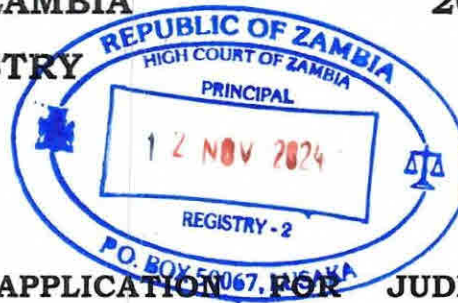


**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**2022/HP/0876**



**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW  
PURSUANT TO ORDER 53 OF THE SUPREME  
COURT PRACTICE (1999) EDITION**

**IN THE MATTER OF: SECTIONS 16, 28, 29, 30, 96, 97 AND 100 OF THE  
MINES AND MINERALS DEVELOPMENT ACT NO.  
11 OF 2015**

**IN THE MATTER OF: THE DECISION OF THE MINING LICENSING  
COMMITTEE REJECTING THE APPLICANTS'  
APPLICATIONS FOR ARTISANAL MINING RIGHTS**

**IN THE MATTER OF: THE DECISION OF THE MINISTER OF MINES AND  
MINERAL DEVELOPMENT NOT TO ACT ON THE  
APPLICANTS' APPEALS FOLLOWING THE  
REJECTION OF THEIR APPLICATIONS FOR  
ARTISANAL MINING RIGHTS BY THE MINING  
LICENSING COMMITTEE**

**IN THE MATTER OF: THE DECISION OF THE MINISTER OF MINES AND  
MINERAL DEVELOPMENT NOT TO CONSTITUTE  
THE MINING APPEALS TRIBUNAL TO HEAR  
APPEALS OF APPLICANTS DISSATISFIED WITH  
THE MINISTER'S DECISIONS.**

**BETWEEN:**

**KALIMBWE KAJOBA**

**1<sup>ST</sup> APPLICANT**

**MUSA MUNTAGA**

**2<sup>ND</sup> APPLICANT**

**JUDY HARDGE**

**3<sup>RD</sup> APPLICANT**

**MWANGALA NAMASIKU**

**4<sup>TH</sup> APPLICANT**

**AND**

**ATTORNEY GENERAL**

**1<sup>ST</sup> RESPONDENT**

**MINISTER OF MINES AND MINERALS  
DEVELOPMENT**

**2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF MINING CADASTRE ALLEGED CONTEMNOR**

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN  
CHAMBERS, ON 12<sup>TH</sup> NOVEMBER, 2024.**

*For the Applicants: Mr. B. Sitali – Butler & Co. Legal Practitioners.*

*For the Respondents: No Appearance.*

*For the Alleged Contemnor: No Appearance.*

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## **JUDGMENT**

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### **CASES REFERRED TO:**

1. *Derrick Chitala (Suing as Secretary of the Zambia Democratic Congress) v Attorney General – SCZ Judgment No.14 of 1995;*
2. *Attorney General v Nigel Kalonda Mutuna, Charles Kajimanga and Philip Musonda - Appeal No. 88 of 2012;*
3. *Moonde Jane Mugaila-Mapiko (suing on behalf of the Traditional Council of the Mungaila Royal Establishment) John Muchabi v Victor Makaba Chande (2010) Vol. 1 Z.R. 397;*
4. *Nyampala Safaris (Z) Limited and Others v Zambia Wildlife Authority and Others – SCZ Judgment No.6 of 2004;*
5. *Sablehand Zambia Limited v Zambia Revenue Authority (2005) Z.R. 109;*
6. *Fredrick J T Chiluba v The Attorney General (2003) Z.R.153; and*
7. *Council of Civil Service Unions v Minister for the Civil Service (1984) 3 All ER 935.*

**LEGISLATION REFERRED TO:**

1. *The Rules of the Supreme Court of England (White Book)*, Vol 11999 Edition, London Sweet & Maxwell;
2. *The Mines and Minerals Development Act No. 11 of 2015.*

**OTHER WORKS REFERRED TO:**

1. *Halsbury's Laws of England, Volume 9, 4<sup>th</sup> Edition (London Butterworths, 1998); and*
2. *Michael Allen and Brian Thompson, Cases and Materials on Constitutional and Administrative Law, Seventh Edition, Oxford University Press, 2002.*

**1. INTRODUCTION**

1.1 The Record herein was re-allocated to this Court on 11<sup>th</sup> March, 2024, following the departure of Justice T. I. Katanekwa. A perusal of the Record revealed that there were pending Application for Leave to Commence Contempt Proceedings, following the grant of Leave to Apply for Judicial Review and the substantive Application for Judicial Review. Accordingly, I called the Parties for a Status Conference.

1.2 On the Return date, only Counsel for the Applicants was in attendance. The Respondents were not in attendance and no just cause was advanced for their absence. Counsel informed the Court that Justice Katanekwa had indicated that he would deliver both the Ruling and Judgment based on the documents on the Record, which Ruling and Judgment have never been delivered. Thus, Counsel urged this Court to proceed to render its Ruling on the interlocutory application and Judgment in the

substantive matter, based on the documents on the Record.

- 1.3 Accordingly, this Judgment is combined with the Ruling in respect of the said pending applications, made by the Applicants.

## **2. BACKGROUND**

2.1 The genesis of the applications before this Court, as can be ascertained from the evidence on Record, is that a company called Cupriferous Resources Limited, then a holder of a Large-Scale Exploration Licence No. 23009-HQ-LEL, granted the Applicants consent to carry out Artisanal Mining in a portion of the area covered by the said Cupriferous Resources Limited's Exploration Licence. Consequently, the Applicants applied to the Director of Mining Cadastre for Artisanal Mining Rights in respect of the portions over which they had been granted consent by Cupriferous Resources Limited and paid the prescribed fees.

