

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

**Appeal No. 291/2024**

**BETWEEN:**

27 JAN 2026

**BANK OF ZAMBIA**

**APPELLANT**

**AND**

**BERNARD FUNDI (Suing on his own  
behalf and on behalf of 59 erstwhile Police  
Officers seconded to the Bank of Zambia)**

**RESPONDENTS**

**CORAM: Kondolo, Majula and Muzenga JJA**  
**On: 24<sup>th</sup> April 2025 and 27<sup>th</sup> January 2026**

For the Appellant: Mrs. Jean Couvares Kamanga, Deputy General  
Counsel

For the Respondent: Mr. Z. Sampa, Mr. W. Kayope & Ms. N. Mwila,  
Simeza Sangwa Associates

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## **J U D G M E N T**

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**Muzenga, JA, delivered the Judgment of the Court.**

Cases referred to:

- 1. Veronica Lungu and 19 Others v. Bank of Zambia  
2011/HP/561**
- 2. Yengwe Farms Limited and Masstock Zambia Limited, the  
Commissioner of Lands v. Attorney General (1999) ZR 69**
- 3. Food Reserve Agency v. Pasi – CAZ Appeal 94 of 2018**

4. **Miyanda v. Handahu – SCZ Judgment No. 5 of 1994**
5. **Indo Zambia Bank Limited v. Mushaukwa Muhanga – SCZ Judgment No. 26 of 2009**
6. **Hakaide Hichilema and Another v. Edgar Chagwa Lungu and Others – 2016/CC/0031**
7. **Zambia Electricity Supply Corporation Limited v. David Lubasi Muyambango (2006) ZR 22**
8. **Celestine Ntarwanda alias Edouard Nsengimana v. Republic [2017] eKLR**
9. **Attorney General v. Nkonde – SCZ Appeal No. 43 of 2016**
10. **Attorney General v. Law Association of Zambia – SCZ No. 3 of 2008**
11. **Carm Investment Limited v. Circolo Italiano Di Lusaka – SCZ/8/204/2015**
12. **Concrete Pipes and Products Limited v. Kabimba and Others – SCZ/8/146/2015**

Statutes referred to:

1. **The Bank of Zambia Act, Chapter 360 of the Laws of Zambia.**
2. **The Bank of Zambia Act, No. 5 of 2022.**

## **1.0 INTRODUCTION**

1.1 This appeal is against the ruling of the High Court delivered by Kafunda J, in which he found that the respondents' matter was capable of determination on a point of law pursuant to **Order 14A of the RSC** on the basis that the Cabinet Circular No. 3 of 2001 was binding on the appellant. The trial court consequently awarded the respondents their claims as stipulated in the statement of claim.

## **2.0 BACKGROUND**

2.1 The background to this matter is that by writ of summons and statement of claim filed in the High Court, the respondents sued the appellant alleging that the contracts of secondment given to them contravened Cabinet Circular No. 3 of 2003. They sought the following reliefs:

- i) A declaration that the contracts of secondment given to the plaintiffs by the defendant to the extent that they contravened Cabinet Circular No. 3 of 2001 were void;**
- ii) A declaration that the plaintiffs as officers on secondment were entitled to the same terms and conditions of service applicable to Security Officers of the defendant;**
- iii) An order of specific performance of the agreements between the plaintiffs and the defendant with respect to salaries, overtime allowances, shift differential allowances and gratuity as governed Cabinet Circular No. 3 of 2001;**
- iv) Interests on the sums found due;**
- v) Any other reliefs the court may deem fit; and**
- vi) Costs.**

2.2 The defendant (now appellant), filed a defence and counter claim. In its defence, the appellant averred that the Circular in question did not govern the terms and conditions of service

between the defendant and the plaintiffs as they were specifically governed by the Offer of Fixed Term Secondment Appointment letters and Bank of Zambia Terms and Conditions of Service for Seconded Zambia Police Officers. It was avowed that the respondents were engaged under specific terms and conditions of service, which terms and conditions were in accordance with the Memorandum of Understanding signed between the Bank of Zambia and the Zambia Police Service. That the respondents at all material times remained the employees of the Zambia Police Service and not the appellant's.

