

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

2022/HP/0627

BETWEEN:

LUSAKA CITY COUNCIL

AND

JULDAN MOTORS LIMITED



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 13th DAY OF
NOVEMBER, 2024.**

For the Plaintiff : Mr. A. Nsama and Mr. N Makunku, In House Counsel

For the Defendant : Mr. A. Mbambara and Mrs. A. Ngunga, Messrs A Mbambara
Legal Practitioners

J U D G M E N T

CASES REFERRED TO:

1. *Charliewell Kakweni Chunga v Lusaka City Council 1981 ZR 54*
2. *Wilson Masauso Zulu v Avondale Housing Project 1982 ZR*
3. *Kankombe and others v Chilanga Cement Plc SCZ No 30 of 2002*
4. *Re H (Minors) 1996 AC 563 at 586*

LEGISLATION REFERRED TO:

1. *The Market and Bus Stations Act No 7 of 2007*
2. *The Local Government Act No 2 of 2019*

1. INTRODUCTION

1.1 The Lusaka City Council, as Plaintiff, commenced this action on 25th April, 2022, by Writ of Summons which was accompanied by a statement of claim and the other documents, claiming:

- i. *A declaration that Juldan Motors Limited's actions were in violation of the laws of Zambia and were illegal;*
- ii. *An Order that Juldan Motors Limited pays the uncollected bus fees for the period 2020 to 2022 amounting to the sum of ZMW299, 712.00;*
- iii. *Interest for the time wasted;*
- iv. *Costs;*
- v. *Any other relief that the Court may deem fit.*

2. STATEMENT OF CLAIM

- 2.1 In setting out the basis for the reliefs that are claimed, the statement of claim shows that the Lusaka City Council stated that it is a body corporate, that is registered under the ***Local Government Act No 2 of 2019 of the Laws of Zambia***. The further averment was that it is in charge of, mandated to maintain and conduct or manage bus stations and markets in accordance with the ***Markets and Bus Stations Act No 7 of 2007***.
- 2.2 It was contended that Juldan Motors Limited is a bus operator, and has its' offices along Freedom Way, and it operates on the routes to Johannesburg, Lundazi and Mporokoso.
- 2.3 Further averment was made that on dates unknown, between the period 2020 and 25th March, 2022, Juldan Motors Limited acting as a bus operator, did load from their offices which are situated along Freedom Way, for their buses which went on the Johannesburg, Lundazi and Mporokoso routes. However, the offices for Juldan Motors

Limited which are situated along Freedom Way, have not been established as a bus station. Therefore, the acts were contrary to the law.

- 2.4 Allegation was made, that Juldan Motors Limited diverted buses from the established bus stations, thereby depriving Lusaka City Council of the collection of revenue from the three bus routes, being Johannesburg, Mporokoso and Lundazi, and crippling the said Lusaka City Council.
- 2.5 Assertion was made that on or about 25th March, 2022, Lusaka City Council issued a demand letter to Juldan Motors Limited for the recovery of uncollected bus fees and the penalty for loading buses at its' offices along Freedom Way for the routes Johannesburg, Mporokoso and Lundazi.
- 2.6 The amounts claimed were stated as follows:
 - i. Year 2020-K108, 000.00
 - ii. Year 2021-K108, 000.00
 - iii. Year 2022-K267, 600.00
 - iv. 12% Penalty (Based on average inflation rate)- K32, 112.00
- 2.7 However, despite the demand notice, Juldan Motors Limited had not responded to the same, and as a result, Lusaka City Council had suffered loss and inconvenience.

3. DEFENCE

- 3.1 In the amended defence which was filed on 21st October, 2022, Juldan Motors Limited admitted that is a bus operator with offices along Freedom Way, and that it operates on the Johannesburg, Lundazi and Mporokoso routes. It was

denied that it loaded buses from its' offices along Freedom Way as alleged, but rather that its' offices along Freedom Way were used to load and offload goods for passengers. The addition was that some passengers would insist on being present when their goods were being either loaded or offloaded.

- 3.2 The defence was further that Lusaka City Council acquiesced to this conduct by accepting payments from Juldan Motors Limited for the premises. It was also contended that Juldan Motors Limited holds a certificate of title for the premises, and it remits all the necessary levies and rates to the Lusaka City Council for the said premises.
- 3.3 Denial was made to the assertion that Juldan Motors Limited's offices along Freedom Way had never been established as a bus station, and therefore, it was acting contrary to the law. The contention was that inspectors from the Lusaka City Council would inspect the premises.
- 3.4 It was further denied that Juldan Motors Limited would divert its' buses from the established bus stations, thereby depriving and crippling Lusaka City Council of collection of the said revenue. The defence was that Juldan Motors Limited had been making payments to the Lusaka City Council for every bus load every single day, and for use of its' reserved bay to load passengers and their goods.
- 3.5 Further assertion was made that most bus stations and markets were under the control of political cadres who collected and allegedly deprived Lusaka City Council of

revenue collection from bus stations and markets. The assertion relating to the issuance of a demand letter to pay the uncollected bus fees and the penalty for loading buses at their offices for the Johannesburg, Mporokoso and Lundazi routes was denied, the assertion being that the same was made with malice and bias against Juldan Motors Limited.

- 3.6 It was also denied that Lusaka City Council had suffered loss and severe inconvenience.

4. REPLY

- 4.1 In the amended reply to the amended defence which filed on 10th November, 2022, Lusaka City Council maintained that Juldan Motors Limited operated and loaded from its' offices along Freedom Way for the Johannesburg, Mporokoso and Lundazi routes, instead of loading and operating from the lawfully established and designated bus stations.
- 4.2 The reply was further that Lusaka City Council had not been collecting levies from the premises as a bus station, but rather it had been collecting levies relating to refuse and property rates.
- 4.3 The contention was that having a certificate of title did not allow one to operate a bus station, as that is the preserve of the Local Authority.

