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2015/HP/1502

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)



BETWEEN:

**PETER KAMPAMBA (T/A KAMPET GENERAL DEALERS)**

**PLAINTIFF**

AND

**ZAMBIAN BREWERIES PLC**

**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 10<sup>th</sup> DAY OF  
FEBRUARY, 2025.**

*For the Plaintiff : Mr. M.D Lungu, Messrs GDC Chambers*

*For the Defendant : Mr. A. Kasofu, Messrs Tembo Ngulube & Associates*

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## **R U L I N G**

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CASES REFERRED TO:

- 1. Chikuta v Chipata Rural Council 1974 ZR 241**
- 2. Mohamed A. Omar v Zambia Airways Corporation Ltd. 1986 ZR 23**
- 3. Attorney General and another v Lewanika and others 1993-1994 ZR 164**
- 4. New Plast Industries v Commissioner of Lands 2001 ZR 51**
- 5. JCN Holdings Limited v Development Bank of Zambia SCZ No 22/2013**
- 6. Crossland Mutinta and others v Donovan Chipanda Selected Judgment No 53 of 2018**
- 7. Morgan Naik v Simon David Burgess Appeal No 45/2020**
- 8. Citibank Zambia Limited v Suhayl Dudhia Appeal No 6 of 2022**

LEGISLATION REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia**
- 2. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia**

### **1. INTRODUCTION**

1.1 **Zambian Breweries Plc**, the Defendant herein, filed a Notice of Motion on 3<sup>rd</sup> May, 2024, pursuant to **Order 33 Rule 3** as read

with **Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition** seeking the determination of the following questions:

- i. *Whether this Honourable Court has jurisdiction to hear questions relating to Peter Kampamba and Zambian Breweries Plc' Accounts and whether this Honourable Court has jurisdiction to furnish the report on the findings.*
- ii. *In the event of the Court deciding in the alternative on (i) the matter be sent back to the trial Court for continued trial.*

1.2 The Notice of Motion was supported by an affidavit and a List of Authorities and Skeleton Arguments. In opposition, Peter Kampamba filed an affidavit in opposition and List of Authorities and Skeleton Arguments in opposition on 20<sup>th</sup> May, 2024, while an affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 30<sup>th</sup> May, 2024.

## **2. BACKGROUND**

2.1 Peter Kampamba (T/A Kampet General Dealers), sued Zambian Breweries Plc on 8<sup>th</sup> September, 2015, by Writ of Summons which was accompanied by a statement of claim, in which he claimed:

- i. *A true and full Account of all invoices issued by Zambian Breweries Plc for deliveries of products against all payments made by Peter Kampamba to Zambian Breweries Plc herein;*
- ii. *An Order for the payment by Zambian Breweries Plc to Peter Kampamba, of all sums found to be due and payable to Peter Kampamba on taking of the Account in (i) above;*
- i. *An Order for the delivery up and surrender of the Original Certificate of Title No 10073 in respect of Stand No 114*

*Chilenje, Lusaka to Peter Kampamba by Zambian Breweries Plc herein;*

- ii. An Order forthwith of the removal of the caveat placed by Zambian Breweries Plc on 12<sup>th</sup> November, 2010 in respect of Stand No 114 Chilenje Lusaka;*
- iii. An Order for general and exemplary damages to be assessed by the Court for loss of use of the said No 114 Chilenje Lusaka arising from the continued refusal by Zambian Breweries Plc to release the certificate of title herein;*
- iv. General and aggravated damages for aggravated conduct on the part of Zambian Breweries Plc to be assessed by the Court;*
- v. Interest on all sums found due and payable by Zambian Breweries Plc to Peter Kampamba at such rate and for such period to be assessed by the Court;*
- vi. Costs of the action to be taxed in default of agreement by the parties herein;*
- vii. Further or other reliefs, including all further necessary or appropriate Accounts, inquiries and directions.*

2.2 A defence and counterclaim was filed on 24<sup>th</sup> September, 2015, while appearance was entered on 28<sup>th</sup> December, 2015. A reply and defence to the counterclaim was filed on 28<sup>th</sup> October, 2015.

