IN THE COURT OF APPEAL OF ZAMBIA **Appeal No. 109/2023**
HOLDEN AT KABWE
(Civil Jurisdiction)

BETWEEN:

JERVIS ZIMBA (Suing in his capacity as President/Chairman of Zambia National Farmers' Union) **APPELLANT**

27 JAN 2026

AND

SANKANA GENERAL DEALERS **RESPONDENT**

CORAM: Kondolo, SC, Majula and Muzenga, JJA
On: 22nd May 2025 and 27th January 2026

For the Appellant: Mr. Isaac Nonde, Messrs Isaac & Partners

For the Respondent: Mr. S. Nsomboshi, Messrs Mulenga Nsomboshi & Associates

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JUDGMENT

Muzenga, JA, delivered the Judgment of the Court

Cases referred to:

1. **Giogio Fraschini and Motor Parts Industries (Copperbelt) v. Attorney General (1984) ZR 29**
2. **Lafarge Cement Plc v. African Brothers Corporation Limited – SCZ Judgment No. 21/2016**
3. **Attorney General v. Marcus Kampumba Achiume (1983) ZR 1**
4. **Colgate Palmolive (Z) Inc v. Abel Shemu Chika and 110 Others – Appeal No. 181 of 2005**

5. **Dangote Industries Zambia Limited v. Enfin Limited – CAZ Appeal No. 53 of 2020**
6. **Acropolis Bakery Limited v. ZCCM Limited (1985) ZR 232**
7. **Wilson Masauso Zulu v. Avondale Housing Project (1982) ZR 172**
8. **Khalid Mohamed v. Attorney General (1982) ZR 49**
9. **Nkhata and 4 Others v. Attorney General (1966) ZR 124**
10. **Zambia Bata Shoe Company Limited v. Vin-Mas Limited (1994) SJ 35**
11. **Royal British Bank v. Turquand (1856) 6 E & B 327**
12. **Scherer v. Counting Investments Limited (1986) 1 WLR 615**
13. **Rudnap (Zambia) Limited v. Spyron Enterprises Limited (1976) ZR 326**
14. **National Airports Corporation v. Reggie Ephraim Zimba and Another (2000) ZR 154**
15. **Freeman & Lockyer v. Buckhurst Park Properties (1967) 2 QB 480**
16. **Grindlays Bank International Zambia Limited v. Nahar Investments Limited – SCZ Judgment No. 11 of 1991**
17. **Collet v. Van Zyl Brother Limited (1966) ZR 65**

Other works referred to:

1. **Charlesworth and Percy on Negligence, 12th Edition**
2. **Commercial Law in Zambia, Cases and Materials**
3. **Halsbury's Laws of England 4th Edition (re-issue) vol 1**
4. **William Bowstead, Francis Martin Baillie Reynolds, Peter George Watts, Bowstead and Reynolds on Agency, 19th Edition (2010) London, Sweet & Maxwell**
5. **Matibini P, Zambian Civil Procedure Commentary and Cases Volume 1, South Africa, LexisNexis, 2017**

Legislation referred to:

1. **High Court Act, Chapter 27 of the Laws of Zambia.**

1.0 INTRODUCTION

1.1 This appeal is against the judgment of the High Court delivered by Kamwendo J, in which he found for the respondent and awarded the reliefs as endorsed in the writ.

2.0 BACKGROUND

2.1 The background to this matter is that the respondent sued the appellant in the High Court alleging that on or about December 2017, they entered into an agreement with the defendants for the supply of 2,100 bags of Compound D fertiliser and 670 bags of Urea priced at ZMW260.00 and ZMW300.00 each respectively. That each of the bags delivered to Changa Musonda, an agent and employee of the appellant weighed 50 kilogrammes and the total cost of all the bags collected amounted to K747,000.00. The parties agreed that the period for full payment of money was from end of May 2018 to 31st August 2018 from date of delivery. The respondent alleged that the appellant had only paid a total of K104,600.00 and the balance of K642,400.00 remained unpaid despite several reminders. The respondent sought payment of K642,400.00 being the balance due and interest thereon.