5. EVIDENCE LED AT TRIAL

- 5.1 At trial, the Lusaka City Council called Two (2) witnesses as did Juldan Motors Limited.

PW1-KENNEDY CHANSA

- 5.2 This witness produced his witness statement as his testimony before the Court. His evidence as contained in that witness statement, was that he was the Assistant Operations Manager at Intercity Bus Terminus. Kennedy Chansa alleged that Juldan Motors Limited began loading passengers from the car park along Freedom Way sometime in 2020.
- 5.3 It was also his testimony that his office engaged Juldan Motors Limited sometime in 2021, who advised that they would revert after they tabled the issue with the Chairperson of Juldan Motors Limited. Then on or about 25th March, 2022, Lusaka City Council wrote to Juldan Motors Limited demanding payment of K299, 712.00, which demand letter was at pages 2-3 of Lusaka City Council's bundle of documents.
- 5.4 Further testimony was given, that at a meeting which was held, Lusaka City Council reluctantly agreed to send its' officers to the Juldan Motors Limited's car park along Freedom Way, so that they could be collecting revenue from there, as Lusaka City Council was losing money. Thus, cashiers from the Lusaka City Council were on the ground and were collecting revenue from Juldan Motors Limited's car park, instead of the bus station that is designated for the said purpose.

CROSS EXAMINATION OF KENNEDY CHANSA

- 5.5 It was Kennedy Chansa's evidence in cross examination, that he worked as Assistant Manager under Housing and

Marketing. He agreed that the property in issue belongs to Juldan Motors Limited. His evidence was that he would not know, whether in 2020, Lusaka City Council collected levies from Juldan Motors Limited. When cross examined further, Kennedy Chansa testified that he could not dispute as he was not there.

- 5.6 He stated that a breakdown of the amount claimed could be found even though at the time of his testimony, he had no proof of the same. Kennedy Chansa's continued testimony in cross examination, was that he was not aware whether the premises for Juldan Motors Limited was designated as a bus station. It was his evidence that the said premises are not gazetted as a bus station.
- 5.7 The testimony that was further given, was that Lusaka City Council is mandated by law to collect levies from designated bus stations, and where the premises are not gazetted as such, levies cannot be collected from there.
- 5.8 On being referred to paragraph 8 of his witness statement, Kennedy Chansa testified that it stated that officers were sent to the Freedom Way car park to collect revenue, and that in paragraph 10 of the said witness statement, his evidence was that cashiers from Lusaka City Council were on the ground collecting revenue at the car park instead of the designated bus stations.
- 5.9 He agreed that his witness statement had not specified a date when Juldan Motors Limited started loading passengers at its' car park in 2020, but Kennedy Chansa's contention

was that this went on up 2021 to 2022. Further in cross examination, Kennedy Chansa testified that a list of buses was given to the Lusaka City Council by the Managers at Juldan Motors Limited. He admitted that the said list was not before, but he testified that he could bring it to Court.

5.10 Kennedy Chansa testified that he was unaware that party cadres used to collect money at bus stations. It was also his evidence, that he agreed with paragraph 6 of the statement of claim, which stated that a demand letter was sent to Juldan Motors Limited for the payment of K299, 712.00, but his position was that he did not know how much of that amount constituted a penalty.

5.11 It was stated, when Kennedy Chansa, was referred to ***Section 6 of the Market and Bus Stations Act No 7 of 2007***, which was produced at page 3 of Lusaka City Council's bundle of documents, that Juldan Motors Limited had not been convicted of any offence, and that he did not see that a penalty fee was applicable.

RE-EXAMINATION OF KENNEDY CHANSA

5.12 The evidence that Kennedy Chansa gave in re-examination, was that page 2 of Lusaka City Council's bundle of documents was a schedule for the Juldan Motors Limited's buses in town, whose cost came to K299, 712.00 for the period 2020-2022, which was the period of the claim.

PW2-MOSES PHIRI

5.13 The last witness who was called by the Lusaka City Council was Moses Phiri, an Accountant at Intercity Bus Terminus.

The testimony that this witness gave, was that the problem began in 2020, and in 2021, they engaged the Manager of Juldan Motors Limited. Then on 25th March, 2022, a demand letter was written to Juldan Motors Limited claiming unpaid revenue for the period 2020 to March 2022.

- 5.14 Moses Phiri testified that there was a picture in the Lusaka City Council's bundle of documents, which depicted the illegal station at Juldan Motors Limited's car park. It was stated that on being written to, Juldan Motors Limited accepted liability, save for the amount that was being claimed from them.
- 5.15 It was his evidence that he had on several occasions, witnessed passengers who were boarding buses from the Juldan Motors Limited's car park on Freedom Way, to go to Johannesburg, Mporokoso and Lundazi.
- 5.16 In concluding his testimony, Moses Phiri testified that Lusaka City Council lost about K8, 000.00 a week from the period 2020 to 2022.

CROSS EXAMINATION OF MOSES PHIRI

- 5.17 When cross examined, Moses Phiri on being referred to paragraph 5 of his witness statement, testified that the said paragraph stated that there was an illegal station. His position was that it was an illegal station, as no Council personnel were working there. Moses Phiri also testified that he did not know that the only thing that the Lusaka City Council could do, was to prosecute anyone who operated an illegal bus station, as he worked in Accounts.