2.3 On 4<sup>th</sup> February, 2019, the Judge who had conduct of the matter then, directed that pursuant to **Order 23 of the High Court Rules, Chapter 27 of the Laws of Zambia**, a Referee, being the Registrar of the High Court, sitting with Two (2) Financial Experts should investigate the questions and issues relating to the

Account that Peter Kampamba had with Zambian Breweries Plc with a report of the findings to be produced within Sixty (60) days, of the date of the Order. Thereafter, the Court would proceed to determine the matter.

- 2.4 The Registrar proceeded to investigate the matter as directed and adjourned the matter for Ruling. Thereafter, on 18<sup>th</sup> May, 2022, Zambian Breweries Plc applied for an Order to discharge the Order adjourning the matter for Ruling, premised on the fact that the Registrar had declined to adjourn hearing of the proceedings on 13<sup>th</sup> March, 2022, and he proceeded to render the Ruling based on the Financial reports which were presented by Experts.
- 2.5 This was on the basis that, despite Counsel for Zambian Breweries Plc having asked his colleague to apply for an adjournment, as he was diagnosed with COVID 19, the Registrar had declined to adjourn the matter.
- 2.6 Ruling on that application was delivered on 19<sup>th</sup> May, 2023, and the Order was granted, which saw the Registrar direct that his Order dated 13<sup>th</sup> May, 2022 was discharged, and that the Financial Expert witness who was nominated by the parties would testify on 14<sup>th</sup> July, 2023.
- 2.7 The Financial Expert testified on the said 14<sup>th</sup> July, 2023, and the parties were given time to file their submissions. Thereafter, Ruling was reserved. An ex-parte application was filed by Zambian Breweries Plc for leave to file a supplementary Expert Opinion out of time on 21<sup>st</sup> February, 2024.
- 2.8 A Notice of Motion was thereafter filed on 3<sup>rd</sup> May, 2024, and on 7<sup>th</sup> August, 2024, the Registrar delivered a Ruling on the same,

stating that the Notice of Motion was misconceived, and that it would create absurdity to argue that the Court lost jurisdiction to investigate the Accounts and render the report. The Registrar adopted the summary report dated 21<sup>st</sup> January, 2024, hence this appeal.

### **3. SUBMISSIONS AT THE HEARING**

#### **SUBMISSIONS BY COUNSEL FOR ZAMBIAN BREWERIES PLC**

- 3.1 In raising the Notice of Motion, Counsel for Zambian Breweries Plc stated that they had appealed the Ruling of the Registrar which was dated 7<sup>th</sup> August 2024. Counsel stated that in doing so, as an appeal against a Registrar to Judge at Chambers, is a re-hearing, reliance was placed on the Notice of Motion, the affidavit in support, as well as the List of Authorities and Skeleton Arguments.
- 3.2 Counsel also submitted that they had filed an affidavit in reply with an accompanying List of Authorities and Skeleton Arguments on 30<sup>th</sup> May, 2024. The prayer was that the application be granted.

#### **RESPONSE BY COUNSEL FOR PETER KAMPAMBA**

- 3.3 In response, Counsel stated that reliance was placed on the affidavit in opposition and the List of Authorities and Skeleton Arguments in opposition, which were filed on 24<sup>th</sup> May, 2024. His prayer was that the application be dismissed. In the alternative, argument was made, that should the Court uphold the Notice of Motion, then costs should not be borne by Peter Kampamba as he did not cause the delay.

**REPLY BY COUNSEL FOR ZAMBIAN BREWERIES PLC**

- 3.4 Counsel submitted that their prayer was that each party should bear their own costs of the application.

