

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2020/HP/0914

BETWEEN:



THE DIRECTOR OF NATIONAL PARKS AND WILDLIFE

EX-PARTE

KIAMBI SAFARIS LIMITED

AND

CHONGWE RIVER LODGE LIMITED

**Before the Honourable Lady Justice Ms. S. Chocho, on 15th September, 2025 in
Chambers.**

For the Applicants:

*Mr. R Peterson and Mr. M. Malambo of Messrs Howard,
Marietta and Peterson Legal practitioners.*

For the Respondent:

*Ms. SK Mofya and Mrs. N. Nkazi – Mbao (Senior State
Advocates) of Messrs Attorney General's Chambers.*

JUDGMENT

Cases referred to:

- 1. Chiluba V. The Attorney General 2003 ZR 153.**
- 2. Chief Constable of North Wales Police and Evans (1982) IWLR 1155, Roy Clarke V. The Attorney General (2004) ZR 297.**
- 3. Derrick Chitala (Secretary General of the Zambia Democratic Congress) Vs. The Attorney General.**
- 4. North-Western Energy V. Energy Regulation Board.**

Legislations referred to:

1. ***Order 53 Rule 3 of the Rules of the Supreme Court 1965 (White Book).***
2. ***Order 53/14/Rules of the Supreme Court 1999 Edition (White Book).***
3. ***Section 7 and 54 of the Zambia Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
4. ***Gazette Notice No. 334 of 1998 of the Finance (Control and Management) Act No. 74 of 1969 of the Laws of Zambia.***
5. ***Public Finance Act No. 15 of 2004 of the Laws of Zambia.***
6. ***Section 28 (5) of the Zambia Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
7. ***Section 28 (2) of the Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
8. ***Section 5 (2) of the Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
9. ***Section 7 (1) of the Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
10. ***Section 7 (2) of the Wildlife Act No. 14 of 2015 of the Laws of Zambia.***
11. ***Section 7 (6) of the Wildlife Act No. 14 of 2015 of the Laws of Zambia.***

1. **INTRODUCTION AND BACKGROUND**

- 1.1. This Judgment is in respect of the Applicants' action commenced by way of Originating Summons dated October 8th, 2020. The application was complete with affidavits verifying facts set out in the Notice.
- 1.2. The process of Judicial Review was filed pursuant to ***Order 53 Rule 3 of the Rules of the Supreme Court of England 1965 (White Book)***. The Applicants seek an Order of Certiorari for the purpose of quashing the decision of the Director of the National Parks and Wildlife (Director) for the revocation of the Applicant's License or to stop the Applicants from conducting any Tourism activities in Chiawa Game Management Area for the decision being illegal.
- 1.3. The Applicants were granted leave to apply for Judicial Review on October 1st, 2020, which leave also operated as a stay of the decision of the Director to suspend the tourism licenses pending full determination of the matter/further order or direction of the Court.
- 1.4. For the avoidance of doubt, I shall reproduce the Applicant's claims verbatim as below:
 - i. A declaration that the Respondent has no authority under the Zambia Wildlife Act No. 14 of 2015 or any other law to make the decision, to which this application relates;
 - ii. An Order of Certiorari to remove the said decision, to which this application relates, into the High Court for the purpose of quashing it;

- iii. A hearing of this application before the Judge pursuant to Order 53 Rule 3 (3) of the Rules of the Supreme Court;
- iv. If leave to apply is granted, a direction that such grant should operate as a stay of the decision, to which this application relates, pursuant to Rule 3 (10) (a) of Order 53 of the Rules of the Supreme Court;
- v. If leave to apply is granted, a direction that the hearing of the application for Judicial Review be expedited;
- vi. An Order for costs; and
- vii. And that all necessary and consequential directions be given.

2. AFFIDAVIT EVIDENCE

- 2.1. The Applicants rely on the averments in the affidavits deposed to by Robert Geldenhuys and Christiaan Henry Liebenberg.
- 2.2. The gist of the averments is that the Applicants are holders of Certificates of Titles over the land in the Chiawa Game Management Area.
- 2.3. The Applicants aver that between the period June 14th, 2018 and September 3rd, 2020 various correspondence was exchanged between the Applicants and Respondent. The correspondence revolves around dispute over payment of Land User Fees in Chiawa Game Management Area.
- 2.4. The Applicants further aver that by letter dated August 27th, 2020 the Respondent communicated his decision to revoke any prior authority granted to the Applicants to operate in Chiawa Game Management Area. Thereby stopping the Applicants from conducting Tourism activities.