2.2 As time went on, Cupriferous Resources Limited applied to transfer its said Exploration Licence to a company called Orezone Mining and Exploration Limited. Subsequently, the Applicants' applications were rejected on the basis that the Large-Scale Exploration Licence over whose portions they had been granted consent had changed hands and

was now held by a new holder, who was not allowed to issue such consents.

- 2.3 It is against this backdrop that on 8<sup>th</sup> June, 2022, the Applicants launched this application by way of Summons for an Order extending time within which to apply for Judicial Review, which application was granted in December, 2022.
- 2.4 On 15<sup>th</sup> February, 2023, the Applicants filed herein an *Ex Parte* Summons for Leave to Commence Judicial Review, pursuant to the provisions of **Order 53** of **The Rules of the Supreme Court**<sup>1</sup>. On 6<sup>th</sup> March, 2023, the Court granted the Applicants Leave to Apply for Judicial Review, which Leave operated as a Stay of the Respondents' Mining Licensing Committee's decision rejecting the Applicants' applications for Artisanal Mining Rights.
- 2.5 On 12<sup>th</sup> April, 2023, the Applicants filed herein a Notice of Motion to proceed for Judicial Review, pursuant to the provisions of **Order 53, Rule 5 (2)** of **The Rules of the Supreme Court**<sup>1</sup>. On 8<sup>th</sup> June, 2023, following an application by the Respondents to adjourn the matter, the Court, in addition to the Order granted on 6<sup>th</sup> March, 2023, further Ordered and Directed that the pieces of land comprised in the Applicants' licence applications shall not be allocated to any other Applicant until the determination of the matter herein or further Order of the Court.

2.6 On 10<sup>th</sup> November, 2023, the Applicants applied herein, by way of *Ex Parte* Summons, for Leave to issue Committal proceedings for Contempt of Court, pursuant to **Order 52, Rule 2 of The Rules of the Supreme Court**<sup>1</sup>. This application is on the basis that the Respondents' Director of Mining Cadastre, on 6<sup>th</sup> June, 2023, went ahead and allocated a licence to a company called Trustnet Consultancy Limited over the same area covered by the Applicants' applications, which was in total disregard of the Court Order of 8<sup>th</sup> June, 2023.

2.7 It is against this backdrop that the Applicants sought Judicial Review and applied for Leave to commence Contempt Proceedings. Both applications are unopposed by the Respondents.

### **3. AFFIDAVIT IN SUPPORT OF EX PARTE SUMMONS FOR LEAVE TO ISSUE COMMITTAL PROCEEDINGS FOR CONTEMPT OF COURT**

3.1 In support of the application is an affidavit deposed by **Kalimbwe Kajoba** with the authority of the other Applicants. He deposed, *inter alia*, that on or about 6<sup>th</sup> March, 2023, this Court granted the Applicants Leave to Apply for Judicial Review. On 8<sup>th</sup> June, 2023, this Court Ordered that the Leave to Apply for Judicial Review granted to the Applicants would also operate as a Stay of the Respondents' Mining Licencing Committee's decision

of 6<sup>th</sup> May, 2021, rejecting the Applicants' application for Artisanal Mining Rights.

- 3.2 It was deposed that in its Order of 8<sup>th</sup> June, 2023, this Court also Ordered that the pieces of land comprised in the Applicants' licence applications should not be allocated to any other Applicant. A copy of the said Order marked "**KK 1**" was produced.
- 3.3 It was further deposed that the Order of 8<sup>th</sup> June, 2023 was served on the Respondents' Director of Mining Cadastre on 9<sup>th</sup> June, 2023, who acknowledged receipt of the said Order. A copy of the said acknowledgment marked "**KK 2**" was produced.
- 3.4 It was also deposed that in total disregard of the Court Order, dated 8<sup>th</sup> June, 2023, on 6<sup>th</sup> July, 2023, the Respondents' Director of Mining Cadastre allocated a licence to a company called Trustnet Consultancy Limited over the same area covered by the Applicants' applications. A copy of a printout from the Mining Cadastre portal marked "**KK 3**" was produced. It was asserted that the document showed that a Small-Scale Mining Licence had been issued to Trustnet Consultancy Limited over the same area covered by the Applicants' applications.
- 3.5 It was deponed that the Deponent had been advised by Counsel, which advice he verily believed to be true, that

the action of the Director of the Mining Cadastre is contemptuous of this Court's Order of 8<sup>th</sup> June, 2023.

3.6 By the Statement in support of Summons for Leave to Issue Contempt Proceedings, the Applicants reiterated the contents of the Affidavit in Support of the application.

**4. NOTICE OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

4.1 By the Notice of Application for Leave to Apply for Judicial Review, the decisions in respect of which reliefs are sought were stated as follows: -

(i) The decision of the Mining Licencing Committee rejecting to grant the Applicants Artisanal Mining Licences as contained in the letters dated 26<sup>th</sup> May, 2021.

(ii) The decision of the 2<sup>nd</sup> Respondent not to act upon the Applicants' appeals made to him on 29<sup>th</sup> June, 2021.

4.2 The reliefs sought by the Applicants, as set out in the Notice of Application for Leave to Apply for Judicial Review, are as follows: -

(i) An Order of *certiorari* to remove into this High Court for the purposes of quashing the decision of the Mining Licencing Committee rejecting the

Applicants' applications for Artisanal Mining Licences as contained in the letters dated 26<sup>th</sup> May, 2021;

(ii) An Order of *certiorari* to quash the decision of the Minister of Mines not to act upon the Applicants' appeal made to him on 29<sup>th</sup> June, 2021;

(iii) An Order for costs; and that all the consequential directions be given.