2.3 In its counter claim, the appellant averred that it availed to Bernard Fundi and Namoomba Michelo diverse loan facilities in the sums of ZMW45,000.00 and ZMW60,000.00 respectively during their secondment to the Bank at the annual interest rate of 12.5% per annum. The appellant averred that the said Bernard Fundi and Namoomba Michelo were at the time of their separation from the defendant, justly and truly indebted to it and had failed or neglected to pay the sums owed. The appellant sought the following reliefs:

- i) **An order for the payment of the sum of K12,296.47 to the defendant by one Bernard Fundi being the**

**total principal and contractual interest accrued on the loan granted to him by the defendant;**

- ii) **An order for the payment of the sum of K11,210.03 to the defendant by one Michelo Woods Namoomba being the total principal and contractual interest accrued on the loan granted to him by the defendant;**
- iii) **Interest on all sums found due and payable; and**
- iv) **Costs.**

2.4 On 30<sup>th</sup> March 2022, the respondents took out summons for determination of matter on a point of law and for judgment pursuant to **Order 14A of the RSC**. The respondents intended for the matter to be determined on the question of whether the **Cabinet Office Circular No. 3 of 2001** was binding on the appellant.

2.5 The respondents' argument was that according to the **Government Gazettes No. 836 of 2016** and **Government Gazettes No. 183 of 2012** issued pursuant to the **Statutory Functions Act, Cap 4 of the Laws of Zambia (the Statutory Functions, Portfolios and Composition of Government)**, the appellant was regarded as a Statutory Body under the Ministry of Finance. That it followed that where the Cabinet

Circulars are directed to Institutions and Statutory bodies under the Ministry of Finance, the same would be regarded as equally directed to the defendant. Reliance was placed on the case of **Veronica Lungu and 19 Others v. Bank of Zambia.**<sup>1</sup>

2.6 The respondents submitted that paragraph (g) of the Cabinet Circular was binding on the appellant and the respondents were entitled to enjoy the same conditions of service as those available to the Security Officers employed by the appellant. It was argued that despite the requirements of paragraph (g) of the Circular, which was applicable, and binding on the appellant, the appellant's terms and conditions of service provided the following as express terms in the engagement of the respondents:

- **Seconded officers were not to be entitled to overtime allowance during the period of secondment; and**
- **Seconded officers shall be required to work in shifts but will not be entitled to shift differential allowance.**

2.7 It was argued that the above terms were given to the respondents notwithstanding that they held the same rank and carried out the same work as officers employed by the defendant who were entitled to *inter alia* overtime allowance, shift differential allowance, gratuity and higher basis which were not

available to the respondents. The respondents implored the trial court to find that to the extent that the appellant's terms and conditions excluded the respondents to certain conditions available to its officers, the said terms and conditions were void and illegal and meant to disadvantage the respondents.

2.8 The appellant's contention was that the circular was not binding on it because even though it speaks to the issue of secondment to Statutory Bodies and other Institutions, it is not addressed to the heads of Statutory Bodies or other institutions and particularly not addressed to the appellant. That the respondents' reference to **Government Gazettes No. 836 of 2016** and **Government Gazettes No. 183 of 2012** was misconceived and irrelevant to the determination of the question. The appellant contended that the Circular has specific addressees and there is no occasion for the court to read in other addressees not listed in the Circular.

2.9 The appellant's alternative argument was that the Circular was not binding on the appellant as its purpose was to curb irregularities in the procedures and conditions of service on secondments and that seconded officers would serve on conditions of service obtaining at the place of secondment. That the Circular does not give the respondents any entitlements thus

not entitling the respondents to the reliefs sought. It was argued that paragraph 2(g) of the Circular was gravely misapprehended by the respondents.

### **3.0 DECISION OF THE COURT BELOW**

3.1 The trial court considered the preliminary question and determined that the ordinary and natural meaning of the words in **clause 2(g)** placed an obligation on the organisation of secondment to ensure that the seconded officers were entitled to and would enjoy the conditions that are applicable to officers employed in the institutions of secondment. He thus found that the respondents were entitled to the conditions of the appellant bank and awarded them their claims as stipulated in the statement of claim.