**4. DECISION OF THIS COURT**

- 4.1 I have considered the appeal, which was brought pursuant to **Order 30 Rule 10 of the High Court Rules**. That Order provides that:

***“10. (1) Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision, order or direction complained of, or such further time as may be allowed by a Judge or the Registrar. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision, order or direction of the Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar.”***

- 4.2 As rightly submitted by Counsel for Zambia Breweries Plc, an appeal from the Registrar to a Judge at Chambers is a re-hearing. In that regard, the Supreme Court in the case of **Mohamed A. Omar v Zambia Airways Corporation Ltd** <sup>(2)</sup> held that:

***“An appeal to a judge in Chambers is treated as an actual rehearing of the application and the judge should have regard to the contents of supplementary affidavits.”***

- 4.3 The gist of the affidavit which was filed in support of the Notice of Motion, as deposed to by Deborah Bwalya, Legal Counsel and Company Secretary for *Zambian Breweries Plc*, was that after this matter was commenced on 8<sup>th</sup> September, 2015, *Zambian Breweries Plc* filed its' defence and counterclaim on 24<sup>th</sup> September, 2015. She further averred that trial commenced, but it was not concluded.
- 4.4 It was her averment, that by a Ruling dated 4<sup>th</sup> February, 2019, the Judge with conduct of the matter then, pursuant to **Order 23 of the High Court Act** directed that the Accounts for Peter Kampamba and *Zambian Breweries Plc* be investigated by the Registrar of the High Court, sitting with Two (2) Financial Experts, within Sixty (60) days of the date of that Order.
- 4.5 It was deposed that over Sixty (60) days from the date of that Order had passed, and the said Report had not been delivered to the Judge by the Referee. As such, the Court had no jurisdiction to investigate the parties' Accounts and to render a report.
- 4.6 In the List of Authorities and Skeleton Arguments in support, the law which had been relied on, in raising the Notice of Motion was cited.
- 4.7 The case of ***JCN Holdings Limited v Development Bank of Zambia*** <sup>(5)</sup> was stated as having held that any Order or ruling delivered by the Court without jurisdiction, is void for want of jurisdiction. Further reliance was placed on the cases of ***Crossland Mutinta and others v Donovan Chipanda*** <sup>(6)</sup> and ***Morgan Naik v Simon David Burgess*** <sup>(7)</sup> as having reiterated the above decision.

- 4.8 Premised on the above, the argument was that as the time within which the report was to have been presented to the Court on or about 5<sup>th</sup> April, 2019 had elapsed, this Court had no jurisdiction to hear the parties.
- 4.9 In opposition, Peter Kampamba agreed with the contents of the affidavit which was filed in support of the application, as regards commencement of the matter, the defence and counterclaim being filed, as well as the directions that the trial Judge gave in the matter. He deposed that resolution of the dispute hinged on reconciliation of his and Zambian Breweries Plc's Accounts. Hence, the direction by the Judge for reconciliation of the same.
- 4.10 It was agreed that a Sixty (60) day time frame was given, within which the Report on reconciliation of the Accounts was to be furnished. However, as advised by his advocates, Peter Kampamba stated that the parties appeared before the Registrar, Mr. Nkole, and it was agreed that the Registrar retires to render his ruling based on the reports which were filed by the parties.
- 4.11 It was also his averment, that as advised by the advocates on record, the expiration of the Sixty (60) days within which the Registrar was supposed to have furnished the report as directed by the Judge, did not take away his jurisdiction to investigate the Accounts as directed, and to render a report into Court.
- 4.12 Peter Kampamba deposed that he had been advised by his advocates, that to hold that the Registrar lacked jurisdiction to render a report to the Honourable Judge, on account of lapse of time, would create absurdity, as the determination of the matter, hinged on reconciliation of the parties' Accounts.