4.3 The Notice of Application for Leave has set out the facts upon which the reliefs sought by the Applicants are based, which are as follows: -

(i) By letters addressed to the Applicants on diverse dates, a Company known as Cupriferous Resources Limited which was a holder of a Large-Scale Exploration Licence No. 23009-HQ-LEL granted the Applicants consent to conduct Artisanal Mining on portions of the land covered by the Large-Scale Exploration Licence No. 23009-HQ-LEL.

(ii) Upon being granted consent by Cupriferous Resources Limited, the Applicants each applied to the Ministry of Mines for Artisanal Licences on 1<sup>st</sup> March, 2021 and paid the necessary fees for Artisanal Mining Rights or Licences.

- (iii) After the Applicants had already submitted their applications for Artisanal Mining Rights to the Ministry of Mines, Cupriferous Resources Limited applied to the Ministry of Mines, for consent to transfer its Large-Scale Exploration Licence to Orezone Mining and Exploration Limited on 16<sup>th</sup> March, 2021.
- (iv) By the time Cupriferous Limited applied for consent to transfer its Large-Scale Exploration Licence to Orezone Mining and Exploration Limited, the Applicants' Application for Artisanal Mining Rights had already been submitted to the Ministry of Mines.
- (v) By letters dated 6<sup>th</sup> May, 2021, the Applicants were informed that the Mining Licence Committee had rejected their applications for Artisanal Mining Rights for the following reasons: -
  - (a) That the holder of an Exploration Licence Cupriferous Resources Limited was not supposed to have issued the Applicants with consent;
  - (b) That the Large-Scale Exploration Licence had since changed hands from Cupriferous

Resources Limited to Orezone Mining and Exploration Limited; and

(c) That therefore the Applicants needed to engage with the new holder of the licence for consents.

(vi) After being advised of the rejection of their applications for Artisanal Mining Rights, the Applicants appealed to the Minister of Mines.

(vii) Despite appealing to the Minister, the Minister has not responded to or attended to the Applicants' appeal.

(viii) The Applicants have made several follow ups with the Minister but to no avail.

4.4 With respect to the law relied upon, the Applicants asserted as follows: -

(i) That the applications for mining rights are granted or dealt with in the order of priority on a first come first serve basis. Therefore, as the Applicants' applications for Artisanal Mining Rights were submitted before the Large-Scale Exploration Licence had changed hands from Cupriferous Resources Limited to Orezone Mining and Exploration Limited, the change in ownership of the Large-Scale exploration should not have been

considered when determining the Applicants' Applications. The Applicants contend that the fact that the licence had since changed hands was an extraneous matter which ought not to have been considered when considering the Applicants' Applications.

- (ii) It was asserted that **Section 16** of ***The Mines and Minerals Development Act***<sup>2</sup> allows a holder of a mining right to grant consent to another person over the area where he holds a licence and that the said **Section 16** applies to the holder of a Large-Scale Exploration Licence from granting such consent. The Applicants further asserted that the reason advanced by the Mining Licencing Committee that a holder of an Exploration Licence, being Cupriferous Resources Limited was not supposed to grant the Applicants consent is not supported by law.
- (iii) The Applicants contend that if, as alleged by the Mining Licence Committee, a holder of an Exploration Licence is not supposed to grant consents, then it would have been contradictory for the same Mining Licencing Committee to advise the Applicants to seek consents from Orezone Mining and Exploration Limited, the new holder of the

Large-Scale Exploration Licence. It was further stated that **Section 97** of **The Mines and Minerals Development Act<sup>2</sup>** obliges the Minister to determine appeals made to him. It was contended that the Minister's decision not to determine the Applicants' appeal amounts to dereliction of his statutory duty.

4.5 The grounds advanced for review, by the Applicants, are as follows: -

(a) Illegality

Under this ground, it has been alleged that the Mining Licence Committee's decision rejecting the Applicant's Application because the Large-Scale Exploration Licence had changed hands was illegal because the Applicants' applications had been made before the said Large-Scale Exploration Licence had changed hands. It was further asserted that the Mining Licencing Committee's decision rejecting the Applicants' applications allegedly because a holder of a Large-Scale Exploration Licence is not allowed to grant consent is illegal because **Section 16** of **The Mines and Minerals Development Act<sup>2</sup>** allows a holder of a Large-Scale Licence to grant such consents. The Applicants contend that the Minister's decision not to determine the Applicants'

appeals against the Mining Licence Committee's decision is illegal and amounts to dereliction of his statutory duty.

(b) Procedural Impropriety

On this ground, the Applicants contended that the Mining Licence Committee should have dealt with the Applicants' applications before dealing with the application for the change of the Large-Scale Exploration Licence, as the Applicants' applications had been submitted earlier than the application for the change of ownership of the Large-Scale Exploration Licence. Therefore, it was asserted that the Mining Licence Committee's decision not to accord the Applicants priority amounted to procedural impropriety.

(c) Irrationality

Under this ground, it was asserted that the Mining Licencing Committee's decision that the Applicants should seek fresh consents from Orezone Mining and Exploration Limited after stating that a holder of such a licence is not allowed to grant consents is irrational and unreasonable in the *Wednesbury sense* as no reasonable body properly advising itself could arrive at such a decision. It has been further

asserted that the Minister's decision not to determine the Applicants' appeals against the Mining Licence Committee's decision which were submitted to his office, is unreasonable in the *Wednesbury sense* as no reasonable body properly advising itself could possibly arrive at such a decision.