### **4.0 GROUNDS OF APPEAL**

4.1 Unhappy with the decision of the court below, the appellant has appealed to this court fronting the following grounds of appeal:

- i) **The Honourable Court below erred both in law and fact when it held that Cabinet Circular No. 3 of 2001 was binding on the Bank of Zambia (the appellant herein), when the said Cabinet Circular was not directed at, or addressed to the appellant.**
- ii) **The Honourable Court below erred both in law and fact when it held that a literal interpretation of clause 2(g) of the Cabinet Circular No. 3 of 2001**

meant that officers on secondment were to be subject to the terms and conditions of service applicable in the Bank of Zambia and that officers on secondment were not to be disadvantaged by being given lesser conditions than those enjoyed in the place from where they were seconded.

- iii) The Honourable Court below erred both in law and in fact when it held that in their ordinary and natural meaning, the words of Clause 2(g) of the Cabinet Circular No. 3 of 2001 places an obligation on the organisation of secondment to ensure that the seconded officers were entitled to and would enjoy the conditions that are applicable to the officers employed in the institutions of secondment.

## 5.0 APPELLANT'S HEADS OF ARGUMENT

- 5.1 In support of ground one, the appellant argued that the **Cabinet Circular No. 3 of 2001** was clearly not addressed to the appellant and it was not thus bound by it. The appellant placed reliance on the case of **Yengwe Farms Limited and Masstock Zambia Limited, the Commissioner of Lands v. Attorney General**<sup>2</sup> where the Supreme Court held that **Circular No. 1 of 1985** was not binding on the Commissioner of Lands as it was not addressed to him. We were also referred to our decision in **Food Reserve Agency v. Pasi**.<sup>3</sup> The appellant submitted that the Circular must therefore expressly state the institution it is applicable to. That the

trial court erred when it held that the Circular was not addressed to any statutory body but all statutory bodies by necessary implication and that the list of addressees was not exhaustive.

- 5.2 It was learned counsel's argument that a holding that **Cabinet Circular No. 3 of 2001** is binding on the appellant is contrary to **Articles 213 and 215 of the Constitution of Zambia** which provides that the Bank of Zambia shall not be subject to the direction or control of a person or an authority in the performance of its functions.
- 5.3 Ground two of the appeal was abandoned.
- 5.4 In support of ground three, the appellant argued that even where one determines that the **Cabinet Office Circular No. 3 of 2001** applies to the appellant, they are bound to apply the rules of statutory interpretation to ascribe meaning to the words in the Circular. We were referred to the case of **Miyanda v. Handahu**<sup>4</sup> and **Indo Zambia Bank Limited v. Mushaukwa Muhanga**<sup>5</sup> where the Supreme Court restated the principle that when interpreting documents, the starting point is to look at the plain and ordinary meaning of the words used. The case of **Hakainde Hichilema and Another v. Edgar Chagwa Lungu and Others**<sup>6</sup>

was also referred to where the Constitutional Court stated as follows:

**“In interpreting the provisions of Article 101(5) of the Constitution, the words used by the legislature should be given their ordinary meaning and only if the ordinary results in an absurd meaning should the purposive interpretation be resorted to. In the present case, no absurdity results from the interpretation of the provision in its ordinary sense.”**

- 5.5 It was submitted that their understanding of **Clause 2(g)** is congruent with the position of the court below, that the words in the clause are very clear and unambiguous and that the literal interpretation of the clause does not lead to any mischief, absurdity or conflict with our laws. It was the appellant’s view that the court below fell into grave error in finding that since the respondents were entitled to conditions of service of the appellant as provided by the Circular, the Bank was in contravention by providing the respondents with conditions different to those applying to the appellant’s staff members.
- 5.6 The appellant argued that the terms and conditions applicable in the Bank were the Bank of Zambia Terms and Conditions of Service for Seconded Police Officers and that the only caveat placed by **Clause 2(g)** is that such terms and conditions should not disadvantage the

seconded officers. It was contended that the disadvantage envisaged is in reference to the terms and conditions that the seconded officers enjoyed at the places from which they are being seconded, Zambia Police Service in this case. The appellant's argument was that the Bank of Zambia terms and conditions of service for seconded police officers did not disadvantage the respondents with reference to their terms of service in the Zambia Police Service nor has this been so alleged. That the Bank was therefore in no way in contravention of **Clause 2(g) of the Circular.**

