. INTRODUCTION AND BACKGROUND

1.1. This ruling is by majority because Mr. Justice A. M. Wood, who was part of the panel that heard the motion, retired before the ruling was finalised.

1.2. The delay in delivering the ruling is regretted.

2.0. BACKGROUND

2.1. The applicants, a group of 35 settlers, had sometime around 1978, been settled by the Government of the Republic of Zambia in a village settlement scheme known as Mugoto Naluama Resettlement Scheme. This was part of the Government's implementation of the post-independence agricultural land redistribution policy.

2.2. The land in question had previously been repossessed by the Government from an absentee landlord. It was zoned into three, namely, residential, agricultural and communal grazing, before being allocated to the applicants to use as designated.

- 2.3.** Although the applicants were not issued with any certificates of title, they believed that the grant to them of the land in the resettlement area by the Government was on a permanent basis. They held on to this belief until the second respondent, Chikankata District Council, took over some of the resettlement land from them.
- 2.4.** Angered by that development, the settlers took out an action in the High Court in 2013, seeking various relief. The High Court held that the settlers, had an equitable interest to use the communal grazing and residential land but the state remained the legal owner with an overriding interest. It dismissed the settlers' claim. It, however, held that the settlers were each entitled to 10 hectares of land and directed that they be issued with certificates of title to those portions of land.
- 2.5.** Dissatisfied with that outcome, the settlers appealed to the Court of Appeal on ten grounds. By its judgment of 30th August 2023, the Court of Appeal dismissed the appeal on all grounds.
- 2.6.** The settlers sought to appeal further to this court. To do so they needed to obtain leave, in obedience to section 13 of the

Court of Appeal Act. They applied to the Court of Appeal for such leave. On 27th March 2024 that court declined to grant the application. The settlers were unrelenting. They renewed the application before a single judge of this court on 9th April 2024.

2.7. The single judge of this court heard the renewed application. In his ruling dated 16th September 2024, he rejected the application. His reasons for doing so were that: (i) the intended appeal would be determining the rights of licensees against legal title holders; (ii) the intended appeal is of no wider public significance beyond the applicants' rights as residents of other settlement schemes may be under different conditions; and (iii) that the applicants have not demonstrated realistic prospects of success.

2.8. The applicants renewed the application for leave before the full court.

3.0. THE HEARING OF THE MOTION

3.1. The hearing of the motion by the full court took a more dramatic turn than we had anticipated. We asked Mr. Sianondo, learned

counsel for the applicants, whether the record of motion had been prepared in accordance with the rules. Counsel's response was that the record of motion reproduced all the documents that were before the single judge but included additional documents. He admitted that the documents from pages 3 to 17 of the record of motion were unnecessary though they were merely intended to introduce the actual motion documents.

- 3.2.** Counsel admitted that in terms of rule 48 of the Supreme Court Rules, only extra copies of the motion as presented before the single judge should have been filed. In consequence, all the other documents that graced the record of motion were unnecessary, nay irrelevant. He urged us to expunge from the record all documents that were not before the single judge so that we consider the motion as it was presented before the single judge.
- 3.3.** As there was no objection from the respondents' counsel, we expunged the documents and heard the application.

4.0. THE ARGUMENTS ON THE MOTION

- 4.1.** Mr. Sianondo submitted that the intended appeal raises a point of law of public importance. The question he thought deserves consideration by this court on appeal is whether the settlers who were given land to live on permanently held that land as state land or as customary land, bearing in mind the findings of the Sakala Commission that the land was held on a village-based basis.
- 4.2.** This question for consideration is significant, according to counsel, because the single judge treated the settlers as licensees'. The Government, submitted Mr. Sianondo, continues to establish settlement schemes with the potential that similar issues may arise.
- 4.3.** Pointing to a passage in the record of motion, counsel stated that 15 resettlement schemes in 8 provinces have thus far been created. The question, according to counsel, is how these settlers are to be treated when they are given land the way the applicants were given? The repercussions of a decision on

appeal will thus go beyond the settlers of Mugoto Naluama Resettlement Scheme.

- 4.4. Counsel submitted that the foregoing considerations not only raise a point of law of public importance but also constitute compelling reasons for the appeal to be heard. They also give the intended appeal sufficient prospects of success.
- 4.5. Mrs. Simachela, learned counsel for the first respondent, referred to the arguments she made before the single judge. She stressed that the application for leave to appeal is premised on section 13(3) of the Court of Appeal Act.
- 4.6. Pointing to each of the proposed grounds of appeal, the learned counsel submitted that based on the substance of those proposed grounds of appeal, the applicants' contention that they raised a 'point of law of public importance' and have 'reasonable prospects of success' and that there are 'compelling reasons,' cannot reasonably be sustained.
- 4.7. According to Mrs. Simachela, a perusal of the draft grounds of appeal shows that the applicants' grievance with the judgment of the Court of Appeal stems from findings of fact. On this score

alone the proposed appeal does not muster the necessary threshold, particularly that of a point of law of public importance.