**5. AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION TO PROCEED FOR JUDICIAL REVIEW**

- 5.1 The application is supported by the Affidavit in Support of Summons for Leave to Apply for Judicial Review, dated 15<sup>th</sup> February, 2023, jointly deposed by all the four Applicants. The gist of the Affidavit is that by a letter dated 4<sup>th</sup> September, 2019, a Company called Cupriferous Resources Limited, then being a holder of a Large-Scale Exploration Licence No. 23009-HQ-LEL, granted the 1<sup>st</sup> Applicant consent to carry out Artisanal Mining in a portion of the area covered by the said Cupriferous Resources Limited's Exploration Licence.
- 5.2 That on or about 1<sup>st</sup> March, 2021, having been granted consent to carry out Artisanal Mining by Cupriferous Resources Limited, the 1<sup>st</sup> Applicant applied to the Director of Mining Cadastre for Artisanal Mining Rights in respect of the portions over which he had been granted consent by Cupriferous Resources Limited. That when submitting his

application for Artisanal Mining Rights, the 1<sup>st</sup> Applicant paid the prescribed fees in support of his application.

- 5.3 The 2<sup>nd</sup> Applicant deposed that by a letter dated 10<sup>th</sup> February, 2020, a Company called Cupriferous Resources Limited, then being a holder of a Large-Scale Exploration Licence No. 23009-HQ-LEL, granted the 2<sup>nd</sup> Applicant consent to carry out Artisanal Mining in a portion of the area covered by the said Cupriferous Resources Limited's Exploration Licence.
- 5.4 On or about 1<sup>st</sup> March, 2021, having been granted consent to carry out Artisanal Mining by Cupriferous Resources Limited, the 2<sup>nd</sup> Applicant applied to the Director of Mining Cadastre for Artisanal Mining Rights in respect of the portions over which he had been granted consent by the Cupriferous Resources Limited. When submitting his application for Artisanal Mining Rights, the 2<sup>nd</sup> Applicant paid the prescribed fees in support of his application.
- 5.5 The 3<sup>rd</sup> Applicant averred that by letters dated 8<sup>th</sup> June, 2020, and 7<sup>th</sup> October, 2019, a Company called Cupriferous Exploration Resources Limited, then being a holder of a Large-Scale Exploration Licence No. 23009-HQ-LEL, granted the 3<sup>rd</sup> Applicant consent to carry out Artisanal Mining in a portion of the area covered by the said Cupriferous Resources Limited's Exploration Licence.

- 5.6 It was further asserted that on or about 1<sup>st</sup> March, 2021, having been granted consent to carry out Artisanal Mining by Cupriferous Resources Limited, the 3<sup>rd</sup> Applicant applied to the Director of Mining Cadastre for Artisanal Mining Rights in respect of the portions over which she had been granted consent by the Cupriferous Resources Limited and when submitting her application for Artisanal Mining Rights, the 3<sup>rd</sup> Applicant paid the prescribed fees in support of her application.
- 5.7 Finally, the 4<sup>th</sup> Applicant averred that by a letter dated 18<sup>th</sup> November, 2019, a company called Cupriferous Resources Limited, then being a holder of a Large-Scale Exploration Licence No. 23009HQ-LEL, granted the 4<sup>th</sup> Applicant consent to carry out Artisanal Mining in a portion of the area covered by the said Cupriferous Resources Limited's Exploration Licence.
- 5.8 It was further averred that on or about 1<sup>st</sup> March, 2021, having been granted consent to carry out Artisanal Mining by Cupriferous Resources Limited, the 4<sup>th</sup> Applicant applied to the Director of Mining Cadastre for Artisanal Mining Rights in respect of the portions over which the 4<sup>th</sup> Applicant had been granted consent by Cupriferous Resources Limited. That when submitting his application for Artisanal Mining Rights, the 4<sup>th</sup> Applicant paid the prescribed fees in support of his application.

- 5.9 The Applicants averred that on or about 16<sup>th</sup> March, 2021, after they had already submitted applications for Artisanal Mining Rights to the Director of Mining Cadastre, Cupriferous Resources Limited, the Company which granted them consent to obtain Artisanal Mining Rights in some portions of its tenement, applied for consent to transfer its Large-Scale Exploration Licence No. 230009-HQ-LEL to a Company called Orezone Mining and Exploration Limited.
- 5.10 That by letters dated 6<sup>th</sup> May, 2021, written by the Mining Cadastre, which letters were only brought to the attention of the Applicants on 15<sup>th</sup> June, 2021, the Applicants were informed that their applications for Artisanal Mining Rights had been rejected by the Mining Licence Committee because the Large-Scale Exploration Licence No. 23009-HQ-LEL, over whose portions they had been granted consent by Cupriferous Resources Limited, was not allowed to issue the Applicants with such consents.
- 5.11 The Deponents deponed that the Applicants have been advised by their Advocates, which advise they verily believe to be true, that since their applications for Artisanal Mining Rights had been submitted before the Large-Scale Exploration Licence held by Cupriferous Limited Resources changed hands, the Mining Licence Committee

was obliged to consider and grant them the Artisanal Mining Rights which they had applied for.

5.12 The Applicants averred that they have also been advised by their Advocates, which they verily believe to be true, that if as alleged in the letter of 6<sup>th</sup> May, 2021, a holder of a Large-Scale Exploration Licence is not supposed to issue consents, then the Mining Licence Committee should not have advised them to negotiate fresh consents with the new holder of the same Large-Scale Exploration Licence.