2.2 The appellant in his defence admitted being the employer of Changa Musonda but disputed the respondent's claim on the basis that one

of its functions was to play a facilitatory role to link farmers to various services but only at national level and not local level and thus did not play any part in linking the Kabwe District Farmers' Association to the respondent nor was it a party nor had any prior knowledge of the business transaction alleged by the respondent. All in all, the appellant denied owing the respondent any sums as alleged.

2.3 In reply, the respondent averred that it believed Changa Musonda to have been the appellant's employee as could be seen from the letter head of the agreement between the parties which bore the appellant's logo, signed in his capacity as employee of the appellant. It was asserted that the respondent could not be expected to know the internal organisational affairs especially that the respondent had no previous dealings with them. That since Changa Musonda was an employee of the appellant and the place of business suggested for all intents and purposes were for the appellant, the respondent believed it was dealing with the appellant.

3.0 DECISION OF COURT BELOW

3.1 After analysing the evidence adduced, the trial judge reasoned that when Changa Musonda entered into an agreement with the respondent, he was acting in the scope and course of his

employment. Relying on the case of **British Bank v. Turquand**, the trial judge reasoned that there was nothing in his contract of employment which prohibited him from transacting with third parties for matters in line with his duties as outlined in his contract. He consequently found that Changa Musonda signed the contract as an employee of the appellant, Zambia National Farmers' Union and flowing from that, the appellant was liable to the respondent in the sum of K 642,400.00.

4.0 THE APPEAL

4.1 Dissatisfied with the judgment of the court below, the appellant appealed to this court on six grounds as follows:

1) **That the learned trial judge erred and misdirected himself at law when he found the defendant to be vicariously liable for the actions of Changa Masonga.**

2) **That the learned trial judge erred and misdirected himself at law and in fact when he found that the contract signed by Changa Masonga clearly fell within the ambit of his duties as an employee of the defendant.**

3) **That the learned trial judge erred and misdirected himself at law and in fact when he found that Changa Masonga was acting in the scope and course of his employment.**

4) **That the learned trial judge erred and misdirected himself at law and in fact by taking the view that there was nothing in the contract of employment for Changa Masonga which**

prohibited him from entering into a contract with third parties for matter within his duties as outlined in his contract of employment.

5) **That the learned trial judge erred and misdirected himself at law by granting costs to the plaintiff as the plaintiff did not prove his case against the defendant.**

5.0 APPELLANT'S HEADS OF ARGUMENT

5.1 In ground one, the appellant submitted that the doctrine of vicarious liability finds its roots in early common law. We were referred to the learned authors of **Charlesworth and Percy on Negligence, 12th Edition** who state that:

> **"It came to be established that the liability of an employer for the tort of his employee was based, not on a fiction that he had impliedly commanded his employee to act as he did, but on the ground that the employee had acted within the scope of, or during the course of, his employment or authority."**

5.2 It was submitted that the general principle is that an employer may be held vicariously liable for the employee's acts or omissions as was observed in **Giogio Fraschini and Motor Parts Industries (Copperbelt) v. Attorney General.**[1] That vicarious liability imposes liability upon one party for torts committed by another person.

5.3 Learned counsel for appellant argued that it cannot be held vicariously liable for Changa Masonga's actions as he acted outside the scope of his employment duties and had no capacity to bind the appellant to any legally binding contract. It was contended that this was not part of his contractual duties, and the appellant had not held him out to possess such authority. It was submitted that this fact was well known to the respondent as PW1 admitted in cross examination that the guarantee at page 103 of the record of appeal was from Changa Masonga and not the appellant and that the respondent only came to know him as a District Facilitator when signing the agreement and that the delivery notes were for Mbala and Kapiri Mposhi Districts and not for the appellant.

5.4 It was argued that PW1 also admitted the delivery notes were not stamped by the appellant and that Changa Masonga was not only the recipient of the fertiliser, but he was the one who produced the money to make partial payment deposit for the fertiliser. That it is evidently clear that the respondent admitted that its only contact was with the said Changa Masonga and not the appellant.

