

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

APPEAL 317/2024

BETWEEN:

THE UNIVERSITY OF ZAMBIA

AND

OSSIE MANGANI ZULU



APPELLANT

RESPONDENT

CORAM: KONDOLO, MAKUNGU AND CHEMBE JJA

On 14th January 2026 and 29th January 2026

For the Appellant : No appearance

For the Respondent : In person

JUDGMENT

CHEMBE, JA, delivered the Judgment of the Court.

Cases referred to:

1. *Kuntawala v Chirundu District Council CAZ Appeal No 57 of 2020*
2. *Lusaka West Development Company Ltd v The Attorney General (1973) ZR 42 (SC)*
3. *The Attorney General v Mwanza (1985) ZR 1 (SC)*
4. *Stanbic Bank Ltd v Micoquip Zambia Limited SCZ Appeal No 180 of 2015*
5. *Zambia Privatization Agency v Huddell C Chibichabo and another (2005) ZR 74*

6. *Northern Cycles Limited v Commercial Bank Limited SCZ Appeal No. 104.2002*
7. *July Danobo v Chimsoro Farms Limited (2009) ZR 148*
8. *Prisca Lubungu v Obby Kapango and Others SCZ Appeal No. 216/2016*
9. *Zambia Revenue Authority v Charles Walumweya Muhau Masiye SCZ Appeal No. 56/2011*
10. *Leopold Walford (Zambia) Limited v Attorney General (1973) ZR 315*
11. *Romeki Travel and Car Hire Limited v Kampoko Resources Limited 2019/HPC/0451*
12. *Riches v Westminster Bank Ltd (1947) 1 ALLER 469*
13. *Indeni Petroleum Refinery Company Limited v V.G Limited SCZ Judgment No.22/2007.*
14. *JCN Holdings Limited and Others v Development Bank of Zambia (2013) ZR 22*
15. *Zambia Telecommunications Authority v Kalumba (2007) ZR 95 (SC)*
16. *Griever Sikasote v Southern Cross Motors Limited CAZ Appeal No. 62 of 2018*
17. *Lee Mpambu v Tanzania Zambia Railway Authority SCZ Appeal No. 198/2012*
18. *Cavmont Bank Limited v Cereal Millers and Farms Limited and Others Appeal No. 277/2021*

1.0 INTRODUCTION

1.1 This is an appeal against the Ruling of Mikalile J dated 11th June 2024 in which the learned Judge clarified the order in the judgment dated 26th June 2023. In the said Ruling the Court below ordered the Appellant to pay the Respondent his monthly

salaries from the date of retirement up to the date when his retirement benefits were paid.

2.0 BACKGROUND

- 2.1 The Respondent, who was the complainant in the Court below, was an employee of the Appellant. He retired on 19th March 2015 but was not paid his retirement benefits. He commenced proceedings in the Industrial Relations Division of the High Court claiming, inter alia, payment of his retirement benefits and that he be retained on the payroll pending payment of the same.
- 2.2 After hearing the matter, the Court below rendered a judgment in which it ordered the Appellant to pay the Respondent his retirement benefits and restore him on the payroll pending the said payment.
- 2.3 Before the judgment was delivered, the Respondent had quietly paid the Appellant his pension benefits according to its own computation on 13th February 2023. After delivery of judgment, the Respondent complained that he was underpaid by K65, 389.00. The Appellant refused to pay this amount and insisted that its computation was correct.

2.4 Unhappy with this state of affairs, the Respondent commenced committal proceedings on the ground that the Appellant had refused to comply with the judgment.

3.0 DECISION OF THE COURT BELOW

3.1 After considering the matter, the Court below dismissed the committal proceedings for failure to comply with the rules of court. The Court also made the following order;

“The Registrar shall assess the balance if any left from the retirement benefits as well as salary arrears from date of retirement being 19th March 2015 till date of payment of the benefits being 13th February 2023.”

4.0 THE APPEAL

4.1 Aggrieved by the order to pay salary arrears, the Appellant filed an appeal advancing one ground of appeal as follows;

The learned trial Judge erred in law and fact when she made fresh orders to pay the Respondent salary arrears post judgment, the judgment having made the Court functus officio thereby robbing the Court of jurisdiction.

5.0 APPELLANT’S HEADS OF ARGUMENT

5.1 The Appellant filed heads of argument in support of the appeal on 5th November 2024. The gist of the Appellant’s argument is that the Court below having delivered its final judgment in June

2023 could not revisit it and clarify it in the committal proceedings as it had become functus officio.

5.2 It was contended that the lower Court lacked jurisdiction to award salary arrears to the Respondent during committal proceedings which were meant to establish whether the Appellant had complied with the judgment. The Appellant submitted that it was a misdirection for the lower Court to give fresh orders after delivery of judgment.

