

**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. *Charliwell 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.