- 4.13 The arguments in the List of Authorities and Skeleton Arguments in opposition, were that the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup> in relation to the jurisdiction of the Industrial Relations Court, as regards the requirement that it must hear and determine a matter within One (1) year of its' commencement, held that if there was failure to do so, the Court did not lose its' jurisdiction.
- 4.14 It was argued that the said case adopted a purposive approach in interpreting ***Section 85 (1) of the Industrial and Labour Relations Act***, which approach was also taken in the case of ***Attorney General and another v Lewanika and others*** <sup>(3)</sup>.
- 4.15 Therefore, the submission was that a similar approach should be taken with regard to the Judge's Order, which directed that the investigation should be done, and a report compiled within Sixty (60) days of the date of the Order. It was further argued that it would not have been the intention of the Judge that the matter would be sent back for trial without the report, upon which resolution of the matter lay.
- 4.16 This was argued, as being more so, as with the parties' consent, the parties agreed that the Registrar retires to render the Ruling.
- 4.17 The affidavit in reply as deposed to by Deborah Bwalya, was that resolution of the matter did not hinge on reconciliation of the Parties Accounts, but on the trial Court, establishing liability based on the totality of the evidence after a trial process.
- 4.18 It was reiterated that when the Registrar sat on 14<sup>th</sup> July, 2023, he had lost jurisdiction to hear and render a Ruling on the reconciliation of the Accounts.

- 4.19 The List of Authorities and Skeleton Arguments in reply maintained the arguments as earlier advanced. Further argument was made, that Peter Kampamba had completely misinterpreted the decision in the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup>, as the Order of the Court dated 4<sup>th</sup> February, 2019, was very clear, and a literal interpretation of that Order needed to be made.
- 4.20 It was argued that pursuant to that Order, the Registrar only had Sixty (60) days within which to furnish the report to the trial Judge. Denial was made, that holding that the Registrar had no jurisdiction would create absurdity, and it was repeated that Peter Kampamba had misinterpreted the decision in the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup>.
- 4.21 Still in arguing, the contention was that the said case was distinguishable from this case, as it dealt with the lack of jurisdiction of the Court, to determine a matter in its' entirety after the lapse of One (1) year from its' commencement, if it was not concluded.
- 4.22 *Zambian Breweries Plc* stated that in this matter, the holding that the Registrar had no jurisdiction to investigate the Accounts of the parties after the Sixty (60) days had elapsed, would not fetter the jurisdiction of the Court to deliver Judgment in this matter.
- 4.23 This, it was argued, was because the Judge would consider all the evidence on the record, and not just the evidence from the reconciliation. In that regard, the submission was that *Zambian Breweries Plc* wished to cross examine the witnesses for Peter Kampamba on how they were so generous in continuing to pay for

products that Peter Kampamba was not receiving, especially that he continued trading.

- 4.24 It was stated that this evidence would not be adduced from reconciliation of the Accounts, but at trial, from the witnesses who would testify. Argument was made, that Peter Kampamba had taken a simplistic approach to how this matter should be determined, while ignoring that he could not have traded, if he did not receive the product that he was paying for.

### **DECISION**

- 4.25 From the contending the affidavits and the list of Authorities and Skeleton Arguments, the issues in dispute are firstly, whether the Registrar lost jurisdiction to investigate the parties Accounts, and to render a report on the same, in view of the fact that the Order of the Judge dated 4<sup>th</sup> February, 2019, directed the same to be done within Sixty (60) days of the date of the Order.
- 4.26 The second issue is whether the Report on the reconciliation will determine the matter with finality.
- 4.27 *Zambian Breweries Plc* in arguing that the Registrar lost jurisdiction to conduct investigation of the parties' Accounts, relied on the cases of ***JCN Holdings Limited v Development Bank of Zambia*** <sup>(5)</sup>, ***Crossland Mutinta and others v Donovan Chipanda*** <sup>(6)</sup> and ***Morgan Naik v Simon David Burgess*** <sup>(7)</sup> as authority for the argument, that where the Court has no jurisdiction, any Orders that it issues are null and void.
- 4.28 Peter Kampamba on the other hand, relied on the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup> as having held that even where the time for doing something expires, applying a

purposive approach to the interpretation of legislation, the Court does not lose its' jurisdiction to hear and determine a matter.

