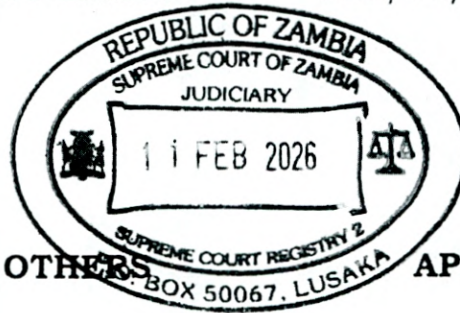


IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT NDOLA  
(Civil Jurisdiction)

SCZ/07/28/2025



BETWEEN:

**RODGERS MBAO AND 12 OTHERS** **APPLICANTS**

**AND**

**STANDARD CHARTERED BANK ZAMBIA PLC** **RESPONDENT**

Coram: Malila, CJ, Kaoma and Chisanga, JJS

On 3<sup>rd</sup> February 2026 and 11<sup>th</sup> February 2026

For the Applicants: Mrs. N. Nachalwe with Miss. R. Samanjomba - Nkusuwila Nachalwe Advocates, and Mr. C. Chungu of Nsapato & Co. Advocates, under LAZ Probono Scheme

For the Respondent: Mr. L. Linyama and Miss. C. K. Muzumara -Eric Silwamba, Jalasi and Linyama Legal Practitioners

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## **RULING**

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Kaoma, JS delivered the Ruling of the Court

**Cases referred to:**

1. **Kapsch Trafficcom South Africa Holding Pty Limited and Another v Intelligent Mobility Solutions Limited and Another SCZ 7/32/2024**
2. **Zambia Medicines Regulatory Authority v Brian Mwanei Kabika - CAZ Appeal No.100 of 2023**
3. **Lawrence Muyunda Mwale v Bank of Zambia - SCZ Judgement No. 22 of 2010**
4. **Henry Nyambe and Others v Lumwana Mining Company Limited - SCZ 7/034/2024**
5. **Bidvest Food Zambia Limited and Four (4) others v CAA Import and Export Limited - SCZ Appeal No. 56 of 2017**
6. **Rajan Lekhraj Mahtani & Barkat Ali v Little Park Ltd - SCZ/7/13/2024**

**Legislation referred to:**

1. **Court of Appeal Act No. 7 of 2016, section 13(3)(a) (c) and (d)**
2. **Employment Code Act No. 3 of 2019, sections 54(1)(d), 55(3) and 67(4)**

## 1 **Introduction**

- 1.1 This is a renewed notice of motion for an order for leave to appeal to this Court the decision of the Court of Appeal dated 18<sup>th</sup> September 2024, made pursuant to **section 13(3)** of the **Court of Appeal Act** (the Act), following the refusal by the court to grant the applicants leave to appeal.
- 1.2 The motion is supported by an affidavit deposed to by Rodgers Mbao, the lead applicant, and a list of authorities and skeleton arguments. There is also an affidavit in opposition sworn by Doris Chomba Tembwe, head legal and company secretary of the respondent bank and arguments in opposition.
- 1.3 The respondent also assails the motion record as being incompetent for omitting the notice of motion that was before the court below and the transcript of proceedings, but counsel appears not to have pursued this argument with vigour.

## 2 **Background facts**

- 2.1 The applicants, former employees of the respondent, were declared redundant in 2020. A dispute arose about the computation of their redundancy packages, mostly exclusion of car allowance (for those who opted for a leased vehicle scheme), talk-time allowance, and annual performance bonuses.

- 2.2 The applicants claimed that the allowances and bonuses constituted “other benefits” under **section 55(3)** of the **Employment Code Act** (the ECA) and should have been included in the computation of the redundancy packages.
- 2.3 The High Court (IRD) found in their favour and ordered a recalculation of the redundancy packages to include the said items and to return the repossessed vehicles. On appeal, the Court of Appeal reversed the decision and refused to grant the applicants leave to appeal on the ground that they had not met the threshold under **section 13(3)** of the Act.
- 2.4 The applicants renewed the motion before a single judge of this Court who adjourned it to the Court for consideration under **Rule 48(3)** of the **Supreme Court Rules, Chapter 25**.