5.13 The Deponents avowed that upon receipt of the letter dated 6<sup>th</sup> May, 2021, rejecting the Applicants' applications for Artisanal Mining Rights, the Applicants appealed to the Minister of Mines and Mineral Development on 29<sup>th</sup> June, 2021. When the Applicants followed up on their appeals with the Minister, they were advised that the Minister had not received their appeals, which prompted them to instruct their Counsel to write another appeal to the Minister.

5.14 It was deposed that the letter of appeal from their Advocates to the Minister of Mines and Mineral Development has to date been ignored by the Minister.

5.15 It was further deposed that the Applicants are desirous of applying for Judicial Review of the Mining Licence

Committees' refusal to grant them Artisanal Mining Rights as well as the Minister's decision not to act on their appeals

**6. SKELETON ARGUMENTS IN SUPPORT OF SUMMONS FOR LEAVE TO ISSUE COMMITTAL PROCEEDINGS**

- 6.1 By Skeleton Arguments in support of Summons for Leave to Issue Committal Proceedings, filed on 10<sup>th</sup> November, 2023, the Applicants' Counsel cited **Order 52, Rule 2** of ***The Rules of the Supreme Court***<sup>1</sup> and submitted that the requirements stated in the said Order have been satisfied by the Applicants in this application.
- 6.2 It was asserted that in the absence of any specific rules in the High Court regarding Contempt Proceedings, resort should be had to the practice outlined in the Supreme Court Practice (1999) Edition.
- 6.3 Counsel contended that the alleged contemnor has defied the Court's Order dated 8<sup>th</sup> June, 2023, wherein the Court Ordered that the Leave granted would also operate as a Stay of the Respondents' Mining Licensing Committee's decision of 6<sup>th</sup> May, 2021, rejecting the Applicants' applications for Artisanal Mining Rights. Counsel added that in the same Order, this Court Ordered that the pieces of land comprised in the Applicants' applications for a licence should not be allocated to any other Applicant.

6.4 Based on the foregoing, it was asserted that the alleged contemnor knew or ought to have known of the aforementioned Order as it was served on the Respondents' Director of Mining Cadastre. However, in total disregard of the Court's Order, the Respondents' Director of Mining Cadastre proceeded to allocate a mining license to Trustnet Consultancy Limited over the same area covered by the Applicants' applications.

6.5 Therefore, it was submitted that this is a fitting case for this Court to grant the Applicants Leave to Issue Contempt Proceedings against the Alleged Contemnor.

## **7. SKELETON ARGUMENTS IN SUPPORT OF NOTICE OF MOTION TO PROCEED FOR JUDICIAL REVIEW**

7.1 In the Skeleton Arguments in support of Summons for Leave to Apply for Judicial Review, the Applicants cited ***Order 53, Rule 14 (21) of The Rules of the Supreme Court***<sup>1</sup>, as well as the case of ***Derrick Chitala (Suing as Secretary of the Zambia Democratic Congress) v Attorney General***<sup>1</sup>, and submitted that from the reading of the Affidavit filed in support of the Application for Leave, the Applicants' Application cannot be described as frivolous, vexatious or hopeless, as the Applicants, who are all Zambian citizens, have demonstrated that they were granted consents by Cupriferos Resources Limited to carry out Artisanal Mining on portions of the land covered

by Large-Scale Exploration Licence No. 23009-HQ-LEL and that after being granted such consent the Applicants applied to the Ministry of Mines for Artisanal Mining Rights on 1<sup>st</sup> March, 2021.

7.2 The Applicants also placed reliance on the Supreme Court case of *Attorney General v Nigel Kalonda Mutuna, Charles Kajimanga and Philip Musonda*<sup>2</sup> and submitted that this is a fitting matter for this Honourable Court to grant the Applicants Judicial Review.

## **8. THE HEARING**

8.1 At the hearing on 20<sup>th</sup> June, 2024, only Counsel for the Applicants was present, while Counsel for the Respondents was absent. On my determination that the Respondent's Advocates had been served with a Notice of Hearing and that no reason had been advanced to justify their absence, I proceeded to hear the Applicants' applications.

8.2 Counsel implored the Court to proceed to render its Ruling and Judgment on the pending applications based on the documents on the Record.

## **9. CONSIDERATION AND DECISION OF THE COURT**

9.1 I have carefully considered both the application for Judicial Review and for Leave to commence Contempt Proceedings, the Affidavit evidence on Record, as well as

the accompanying documents. I have further considered the Skeleton Arguments, and authorities cited, for which I am grateful to Counsel.

9.2 I will first consider and render my decision on the application for Leave to commence Contempt Proceedings. By this application, I am being called upon to grant an Order for Leave to commence Contempt Proceedings against the Respondents.

9.3 **Order 52, Rule 2** of **The Rules of the Supreme Court**<sup>1</sup>, pursuant to which the application has been made, provides as follows: -

*“(1) No application to a divisional court for an order of committal against any person may be made unless leave to make such an application has been granted.*

*(2) An application for such leave must be made ex parte to a divisional court, except in vacation when it can be made ex-parte to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name description and address of the party sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application verifying the facts relied upon.”*

9.4 A further reading of **Order 52, Rule 1** of **The Rules of the Supreme Court**<sup>1</sup> reveals that the provision gives powers to the Court to punish for Contempt of Court by granting an

Order of Committal. **Order 52, Rule 1 (3)** of **The Rules of the Supreme Court**<sup>1</sup> states that the chief instance of civil contempt is disobedience to an Order of the Court by a Party to proceedings. Further, **paragraph 52** of the **Halsbury's Laws of England**<sup>1</sup> states that: -

***“It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order or to disobey a judgment or order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person on the faith of which the court sanctions a particular course of action or inaction.”***

9.5 In the case of **Moonde Jane Mugaila-Mapiko (suing on behalf of the Traditional Council of the Mungaila Royal Establishment) John Muchabi v Victor Makaba Chande**<sup>3</sup>, the Court held, *inter alia*, that: -

***“Proceedings for contempt are essentially punitive in character and the purpose is to secure compliance with Court Orders.”***

9.6 Based on the foregoing, the power of the Court to Order Committal for civil contempt is a power to be exercised with great care. In this regard, Leave from the Court is required so that the Court can consider whether there are reasonable grounds to warrant commencement of Committal Proceedings, which are considered serious because of the criminal nature.