5.5 The appellant argued further that DW1 was clear in his evidence that the appellant had no part to play in the contract between the Zambia National Farmers' Union (ZNFU) and the respondent, neither

had ZNFU had sight of the said contract. It was submitted that Changa Masonga had no capacity to sign a contract between the Kabwe District Farmers' Association and the respondent and there was nothing in the documents to show that the ZFNU undertook to guarantee farmers in Kabwe District.

5.6 It was argued that DW4, Changa Masonga's supervisor, testified that after becoming aware of the case in court, Changa Masonga agreed during disciplinary proceedings convened against him that he had gone beyond his mandate and his contract was consequently terminated.

5.7 It was counsel's submission that Changa Masonga had no ostensible authority to bind the appellant and the court erred in finding that the appellant was vicariously liable for the unauthorised actions of Changa Masonga. Reliance was placed on the case of **Lafarge Cement Plc v. African Brothers Corporation Limited**[2] where it was held that:

> **"The general principal is that the employer may be held vicariously liable for the employee's acts or omissions. However, the bespoken arrangement that the respondent had with Brian Banda was a private arrangement between the respondent and Brian Banda. The evidence on record does not show that the so called 'bespoken' arrangement between the respondent and Brian Banda had anything to do with**

> **the appellant. The appellant is therefore not vicariously liable as the arrangement between the respondent and Brian Banda was outside the scope of Brian Banda's employment duties..."**

5.8 The appellant contended that the agreement signed by Changa Masonga and the respondent was a private agreement and had nothing to do with the appellant.

5.9 Relying on the case of **Attorney General v. Marcus Kampumba Achiume,**[3] it was submitted that the trial judge did not properly analyse the evidence because had he done so, he would have found that the private agreement between Changa Masonga and the respondent had nothing to do with the appellant.

5.10 The appellant argued grounds two, three and four together that there was sufficient evidence adduced that the appellant's constitution appearing on page 146 to 157 of the record of appeal and the employment contract for Changa Masonga appearing on pages 157 to 166 did not authorise him to enter into contracts on behalf of the appellant as that was a preserve of the Council which delegated its powers to the Board and the Executive Director.

5.11 It was contended that the court below erred when it found that Changa Masonga had acted in the scope of his employment without

any evidence being presented to it to show that it was his duty under the contract of employment to sign contracts on behalf of the appellant. Reference was made to the case of **Colgate Palmolive (Z) Inc v. Abel Shemu Chika and 110 Others**[4] and the case of **Dangote Industries Zambia Limited v. Enfin Limited,**[5] where we held that **"it is trite that the courts will normally uphold the manifest intentions of the parties who have properly executed an agreement."**

5.12 The case of **Acropolis Bakery Limited v. ZCCM Limited**[6] was also referred to in submitting that the respondent was only trying to recover from the appellant on the basis that Changa Masonga was an employee of the appellant when he acted outside the scope of his contract.

5.13 In ground five, we were referred to **Wilson Masauso Zulu v. Avondale Housing Project**[7] and **Khalid Mohamed v. Attorney General**[8] for the proposition that the onus was on the respondent to prove its case against the appellant and that the appellant had ably demonstrated in these arguments that the court below erred in awarding judgment to the respondent.

5.14 In sum, we were urged to uphold the appeal.

6.0 RESPONDENT'S HEADS OF ARGUMENT

6.1 In response to ground one, the respondent argued that the appeal is hinged on whether or not Changa Masonga negotiated and signed the contract on behalf of the appellant with the respondent within the scope of or in the normal course of his employment. It was counsel's argument that their answer to this question was that he did, and the employer, is vicariously liable without a doubt.

6.2 It was argued that the agreement at page 102 of the record of appeal was signed between the respondent and the appellant through its Credit Facilitator clearly showing the same headed Zambia National Farmers' Union with the appellant's logo. That the appellant's president DW1 confirmed at page 341 of the record of appeal that the said Changa Masonga was disciplined by the appellant and not Kabwe District Farmers' Union, confirming that he was their employee. It was argued that the contract of employment for Changa Masonga at pages 157 to 166 of the record of appeal did not contain any clause prohibiting him from signing any contracts on behalf of the appellant. It was submitted that part of his responsibilities were to ensure **'overall coordination of the Union activities at district level.'**

6.3 The respondent submitted that it is trite that if the employee in question is a servant of a particular class and the act complained of was one which would in ordinary course be within the scope of the employment of servants of that class, then the employer must be held liable as illustrated in **Giogio Fraschini and Motor Parts Industries (Copperbelt) v. Attorney General** *supra*. It was argued that there was therefore no doubt that Changa Masonga, the appellant's Credit Facilitator, was doing his job as outlined in the contract of employment.