- 2.5. The Applicants aver that the Respondent's action is illegal.
- 2.6. In opposition, the Respondent filed an Affidavit dated June 4th, 2024, sworn by one Richard Mwamba, Assistant Director of Commercial Services in the Department of the National Parks and Wildlife under the Ministry of Tourism.
- 2.7. The Respondent avers that in order to operate a Tourism facility in the Chiawa Game Management Area, a Tourism Operator is obliged and mandated to pay Land User Fees to the Government and the Local Community. The Court was referred to Gazette Notice No. 334 of 1998 providing for the said fees.
- 2.8. The Respondent avers that the Applicants in defiance of the said Gazette Notice No. 334 of 1998, operate and continue to operate Tourism facilities in Chiawa Game Management Area without paying the Non-consumptive Wildlife User Fees.
- 2.9. The Respondent further avers that the Applicants were engaged on several occasions to make payments of the fees and settle the outstanding Non-consumptive Wildlife User Fees.
- 2.10. The Respondent avers that subsequent to the non-payment of the Non-consumptive Wildlife User Fees to the Government and Local Community, on/around August 27th, 2020, the Ministry of Tourism through the Department of National Parks and Wildlife revoked any prior authority granted to the Applicants to conduct any Tourism activities in Chiawa Game Management Area until the matters between the Parties are resolved.
- 2.11. The Respondent avers that the Gazette Notice No. 334 of 1998 and the subsequent Non-consumptive Wildlife User Fees are

legitimately based on the provision of the law and anyone not in conformity is breaching the law and depriving the Government of the much-needed revenue.

3. **THE LAW, ARGUMENTS AND SUBMISSIONS**

- 3.1. I have had occasion to review and consider the application having heard the Counsel for the Applicants and Respondent, read the Parties' Affidavit Evidence, Skeleton Arguments, List of Authorities and Submissions. I am thankful for the submissions, I shall not reproduce the same, suffice it to state that I have duly considered all even though I may not make direct reference to the same in this my Judgment.
- 3.2. This Court has jurisdiction to grant the Orders as requested for by the Applicants. The law is clear on the fact that what is subject to that jurisdiction is the decision-making process and not the merits of the decision.
- 3.3. The law on Judicial Review is well settled and there is a plethora of authorities including ***Order 53/14/Rules of the Supreme Court 1999 Edition (White Book), Chiluba V. The Attorney General 2003 ZR 153¹, Chief Constable of North Wales Police and Evans (1982) IWLR 1155, Roy Clarke V. The Attorney General (2004) ZR 297².***
- 3.4. The Applicants submits that the main issue is to deal with the manner in which the Director arrived at his decision and demonstrates an illegality therein. The Applicants submits that the Director does not have the relevant statutory authority to

suspend/revoke a license/authority from operating in Chaiwa Game Management Area.

- 3.5. The authority to revoke/suspend a license lies with the Wildlife Management Licensing Committee and not as a singular authority making reference to **Section 7 and 54 of the Zambia Wildlife Act**.
- 3.6. The Applicant submits that the Director places reliance on **Gazette Notice No. 334 of 1998 of the Finance (Control and Management) Act No. 74 of 1969 of the Laws of Zambia** which the Applicants contends is repealed and replaced by **Public Finance Act No. 15 of 2004 of the Laws of Zambia**.
- 3.7. The Applicants further submits that they are exempted from the provisions of **Section 28 (5) of the Zambia Wildlife Act** which section the Director referred to in his decision to suspend or terminate license. Reference is made to **Section 28 (2) of the Wildlife Act** provides that;

“Any land within any declared or extended Game Management Area that is held under a leasehold title shall not, except with the written consent of the occupier, be affected by the declaration or extension made under subsection (1) and shall be deemed to be excluded from it.”