- 9.7 In this case, the Applicant's contention is that the Alleged Contemnor has defied the Court's Order dated 8<sup>th</sup> June, 2023, wherein the Court ordered that the Leave granted would operate as a Stay of the Respondents' Mining Licencing Committee's decision of 6<sup>th</sup> May, 2021, rejecting the Applicants' application for Artisanal Mining Rights. By the said Order, the Court stated that the pieces of land comprised in the Applicants' application for a license should not be allocated to any other Applicant.
- 9.8 On my analysis of the evidence on record, particularly the exhibit marked "**KK 2**", being a letter of service of the Court Order, the Applicants have proved to the required standard that the Respondents were served with the Court Order.
- 9.9 Further, on my analysis of the copy of a printout from the Mining Cadastre portal produced and marked "**KK 3**", I note that it is a document allegedly depicting that a licence had been issued to a company called Trustnet Consultancy Limited on 6<sup>th</sup> July, 2023.
- 9.10 I note, however, that the Applicants herein have not led evidence from which this Court can determine with certainty that the license issued to Trustnet Consultancy Limited relates to the same area covered by the Applicants' applications. In my view, the print out produced merely indicates that a license has been issued to Trustnet

Consultancy but does not indicate on which land the said license relates.

9.11 Accordingly, I find that the Applicants have not proved that the Respondents herein issued a license to Trustnet Consultancy on the same area covered by the Applicants' applications and therefore, in breach of the Court Order dated 8<sup>th</sup> July, 2023.

9.12 Consequently, the Applicants herein have failed to prove that there is a just cause for this Court to grant Leave to the Applicants to commence Contempt Proceedings against the Respondents. It follows, therefore, that the application lacks merit and is accordingly dismissed.

9.13 This now brings me to the substantive application for Judicial Review. The Applicants in this matter seek an Order of *Certiorari* to quash the decision of the Mining Licensing Committee rejecting the Applicants' applications for Artisanal Mining licenses as contained in the letters dated 26<sup>th</sup> May, 2021. The Applicants also seek an Order of *Certiorari* to quash the decision of the Minister of Mines not to act upon the Applicants' appeal made on 29<sup>th</sup> June, 2021.

9.14 The grounds upon which Judicial Review is sought are illegality, procedural impropriety and irrationality. Before I consider the grounds upon which the application for

Judicial Review is made, it is necessary for me to state the underlying principles that guide this Court's exercise of jurisdiction in an application for Judicial Review. In the case of ***Nyampala Safaris (Z) Limited and Others v Zambia Wildlife Authority and Others***<sup>4</sup> and later in the case of ***Sablehand Zambia Limited v Zambia Revenue Authority***<sup>5</sup>, the Supreme Court considered the parameters of the High Court's jurisdiction on an application for Judicial Review and restated the underlying principles as follows: -

- a) ***that the remedy of judicial review is concerned, not with the merits of the decision, but the decision-making process itself;***
- b) ***that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question; and***
- c) ***that a decision of an inferior court or a public authority may be quashed (by an order of certiorari) where that court or authority acted-***

- i) without jurisdiction;*
- ii) exceeded its jurisdiction*
- iii) failed to comply with the rules of natural justice where these rules are applicable;*
- iv) where there is an error of law on the face of the record; or*
- v) the decision is unreasonable in the Wednesbury sense, namely, that it was a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably, could reasonably have reached.”*

9.15 I am guided by these principles in determining the application for Judicial Review before me.

9.16 The first ground upon which the Applicants seek judicial review is illegality. The Applicants allege that the Mining Licensing Committee’s decision rejecting the Applicants’ applications for Artisanal Mining Licenses on the basis that the Large-Scale Exploration Licence had changed hands, was illegal as their applications had been made before the Large-Scale Exploration Licence had changed hands.

9.17 It is further alleged that the decision by the Mining Licensing Committee to reject the Applicants' applications on the basis that a holder of a Large-Scale Exploration Licence is not allowed to grant consent, is illegal as **Section 16** of **The Mines and Minerals Development Act**<sup>2</sup> allows such a licence holder to grant such consents.

9.18 The Applicants have further alleged that the Minister's decision not to determine the Applicants' appeals against the decision of the Mining License Committee is illegal and amounts to dereliction of statutory duty.

9.19 Regarding the ground of illegality, the learned authors, Michael Allen and Brian Thompson, state on **page 576** of their book entitled **Cases and Materials on Constitutional and Administrative Law**<sup>2</sup>, that an authority must not exceed its jurisdiction by purporting to exercise powers which it does not possess and must direct itself properly on the law. That the authority must not use its power for an improper purpose; it must take into account all relevant considerations and disregard all irrelevant considerations, and that an authority to which the exercise of a discretion has been entrusted cannot delegate the exercise of its discretion to another unless clearly authorised to do so, and it must not fetter its discretion.