4.29 The reply was that the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup> had been wrongly applied to this case, as that case dealt with the Court's lack of jurisdiction to determine a matter in its' entirety, after the period prescribed. However, in this case, even if this Court were to hold that the Registrar lacked jurisdiction to investigate the parties Accounts, and to render a Report on the same, that would not rob this Court of its' jurisdiction to hear and determine the matter, as the report, is but just one aspect of the evidence in this case.

4.30 Further argument was made, that Zambian Breweries Plc wishes to cross examine the witnesses for Peter Kampamba, and establish how he had continued trading, when he was not receiving products that he was paying for.

4.31 In relation to a Court losing jurisdiction over a matter on account of lapse of time, the Supreme Court in the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup> considered the provisions of ***Section 85 (3) (b) (ii) of the Industrial and Labour Relations Act*** which provides as follows:

***“The Court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented.”***

4.32 In dealing with that Section, with regard to whether a Court loses its' jurisdiction to hear and determine a matter, on the lapse of One (1) year from the proceedings being commenced, they noted that they had in the case of ***JCN Holdings v Development Bank***

*of Zambia* <sup>(5)</sup> relied on the cases of *Chikuta v Chipata Rural Council* <sup>(1)</sup> and *New Plast Industries v Commissioner of Lands* <sup>(4)</sup> in holding that if a Court has no jurisdiction to hear and determine a matter, it cannot make any lawful Orders or grant the remedies sought by a party.

- 4.33 The Supreme Court further observed, that there are no clear spelt out consequences of the failure to observe the provisions of **Section 85 (3) (b) (ii) of the Industrial and Labour Relations Act** which was a question of statutory interpretation. It was noted that when interpreting legislation, the Court should consider the plain language of the statute, and that where the language of the statute is simple and unambiguous, it must be applied according to its' terms.
- 4.34 They also stated that the provisions of **Section 85 (3) (b) (ii) of the Industrial and Labour Relations Act** are clear, as it directs a Court to dispose of a matter brought before it, within a period of One (1) year from the date of filing or presentation of the petition. However, the Section does not state what the consequences should be, of failure to abide by it.
- 4.35 The Supreme Court guided that where a statutory provision is silent or unclear as to what the consequences of its' breach will be, the Judge has a duty to interpret the provisions of the statute to fit the purpose for which the statute was drafted, and thereby avert reading into the statute unintended consequences for its' non-observance.
- 4.36 It was further guided that a Judge must not attribute a meaning or in the case of a consequence, to the provisions which might

- bring forth inconsistencies, uncertainties and ambiguities when the provisions are considered against the legislative intent.
- 4.37 The guidance that was also given, was that broadly speaking, where the literal interpretation creates absurdity, the golden rule may be invoked to modify the reading of the words, to avoid an offensive situation. That likewise, the mischief rule allows Judges to consider the gaps or the mischief which the statute was intended to address.
- 4.38 The Supreme Court stated that the purposive approach requires Judges to look beyond the intention of the statute, and discover the original purpose for the enactment of the legislation, and its' meaning should be defined from that purpose.
- 4.39 Further guidance was given, that the judicial duty of statutory interpretation is not merely a duty to read, but that it is a duty to help the legislature to achieve its' aims which can reasonably be inferred from statutory design, and it requires Judges to pay attention to the spirit as well as the letter of the statute.
- 4.40 Note was made, that the objective of **Section 85 (3) (b) (ii) of the Industrial and Labour Relations Act** was to ensure that the delay in disposal of cases was curbed, and that to suggest a contrary intention, would create an absurdity.
- 4.41 Therefore, the Supreme Court found that the purposive approach to the interpretation of **Section 85 (3) (b) (ii) of the Industrial and Labour Relations Act** meant that the Court did not lose jurisdiction after One (1) year, and that holding otherwise, would result in absurdity in light of the intention of Parliament which

was to cure delays in concluding matters of an industrial relations nature. It accordingly found so.

