

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

SP No. 71/2024

BETWEEN:

CHARLES MPUNDU

AND

FOOD RESERVE AGENCY



APPLICANT

RESPONDENT

CORAM: Kondolo, SC, Majula and Muzenga, JJA
On 19th June 2025 and 5th December 2025

For the Applicant: Mr. C. Chungu, Messrs Nsapato & Co. Advocates

For the Respondent: Mr. W. Silwimba, In-House Counsel

R U L I N G

MUZENGA, JA delivered the Judgment of the Court.

Cases referred to:

- 1. Bidvest Foods and Others v CAA Import and Export Limited – Appeal No. 56/2017.**
- 2. ZCCM Investment Holdings Plc v First Quantum Minerals Limited & Others – CAZ Application No. SP 002/2021.**
- 3. Savenda Management Services v Stanbic Bank Zambia Limited – Selected Judgment No. 10 of 2018.**
- 4. Kekelwa Samuel Kongwa v Meamui Gerogina Kongwa – SCZ/8/05/2019.**

Legislation referred to:

1. The Court of Appeal Act, No. 7 of 2016.

1.0 INTRODUCTION

1.1 This application is by way of a Notice of Motion for leave to appeal to the Supreme Court pursuant to **Section 13(1) and (3) of the Court of Appeal Act, No. 7 of 2016.**

2.0 BACKGROUND OF THE APPLICATION

2.1 The background to this appeal is that the applicant commenced this action in the High Court by way of writ of summons and a statement of claim alleging that they entered into a lease agreement with the respondent on 12th December 2012 for a term of twelve months at a monthly rental of K15,778.00, wherein the respondent could terminate the agreement by providing three months' notice in writing.

2.2 The respondent expressed its intention to renew the lease agreement in a letter dated 10th November 2016 which was later retracted in a letter dated 22nd November 2016. Following the respondent's notice of non-renewal, the respondent was obligated to return the premises in a tenantable state of repair but failed to undertake the said repairs and failed to surrender the demised premises to the applicant until October 2017. From 31st December 2016 to October 2017 when the rehabilitation works were

completed, the respondent did not remit any rental payment amounting to K157,780.00 to the applicant.

2.3 The respondent's defence was that they engaged into negotiations concerning the repairs with the applicant which spanned 10 months and further that the repair works were subject to statutory public procurement regulations.

2.4 The trial court considered the matter and *inter alia* found that the respondent's excessive delay in carrying out repairs on the demised property deprived the applicant of rental income from other tenants and that the excuse of the lengthy procurement process was insufficient to deprive the applicant of his property rights. The court awarded the applicant *mesne* profits for loss of use of the demised premises in the amount of K157,780.00 for a period of 10 months. Dissatisfied with the trial court's decision, the respondent appealed to this court on 20th May 2022 and on 26th August 2024, we delivered judgment which is a subject of this application.

2.5 Aggrieved with our decision, the applicant filed this application on 9th September 2024, seeking leave to appeal to the Supreme Court.

3.0 DECISION OF THIS COURT

3.1 After hearing the appeal, we reasoned that the trial court, having correctly determined that the respondent was a trespasser should have dismissed the applicant's claim for *mesne* profits equivalent to 10 months' rent from January 2017 to October 2017. We allowed

the appeal and set aside the lower court's award of *mesne* profits of 10 months to the applicant.

4.0 THIS APPLICATION

- 4.1 This application is supported by an affidavit and skeleton arguments. The crux of the affidavit in support is that the intended appeal to the Supreme Court raises fundamental points of law of public importance in relation to delays in a tenant carrying out repairs and returning property in a habitable and tenantable condition. That the appeal would also avail the Supreme Court an opportunity to pronounce itself on the crucial point of ensuring leased property is returned in a reasonable condition, that not only affects the applicant, but the general public and other landlords.
- 4.2 It is averred that this would be the first time the Supreme Court will deal with the issue and interpretation of this specific duty on tenants *vis-à-vis mesne* profits where the tenant fails to carry out their responsibility. The applicant avers that the appeal has reasonable prospects of success and that the notice and memorandum of appeal raises weighty issues and matters of public importance and public interest to be determined by the Supreme Court.
- 4.3 In the skeleton arguments, we were referred to **Section 13(3) of the Court of Appeal Act** and the case of **Bidvest Foods Zambia Limited and 4 Others v CAA Import and Export Limited¹** where the Supreme Court was emphatic that an appeal should raise weighty issues that must be on a point of law of public importance