- 5.18 He testified that page 1 of Lusaka City Council's bundle of documents was a picture of the illegal bus station. While testifying that the said picture was taken in January 2023, Moses Phiri's evidence was that it was taken in town, and the assumption was that it was of a bus that was loading.
- 5.19 As regards paragraph 6 of his witness statement, Moses Phiri's testimony was that it stated that Juldan Motors Limited accepted liability. When cross examined further, he told the Court that he had no proof of the same. It was also his evidence, that Juldan Motors Limited disputed the amount that was claimed. He was unaware of who owns the premises on Freedom Way, but stated that he could not dispute that the premises belonged to Juldan Motors Limited.
- 5.20 Moses Phiri testified that they claimed 12% as a penalty, as they lost revenue. He agreed that they asked for interest on the money that was claimed, and that the Act, whose name he did not know, authorised them to charge interest.
- 5.21 When referred to **Section 6 of the Market and Bus Stations Act**, which was at page 3 of the Lusaka City Council's bundle of documents, Moses Phiri's testimony was that he did not understand the provisions of the said Section. He agreed that Juldan Motors Limited had not been convicted of any offence.
- 5.22 His evidence, when he was referred to paragraph 4 of the reply at page 11 of Juldan Motors Limited's bundle of documents, was that he had no idea about the handover.

Moses Phiri testified that page 1 of Juldan Motors Limited's bundle of documents was a certificate of title in its' name for the property, and that page 12 was a tax invoice for K12, 000.00 which was paid to the Lusaka City Council for the period January to June 2020.

5.23 He further agreed that page 8 of the said bundle of documents was an invoice for 2020, in the sum of K12, 000.00 as well as page 9. Moses Phiri stated that page 10 was a payment for rates, while page 11 was payment of K12, 000.00 from July to December, 2021. He also testified that page 12 was a payment for property rates from January to June 2022, and that page 14 was also a payment for rates.

5.24 Moses Phiri stated that page 16 was also a payment from Juldan Motors Limited. He maintained that he was unaware, that party cadres started running markets and bus stops.

RE-EXAMINATION OF MOSES PHIRI

5.25 Moses Phiri clarified in re-examination, that the bus station on Freedom Way was illegal, as there was no Council officer there to collect the gate fees. He stated that at page 8 of Juldan Motors Limited's bundle of documents, was a receipt for slots for parking in town.

5.26 That marked the close of the case for Lusaka City Council.

DW1-CHARLES NGANDU

5.27 The first witness for the defence was Charles Ngandu, an Accountant at Juldan Motors Limited. He produced his witness statement as his testimony. Charles Ngandu testified in that witness statement, that Lusaka City Council

is a body corporate that is established under the **Local Government Act No 2 of 2019**, with its' mandate including, being in charge of, maintaining, conducting and managing bus stations and markets, in accordance with the **Markets and Bus Stations Act No 7 of 2007**.

- 5.28 He further testified that Juldan Motors Limited is a bus operator that has offices on Freedom Way, and that its' buses serviced the Johannesburg, Lundazi and Mporokoso routes. Charles Ngandu's continued testimony, was that he was employed as an Accountant for Juldan Motors Limited in February, 2015, and he had perused the files for Juldan Motors Limited.
- 5.29 His evidence was that prior to him joining Juldan Motors Limited, he worked for UBZ, which used to operate a bus station on Freedom Way, where passengers used to load and offload. He added that the said premises were designated as a bus station by the Lusaka City Council.
- 5.30 Charles Ngandu told the Court that when Juldan Motors Limited bought the land from UBZ, and the certificate of title was changed into its' name, no application was made to the Lusaka City Council for change of use of the land. It was stated that Juldan Motors Limited used the said premises to load and offload goods for passengers, and in that regard, it had been making periodic payments for the premises, and for each bus load, as evidenced from the receipts which were at pages 7-16 of Juldan Motors Limited's bundle of documents.

- 5.31 It was further his testimony, that passengers would be loaded at Intercity Bus Terminus, and Juldan Motors Limited would pay for each bus load, before it proceeded to Freedom Way to load or offload passenger's goods.
- 5.32 He denied the assertion that between 2020 and 2021, Juldan Motors Limited did not pay for bus loads to Johannesburg, Mporokoso and Lundazi. In justifying that position, Charles Ngandu explained that during that period, buses rarely travelled to Johannesburg, due to the COVID 19 pandemic, as South Africa was on lockdown, and passengers were not travelling to that country.
- 5.33 He stated that secondly, there was partial lockdown in the country and travelling was restricted. Then from 2021 to 25th March, 2022, for any bus load that was made by Juldan Motors Limited, the bus load fees were paid at Intercity Bus Terminus.
- 5.34 Charles Ngandu's testimony was also that during that period, most bus stations were under the control of political cadres who collected the fees, and they may have deprived the Lusaka City Council of revenue collection from the bus stations, and not Juldan Motors Limited.
- 5.35 His evidence was that inspectors from the Lusaka City Council had been inspecting the Juldan Motors Limited's premises, hence it was absurd to allege that Juldan Motors Limited had acted illegally, and that Lusaka City Council had been deprived of revenue collection, thereby crippling it.

5.36 The testimony that was further given was, that as evidenced by pages 7-16 of Juldan Motors Limited's bundle of documents, Lusaka City Council had been collecting revenue from Juldan Motors Limited. Therefore, any claims of liability were denied.

CROSS EXAMINATION OF CHARLES NGANDU

- 5.37 It was Charles Ngandu's evidence in cross examination, that the area on Freedom Way was designated as a bus station. He stated that he had no evidence to establish so. When referred to paragraph 6 of his witness statement, he testified that prior to Juldan Motors Limited going there, the people who operated from there, used it as a bus station. It was his testimony that Juldan Motors Limited did not apply to change the land use.
- 5.38 Further in cross examination, Charles Ngandu stated that during the COVID 19 lockdown, Juldan Motors Limited barely made trips to Lundazi, and he told the Court that there was a lockdown in Johannesburg. Charles Ngandu explained that they paid bus levies at Intercity Bus Terminus, and he agreed that cadres were not reported to the police for collecting levies at the bus stations, stating that it was difficult.
- 5.39 Nevertheless, he agreed that there is an office for the Lusaka City Council at Intercity Bus Terminus, and Charles Ngandu testified that Juldan Motors Limited paid revenue to the Lusaka City Council and the cadres. Agreement was made

that the cadres were not reported to the Manager at Intercity Bus Terminus.