- 3.8. The Respondent argues that the Director possess the authority to revoke/suspend a license to conduct Tourism activities in Chiawa Game Management Area. Such authority exercised there are reasonable cause or grounds, placing reliance in **Section 5 (2) of the Wildlife Act No. 14 of 2015** which provides;

“Subject to the other provisions of this Act, the functions of the Department are to – (a) control, manage, conserve, protect and administer National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas and coordinate activities in these areas.”

- 3.9. The Respondent submits that there was reasonable grounds for the Director to revoke the Applicant’s authority to operate until the matters between the Parties are resolved.
- 3.10. The Respondent further submits that where a Party is aggrieved with decision of the Director/Committee, an appeal lies to the Minister.

4. COURT’S DECISION

- 4.1. The clear and undisputed fact is that the Applicants are holders of the Certificate of Title for the following Lots;
- a. Lot No. 11843/M under Certificate of Title No. 26830.
 - b. Lot No. 9173/M under Certificate of Title No. 18192.
 - c. Lot No. 19911/M under Certificate of Title No. 74717.
 - d. Lot No. 21983/M under Certificate of Title No. 18826.
- 4.2. It is also not disputed that the Respondent through the Director of the Department of National Parks and Wildlife Ministry of Tourism and Arts (as it was then called) by letter dated August 27th, 2020 did Revoke any prior authority granted to the Applicants to operate in Chiawa Game Management Area until the matter of User Fees is resolved to the satisfaction of all the Parties involved.

- 4.3. The Applicants seeks reliefs as reproduced under Paragraph 1.4 above.
- 4.4. From my understanding of the pleadings, the question to be answered is whether/not the decision made by the Director is subject to the Judicial Review.
- 4.5. As rightly stated by the Parties it is trite law that this Court under Judicial Review proceedings, is not concerned with the merits of the decision but rather with the decision-making process so that individuals are given fair treatment by the authorities to which they have been subjected. The celebrated case of ***Derrick Chitala (Secretary General of the Zambia Democratic Congress) Vs. The Attorney General***³ refers.
- 4.6. The Respondent argues that the Director derives/derived his authority to make the decision from ***Section 5 (2) of the Zambia Wildlife Act No. 14 of 2015 (hereinafter referred to as the Act)***.
- 4.7. The provisions of ***Section 5 (2) of 'The Act'*** are reproduced here under;

“(2) Subject to the other provisions of this Act, the functions of the Department are to —

(a) control, manage, conserve, protect and administer National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas and coordinate activities in these areas;

(b) in partnership with local communities, share the

- responsibilities of management in Community Partnership Parks and Game Management Areas;*
- (c) adopt methods to ensure the sustainability, conservation and preservation in the natural state of eco-systems and biological diversity in the National Parks, Community Partnerships Parks, bird and wildlife sanctuaries and Game Management Areas;*
- (d) encourage the general development of National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas, including the development of facilities and amenities within these areas in accordance with the management plans for those areas;*
- (e) sensitise and educate the general public on the necessity of wildlife conservation and the importance of wildlife to foster appreciation of the economic and aesthetic value of wildlife as natural assets;*
- (f) undertake measures to ensure the proper balance between the sustainable use of wildlife and the management of eco-systems in National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas;*
- (g) enhance the economic and social well-being of local communities in or around Community Partnership Parks and Game Management Areas;*
- (h) prepare and implement management plans for*

National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas in consultation with relevant stakeholders;

- (i) issue licences, certificates and permits under this Act;*
- (j) in partnership with local communities, grant hunting concessions to hunting outfitters and non-consumptive tourism operators in Game Management Areas;*
- (k) assist and advise the boards in the management of human and natural resources in Game Management Areas and open areas which fall under their jurisdiction;*
- (l) formulate and advise the Minister on the regulations for the preparation and implementation of general management plans for National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas;*
- (m) ensure the systematic management of financial, human and natural resources for wildlife conservation so that the abundance and diversity of species is maintained at optimum level;*
- (n) advise the Minister on the regulations required to conserve, protect and manage wildlife in National Parks, Community Partnership Parks, bird and wildlife sanctuaries, Game Management Areas, open areas and private wildlife estates;*