5.3 We were referred to numerous authorities where the superior Courts have guided on the circumstances under which the Court becomes functus officio. These included the cases of *Kuntawala v Chirundu District Council*¹, *Lusaka West Development Company Ltd v The Attorney General*², *The Attorney General v Mwanza*³ and *Stanbic Bank Ltd v Micoquip Zambia Limited*⁴.

5.4 For the definition of the phrase functus officio, we were referred to **Black's Law Dictionary** and **Zambian Civil Procedure Commentary and Cases**. We were urged to overturn the ruling and allow the appeal.

6.0 THE CROSS APPEAL

The Respondent was also dissatisfied with the Ruling and filed a cross appeal on 9th July 2024. He advanced two grounds of appeal as follows:

- i) The court below erred in law and fact by ordering assessment of my salary arrears up to 13th February 2023 instead of up to the date of full payment of my retirement benefits, should it be found that the Appellant owes me the balance in my retirement benefits when the Court ordered assessment of my retirement benefits if any.**
- ii) The Court below erred in law and fact by denying me interest on the balance amount found to be due to me, if any.**

7.0 RESPONDENT'S HEADS OF ARGUMENT

7.1 The Respondent filed his heads of argument on 21st November 2024. In response to the appeal, the Respondent submitted that the Court below did not make a fresh order in its Ruling as it was merely granting the request by the Appellant for assessment of the sums due. It was argued that Article 189 (2) of the Constitution was clear that the Respondent needed to be

maintained on the payroll until payment of his retirement benefits.

7.2 In the same heads of argument, the Respondent raised an objection to the record of appeal. It was argued that the record of appeal included proceedings from the main proceedings and therefore was incompetent. It was submitted that the record of appeal breached Order 10 Rule 9 (5) of the Court of Appeal Rules.

7.3 We were referred to the cases of ***Northern Cycles Limited v Commercial Bank Limited***⁵, ***July Danobo v Chimsoro Farms Limited***⁶, ***Prisca Lubungu v Obby Kapango and Others***⁷ and ***Zambia Revenue Authority v Charles Walumweya Muhau Masiye***⁸ in support of the proposition that an incompetent record of appeal will result in the dismissal of the appeal. We were urged to dismiss the appeal on that score.

7.4 The Respondent also included arguments in support of his cross appeal. In relation to the first ground of the cross appeal, it was argued that the court below should have ordered that the salary arrears after assessment should be paid up to the date of payment and not up to 13th February 2023.

7.5 With regard to the 2nd ground of appeal, the Respondent lamented the failure by the court below to award him interest on the sums found due. He relied on Order 36 of the High Court Rules and the cases of **Leopold Walford (Zambia) Limited v Attorney General**⁹, **Romeki Travel and Car Hire Limited v Kampoko Resources Limited**¹⁰, **Riches v Westminster Bank Ltd**¹¹ and **Indeni Petroleum Refinery Company Limited v V.G Limited**¹². We were urged to interfere with the Ruling and order that interest be paid on the outstanding amounts up to the date of payment.

8.0 APPELLANT'S ARGUMENTS IN REPLY AND RESPONSE TO THE CROSS APPEAL

8.1 In the Appellant's heads of argument filed in reply on 13th December 2024, it was submitted that the Respondent's argument that the contested order was merely a clarification was untenable as there was no order awarding salary arrears in the judgment. The Appellant maintained that the order directing assessment of salary arrears was a fresh order.

8.2 A further argument was that the court below having ruled that the committal proceedings were improperly before it, lacked the jurisdiction to make any orders whatsoever. The Appellant

relied on the case of **JCN Holdings Limited and Others v Development Bank of Zambia**¹³ in which the Supreme Court guided that if a matter was not properly before a court, that court had no jurisdiction to make any orders or grant any remedies.

8.3 We were urged to quash the Ruling of the Court below.

8.4 With regard to the cross appeal, the Appellant submitted that the Respondent did not plead for salary arrears beyond February 2023. In relation to the claim for interest, the Appellant asserted that interest was a discretionary remedy which needs to be specifically pleaded. Reference was made to the case of **Zambia Telecommunications Authority v Kalumba**¹⁴.

8.5 The Appellant also submitted that the cross appeal was an attempt to introduce new reliefs contrary to settled appellate practice. The Appellant prayed that the cross appeal be dismissed with costs.

9.0 HEARING

9.1 At the hearing, the Appellant and his Counsel did not appear having filed a notice of non-attendance earlier. The Respondent

relied on the arguments filed. He referred to the cases of **Griever Sikasote v Southern Cross Motors Limited**¹⁶, **Lee Mpambu v Tanzania Zambia Railway Authority SCZ17** and **Zambia State Insurance v Serios Farms Limited** (no citation provided) in support of his claim for interest.