- 5.40 Charles Ngandu also agreed that the receipts for the payments were not before Court. He testified that RPS, being Ronald Paul Sililo, was like Juldan Motors Limited, and it operated as a bus station. He stated that Juldan Motors Limited bought the land from the National Housing Authority, and it did not apply for change of use of the said land. It was agreed that the same did not mean that Juldan Motors Limited could operate the premises as a bus station.
- 5.41 Charles Ngandu's evidence was that he had no evidence to show that Intercity Bus Terminus was under the control of cadres. He maintained that passengers were loaded and offloaded from Intercity Bus Terminus, and that the receipts for the payments were at the office.
- 5.42 When referred to the receipts which were at pages 7-16 of Juldan Motors Limited's bundle of documents, Charles Ngandu agreed that those receipts showed that they were for parking space and not for loading fees.

RE-EXAMINATION OF CHARLES NGANDU

- 5.43 He testified in re-examination, that if they had reported the cadres, they would not have been allowed to load in full view of Council officers. Charles Ngandu stated that when RPS ran the premises after it bought it from UBZ, it was used as a bus station. He also clarified that they acquired the premises as tenants of the National Housing Authority from RPS. Then later, Juldan Motors Limited was offered the

premises to buy, and they did not apply for change of use of the premises.

5.44 Thus, they continued to park the buses there, before going to load passengers at Intercity Bus Terminus, and luggage for the passengers would also be stored there. He testified that the passengers would load their luggage there, and board the buses which would go to Intercity bus terminus to load other passengers before leaving for their destination.

5.45 Charles Ngandu further clarified that the receipts which were before Court related to use of the premises, being parking, and he also testified that they would pay rates to the Council as well. He ended by stating that the buses did not travel to Johannesburg.

DW2-BRIAN CHISENGA

5.46 The last witness who was called by Juldan Motors Limited was Brian Chisenga. He also produced his witness statement as his evidence. It was testified in that witness statement, that Brian Chisenga had worked for Juldan Motors Limited for over Fifteen (15) years, and that he worked as Operations Manager. He explained that he reported to the Chief Executive Officer, Mr. July Danobo.

5.47 Brian Chisenga further testified that his duties included overseeing the bus operations in Lusaka and beyond borders, as well as overseeing payments which were made to the relevant authorities, such as those which were at pages 7-16 of Juldan Motors Limited's bundle of documents.

- 5.48 He confirmed that the offices for Juldan Motors Limited are on Freedom Way, adding that passengers' goods were loaded and offloaded from there. It was stated that Juldan Motors Limited mostly operated from the Intercity Bus Terminus, where it had been making periodic payments for the premises, and for each bus load per day, as evidenced at pages 7-16 of Juldan Motors Limited's bundle of documents.
- 5.49 Brian Chisenga denied that from 2020 to 2021, Juldan Motors Limited did not pay for the bus routes to Johannesburg, Mporokoso and Lundazi, reiterating that during that period, buses rarely travelled to Johannesburg as there was the outbreak of COVID 19, and there was lockdown in South Africa, so passengers were not traveling to that country.
- 5.50 He also maintained that within the country, there was partial lockdown and travelling was restricted. Brian Chisenga further reiterated that from 2021 to 25th March, 2022, for any bus loads that Juldan Motors Limited made, the bus load fees were paid at Intercity Bus Terminus.
- 5.51 It was also his evidence, as pleaded in the defence, that most bus stations were under the control of political cadres who collected revenue, and they could therefore have deprived Lusaka City Council of the revenue from bus stations and not Juldan Motors Limited.
- 5.52 It was repeated as pleaded in the defence, that inspectors from Juldan Motors Limited carried out inspections at Juldan Motors Limited's premises, and therefore it was

absurd to allege that Juldan Motors Limited had acted illegally.

5.53 Brian Chisenga repeated that Lusaka City Council had been collecting revenue from Juldan Motors Limited, as evidenced at pages 7-16 of Juldan Motors Limited's of documents. With reference to page 1 of Juldan Motors Limited's bundle of documents, Brian Chisenga testified that it was the certificate of title for the premises.

5.54 He added that Juldan Motors Limited had been paying taxes, as seen at pages 1-16 of its' bundle of documents. The liability was denied on that basis.

CROSS EXAMINATION OF BRIAN CHISENGA

5.55 In cross examination, Brian Chisenga testified that Juldan Motors Limited operated mostly from Intercity Bus Terminus, and that it did not have any other place where it operated from. He testified, when referred to page 7 of Juldan Motors Limited's bundle of documents, that it was a reserved bay invoice. Further in cross examination, Brian Chisenga testified that the said invoice was not evidence of payment of the money that Lusaka City Council was claiming.

5.56 His position was that even for the period that was claimed, Juldan Motors Limited loaded from Intercity Bus Terminus, even though the proof of payment was not before Court. On being referred to page 10 of Juldan Motors Limited's bundle of documents, the testimony that Brian Chisenga gave, was that it was for payment of rates to the Lusaka City Council.

He maintained that the defence showed that political cadres, controlled bus stations.

5.57 It was agreed that there is an office for the Lusaka City Council at Intercity Bus Terminus, and Brian Chisenga maintained that Juldan Motors Limited paid revenue to the Lusaka City Council, and not to cadres, as shown at page 7 of Juldan Motors Limited's bundle of documents. He further testified that Juldan Motors Limited paid for loading and offloading at Freedom Way, and not at Intercity Bus Terminus.

RE-EXAMINATION OF BRIAN CHISENGA

5.58 In re-examination, Brian Chisenga clarified that they did not have evidence of payment, as the issue was about Freedom Way, and not Intercity Bus Terminus. He further stated that paragraph 4 of the reply showed that Lusaka City Council took over from people who were illegally running markets and bus stations. It was also clarified that page 7 of Juldan Motors Limited's bundle of documents, was a payment in cash.