and on issues adjudicated on by the Supreme Court. It was argued that the issue at hand relates to the crucial issue of the manner in which leased property must be returned to a landlord at the end of the lease and whether *mesne* profits can be claimed in the circumstances.

- 4.4 The applicant further referred to the case of **ZCCM Investment Holdings Plc v First Quantum Minerals Limited & Others**² for the argument that this case is a deserving case of an appeal to the Supreme Court as there is widespread interest and the intended grounds of appeal clearly indicate points of public interest and importance relating to the duty on tenants to ensure property is yielded up in a habitable condition. It was contended that there was no doubt that the appeal will affect a significant part of the public who are landlords and tenants and their duties at the end of the lease.
- 4.5 It was argued that the intended appeal had sufficient and compelling reasons for leave to be granted to appeal to the Supreme Court and gives it the opportunity to develop Zambia's jurisprudence on *mesne* profits.
- 4.6 The application was opposed by way of an affidavit and skeleton arguments. The contents of the affidavit summarise that the intended appeal raises no fundamental point of law of public importance as the subject of landlord/tenant relationship falls off the ambit of public importance. That the applicant is raising new issues before this court as the subject issue for determination was the claim

for *mesne* profits for allegedly keeping the applicant out of possession of the subject premises and not returning the leased property in a habitable condition. The respondent averred that the applicant sought to introduce new issues before the Supreme Court as the aspect of duties of tenants *vis-a-vis mesne* profits was not the subject in dispute. It was further averred that the concept of *mesne* profits has been explored extensively in Zambia and that there was no public debate or interest warranting the grant of leave to appeal.

- 4.7 The respondent averred that there are no prospects of the intended appeal succeeding as the applicant is on record admitting to events that disqualified his claim and he is attempting to re-open matters that have already been determined by this court.
- 4.8 In the skeleton arguments, the respondent relied on **Section 13(1) and (3)** and **Savenda Management Limited v Stanbic (Z) Limited³** in arguing that this is a cause which could be construed as waste of the court's time hence warranting a clip to its ascendancy to the Supreme Court. That there is no public importance and novelty that could remotely be considered from this appeal in the sense that in arriving at the decision the court followed established principles in any landlord-tenant agreement as regards when to award *mesne* profits. Reliance was placed on the **Bidvest case supra**. Further reference was made to the case of **Kekelwa Samuel Kongwa v Meamui Gerogina Kongwa⁴** where the Supreme Court stated that:

"For a legal question to be treated as a point of law of public importance, it must have a public or general character than one that merely affects the private rights or interest of the parties to a particular dispute. The legal point in issue should relate to a widespread concern in the body politic the determination of which should naturally have effect beyond the private interest of the parties to the appeal."

4.9 It was argued that the applicant's application for an order to appeal to the Supreme Court is devoid of novelty and raises no significant issues and would not invigorate public curiosity nor interest. The respondent contended that the application should fail as the intended grounds do not meet the threshold in **Section 13(3) of the Court of Appeal Act.**

5.0 HEARING

5.1 At the hearing, both counsel relied on their affidavits in support and in opposition, as well as their skeleton arguments and list of authorities. Both of them briefly made oral augmentations. We have noted the written submissions which we do not intend to reproduce herein.

6.0 OUR DECISION

6.1 We have carefully considered the applicant's Notice of Motion, the affidavits for and against, the skeleton arguments relied on by each party, and the oral submissions by counsel. The application before us is for leave to appeal to the Supreme Court against the Judgment of the Court. It is a well-established principle that an appeal to the

Supreme Court in Zambia is no longer a matter of right as leave to do so must be sought and granted by the Court.