### 3 **The renewed motion**

- 3.1 The applicants, by counsel, submit that they have met the criteria under **section 13(3)(a)(c)** and **(d)** of the Act. With respect to point of law of public importance, they argue that the interpretation and application of **section 55(3)** of the ECA, in particular the computation of redundancy pay is a seminal issue, and that this being a recent legislative innovation has not yet received definitive interpretation by this Court.

- 3.2 They further submit that the question of what constitutes “other benefits” payable upon redundancy, precisely whether generally discretionary or policy-based allowances (such as car schemes and talk-time) are crystallised into calculable entitlements upon redundancy, is of profound significance to the Zambian workforce and employer community and will guide the financial expectations of thousands of employees and the liability exposure of employers nationwide. They also contend that there is a conflict in **section 54(1)(d)**, of the ECA that creates uncertainty in the law, which requires harmonisation.
- 3.3 According to Mr. Chungu the recent decision in **Kapsch Trafficcom South Africa Holding Pty Limited and Another v Intelligent Mobility Solutions Limited and Another**<sup>1</sup>, has expanded the scope for leave to appeal where points of law remain unsettled, have been decided inconsistently, or involve statutory interpretation with broad implications.
- 3.4 The applicants also fault the labelling of “talk-time” allowance as a “tool of trade” saying it lacked evidential basis. This is compared with **Zambia Medicines Regulatory Authority v Kabika**<sup>2</sup>, where the court placed the onus on the employer to prove that an allowance was facilitative and not remunerative.

- 3.5 It is argued that this inconsistency in approach, coupled with the novel provision in **section 67(4)** of the ECA is a clear point of law of public importance requiring our determination.
- 3.6 It is further submitted that for employees who opted for the car lease scheme, the cash car allowance did not “fall off” but was merely channelled by the employer to Barclays Bank as lease payments. Therefore, the allowance should have been included in the redundancy package.
- 3.7 The applicants believe that the Court of Appeal misdirected itself as regards the interpretation of the contractual scheme and treatment of ‘other benefits’, and this to them, presents novel, unresolved, and fundamentally important legal questions that have generated considerable public debate and interest and warrant authoritative pronouncement by this Court.
- 3.8 Mr. Chungu reinforced the applicants’ position by quoting **Henry Nyambe and Others v Lumwana Mining Company Limited**<sup>4</sup>, where leave to appeal was granted concerning the interpretation of **sections 54** and **55(3)** of the ECA, even if the appeal was finally not argued on that ground. However, he says, this demonstrates the arguable nature and importance of the issue at play in this motion.

- 3.9 In contrast, the respondent through its learned counsel, contends that this case involved a private contractual dispute dressed in statutory clothing. The issues of interpretation of specific car policy documents, talk-time provisions, and bonus clauses, are fact-specific applications of settled law, and do not raise any new principle or point of law of general application.
- 3.10 It is argued that the court below correctly applied well-established contract law principles and Supreme Court decisions on the difference between tools of trade and emoluments and the ECA has not redefined these principles.
- 3.11 On the car allowance, counsel referred to the clause in the Senior Staff Car Guidelines, stating that employees who opted for a leased vehicle were no longer entitled to the taxable cash monthly allowance. Thus, to claim the cash allowance on redundancy would be an attempt to “have one’s cake and eat it.”
- 3.12 However, it is agreed that leave to appeal on a similar issue was granted in **Henry Nyambe**<sup>4</sup> but it is argued that granting leave in this case will result in the Court dealing with the same issue.
- 3.13 We have considered the above arguments and the record of motion. Surprisingly, we have not seen a copy of the High Court judgment on the record, so we are not able to understand fully

the context in which the High Court judge arrived at the decision that he did. However, our simple task is not to decide the merits of the intended appeal, but to determine whether the applicants have met the strict threshold set by **section 13(3)** of the Court of Appeal Act, to warrant the grant of leave to appeal.