5.59 That marked the close of the case for Juldan Motors Limited.

6. DECISION OF THIS COURT

6.1 I have considered the evidence and the submissions.

FACTS NOT IN ISSUE

6.2 It is common cause that the Lusaka City Council is a body corporate, that is established pursuant to the ***Local Government Act No 2 of 2019***. It is not in dispute that

Juldan Motors Limited is a bus operator that has offices along Freedom Way in the Lusaka Town Centre.

- 6.3 It is not in contention, that the Lusaka City Council claims for a declaration that Juldan Motors Limited has violated the laws of Zambia, and that it should pay uncollected bus fees for the period 2020 to 2022 in the amount of K299, 712.00.

ISSUES IN DISPUTE

- 6.4 What is in contention, is whether Juldan Motors Limited is in breach of the law, and it should be Ordered to pay the sum of K299, 712.00 that is claimed.

ANALYSIS

- 6.5 The evidence as given by Kennedy Chansa on behalf of the Lusaka City Council, was that Juldan Motors Limited began loading passengers from the car park along Freedom Way sometime in 2020. His evidence was that his office engaged Juldan Motors Limited sometime in 2021, who advised that they would revert after they tabled the issue with the Chairperson of Juldan Motors Limited.
- 6.6 Then on or about 25th March, 2022, Lusaka City Council wrote to Juldan Motors Limited demanding payment of K299, 712.00, which demand letter was at pages 2-3 of Lusaka City Council's bundle of documents. Kennedy Chansa's testimony was that at a meeting which was held, Lusaka City Council reluctantly agreed to send its' officers to Juldan Motors Limited's car park along Freedom Way, so that they could be collecting revenue from there, as Lusaka City Council was losing money.

- 6.7 Thus, cashiers from the Lusaka City Council were on the ground, and were collecting revenue from Juldan Motors Limited's car park, instead of the Bus Station that is designated for the said purpose.
- 6.8 Moses Phiri, an Accountant at Intercity Bus Terminus told the Court that the problem began in 2020, and in 2021, they had engaged the Manager of Juldan Motors Limited. Then on 25th March, 2022, a demand letter was written to Juldan Motors Limited claiming unpaid revenue for the period 2020 to March 2022.
- 6.9 Moses Phiri testified that there was a picture in the Lusaka City Council's bundle of documents, which depicted the illegal station at Juldan Motors Limited's car park. It was his evidence, that on being written to, Juldan Motors Limited accepted liability, save for the amount that was being claimed from them.
- 6.10 Moses Phiri's evidence was also that he had on several occasions, witnessed passengers who were boarding buses from Juldan Motors Limited's car park on Freedom Way, to go to Johannesburg, Mporokoso and Lundazi. He stated that Lusaka City Council lost about K8, 000.00 a week from the period 2020 to 2022.
- 6.11 On the part of Juldan Motors Limited, Charles Ngandu, an Accountant at Juldan Motors Limited, testified that Juldan Motors Limited is a bus operator that has offices on Freedom Way, and that its' buses service the Johannesburg, Lundazi and Mporokoso routes.

- 6.12 Charles Ngandu, stated that he was employed as an Accountant for Juldan Motors Limited in February, 2015, and he had perused the files for Juldan Motors Limited. His evidence was that prior to him joining Juldan Motors Limited, he had worked for UBZ, which used to operate a bus station on Freedom Way, where passengers used to load and offload. He added that the said premises were designated as a bus station by the Lusaka City Council.
- 6.13 His evidence was that when Juldan Motors Limited bought the land from UBZ, and the certificate of title was changed into its' name, no application was made to the Lusaka City Council for change of use of the land. It was stated that Juldan Motors Limited used the said premises to load and offload goods for passengers, and in that regard, it had been making periodic payments for the premises, and for each bus load, as evidenced from the receipts which were at pages 7-16 of Juldan Motors Limited's bundle of documents.
- 6.14 Charles Ngandu's evidence was that passengers would be loaded at Intercity Bus Terminus, and Juldan Motors Limited would pay for each bus load, before it proceeded to Freedom Way to load or offload passenger's goods.
- 6.15 He denied the assertion that between 2020 and 2021, Juldan Motors Limited did not pay for bus loads to Johannesburg, Mporokoso and Lundazi. In support of the assertion, he testified that during that period, buses rarely travelled to Johannesburg due to the COVID 19 pandemic,

as South Africa was on lockdown, and passengers were not travelling to that country.

- 6.16 He stated that secondly, there was partial lockdown in the country and travelling was restricted. Then from 2021 to 25th March, 2022, for any bus load that was made by Juldan Motors Limited, the bus load fees were paid at Intercity Bus Terminus.
- 6.17 Charles Ngandu's testimony was that during that period, most bus stations were under the control of political cadres who collected the fees, and they may have deprived the Lusaka City Council of revenue collection from the bus stations, and not Juldan Motors Limited.
- 6.18 It was also his evidence that inspectors from Lusaka City Council had been inspecting Juldan Motors Limited's premises, hence it was absurd to allege that Juldan Motors Limited had acted illegally, and that Lusaka City Council had been deprived of revenue collection, thereby crippling it.
- 6.19 Then as evidenced by pages 7-16 of Juldan Motors Limited's bundle of documents, Lusaka City Council had been collecting revenue from Juldan Motors Limited. Therefore, any claims of liability were denied.
- 6.20 Brian Chisenga's evidence on the other hand, was that he had worked for Juldan Motors Limited for over Fifteen (15) years, and that he worked as Operations Manager. He explained that he reported to the Chief Executive Officer, Mr. July Danobo.