6.2 **Section 13(3) of the Court of Appeal Act** provides that:

“The Court may grant leave to appeal where it considers that –

a) The appeal raises a point of law of public importance;

b) It is desirable and in the public interest that an appeal by the person convicted should be determined by the Supreme Court;

c) The appeal would have a reasonable prospect of success; or

d) There is some other compelling reason for the appeal to be heard.”

6.3 The Supreme Court in the case of **Savenda Management Services v Stanbic Bank Zambia Limited** *supra* gave guidelines on what this Court should take into consideration when handling an application for leave to appeal. The Supreme Court said that:

“The permissible grounds for the grant of leave to appeal in civil matters are set out in section 13(3)(a) (c) (d). These are where: the appeal raises a point of law of public importance; the appeal would have a reasonable prospect of success; or there are some compelling reasons for the appeal to be heard.

The rationale for the foregoing is an acknowledgement of the fact that the resources of the courts are

overstretched and if it were otherwise, the doors to justice would be open to busybodies whose only aim is to delay the inevitable execution of a judgment. We are of the firm view that this court should only be open to a litigant who has moved the Court of Appeal and met the threshold set out in section 13(3)."

- 6.4 The applicant contends that the intended appeal satisfies the requirements in **Section 13 of the Act** as it raises weighty issues that transcend private rights and are of public interest and importance relating to the duty of the tenants to yield up property in a habitable condition and the question of whether *mesne* profits can be claimed in the circumstances. It has been contended that the intended appeal has reasonable prospects of success.
- 6.5 The respondent on the other hand opposes the application on the basis that there is no public importance and novelty that could remotely be considered from this appeal in the sense that in arriving at the decision the court followed established principles in any landlord-tenant agreement as regards when to award *mesne* profits and that the subject landlord and tenant falls outside the ambit of public importance.
- 6.6 It was contended that the applicant's application for an order for leave to appeal to the Supreme Court is devoid of novelty and raises no significant issues and possibly would not invigorate public curiosity nor interest with no prospects of success.

- 6.7 In our judgment, we referred to authorities which elucidate that *mesne* profits constitute compensation that an individual wrongfully occupying another's property may be required to pay to the owner for such use and occupation. The burden was on the applicant as landlord to establish that he was unjustifiably deprived of possession of his property.
- 6.8 In that regard, we observed that despite the finding that the respondent was not a trespasser and that it did not access the applicant's premises without authorisation, the trial court granted the applicant his claim for *mesne* profits. The application of the legal principle regarding *mesne* profits together with a thorough evaluation of the evidence suggests that the court having correctly determined that the respondent was not a trespasser should have dismissed the applicant's claim for *mesne* profits.
- 6.9 We referred to a number of authorities in our jurisdiction and carefully considered the circumstances under which one is entitled to the relief of *mesne* profits. The applicant unfortunately, did not satisfy the requirement warranting an award for *mesne* profits as the evidence on record well established that the respondent was not a trespasser. Our view therefore is that the intended appeal does not disclose any weighty issues transcending private rights and interests. We thus are inclined to agree with the respondent's assertion that the subject of landlord and tenant falls outside the ambit of public importance. It would appear that the applicant's desire is to get a more favourable outcome to his case.

6.10 All in all, we find no merit in this application.

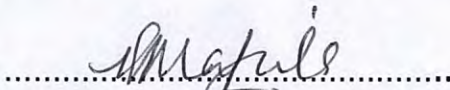
7.0 CONCLUSION

7.1 Having found no merit in the application, we dismiss it.

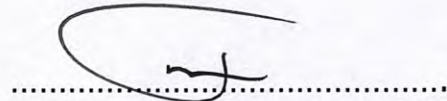
7.2 We award costs to the respondent, to be taxed in default of agreement.



M. M. KONDOLO, SC
COURT OF APPEAL JUDGE



B. M. MAJULA
COURT OF APPEAL JUDGE



K. MUZENGA
COURT OF APPEAL JUDGE