6.4 Placing reliance on the case of **Attorney General v. Marcus Kampumba Achiume** *supra* and **Nkhata and Four Others v. Attorney General,**[9] the respondent contended that there is nothing on record to justify this Court to interfere with the trial court's findings of fact as they appeared in the court below.

6.5 In response to grounds 4 to 5, the respondent referred to the case of **Zambia Bata Shoe Company Limited v. Vin-Mas Limited**[10] where the Supreme Court held *inter alia* that the company's authorised agents bound the company to comply with the contract and such liability cannot be avoided.

6.6 Further reference was also made to the learned author of **Commercial Law in Zambia, Cases and Materials at page 67** where it is stated that:

> **"The general rule is that an agent makes a contract on behalf of his principal, the contract is between the principal and the third party and *prima facie* at common law, the only person who can sue and be sued on the contract is the principal."**

6.7 It was submitted that from the above authorities, the appellant having held out Changa Musonda to be Senior Officer stationed at Kabwe office as Credit Facilitator with wide powers and responsibilities according to his contract, there is no basis upon which any reasonable person in the shoes of the respondent would not have transacted with the said Changa Masonga in good faith, as it did.

6.8 It was submitted that the learned trial court was on firm ground when he found that there was nothing in the contract of employment or the constitution prohibiting Changa Masonga from entering into a contract.

6.9 The respondent argued that even assuming Changa Masonga was prohibited from entering into contracts, DW1's evidence was that neither the appellant's constitution nor the contract of employment

was publicised. It was argued that the position of the law in so far as internal regulations of an institution in relation to outsiders is as illustrated in **Royal British Bank v. Turquand.**[11]

6.10 In response to ground 5, the respondent referred to **Order 40 Rule 6 of the High Court Rules,** on the court's discretion to award costs of a suit or matter.

6.11 It was argued that the principle governing the award of costs is summarised by Dudley LJ in the case of **Scherer v. Counting Investments Limited**[12] remains good law where he stated that:

> **"The normal rule is that costs follow the event. The party who seems to have unjustifiably brought another party before the court or given another party cause to obtain his rights, is required to recompense that other party in costs, but; the Judge has unlimited discretion to make what order as to costs he considers that the justice of the case requires. Consequently, a successful party has a reasonable expectation of obtaining an order to be paid the costs by the opposing party but has no right to such an order for it depends upon the exercise of the court's discretion."**

6.12 It was argued that there is no doubt that the respondent succeeded in all its claims against the appellant and that it's the appellant's refusal to pay the respondent that occasioned this suit and the respondent, ought to, as a matter of justice, recover its costs.

6.13 In sum, we were urged to dismiss the appeal for lack of merit.

7.0 HEARING

7.1 At the hearing of the appeal, learned counsel placed reliance on the arguments filed in support of their respective positions. The same were augmented with brief oral submissions.

8.0 DECISION OF THE COURT

8.1 We have carefully considered the arguments advanced by the parties, the record of appeal and the judgment of the trial court. To avoid repetition, we will address the first four grounds of appeal together as they are interrelated.

8.2 A careful perusal of the record of appeal reveals that after considering the evidence adduced, the trial court formed the view that Changa Masonga was acting within the scope of his employment when he entered into an agreement with the respondent. Further that the appellant as his employer was therefore liable to the respondent for the sum of ZMW642,400.00.