3.14 As regards **section 13(3)(a)**, we have said in **Bidvest Food Zambia Limited and Four (4) others v CAA Import and Export Limited**<sup>4</sup> and in several other cases that a point of law is of “public importance” if it transcends the immediate interests of the parties and raises an issue of legal principle the resolution of which will affect a broad class of persons, guide public authorities, or contribute significantly to the development of a coherent legal framework.

3.15 Indeed, in **Henry Nyambe**<sup>4</sup>, the Court agreed, when granting leave, that the ECA represents a significant legislative reform of our labour law and that the interpretation of its core provisions, such as **section 55(3)**, is a matter of legitimate public concern. However, a statutory provision cannot be interpreted in a vacuum. Thus, when the appeal was finally heard, the court refused to deal with the issue of interpretation of this provision.

3.16 In the present case, at first glance, the question of how statutory redundancy pay provisions interact with policy-driven employment benefits like car allowance, talk-time and bonuses, appears to raise points of law of public importance. Nonetheless, upon closer scrutiny of the assailed judgment and the items in issue, it becomes clear that the legal questions the applicants seek to escalate to this Court were fact specific, with contractual underpinning, and that the questions were effectively answered by the court below through the application of longstanding and fundamental principles of contract and common law.

3.17 The Court of Appeal did not specifically mention **section 55(3)** but it was alive to the provision and did consider it through the lens of the specific, written contracts and policies that governed the parties' employment relationship.

3.18 We are also alive to the applicants' contention about a possible conflicting approach in **Brian Mwanei Kabika**<sup>2</sup>. However, we are satisfied that the determination of whether an allowance is a tool of trade or a remunerative benefit remains inherently a fact-intensive inquiry guided by the employment contract and evidence, not an abstract legal principle altered by the new Act.

- 3.19 The principle that a purely discretionary bonus, reliant on future performance and corporate results, does not form an accrued entitlement payable on termination is also settled. So is the principle that parties are bound by the clear terms of agreements they voluntarily enter into, and that a court will not rewrite a contract to bestow a benefit where the terms expressly provide otherwise.
- 3.20 In addition, the alleged conflict between **sections 54(1)(d) and 55(3)** is, in our view, more apparent than real. **Section 54(1)(d)** sets out the entitlement of an employee declared redundant and how the redundancy pay should be computed. It refers to a redundancy severance pay of **two months' basic pay** for each year served under the contract of employment.
- 3.21 **Section 55(3)(a)** provides for **two months' pay** for every year served and **other benefits** the employee is entitled to as compensation for loss of employment. Clearly, the pay indicated in **section 55(3)** is already defined in **section 54(1)(d)**. As to '**other benefits**', surely counsel for the applicants ought to know that this refers to accrued contractual benefits due to an employee upon termination, such as leave pay and repatriation. This is as clear as day and requires no interpretation.

3.22 Counsel for the applicants also cited **section 67(4)** of the ECA.

This provides for payment, in addition to wages, of allowances in kind where it is customary or agreed to by the employee or provided for in a collective agreement, or in line with any written law. The payment, being an allowance in kind, is for the personal use and benefit of the employee, and the employee's family, and should not be in the form of liquor or drugs.

3.23 This provision does not state that all allowances are now for the personal use and benefit of the employee. This will depend on the nature of the allowance, the contract of employment and the use for which the allowance was paid. We cannot accept that an allowance like talk-time would be for the personal use of the employee and his family. We do not agree that this provision raises a point of law of public importance needing determination

3.24 In our view, there is nothing ambiguous or inconsistent, or uncertain in these provisions or in the law, to require authoritative interpretation or harmonisation by this Court. Plainly, there is nothing to interpret beyond what we have said.

3.25 Furthermore, we do not agree that the ECA has fundamentally changed or altered the legal principles relating to redundancy pay. The Act mandates the payment of entitlements. It does not

create entitlements where none exist under the contract of employment. The underlying principles are still sound and the impugned judgment is a clear application of these principles to a detailed factual contractual background.