- 6.21 It was his testimony, that his duties included overseeing the bus operations in Lusaka and beyond borders, as well as overseeing payments which were made to the relevant authorities, such as those which were at pages 7-16 of Juldan Motors Limited's bundle of documents.
- 6.22 Brian Chisenga confirmed that the offices for Juldan Motors Limited are on Freedom Way, adding that passengers' goods were loaded and offloaded from there. It was stated that Juldan Motors Limited mostly operated from the Intercity Bus Terminus, where it had been making periodic payments for the premises, and for each bus load per day, as evidenced at pages 7-16 of Juldan Motors Limited's bundle of documents.
- 6.23 Brian Chisenga denied that from 2020 to 2021, Juldan Motors Limited did not pay for the bus routes to Johannesburg, Mporokoso and Lundazi, reiterating that during that period, buses rarely travelled to Johannesburg as there was the outbreak of COVID 19, and there was lockdown in South Africa, so passengers were not traveling to that country.
- 6.24 He also maintained that within the country, there was partial lockdown and travelling was restricted. Brian Chisenga further reiterated that from 2021 to 25th March, 2022, for any bus loads that Juldan Motors Limited made, the bus load fees were paid at Intercity Bus Terminus.
- 6.25 It was also his evidence, as pleaded in the defence, that most bus stations were under the control of political cadres who

collected revenue, and they could therefore have deprived Lusaka City Council of the revenue from the bus stations and not Juldan Motors Limited.

6.26 It was repeated, as pleaded in the defence, that inspectors from Lusaka City Council carried out inspections at Juldan Motors Limited's premises, and therefore it was absurd to allege that Juldan Motors Limited had acted illegally.

6.27 Brian Chisenga also repeated that Lusaka City Council had been collecting revenue from Juldan Motors Limited, as evidenced at pages 7-16 of Juldan Motors Limited's documents. With reference to page 1 of Juldan Motors Limited's bundle of documents, Brian Chisenga testified that it was the certificate of title for the premises.

6.28 He added that Juldan Motors Limited had been paying taxes, as seen at pages 1-16 of its' bundle of documents. The liability was denied on that basis.

DECISION

WHETHER JULDAN MOTORS BREACHED THE LAW?

6.29 In support of this claim, the Lusaka City Council relying on the cases of *Wilson Masauso Zulu v Avondale Housing Project* ⁽²⁾, *Kankombe and others v Chilanga Cement Plc* ⁽³⁾ and *Re H (Minors)* ⁽⁴⁾ held that the onus is upon the Plaintiff to prove a case on a balance of probabilities.

6.30 The submission was that Juldan Motors Limited had failed to provide evidence that it was paying the requisite fee for loading passengers from their car park which is along Freedom Way. Thus, it had created an illegal bus station, as

even seen from the Lusaka City Council's bundle of documents.

- 6.31 Submission was made, that pursuant to **Section 5 (1) of the Market and Bus Stations Act No of 2007**, the management of bus stations is the preserve of the local authority. The definitions of area, bus station, bus stop and local authority in **Section 3 of the Markets and Bus Stations Act** was also cited.
- 6.32 It was stated that Juldan Motors Limited had argued that in the years 2020 to 2022, it was based at Intercity Bus Terminus and that during that period, buses rarely travelled to Johannesburg due to the outbreak of COVID 19. However, the evidence clearly established that Juldan Motors Limited was operating from Freedom Way where it loaded and offloaded passengers who went to South Africa.
- 6.33 The provisions of **Section 4 of the Markets and Bus Stations Act** were stated as empowering the Minister or a local authority, with the approval of the Minister, to establish markets and bus stations. The submission was further, that in line with **Section 16 of the said Act**, the local authority is conferred with powers to discharge functions under the Act.
- 6.34 Thus, Juldan Motors Limited should have reported any cadres who harassed it to the police. The case of **Charliewell Kakweni Chunga v Lusaka City Council** ⁽¹⁾ was stated as having held that:

“Rate is a sum of money collected by the council for purposes of services of a public nature as opposed to services to an individual.”

- 6.35 It was submitted that rates are taxes on property with value, which is situated within the boundary of the Council for purposes of raising revenue, for the maintenance of facilities that are offered to all the residents of Zambia.
- 6.36 The submission was further that **Section 25 of the Local Government Act No 2 of 2019** empowers the local authority to make by laws, to impose levies and under **Subsection (4)** of that Section, any levy that is not paid, is recoverable by the local authority as a civil debt.
- 6.37 It was stated that **Section 9 of the Markets and Bus Stations Act** has similar provision. The contention was that Juldan Motors Limited violated the provisions of **Section 6 of the Markets and Bus Stations Act**.
- 6.38 Juldan Motors Limited in its’ submissions, admitted that **Section 6 of the Markets and Bus Stations Act** empowers the local authority to administer markets and bus stations. It was stated that **Section 9** of the said Act criminalises breach of the provisions of **Section 6** of the Act. Denial was made, that Juldan Motors Limited had breached the provision, and the contention was that there was no evidence of its’ conviction, which had been tendered.
- 6.39 Further, it was stated that for there to be breach of **Section 6** of the Act, it had to be established that Juldan Motors Limited had established a bus station without authority, and

had been loading at its' premises. However, no such evidence in the form of bus tickets had been brought to support the assertion. The submission was also that the mere picture of a bus left much to be desired, as no evidence to show the alleged violation had been tendered.

6.40 It was stated that **Section 25 of the Local Government Act** states that a levy is recoverable as a civil debt, and that a levy is one that is imposed under that Act, and not under the **Markets and Bus Stations Act**.

6.41 A review of the statement of claim, shows that Lusaka City Council contends that Juldan Motors Limited between 2020 and 25th March, 2022, started loading passengers from its' offices along Freedom Way for the Johannesburg, Mporokoso and Lundazi routes, in contravention of the law, as the said offices are not designated as a bus station.