8.3 The relationship of a principal and agent is not odd at law. It is for this reason that agents are recognised as having the power to affect the legal rights, liabilities and relationships of the principal. The learned authors of **Halsbury's Laws of England 4th Edition (re-issue) vol 1(1) at paragraph 1** define the term **'agent'** as:

> **"... in law, the word agency is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relation of agency arises whenever one person called the 'agent' has authority to act on behalf of another called the 'principal' and consents so to act. Whether that relation exists in any situation depends not on the precise terminology employed by the parties to describe their relationship but on the true nature of the agreement or the circumstances of the relationship between the alleged principal and agent."**

8.4 The Supreme Court stated in the case of **Rudnap (Zambia) Limited v. Spyron Enterprises Limited**[13] that:

> **"When a contract is made with an alleged agent of a company the onus is on the claimant to prove that the agreement was made with an employee or agent of that company who was held out to be authorised to enter into such an agreement."**

8.5 The undisputed evidence on record is that Changa Masonga was employed by the appellant as a Credit and Market Facilitator who, according to the contract of employment was responsible for the overall coordination of the Union/DFA activities at district level. Some of his specific duties included:

> **i) Liaison between the ZNFU Head Office and the District Farmers' Association members and**

potential members, as well as other agricultural industry stakeholders;

ii) **Mobilising farmers and linking them to specific services such as input suppliers, discounts, markets, finance and other support services;**

iii) **Representing the Union at various district meetings and conferences;**

iv) **Coordination of all ZNFU member services and projects at district level;**

v) **To be custodian of the ZNFU assets (fixed and moveable) at district level...**

8.6 PW1 told the trial Court that he initially did not know that Masonga was a credit facilitator. He only came to know at the time the agreement was signed on a paper bearing the appellant's logo and he could not tell whether the logo was genuine or not.

8.7 The evidence of one of the appellant's witness, DW1 was that as far as the appellant was concerned, they were not owing the respondent because clause 2(c) of their constitution stipulated that a District Farmers' Association (Kabwe) is an independent entity and merely an affiliate of the ZNFU. That the Council is the supreme body of ZNFU which makes decisions on behalf of ZNFU and that

the appellant did not play any role in the contract with the respondent and did not even have sight of the same.

8.8 It is clear however from Changa Masonga's duties as outlined in the contract of employment, that he was responsible for the liaison between the ZNFU Head Office and the District Farmers' Association members and potential members, as well as other agricultural industry stakeholders; mobilising farmers and linking them to specific services such as input suppliers, discounts, markets, finance and other support services and for the overall coordination of all ZNFU member services and projects at district level.

8.9 From these responsibilities, it can be inferred that it was within the scope of his duties to enter into agreements with other agricultural industry stakeholders and farmers, linking them to services such as input suppliers, discounts, markets, finance and other services on behalf of the ZNFU.

8.10 It is further clear, as earlier mentioned, the agreement between the respondent and Changa Masonga was signed on headed paper bearing the appellant's logo. Being an employee of the appellant, Changa Masonga acted as an agent of ZNFU and his actions thus capable of binding the appellant as his principal. We are therefore of the firm view that the respondent discharged the onus that the

agreement was made with the appellant's employee who was being held out to be authorised to enter such agreements.

8.11 The appellant argues that both the contract of employment and the constitution did not authorise Changa Masonga to enter into contracts on its behalf as that was a preserve of the Council which delegated its powers to the Board and the Executive Director. We have to state that the law is clear in this regard as aptly put in the rule in **Royal British Bank v. Turquand** *supra*. The rule in this case is simply to the effect that third parties who had dealings with the company need not inquire into the regularity of the indoor management but could assume that its requirements had been complied with.

8.12 This principle was adopted by the Supreme Court in the case of **National Airports Corporation v. Reggie Ephraim Zimba and another**[14] where it was stated that an outsider dealing with a company cannot be concerned with any alleged want of authority when dealing with a representative of appropriate authority or standing for the class or type of transaction.

8.13 The actions of an agent will bind the principal whether the agent is acting with actual or ostensible authority to act on behalf of the principal. The distinction between actual and apparent authority

was explained by Diplock L. J. in **Freeman & Lockyer v. Buckhurst Park Properties**[15] as follows:

> **"An "actual" authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties...**
> **As "apparent" or "ostensible" authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted on by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed on him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation. The representation, when acted on by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract."**

8.14 It is therefore the position of the law that an employee or an agent or other officer could bind the company or principal if he had ostensible or apparent authority, even though the board of directors had not endowed him with actual authority. The evidence in this case suggests that Changa Masonga had apparent or ostensible authority to transact on behalf of the appellant. This can also be

inferred from the evidence of the appellant that Changa Masonga was dismissed because he admitted to exceeding his mandate under the contract.

