

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE
(Civil Jurisdiction)

Appeal No. 91/2024

BETWEEN:

FQM TRIDENT LIMITED

AND

MUKUKA MUMBA



APPELLANT

RESPONDENT

Coram: Kondolo, SC, Banda-Bobo and Muzenga, JJA
On 16th October 2024 and 5th December 2025

For the Appellant: Mr. L. Mwamba and Mr. B. Stephane of Messrs Mwamba Milan Advocates

For the Respondent: Ms. M. Mbulo of Mesdames Mbulo & Partners and Mr. C. Chungu of Nsapato & Co. Advocates

J U D G M E N T

MUZENGA, JA delivered the Judgment of the Court.

Cases referred to:

- 1. GDC Logistics Zambia Limited v. Joseph Kanyata And 13 Others – Selected Judgment No. 17 of 2017**

Legislation referred to:

- 1. The Rules of the Supreme Court, 1999 Edition.**
- 2. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.**
- 3. The Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia.**

1.0 INTRODUCTION

1.1 The appeal emanates from a ruling on an application to raise a preliminary issue on a point of law that was delivered by the Honourable Mr. Justice L. Musona dated 14th February, 2024.

2.0 BACKGROUND

2.1 On May 23, 2023, the Appellant offered the Respondent a commercial officer position, with the condition that the employment would become effective only after the Respondent fulfilled both pre-employment and post-employment conditions, including a background and security check.

2.2 Under clause 5(a) of the offer, the Respondent's full engagement was contingent upon passing a clean background and security check. After the Respondent signed the Offer Letter, the Appellant conducted the necessary checks. The results were unsatisfactory, particularly regarding references and the Respondent's suitability for the role. Consequently, on June 19, 2023, the Appellant rescinded the employment offer via a **"Rescission Letter."**

2.3 On July 24, 2023, the Respondent initiated legal proceedings in the High Court's Industrial Relations Division, seeking damages for wrongful/unfair dismissal and breach of contract. The respondent

also sought an Order for payment in *lieu* of notice as well as exemplary damages for anguish and inconvenience.

2.4 On September 13, 2023, the Appellant filed an affidavit denying the existence of a binding contract with the Respondent. The Appellant also applied to determine whether a binding contract was formed, given that the Respondent did not meet the pre-employment conditions stated in the offer.

2.5 The question posed by the Appellant in the notice to raise a preliminary issue was whether the Respondent was an actual employee, given the failure to meet the conditions in the conditional offer of employment. The Appellant argued that, without satisfying the conditions, the Respondent lacks the *locus standi* to file a complaint for wrongful dismissal.

3.0 DECISION OF THE LOWER COURT

3.1 From the affidavit evidence and skeleton arguments that were deployed before him, the learned Judge identified the issue for determination as being whether this was an appropriate case to be determined without a trial or hearing. More pointedly, the Judge examined clause 1 of the Offer Letter and was of the view that it did provide for a condition that required fulfillment before the Respondent's employment could become effective.

3.2 On February 14, 2024, the lower court ruled against the Appellant, dismissing their application. The position of the court below was that evidence was required to show that there was a binding contract between the parties because the Respondent did not satisfy the conditional offer. Ultimately, the learned Judge concluded that this was not an appropriate case for him to invoke the powers under **Order 14A of the Rules of the Supreme Court of England.**

4.0 GROUNDS OF APPEAL

4.1 Disenchanted with the decision, the Appellant has appealed on the following grounds:

- "1. The lower court erred in law and fact when it dismissed the application to dismiss the matter on a point of law despite having found that the offer was contingent on fulfilling pre-employment conditions such as a clean background and security check.**
- 2. The lower court erred in law and in fact when it held that the Respondent did not provide any evidence to show that it was its policy or custom to rescind conditional offers without furnishing the offeree the results of security and background check.**
- 3. The lower court erred in law and in fact when it held that evidence is required to show that there was no binding contract between the parties**

because the complainant did not satisfy the conditional offer.”

5.0 ARGUMENTS

5.1 The parties filed their arguments in support of the respective positions they had taken in the appeal. We have taken note of the arguments. However, we shall not reproduce them for reasons that will become clear later in the judgment.

6.0 HEARING OF THE APPEAL

6.1 At the hearing of the appeal, the parties relied on their respective documents and briefly augmented.

7.0 DECISION OF THE COURT

7.1 We have carefully examined the record and the arguments by the respective Counsel. The grievance by the Appellant is that the Court below ought to have disposed of the matter on a point of law after having found that the offer of employment was contingent on fulfilling pre-employment conditions such as a clean background check. We have decided not to consider the merits of the appeal for reasons that will become clear later.

7.2 We note that the lower court was moved by the appellant to determine the cause on a point of law pursuant to **Order 14A of the Rules of the Supreme Court, 1999 Edition (RSC)**. This

matter emanates from the Industrial Division of the High Court. It is trite that the application of the **RSC** is restricted to instances where there is a gap in our rules. In such situations, there should be express provision in the substantive Act or the Rules, indicating clearly that where there is a gap, resort may be had to the **RSC**.


- 7.3 There is no doubt that this matter originates from a Division of the High Court and that **Section 10 of the High Court Act** extends the applicability of the **RSC**, where there is no provision in the rules. However, the Industrial Division of the High Court has its own **Act** and its own rules, separate from the ones applicable to other Divisions of the High Court. These are **The Industrial and Labour Relations Act** and **The Industrial Relations Court Rules**, which do not extend the applicability of the **RSC** to that Court. This is because of the special nature of the Court. It is not bound by strict adherence to pleadings and is mandated to deliver substantial justice. It is the only court that has the power to pierce the veil and peep through to ascertain the true reasons behind a dismissal or decision. It is empowered to make an order or award reliefs which the justice of the situation demands. The Supreme Court in the case of **GDC Logistics Zambia Limited v. Joseph Kanyata And 13 Others**,¹ had the following to say on the subject:

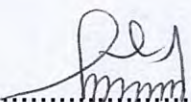
"Clearly, under Section 85 (5), the IRC is not bound by the rules of evidence. The main object of the court is to do substantial justice between the parties before it. We said this in the James Matale⁴ case. However, we have also made it very clear that substantial justice is for both the complainant and the respondent and not only for the complainant.

We also agree with the respondents that in terms of Section 85A (d), the court is mandated to make any other order or award as it may consider fit in the circumstances of the case. And under rule 55, nothing in the Court Rules shall be deemed to limit the court to make such an order as may be necessary for the ends of justice.

..... However, even though the IRC is now a division of the High Court, it is still guided by its own Court Rules"

- 7.4 Therefore the lower Court having been moved under the provisions of the **RSC**, the application was incompetently before the court.
- 7.5 In the circumstances, the appeal is dismissed for being incompetent. The net effect is that the matter should proceed to be determined on its merits by the lower Court.
- 7.6 Each party will bear their own costs.


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M. M. Kondolo, SC
COURT OF APPEAL JUDGE


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A. M. Banda-Bobo
COURT OF APPEAL JUDGE


.....
K. Muzenga
COURT OF APPEAL JUDGE