6.42 Thus, on 25th March, 2022, a demand letter was written to Juldan Motors Limited for recovery of the loading fees for the period, together with a penalty fee in the sum of K299, 712.00.

6.43 The defence was that Juldan Motors Limited just used the Freedom Way office to load and offload goods for its' passengers. It was stated that some passengers would insist on being present when the goods were being loaded and offloaded and thereafter, the buses would go to Intercity Bus Terminus to load or offload other passengers, as the case may be. It was also stated that when the passengers were

loaded at Intercity Bus Terminus, the fees would be paid at the said Intercity Bus Terminus.

6.44 Assertion was made that during the period, cadres had taken over the bus stations and markets, and they could have deprived Lusaka City Council of the revenue collection, and not Juldan Motors Limited.

6.45 The defence was also that during the period, buses rarely travelled to Johannesburg, as there was lockdown in South Africa, and within the country, travel was restricted.

6.46 Markets and Bus Stations are established pursuant to **Section 4 of the Markets and Bus Stations Act**. That Section provides that:

“4. (1) The Minister or a local authority, with the approval of the Minister, may establish markets and bus stations....”

6.47 From this, it is clear that only the Minister or the local authority, with the approval of the Minister, can establish a market or a bus station.

6.48 Then **Section 5** of the said Act, with regard to the management of markets and bus stations states that:

“5. (1) All markets and bus stations shall be under the control of a local authority having jurisdiction in the area in which they are situated.

(2) A market and bus station shall be managed by

–

(a) a local authority in that area; or

(b) a management board....”

6.49 **Section 6 of the Markets and Bus Stations Act** criminalises the establishment of markets and bus stations by unauthorised persons, by providing as follows:

“6. (1) A person shall not, except in partnership with a local authority and with the approval of the Minister -

(a) establish any market or bus station in any area;

(b) being the owner, lessee or occupier of land, permit a market or a bus station to be established on that land; and

(c) maintain, conduct or manage a market or a bus station in contravention of this Act.

(2) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand penalty units and a further fine not exceeding one thousand penalty units for each day the contravention continues or in default of payment, to imprisonment for a period not exceeding six months.”

6.50 **Section 25 of the Local Government Act No 2 of 2019** was cited as empowering local authorities to make by laws for the imposition of levies. The Section provides, and I quote:

“25. (1) Subject to the Constitution and the Business Regulatory Act, 2014, a local authority may make by-laws to impose a levy on—

(a) leviable persons owning or occupying property or premises situated within the area of the local authority;

(b) leviable persons carrying on a business, trade or occupation within the area of the local authority; or

(c) the purchase or sale of a commodity within the area of the local authority.

(2) By-laws imposing a levy may make—

(a) different provision with respect to different classes of property or premises, different classes of businesses, trade or occupations and different classes of commodities; and

(b) provide for—

(i) the manner and times at which and the persons by whom a levy is payable and collected;

(ii) exemptions from a levy; or

(iii) suspension of a levy, in whole or in part.

(3) The proceeds of a levy accrue to the local authority.

(4) The amount of any levy which is not paid is

recoverable by the local authority as a civil debt.

(5) In this section, “leviable person” means—

(a) a person who is eighteen years or above; and

(b) a body of persons, corporate or unincorporate.”

6.51 There was also reliance on **Section 9 of the Markets and Bus Stations Act** in arguing that any unpaid levies can be recovered as a civil debt. That Section states as follows:

“9. (1) Any person who desires to sell goods in any market or operate a bus at any bus station shall pay such fee, stallage or levy as may be prescribed by a local authority or management board with the approval of the Minister.

(2) Any person who fails to pay any fee or levy in contravention of this section commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding six months, or to both.”

6.52 It will be seen that under the **Local Government Act**, the Council or the local authority, is empowered to recover any unpaid levies as a civil debt, and under **Section 9 of the Markets and Bus Stations Act**, any one who sells or operates a bus station without authority, may be prosecuted criminally, and they are liable to pay a fine on being convicted or to be imprisoned for a period not exceeding Six (6) months or both.

- 6.53 In the pleadings, Lusaka City Council seeks a declaration that Juldan Motors Limited's actions are in violation of the law. The particular law that was violated was not stated. However, Lusaka City Council in its' pleadings, stated that it is a body corporate that is established under the **Local Government Act No 2 of 2019**, and that pursuant to the **Market and Bus Stations Act No 7 of 2007**, it is in charge of, mandated to maintain and conduct and manage bus stations and markets.
- 6.54 Therefore, that being the position, the laws that regulate the Lusaka City Council with regard to markets and bus stations, include the two Acts as specified. The proceedings before me are civil proceedings, and therefore if Juldan Motors Limited is found to be in breach of any law, the civil remedies that are available to the Lusaka City Council for any breach are applicable.
- 6.55 From the evidence, it is clear that Juldan Motors Limited has an office from which it operates in Freedom Way. The amended defence alleged that Juldan Motors Limited holds a certificate of title for the said premises on Freedom Way, and that it pays levies and rates for the said premises to the Lusaka City Council.
- 6.56 Its' defence was further that the Lusaka City Council inspects the said premises, and that Juldan Motors Limited only loaded and offloaded goods for passengers from the said offices, with some passengers insisting to be present during the said loading and offloading in the period alleged. The

defence was further that the Lusaka City Council allowed this to happen. It was also stated that Juldan Motors Limited had been making payments to Lusaka City Council for every single bus load and for use of its' reserved bay to load passengers.