3.26 Simply because this is an employment case involving redundancy and multiple employees, does not, in itself, transform the case into a matter that transcends the particular interests of the parties. Neither does the desire to challenge the application of clear principles to specific facts take the case into the public realm. The factual scenario, concerning specific bank policies is unlikely to be of recurrent, nation-wide litigation and there is no evidence to show that the issues at play in this case have generated considerable public debate or interest.

3.27 Coming to reasonable prospects of success, the applicants contend that the Court of Appeal may have erred by applying pre-ECA precedent (like **Lawrence Muyunda Mwale v Bank of Zambia**<sup>3</sup>) without sufficient regard to the transformative intent of the new statutory regime. It is argued that a purposive interpretation of **section 55(3)**, aimed at protecting employees, could lead to a different conclusion to include allowances that were part of the remuneration during employment.

- 3.28 Conversely, the respondent argues that the disputed judgment is firmly rooted in the express terms of the contracts and policies signed by the applicants and there is no ambiguity in section **55(3)** that requires a new interpretation. The section merely mandates payment of benefits an employee was entitled to and the lower court correctly found that under their contracts, the applicants were not entitled to the disputed items. Therefore, the applicants only seek to re-litigate factual, contractual findings with no obvious error of law warranting intervention.
- 3.29 We have said time and again that reasonable prospect of success requires a realistic, not fanciful, chance of success. There must be more than a theoretical possibility of success or a practical likelihood of reversing the lower court's decision.
- 3.30 We said in **Rajan Lekhraj Mahtani and Barkat Ali v Little Park Limited**<sup>5</sup>, that a reasonable prospect of success is based on a reasonable expectation of the outcome, taking into account the facts, law and circumstances of each particular case. We find no arguable error in the reasoning of the court below that gives the intended appeal a realistic chance of success. The judgment is coherent, logically structured, and firmly anchored on the facts, evidence and the law.

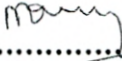
- 3.31 The applicants' main complaint seems to be that the court should have interpreted the contractual documents and statutory provisions more favourably to them. No conclusive argument has been advanced to suggest that we would likely find a reversible error in the application of the law to the facts.
- 3.32 On compelling reasons, it is argued that the appeal presents a prime opportunity for us to develop a coherent, authoritative jurisprudence on a key aspect of modern labour law, providing much-needed certainty. Secondly, that there may be conflicting decisions in the lower court concerning the treatment of contractual benefits vis-à-vis statutory entitlements post-redundancy. And third that the interplay between settled principles and the new statutory framework creates a legal frontier requiring clarification to prevent a flood of litigation.
- 3.33 The respondent asserts that discontent with a precise application of settled law does not constitute a compelling reason; the ECA did not create a radical shift in interpretation as the applicants claim; and there is no evidence of conflicting decisions that require resolution by this Court.
- 3.34 Again, we have said from time to time that compelling reasons must be exceptional, such as a clear conflict in authority, a

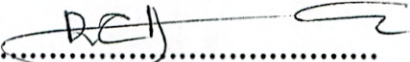
matter of grave constitutional import, or a situation where justice cannot be served without our intervention. As we said in the **Bidvest** case, there may also be occasions when the court may grant leave to appeal based on **section 13(3)(d)** of the Act such as in aid of the need for development of jurisprudence.


3.35 Still, the plea for jurisprudential growth, while laudable and reinforced by reference to the **Kapsch**<sup>1</sup> case, is not compelling on the facts of this case. The factual matrix involving specific bank policies on car leases and talk-time, and discretionary bonuses, is unlikely to be of recurrent, nation-wide litigation. Nor are we swayed that the court below misapplied the law or legal principles or that there is a conflict of decisions or a legal vacuum that requires immediate clarification by this Court.

#### 4 **Conclusion**

4.1 In the event, we find that the applicants have failed to satisfy the criteria set out in **section 13(3)** of the Act. The motion fails and is dismissed. We make no order as to costs.

  
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**M. MALILA**  
**CHIEF JUSTICE**

  
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**R.M.C. KAOMA**  
**SUPREME COURT JUDGE**

  
 .....  
**F.M. CHISANGA**  
**SUPREME COURT JUDGE**