- 4.8. Additionally, in her view, the issues raised in the proposed appeal are peculiar to Mugoto and Naluama settlers and will have no wider public appeal or interest.
- 4.9. On the prospect of success, the learned counsel submitted that there being no point of law of public importance raised it would be moot to go into the prospects of success. She referred to our decision in **Bidvest Foods & Others v. CAA Import & Export Ltd⁽¹⁾** where we observed that prospects of success must be real rather than fanciful.
- 4.10. The gist of Mrs. Simachela's submissions was that none of the proposed grounds of appeal meets any of the threshold for the grant of leave to appeal as set out in section 13 of the Court of Appeal Act and therefore, that the application must be dismissed for lacking merit.
- 4.11. For her part, Ms. Katolo, counsel for the second respondent, submitted that she did not respond to the arguments advanced

before the single judge owing to a lapse in time. She accordingly was not intent on venturing to respond in the renewed application hearing.

5.0. ANALYSIS AND DECISION

- 5.1.** We have carefully considered the arguments of counsel. Section 13(3) of the Court of appeal Act, setting out the conditions under which leave to appeal must be granted, has been a subject of repeated explanation by this court. Suffice it to say that in the case of **Bidvest Foods & Others v. CAA Import & Export Ltd⁽¹⁾** we extensively considered the various aspects of section 13(3). The arguments require neither rehashing nor rendition.
- 5.2.** The applicants have contended through their counsel that the intended appeal raises a point of law of public importance, that point of law being the nature of rights acquired by settlers in a resettlement scheme. On behalf of the respondent, the contention was that the intended appeal did not raise any point of law. It rather raised factual issues only.
- 5.3.** Our view is that to question the nature of a right that one has in land is to raise a legal point rather than a factual issue. In

the present case, we agree with Mr. Sianondo when he submits that the settlers are raising a point of law when they question the kind of right they acquired in the land that they were given in the resettlement scheme in Mugoto Naluama. The question, however, remains whether that point of law is one of public importance.

- 5.4. In **Kekelwa Samuel Kongwa v. Meamui Georgina Kongwa**⁽²⁾ a single judge of this court considered what a point of law of public importance is and stated as follows:

For a legal question to be treated as a point of law of public importance, it must have a public or general character rather than one that merely affects the private rights or interests of the parties to a particular dispute. The legal point in issue should relate to widespread concern in the body politic the determination of which should naturally have effect beyond the private interests of the parties to the appeal.

- 5.5. Mr. Sianondo submitted that the question that falls to be determined is one of broad public interest because it will affect others that are bound to be given land in resettlement areas. He alluded to the fact that no less than 15 resettlement schemes have already been established by the Government in 8 provinces.

- 5.6. When we stated in **Bidvest**⁽¹⁾ that a point of law of public importance is one that transcends the interests of the immediate parties to the action and must be of concern to the broader public, we meant real interest, existing not non-existent, or speculative interest or concern. For future interests, it must be probable not fantastic.
- 5.7. Mr. Sianondo submitted that there are at least 15 resettlement schemes set out but did not explain whether the problem of defining the nature of land rights has affected those schemes, or was likely to be an issue for consideration. In the circumstances, we are inclined to accept the position of the single judge that each resettlement will have its own peculiar issues.
- 5.8. The current dispute and the issues it raises are so fact-specific, making it unlikely that a similar set of circumstances will arise and this explains why in the 15 instances of resettlement, similar issues have not arisen, or at least given rise to any dispute - deserving judicial interpretation.

5.9. In any case, the rights to land are closely attached to the land tenure prevailing over the land in dispute. Where the land alienated is customary the rights attaching to landholders in that system will prevail. If land is given in a leasehold area, the mode of conveyance will determine whether the holder is a licensee or is a beneficial owner. We do not from this perspective consider that the intended appeal raises any compelling legal issues that would warrant consideration by this court.

5.10. The intended appeal presents no reasonable prospects of success. We entirely agree with the single judge's reasoning which we do not wish to repeat.

5.11. The motion is without merit and we dismiss it accordingly. Costs shall follow the event. They are to be taxed if not agreed.


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Mumba Malila
CHIEF JUSTICE


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R. M. C. Kaoma
SUPREME COURT JUDGE