9.20 The learned authors further state that an authority acts unlawfully if it fails to fulfil a statutory duty and that an authority must not excessively interfere with fundamental rights. The learned authors hasten to state that the list is not exhaustive and that the grounds overlap to some extent.

9.21 In the case of ***Fredrick J T Chiluba v The Attorney General***<sup>6</sup>, the Supreme Court cited with approval the decision in the English case of ***Council of Civil Service Union v Minister for Civil Service***<sup>7</sup> to the effect that in order to succeed under the ground of illegality, the Applicant must prove that the decision: -

***“Contravened or exceeded the terms of the law which authorised the making of that decision or that the decision pursues an objective other than that for which the power to make the decision was conferred. By looking at the wording of the power and the context in which the power is to be exercised, the court’s ultimate function is to ensure that the exercise of the power is within or intra-vires the statute.”***

9.22 Based on the foregoing, in determining whether or not a decision is illegal, this Court is required to construe the contents and the scope of the law conferring the duty or power on the decision maker.

9.23 The Law that governs the issuance of Artisanal Mining Licences is ***The Mines and Minerals Development Act***<sup>2</sup>.

**Section 6** of *The Mines and Minerals Development Act*<sup>2</sup> provides as follows on the functions of the Mining Licensing Committee: -

*“(1) There is established the Mining Licensing Committee which shall —*

- (a) consider applications for mining rights and non-mining rights and grant, renew or refuse to grant or renew mining rights and non-mining rights;*
- (b) terminate, suspend or cancel mining rights and non-mining rights;*
- (c) amend the terms and conditions of mining rights and non-mining rights; and*
- (d) advise the Minister on matters relating to its functions under this Act.” (Court’s emphasis)*

9.24 It is clear from the foregoing provision that the Mining Licensing Committee has the legal mandate to consider applications for mining rights and to specifically grant, renew or refuse to grant a mining right.

9.25 Further, **Sections 15** and **16 (1)** of *The Mines and Minerals Development Act*<sup>2</sup> provides as follows: -

*“15 Subject to this Act, where more than one person applies for a mining right over the same area of land, the Committee shall dispose of the*

**applications in the order in which they are received.**

**16(1) An applicant for a mining right over an area subject to another mining right shall apply for consent from the holder of the mining right, which consent shall not be unreasonably withheld.** (Court's emphasis)

9.26 From the foregoing, it is clear that when the Licensing Committee is considering applications for mining rights, the applications are to be considered in the order that they are received or on a first in first out basis. Further, when a person wishes to obtain a mining right within an area that is already subject to a mining right, that person is required to apply for consent from the holder of the mining right.

9.27 Regarding the transfer of mining rights, **Section 66 of *The Mines and Minerals Development Act*<sup>2</sup>** provides as follows: -

***"A holder of a mining right or mineral processing licence or a person with an interest in a mining right or mineral processing licence who intends to transfer, assign, encumber or otherwise deal with the mining right or mineral processing licence or any interest therein shall apply to the Minister for approval in the prescribed manner and form upon payment of the prescribed fee."***  
(Court's emphasis)

9.28 The foregoing entails that when a holder of a mining right intends to transfer the right, an application for transfer should be made to the Minister of Mines for approval.

9.29 From my analysis of the foregoing provisions of ***The Mines and Minerals Development Act***<sup>2</sup>, I note that it is not the mandate of the Mining Licensing Committee to attend to applications for transfer of mining related rights, but that of the Minister of Mines. Therefore, as the application for transfer of a mining right and the process of application for mining rights are made to two different entities, the Applicants' contention that their applications for Artisanal Mining Licenses, which were made earlier than the application for transfer of a mining right, ought to have been determined before the application for transfer does not apply in this instance.

9.30 In other words, the Applicants' contention that the Mining Licensing Committee's decision to transfer the Large-Scale Exploration License to another company before considering the Applicants' applications for Artisanal Mining Licenses was illegal, lacks merit as the Mining Licensing Committee does not have the legal mandate to consider the applications for the transfer of mining rights.

9.31 I now turn to consider the Applicants contention that the decision by the Mining Licensing Committee directing to reject the Applicants applications on the basis that the

initial holder of the Large-Scale Exploration License from whom they had sought consent was not allowed to issue such consents, is illegal.

9.32 In addressing this contention, I have analysed the copies of the Applicants' rejection letters, wherein the Mining Cadastre Department stated that the reason for the rejection of their application by the Mining Licensing Committee was their determination that the initial holders of the Large-Scale Exploration License had abused its exploration rights by issuing consents instead of conducting exploration activities as per approved program.

9.33 In my view, the foregoing reason advanced by the Mining Licensing Committee does not entail that the holder of the Mining Licensing Committee from who the Applicants had been issued consents was not permitted to issue consents. It meant that the consents issued to the Applicants were a consequence of an abuse of exploration rights and that this is the basis on which their applications for Artisanal Mining Licenses were rejected.

9.34 Therefore, the Applicants' contention that the decision of the Mining Licensing Committee entails that a holder of the Large-Scale Exploration License is not allowed to issue consents and is therefore illegal, lacks merit and is accordingly dismissed.

9.35 This brings me to the consideration of the Applicants' contention that the decision by the Minister of Mines not to determine their appeals against the Mining Licensing Committee's decision is illegal and amounts to dereliction of his statutory duty.