5.7 The appellant further argued that it was erroneous for the court below to find that the respondents were entitled to the same conditions as those officers employed by the appellant as the two categories of staff are not comparable. The latter employees are employees of the appellant, while the former, although seconded, remained employees of the Zambia Police Service. That as pronounced in **Zambia Electricity Supply Corporation Limited v. David Lubasi Muyambango,**<sup>7</sup> a seconded employee remains an employee of the employer from which he is seconded.

5.8 All in all, we were urged to uphold the appeal.

## 6.0 RESPONDENTS' HEADS OF ARGUMENT

- 6.1 In response to ground one, the respondents argued that the Cabinet Circular was addressed to the named addressees, statutory bodies and other institutions and that the **Yengwe case** does not aid the appellant but re-affirms the respondents' position that even if the Circular did not specifically mention the appellant, it also addressed the appellant. The respondents contended that the lower court was on firm ground in using the necessary implication rule when interpreting the Circular as it gave the intention to which the Circular was issued. The case of **Celestine Ntarwanda alias Edouard Nsengimana v. Republic**<sup>8</sup> was referred to in this regard.
- 6.2 In response to the appellant's argument that the view taken by the lower court when it held that the Circular is binding on the appellant is contrary to **Articles 213 and 215 of the Constitution**, it was argued that the appellant misapprehended the provisions of the Constitution and further that an interpretation or an allegation of breach must be resolved by the Constitutional Court and not this court.
- 6.3 The respondents argued in relation to ground three that the ruling of the lower court was to the effect that the conditions of service for the respondents was the same as other officers employed by the

appellant in accordance with **Clause 2(g) of the Circular**. That the court below rightly interpreted **Clause 2(g) of the Circular** when it decided that the import of the said clause was so that the conditions of service between the respondents and officers from the appellant were to be the same.

6.4 Making reference to the case of **Attorney General v. Nkonde**<sup>9</sup> on the elements to be considered when applying the literal rule of interpretation, the respondents argued that a literal interpretation of **clause 2(g)** shows that the intention of the Circular was that the respondents were entitled to the same conditions of service as those available to officers employed by the appellant. It was argued that the appellant's arguments that a literal interpretation of **Clause 2(g) of the Circular** meant that the respondents should not be disadvantaged as regards their conditions of service in the Zambia Police Service lacks merit.

6.5 All in all, the respondents' contention is that the appeal is devoid of merit and ought to fail.

## **7.0 AT THE HEARING**

7.1 At the hearing of the appeal, learned counsel relied on the documents filed, which were briefly augmented with oral submissions.

## **8.0 DECISION OF THE COURT**

8.1 We have carefully considered the evidence on the record, the impugned ruling and the arguments advanced by the parties. The issue for determination, as we see it, is whether **Cabinet Office Circular No. 3 of 2001** was binding on the appellant herein. Before delving into the construction of the **Cabinet Office Circular**, we note that this question for determination of the preliminary issue before the lower court was made pursuant to **Order 14A of the Rules of the Supreme Court of England (White Book)**. In the circumstances, the question to be determined first is whether this issue was fit for determination as a preliminary under **Order 14A**.

8.2 **Order 14A** provides as follows:

- “(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that –**
- (a) such question is suitable for determination without a full trial of the action, and**
  - (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.”**
- (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.”**

8.3 **Order 14A** *supra*, empowers the court to determine any question of law of construction of any document arising without full trial of the action where it appears to the court that such a determination will finally determine the proceedings or an issue in the proceedings.