- (o) pay out monies into a fund established by a board and regulate the use of the funds from profits accrued from the revenues payable under this Act in respect of licences, certificates and permits issued, hunting concessions granted and services rendered from the use of wildlife within an area of a board as the Minister may prescribe, in consultation with the Director;*
- (p) regulate trophy hunting operations and non-consumptive tourism operations in Game Management Areas;*
- (q) grant and regulate tourism block concessions in tourism blocks;*
- (r) co-operate with persons and organisations with an interest in the activities of the Department and are prepared to assist the Department on a voluntary basis and comply with the requirements set by the Ministry;*
- (s) regulate private wildlife estates;*
- (t) carry out commercial activities related to consumptive and non-consumptive tourism; and*
- (u) carry out any other activities relating to wildlife conservation and management that are necessary to the performance of its functions under this Act.”*

4.8. I must restate for the record that this Court’s mandate is not concerned with the merit or the ‘why’, for the Respondent’s decision, **BUT** whether or not the correct process/procedure was

followed and with the reasonableness/in this case legality of the same.

I shall therefore not comment on the issue/ arguments as surrounds the validity/otherwise of Gazette Notice No. 334 of 1998. Moreso that the Respondent makes reference to 'The Act'.

- 4.9. In the case of ***North-Western Energy V. Energy Regulation Board***⁴ wherein the Court observed as follows:

“It is trite knowledge that following the celebrated statement of Lord Diplock in Council of Civil Service Unions and Others V. Minister for the Civil Service, Judicial Review has developed to a stage today where administrative actions are conveniently reviewed under three heads or grounds. Namely, illegality, procedural impropriety, unreasonableness, “or irrationality”.

- 4.10. The contents of ***Section 5 (2) of the Act*** that the Respondent relies on and cites in it's letter revoking/suspending the Applicants licenses, is unambiguous and clearly deals with the establishment of the Department of the National Parks and Wildlife and proceeds to detail the functions of the said Department. The functions are subject to other provisions of 'The Act'.

- 4.11. ***Section 5 (2) (i)*** provides;

“Issue licences, certificates and permits under this Act.”

My considered view is that the Act then provides for the how/who undertakes the issuance of licences, certificates and permits. **Section 7 (1)** of the Acts provides;

“(1) There is established the Wildlife Management Licensing Committee which shall—

- (a) consider applications for licences, permits and certificates and grant, renew or refuse to grant or renew licences, permits and certificates;***
- (b) terminate, suspend or revoke licences, permits and certificates;***
- (c) amend the terms and conditions of licences, permits and certificates;***
- (d) perform the functions of the Department relating to licensing;***
- (e) advise the Minister, the Permanent Secretary and the Director on matters relating to its functions under this Act; and***
- (f) perform any other function conferred on the Committee by or under this Act.”***

Section 7 (2) provides for members of the Wildlife Management Licensing Committee of which the Director is listed as ex-officio member.

It is clear in my mind that the authority to terminate, suspend or revoke licenses, permits and certificates lies with the Wildlife Management Licensing Committee.

Section 7 (6) provides;

“The Committee may delegate its functions to the Director, an Assistant Director or wildlife officer on such terms and conditions as it may determine.”

4.12. The Respondent has not shown to this Court that the Wildlife Management Licensing Committee met to consider and decide the Applicant's case and suspend/revoke their licenses/permits. Schedule 1 of the Act is clear on conduct of proceedings of the Wildlife Management Committee. The Respondent has failed/neglected to show the minutes leading to the Director's communique as sought to suspend/revoke the Applicants' licences/permit/previous authorizations.

4.13. In view of 4.8 to 4.11 above, I find that the Respondent's action was/is illegal and unreasonable. The Director exceeded his mandate in deciding as he did.

5. CONCLUSION

- 5.1. For the foregoing reasons, I hereby Order that the application for an Order for Certiorari quashing the decision of the Director of National Parks and Wildlife under the Ministry of Tourism, as suspended/revokes the Applicants' license/authority to operate, succeeds.
- 5.2. I further Order and declare that the Respondent's decision as decides to revoke/suspend licences is ultra vires the Act. The Director without delegated power from the Wildlife Management Licensing Committee has no authority to decide as he did.
- 5.3. The legal costs for and incidental to this cause are awarded to the Applicants to be taxed in default of agreement.
- 5.4. Leave to Appeal is granted.

Delivered at Lusaka on the 15th day of September, 2025.



**S. CHOCHO
JUDGE**