9.36 On appeals against decisions of the Mining Licensing Committee, **Section 97** of ***The Mines and Minerals Development Act***<sup>2</sup> provides as follows: -

***“(1) A person who is aggrieved by a decision of the Director of Mining Cadastre, Director of Mines Safety, Director of Mines, Director of Geological Survey or the Committee under this Act may, within thirty days of receipt of the decision, appeal to the Minister in the prescribed manner and form.”*** (Court's emphasis)

9.37 Based on the foregoing and my analysis of the evidence on record, I note that the letters containing the Mining License Committee's decision to reject the Applicants' applications are dated 6<sup>th</sup> May, 2021. I note further, that the Applicants contend that they only received the said letters on 15<sup>th</sup> June, 2021. However, the Applicants have not led cogent evidence to support this assertion such as a date stamp on the copies of the letters that they received to sufficiently demonstrate that they indeed received the said letters on 15<sup>th</sup> June, 2021. I also note that the Applicants appealed against the decision to the Minister of Mines in a letter dated 29<sup>th</sup> June, 2021.

9.38 Additionally, I note that the Applicants, through their Counsel, made another appeal to the Minister of Mines and Minerals Development by letter dated 29<sup>th</sup> February, 2022.

9.39 Based on the foregoing and my calculation of the period between the dates on the letters of rejection and letters of appeal, I am of the view that the Applicants' appeal to the Minister of Mines was made after the 30 days prescribed period within which the appeal ought to have been made. Therefore, the Minister was not legally obligated to determine the Applicants' appeal. Consequently, the Applicant's contention that the decision not to determine the appeals was illegal, lacks merit and is dismissed.

9.40 The second ground on which the Applicants seek judicial review is procedural impropriety. In ***Council of Civil Service Unions v Minister for the Civil Service***<sup>7</sup>, Lord Diplock described procedural impropriety as follows: -

***“A failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision... (and) also (a) failure by the administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”***

9.41 Based on the foregoing provisions, a decision maker is required to conform to the procedures set down in statute by Parliament.

9.42 Under this ground the Applicants have alleged that the Mining Licensing Committee's decision not to accord the Applicants priority when their applications had been made earlier than the application for transfer of the Large-Scale Exploration License amounted to procedural impropriety.

9.43 However, as I earlier determined under the ground of illegality above, that there was no illegality in the manner that the applications for transfer of the Large-Scale Exploration License and the determination of the Applicants' applications for Artisanal Mining Licenses were dealt with, it follows that there was no procedural impropriety on the part of the Mining Licensing Committee in determining the Applicants' applications.

9.44 On the ground of irrationality, Lord Diplock, in the same case of ***Council of Civil Service Unions v Minister for the Civil Service***<sup>2</sup>, stated that: -

***“By irrationality I mean what can now be succinctly referred to as “Wednesbury unreasonableness”. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within***

*this category is a question that judges by their training and experience should be well equipped to answer...*

9.45 Further, in the case of ***Derrick Chitala v The Attorney General***<sup>1</sup>, Ngulube CJ, as he was then, in addressing the question of “irrationality”, at **pages 97 to 98**, stated that:

*“In law, a decision can be so irrational and so unreasonable as to be unlawful on ‘Wednesbury’ grounds – see *Associated Provincial Picture Houses v. Wednesbury Corporation*. The principle can be summarised as being that the decision of a person or body performing public duties or functions will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no such person or body properly directing itself on the relevant law and acting reasonably could have reached that decision.” (Court’s emphasis)*

9.46 Based on the foregoing, according to the test laid down by Lord Diplock, a decision that is irrational must be so outrageous that it defies logic or accepted moral standards.

9.47 It is important to note that the remedy of Judicial Review is concerned not with the merits of the decision but the decision-making process itself and that the purpose of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected. Further, it is also important to note that it is not part of

the purpose of Judicial Review to substitute the opinion of the Judiciary or of the individual Judges for that of the authority constituted by law to decide the matter in question as stated by the Supreme Court in the case of ***Nyampala Safaris (Z) Limited and Others v Zambia Wildlife Authority and Others***<sup>4</sup> cited above.

9.48 The Applicants' contention under this ground is that the Mining Licensing Committee's decision that the Applicants should seek fresh consent from Orezone Mining and Exploration Limited, the new holder of the Large-Scale Exploration Licence, after stating that a holder of such a licence is not allowed to grant consents is irrational and unreasonable in the Wednesbury sense as no reasonable body properly advised could possibly arrive at such a decision.

9.49 On my analysis of this contention and my earlier finding that the Mining Licensing Committee's decision to reject the Applicant's applications did not entail that a holder of a Large-Scale Mining Right could not issue consent, I find that the Applicants' contention under this ground lacks merit and is accordingly dismissed.

9.50 The other contention under this ground is that the Minister's decision not to determine the Applicants' appeals against the Mining Licensing Committee's decision, which were submitted to his office, is

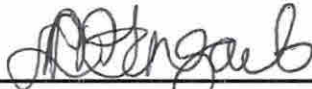
unreasonable in the Wednesbury sense. In determining this contention, I find that since the letters of appeal to the Minister by the Applicants were made after the prescribed period had lapsed, the contention that the Minister's decision not to determine the application is irrational, lacks merit and is accordingly dismissed.

9.51 The net result is that the Applicants' application for Judicial Review made pursuant to **Order 53 of The Rules of the Supreme Court**<sup>1</sup>, has failed on all three grounds and I accordingly dismiss it.

9.52 Each Party shall bear its own costs.

9.53 Leave to Appeal is granted.

**SIGNED, SEALED AND DELIVERED AT LUSAKA ON THE 12<sup>TH</sup>  
DAY OF NOVEMBER, 2024.**



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**P. K. YANGAILO  
HIGH COURT JUDGE**