8.4 For a question to be determined without a full trial, the question has to be one that determines the proceedings. It can thus be stated that it is not every question of law or construction that can be determined without a full trial of the action. On a question of whether or not there was discrimination against the petitioner, the Supreme Court stated in the case of **Attorney General v. Law Association of Zambia**<sup>10</sup> that;

**“We accept that on the facts on record and the nature of reliefs sought, the issue of discrimination could not have been dealt with as a preliminary issue. The trial Judge was, therefore, on firm ground when he held that whether there was discrimination or not against the Petitioner was an issue to be determined during the hearing of the main action.”**

8.5 In *casu*, the respondents' argument in relation to the preliminary issue raised was that by virtue **of paragraph (g) of the Cabinet Office Circular**, they, as seconded civil servants were entitled to the same conditions of service as those available to the security

officers employed by the appellant. That the appellant's terms and conditions were void and illegal and meant to disadvantage and discriminate the respondents.

8.6 The gist of the appellant's argument on the other hand is that contrary to the respondent's assertions, the appellant was not one of the addressees of the Cabinet Circular and thus not bound by it. The appellant argued that the respondents could not compare themselves with the employees of the appellant, as they remained employees of Zambia Police, although seconded.

8.7 We have carefully analysed the arguments advanced by the parties in light of the reliefs sought as endorsed in the statement of claim. For the avoidance of doubt, the respondents' main reliefs in the statement of claim are couched as follows:

- i) **A declaration that the contracts of secondment given to the plaintiffs by the defendant to the extent that they contravened Cabinet Circular No. 3 of 2001 were void;**
- ii) **A declaration that the plaintiffs as officers on secondment were entitled to the same terms and conditions of service applicable to Security Officers of the defendant;**

8.8 From the manner in which the reliefs were couched, it is clear that the preliminary issue raised is intrinsically linked to the main

question for determination at trial. Our considered view is that the question raised is one not suitable for determination without the need for a full trial. This view is fortified by the fact that the determination of whether the **Cabinet Office Circular** is also addressed to the appellant and thus binding on the appellant is one that requires a full trial and evidence to be adduced by both parties in support of their assertions. Further, the appellant has corporate legal personality, separate from Government and determines its own conditions of service for its employees, and if the cabinet circular can have direct application to it, that would require evidence to be placed before the court in order to upset this long standing legal principle (**Sections 3 and 21 of the Bank of Zambia Act, Chapter 360**, now repealed by **Bank of Zambia Act No. 5 of 2022**). This question is not one to be determined without a full trial.

- 8.9 Whilst any party to the proceedings is at liberty to raise preliminary issues pursuant to **Order 14A**, such liberty should be exercised cautiously and in the interest of justice. In line with this, the Supreme Court in the case of **Carm Investment Limited v. Circolo Italiano Di Lusaka**<sup>11</sup> expressed misgivings at parties

frequently raising preliminary objections as there could be a danger of the court straying into the substantive issues.

8.10 Our view therefore is that the determination of an issue linked to the main question to be determined at trial poses a danger of straying into or pre-empting the issues that are to be determined at the hearing of the main action.

8.11 We further find credence in the Supreme Court case of **Concrete Pipes and Products Limited v. Kabimba and Others**<sup>12</sup>

wherein it was stated that:

**"In many cases that have come before this court and where preliminary issues have been raised, we have deferred our ruling on such preliminary issues until after the main action was heard...**

**... in the present case, the preliminary issue was raised by the Appellant at the commencement of the hearing. Although the court indicated in the passage that we have quoted from its ruling that the preliminary issue was dismissed, the context of that ruling is that the appellant was advised to make that preliminary issue part of its defense."**

8.12 It can be stated from this that it is for the court to defer the decision or determination of a preliminary issue until after the main action hearing in situations where the preliminary objection raised cannot adequately answer the questions without a trial of the action.


8.13 In the final analysis, we find that the learned trial judge should have deferred the consideration of the preliminary question, which is integrally linked to the main question, for determination to the full trial.


8.14 Having made this finding, we find merit in the appeal.


## **9.0 CONCLUSION**

9.1 Having found merit in the appeal, we allow it. The matter is remitted to the High Court, before another Judge for trial.

9.2 We award costs to the appellant payable forthwith and to be taxed in default of agreement.

  
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M. M. KONDOLO, SC  
**COURT OF APPEAL JUDGE**

  
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B. M. MAJULA  
**COURT OF APPEAL JUDGE**

  
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K. MUZENGA  
**COURT OF APPEAL JUDGE**