

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

**2024/HP/1328**

**BETWEEN**

**ABWELL MUDUBANSI & OTHERS**

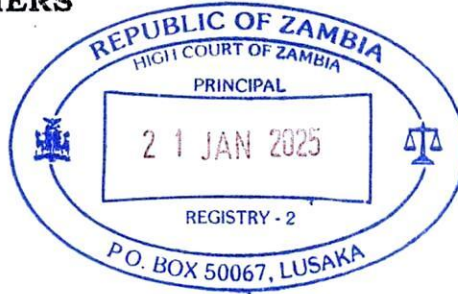
**APPLICANTS**

**AND**

**THE ATTORNEY**

**THE DIRECTOR GENERAL**

**(Parks and Wildlife)**



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

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

**Before the Honourable Lady Justice S. Chocho, in chambers on the 21<sup>st</sup> of January, 2025.**

*For the Applicants:* Mrs. M Hamalangwe of Messers Lennard Lane Partners

*For the Respondents:* Mr. K Malikebo (State Advocate) of Attorney General's Chambers.

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## **R U L I N G**

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**Cases referred to:**

- 1. Mutuna and Kajimanga v Attorney General (2012) Vol 3 ZR 565.***
- 2. Twampane Mining Co-operative Society Limited V E AND M Storti Mining Limited SCZ No. 20 of 2011.***
- 3. Amanita Milling Limited v Nkosi Breweries Limited (2011) ZR 357.***

**Legislation referred to:**

- 1. Order 53 of the Rules of the Supreme Court of England 1965 (White Book) 1999 Edition.***

## **1. INTRODUCTION**

- 1.1. This is a Ruling on the Respondents application to discharge the leave for judicial review granted to the Applicants on October 15, 2024 pursuant to **Order 53 Rule 5(5) of the Rules of the Supreme Court of England (White Book)**.
- 1.2. This matter was heard and determined on January 16<sup>th</sup>, 2025. Extempore Ruling was pronounced at the hearing.

## **2. BACKGROUND**

- 2.1. The Applicants filed pleadings for leave to commence judicial review on 18<sup>th</sup> September, 2024. They filed the following:
- i) Certificate of urgency;
  - ii) Statement for judicial review;
  - iii) Ex-parte Summons for leave to commence judicial review proceedings and Notice of Motion for judicial review;
  - iv) Affidavit in support; and
  - v) Skeleton arguments and a list of authorities.
- 2.2. The Court granted the Applicants leave to file further affidavit which the Applicant filed on 11<sup>th</sup> October, 2024.
- 2.3. The Applicants were granted leave to commence judicial review proceedings on 15<sup>th</sup> October, 2024. The leave acted as stay of execution.
- 2.4. The Respondents filed the current application to discharge leave on 5<sup>th</sup> December, 2024.

### **3. AFFIDAVIT EVIDENCE**

- 3.1. The Respondents by affidavit dated 5<sup>th</sup> December, 2024 sworn by one Kaluba Malikebo averred that the Applicant served the Respondents with leave to commence judicial review on 16<sup>th</sup> October, 2024.
- 3.2. The Respondents further aver that the Applicants did not file/serve any further process/show interest to prosecute the matter.
- 3.3. The Respondents aver that upon conducting a search on November 22, 2024, they discovered that the Applicants have not filed Originating Motion to commence judicial review proceedings nor an application to renew leave.
- 3.4. The Respondents aver that the Applicants did not file Originating Motion to commence judicial review proceedings within 14 days from the grant of leave to commence judicial review.
- 3.5. In opposition the Applicants filed an affidavit dated January 14<sup>th</sup>, 2025 sworn by one Abwell Madubanshi.
- 3.6. The Applicants aver that the Respondents were duly served with the following pleadings:
  - i) Leave to commence judicial review;
  - ii) Notice of motion for judicial review; and
  - iii) Statement and affidavit in support.
- 3.7. The Applicants aver that the Respondents application is an afterthought.

#### **4. THE LAW AND SUBMISSIONS**

- 4.1. I have had occasion to review and consider the application, having heard Counsel for both parties, read the parties affidavits, skeleton arguments and list of authorities for which I am grateful.
- 4.2. The Respondents submit that by filing all the pleadings as stated in paragraphs 2.1 and 3.5 above, on the same date, the Applicants breached the rules of Court and procedure.
- 4.3. The Respondents submit that **Order 53 Rule 5(2) and (5) of the White Book** are instructive and clear on the procedure to be followed. The Order provides as follows:

*“(2) In any other such cause or matter, the application shall be made origination notice of motion to a Judge sitting in open Court, unless the Court directs that it shall be made-*

*a) by Summons to a Judge in chambers;*

*b) by Originating Motion to a Divisional Court of the Queen’s Bench Division.*

*(5) A motion must be entered for hearing within 14 days after the grant of leave”.*

- 4.4. The Respondents rely on the cases of **Mutuna and Kajimanga v Attorney General (2012) Vol 3 ZR 565<sup>1</sup>** and **Twampane Mining Co-operative Society Limited V E AND M Storti Mining Limited SCZ No. 20 of 2011<sup>2</sup>**.
- 4.5. The Respondents submits that the Court should discharge the leave granted to the Applicants.

- 4.6. The Applicants submit that the Respondents application is misconceived and should be dismissed with costs.
- 4.7. The Applicants makes no reference to any authority to buttress its submissions, stating only that it is a matter of practice that a party files pleadings concurrently.


## **5. COURTS DECISION**

- 5.1. It is abundantly clear that the Applicants have misconceived the Respondents application and fails to understand the import of the provisions of **Order 53 of the Rules of the Supreme Court of England (White Book)**.
- 5.2. It is also abundantly clear to me that the Applicants have not complied with the strict rules and procedure as set out in **Order 53 of the Rules of the Supreme Court of England (White book)** under which they sought leave and launched their application. The rules provide for specific steps to be followed and time frame set out.
- 5.3. It is trite that where a party fails/neglects to comply with Court rules/procedure, they do so at their own peril. A defaulting party cannot seek/move the Court to exercise discretion in his favour. The authority in the case of **Amanita Milling Limited v Nkosi Breweries Limited (2011) ZR 357<sup>3</sup>** refers.

**6. CONCLUSION**

- 6.1. By reason of the above, I find that the Respondents application has merit and the Applicants process offends **Order 53 of the Rules of the Supreme Court of England (White Book)**.
- 6.2. **I HEREBY** dismiss the Applicants action for irregularity and failure to follow Court rules and procedure with costs to the Respondents.
- 6.3. I further order that leave to commence judicial review granted on October 15, 2024 **BE AND IS HEREBY** discharged.
- 6.4. The Applicants are free to refile their action provided that costs of this action are fully paid.

**Delivered at Lusaka on the 21<sup>st</sup> day of January, 2025.**



**S. CHOCHO**

**HIGH COURT JUDGE**