8.15 It can be said therefore that the respondent did not need to investigate the regularity of the appellant's indoor management as a Union or whether Changa Masonga had the authority to bind the Farmers' Union, notwithstanding the appellant's claim that Changa Masonga lacked the authority to enter into such agreements either in his contract or the constitution. The fact that the delivery notes were not stamped by the appellant and that Changa Masonga was not only the recipient of the fertiliser, but also the one who produced the money to make partial payment deposit for the fertiliser was not enough to put the respondent on notice that Changa Masonga was acting in his personal capacity.

8.16 We further find credence in the learned authors of **Bowstead and Reynolds on Agency,** who state at paragraph 8-063 that:

> **"An act of an agent within the scope of his apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests."**

8.17 In the same way, in **Grindlays Bank International Zambia Limited v. Nahar Investments Limited**[16] the Supreme Court held that **"where the fraudulent conduct of the servant falls within the scope of the servant's authority, actual or ostensible, the employer will be liable."**

8.18 Therefore, whether or not Changa Masonga acted without authority or fraudulently and was dismissed as a result, as long as he acted within the scope of his authority whether apparent or ostensible, the appellant is liable for his actions. The appellant's liability does not cease on the premise that Changa Masonga acted in furtherance of his personal interests.

8.19 In light of the foregoing, we find nothing perverse in the findings of the learned trial judge that warrants their reversal. In other words, we find no merit in grounds one, two, three and four and we accordingly dismiss them.

8.20 In the last ground, the appellant is aggrieved with the decision of the trial court in granting costs to the respondent when the respondent did not prove the case against the appellant.

8.21 As we have pointed out, we do not find anything warranting the reversal of the findings of the learned trial court. The judge thus rightly found that Changa Masonga acted within the scope of his

employment and that the appellant as his employer was vicariously liable for his actions. It was on this basis that the trial court awarded costs.

8.22 We do not need to belabour on this aspect as the principle in awarding costs is well illustrated by the learned author of **Zambian Civil Procedure; Commentary and Cases** at page 1697 that:

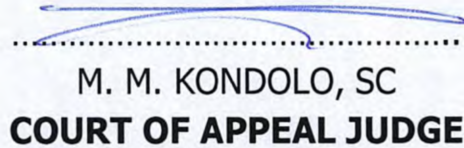
> **"...The most important of these principles is that a party who has been substantially successful in bringing or defending a claim, is generally entitled to have a costs order made in its favour against a party who was not successful."**

8.23 Where a court exercises its jurisdiction by depriving the successful party any costs, the exercise of such discretion must be justifiable by the material supported by the evidence as stated in **Collet v. Van Zyl Brother Limited.**[17] A successful party or litigant is thus always entitled to its costs.

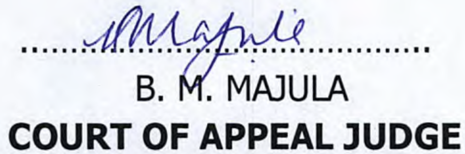
8.24 It goes without saying therefore that having been successful in the court below, the learned judge was on firm ground when he awarded costs to the respondent. We find no merit in this ground of appeal and accordingly dismiss it.

9.0 CONCLUSION

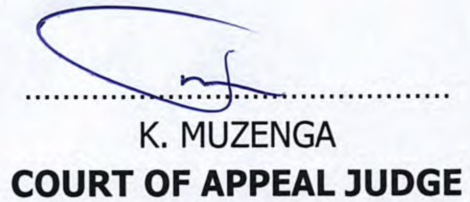
9.1 Having found no merit in the entire appeal, we dismiss it. We award costs to the respondent to be taxed in default of agreement.



M. M. KONDOLO, SC
COURT OF APPEAL JUDGE



B. M. MAJULA
COURT OF APPEAL JUDGE



K. MUZENGA
COURT OF APPEAL JUDGE