10.0 ANALYSIS AND DETERMINATION

10.1 We have carefully considered the record of appeal together with the arguments by both sides. The main issue raised in this appeal is whether the Court below had the power to clarify or correct its judgment after it had been delivered. The issues raised by the Respondent in his cross appeal will depend on the resolution of the above issue. The Appellant's position is that by making an order that it should pay the Respondent salary arrears from the date of retirement during the committal proceedings the Court below made fresh orders in a matter where it had become functus officio. The Respondent has not made any meaningful response to the issue.

10.2 We have perused the Ruling impugned and the judgment of the Court below dated June 2023. We note that the Respondent

had sought an order that he be maintained on the payroll until his retirement benefits were paid. The Court in its judgment ordered the Respondent (the Appellant herein) to restore the complainant on the payroll pending payment of his retirement benefits. The Court below made no reference to the salary arrears from 2015.

10.3 In the Ruling on the application for an order of committal, the Court below decided to address the issue of whether the pension benefits had been paid in full and proceeded to order that the amount outstanding be assessed. The Court below at page 31 of the record of appeal made the following order:

“The Registrar shall assess the balance, if any, left from the retirement benefits as well as salary arrears from date of retirement being 19th March 2015 till the date of payment of the benefits being 13th February 2023.”

10.4 Clearly the above order was an addition to the judgment delivered in June 2023. In the case of ***Zambia Privatization Agency v Huddell C Chibichabo and another***⁵ the Supreme Court held as follows;

“The position of the law is that once a judgment is rendered, the Industrial Relations Court becomes functus

officio. This is because unlike the High Court, which is clothed under order 39 of the High Court Rules with powers of review, the Industrial Relations Court has no such powers of review. Therefore, the Industrial Relations Court, cannot, unlike the High Court, vary its own judgment after rendering such judgment.

10.5 In the June 2023 judgment, the Court below ordered the Appellant to pay the Respondent's pension benefits which were not quantified in the pleadings or the evidence. When the application for an order of committal was heard, it appears that the Court realized that there was need for assessment to resolve the impasse on the quantum payable. The Court below also realized that there was a lack of clarity on the effective date for restoration on the payroll.

10.6 The Court then proceeded to make fresh orders on the issues. However, the law is settled as demonstrated in numerous authorities including the case of **Stanbic Bank (z) Ltd v Micoquip Zambia Limited** (supra) where the Supreme Court held that a Court becomes functus officio after judgment is delivered.

10.7 In the case of **Cavmont Bank Limited v Cereal Millers and Farms Limited and Others**¹⁸, this court had occasion to determine the issue of when a court becomes functus officio. In that case, we relied on the reasoning by the Supreme Court in the case of **Zambia Privatisation Agency v Chibichabo** that once judgment has been delivered, the court becomes functus officio. We held as follows:

“Based on the foregoing authority, by extension, we are of the view that even the High Court is not exempt from this position once the 14 days period under which review can be done has lapsed. The Courts are strictly incapacitated from considering a matter it has adjudicated upon afresh and considering new issues not previously before it under that action.”


10.8 We are also guided by the Supreme Court decision in the **Zambia Privatisation Agency** case (supra) that the Industrial Relations Rules do not provide for the power of review. Although the Industrial Relation Division is now a Division of the High Court, the High Court Rules are not applicable as the Court is governed by the Industrial Relations Court Rules.

- 10.9 On the strength of the above authorities, we hold the view that the lower Court had no jurisdiction to make the orders in the Ruling of June 2024 as it had become functus officio after delivering its judgment a year earlier.
- 10.10 Further, the matter that was before Court was for an order of committal which was dismissed. Having dismissed the application for a committal order for being improperly before the court, the Court below had no power to make further orders in the absence of an application. We are guided by the case of **JCN and Others v Development Bank of Zambia** (supra), where the Supreme Court pronounced itself on the matter when it held that where a matter was not properly before the court, the court had no jurisdiction to make any orders or grant any remedies.
- 10.11 We accordingly hold that the order of the court below that the Respondent be paid his salary arrears from 2015 is null and void for want of jurisdiction.
- 10.12 In view of the above reasoning, the Respondent's cross appeal which is based on the orders which the court below made

without jurisdiction cannot be considered as the Court's orders would amount to nothing.

11.0 CONCLUSION

11.1 In view of the foregoing, we find merit in the single ground of appeal and we allow it. We set aside the order that the Respondent be paid his salary arrears from the date of retirement. The Respondent's cross appeal is dismissed. The matter having originated from the Industrial Relations Division, we order each party to pay its own costs.


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M.M. KONDOLO SC
COURT OF APPEAL JUDGE


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C.K. MAKUNGU
COURT OF APPEAL JUDGE


.....
Y. CHEMBE
COURT OF APPEAL JUDGE