- 6.57 When the two witnesses for Juldan Motors Limited were cross examined, they conceded that the receipts which were at pages 7-16 of its' bundle of documents were for the reserved bay, parking slots, and rates, and not for loading fees for the buses.
- 6.58 What is being claimed is fees for loading, and there is no dispute that the Lusaka City Council is entitled to charge the same in line with the authority that is placed on it, to make by laws under **Section 25 of the Local Government Act No 2 of 2019**.
- 6.59 Moses Phiri who testified on behalf of Lusaka City Council, stated that after a meeting was held with Juldan Motors Limited, it was reluctantly agreed that Lusaka City Council would send its' officers to collect revenue from the Juldan Motors Limited offices on Freedom Way. He was not challenged on this evidence.
- 6.60 The assertion by Juldan Motors Limited was that Lusaka City Council acquiesced to this conduct.
- 6.61 The law in **Section 6 of the Markets and Bus Stations Act** is clear, that a person cannot, except in partnership with a local authority and with the approval of the Minister, establish any market or bus station in any area. Juldan

Motors Limited argued that it bought the premises from the National Housing Authority after RPS used to operate it as a bus station, and it did not apply for change of use of the land.

6.62 It is trite that one cannot ride on authority that a previous owner of the land had to operate a bus station, as that authority was specific to a previous owner or tenant. RPS from what has been stated, merely rented the premises from the National Housing Authority, and in renting the premises, it had applied to use the land as a bus station. The authorities that it may have obtained to use the premises as a bus station were not automatically inherited by Juldan Motors Limited after it bought the property.

6.63 Juldan Motors Limited had to apply in its' own right, in line with **Section 6 of the Markets and Bus Stations Act** which has been seen above, to operate the premises as a bus station. There being no evidence that it did so, means that it has been operating the premises as a bus station illegally, and I so declare. Juldan Motors Limited shall forthwith cease to operate the premises as a bus station, until it formalizes the same in line with the **Market and Bus Stations Act**.

6.64 Any disobedience of the Order will result in contempt proceedings being instituted against Juldan Motors Limited.

CLAIM FOR THE PAYMENT OF K299, 712.00

6.65 This money is claimed as uncollected fees from the years 2020 to 2022 for the Johannesburg, Mporokoso and Lundazi routes. The defence was that during the period, buses rarely

travelled to Johannesburg due to the outbreak of COVID 19 and that where the buses did load, the fees for loading were paid at the Intercity Bus Terminus to the local authority. Juldan Motors Limited also contended that during the period, cadres were in control of markets and bus stations, and they are the persons that deprived the Lusaka City Council of the revenue.

6.66 Paragraph 6 of the statement of claim breaks down the claim for the payment as follows:

- i. Year 2020- K108, 000.00
- ii. Year 2021- K108, 000.00
- iii. Year 2022- K267, 600.00
- iv. 12% penalty (based on average inflation rate) – K32, 112.00

6.67 While the pleading alleges the above as the amount that is being claimed, the amounts as laid down do not tally with what is being claimed in the sum of K299, 712.00, and no evidence was led to substantiate the claim. Kennedy Chansa in re-examination, testified that page 2 of Lusaka City Council's bundle of documents was a loading schedule for the buses on Freedom Way in town, which showed the sum that is claimed.

6.68 It will be noted that the said page has a so-called breakdown of what Lusaka City Council claims, and not what was submitted to it by Juldan Motors Limited, as admitted as owing.

- 6.69 From the evidence, the defence by Juldan Motors Limited was that cadres were running bus stations and markets who could have deprived Lusaka City Council of its' revenue. Lusaka City Council contended that Juldan Motors Limited had not shown that it reported the cadres to the police, so its' defence lacked merit.
- 6.70 ***Section 5 of the Markets and Bus Stations Act*** vests power in the local authorities to run bus stations and markets. Therefore, Lusaka City Council, being the local authority in Lusaka, where Juldan Motors Limited operates its' buses from, it has the mandate to ensure that revenue is collected by itself, and not to allow cadres to take on that responsibility.
- 6.71 Therefore, if cadres did take over the running of bus stations and markets in Lusaka, the onus was on Lusaka City Council to take appropriate action against them.
- 6.72 The reply that was referred to by Juldan Motors Limited, as where Lusaka City Council had pleaded that in or about 2021, there was handover of control of bus stations and markets to the Lusaka City Council from cadres, that reply which is dated 20th May, 2022, was amended on 10th November, 2022, and the amended reply contains no such pleading.
- 6.73 However, what is clear, is that Juldan Motors Limited in its' defence, alleged that cadres were collecting revenue from Intercity Bus Terminus where it was loading and offloading passengers, after goods for the said passengers were loaded

and offloaded at its' offices on Freedom Way. This was not seriously challenged, and I find that this was the position.

6.74 Page 1 of Lusaka City Council's bundles of documents shows a stationary bus alleged to be on Freedom Way. From the state of picture, it cannot be determined whether it was loading or offloading passengers.

6.75 Both witnesses from Lusaka City Council when cross examined, agreed that the Lusaka City Council agreed to send its' officers to the Juldan Motors Limited offices on Freedom Way to collect revenue, so that they did not lose out. Moses Phiri in cross examination, testified that the photograph was taken in 2023, which is a period outside that for which the sum is claimed.

6.76 Therefore, it does not prove the claim for the period 2020 to 25th March, 2022.

6.77 Further, it is trite, and it is a matter of common knowledge that COVID 19 affected international travel from around March 2020 until after 2021, and travel to South Africa was restricted. Therefore, the burden is on Lusaka City Council to prove that in fact, Juldan Motors Limited, did load buses to go to Johannesburg during the period, and with what frequency from its' offices along Freedom Way, and that it did not pay the said loading fees, thereby depriving it of revenue.

6.78 It also bears the burden of proving that Juldan Motors Limited did in fact load buses from its' offices on Freedom Way during the period to go to Mporokoso and Lundazi and

it did not pay the loading fees. There is no evidence to that effect. The claim for payment of the loading fees, therefore fails and it is dismissed.

7. CONCLUSION

7.1 Lusaka City Council having succeeded on its' claim that Juldan Motors Limited violated the law by operating a bus station on Freedom Way without authority, it is awarded costs, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 13th DAY OF NOVEMBER, 2024

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