- 4.42 In this matter, what is up for interpretation is an Order which the trial Judge gave on 4<sup>th</sup> February, 2019, directing that the Registrar of the High Court sits with Two (2) Financial Experts to investigate the Accounts of the parties, within Sixty (60) days of the date of the Order, and to furnish a report to the Court.
- 4.43 That Order was issued as part of the Court's management system of cases, and it did not relate to the Rules of the Court. However, Orders for Directions being an integral part of the management of a case, as are the Rules of the Court, their interpretation, can be subjected to the rules that apply to statutory provisions.
- 4.44 Therefore, the guidance that was given by the Supreme Court in the case of ***Citibank Zambia Limited v Suhayl Dudhia*** <sup>(8)</sup> is applicable to the extent that Orders for Directions are issued in relation to the conduct of a matter.
- 4.45 Thus, a literal interpretation of the Order that the Honourable Judge gave on 4<sup>th</sup> February, 2019, was that an investigation as directed, was to be done within Sixty (60) days, and a Report on the same to be furnished to the Court within that period. The Order did not spell out the consequences of failure to comply with the same.
- 4.46 Peter Kampamba argued that the delay to investigate and present the report was not attributable to him, and therefore, he should not bear the costs of this application. *Zambian Breweries Plc* on the other hand, submitted that each party should bear their own costs of the application.

- 4.47 A perusal of the record, shows that after the Order was made on 4<sup>th</sup> February, 2019, Zambian Breweries Plc only appointed a Financial Expert on their behalf on 7<sup>th</sup> September, 2020. The Registrar first sat to hear the reconciliation on 6<sup>th</sup> October, 2020, and the matter was adjourned. On 22<sup>nd</sup> March, 2021, Counsel for Peter Kampamba who was the only person present before the Registrar, informed the said Registrar, that the parties had attempted to reconcile the Accounts, but they did not conclude. An adjournment was granted on that basis.
- 4.48 Then, on 20<sup>th</sup> April, 2021, the Registrar was again informed by Counsel for Peter Kampamba, that the parties were trying to resolve the matter excuria, and the matter was adjourned to 13<sup>th</sup> May, 2021. A Notice to Raise preliminary issues was filed on 7<sup>th</sup> May, 2021, by Zambian Breweries Plc, which was adjourned on 13<sup>th</sup> May, 2021, as it had not been served on Peter Kampamba.
- 4.49 On 6<sup>th</sup> December, 2021, the Registrar who had conduct of the matter, sent the matter for re-allocation as she was retiring. The Registrar who was allocated the matter thereafter, sat on 21<sup>st</sup> January, 2022, and he adjourned the matter to 11<sup>th</sup> February, 2022, as the parties had not yet concluded the reconciliation.
- 4.50 On that date, the Registrar was informed by Counsel for Peter Kampamba that they had served the reconciled accounts on Counsel for Zambian Breweries Plc on 25<sup>th</sup> January, 2022. However, they had received an application for an adjournment of the hearing of that date, as Counsel for Zambian Breweries Plc was in Ndola.

- 4.51 Counsel opposed the application to adjourn, and the Registrar agreed with him. The Registrar adjourned for Ruling on the reconciliation on that date. An application was filed on 18<sup>th</sup> May, 2022 to discharge the Order to adjourn for Ruling, as earlier highlighted in the background to this matter.
- 4.52 That application was heard on 9<sup>th</sup> December, 2022, and Ruling on the same was delivered on 19<sup>th</sup> May, 2023, discharging the Order for Ruling, and direction was given for the Financial Expert to testify on 14<sup>th</sup> July, 2023. As noted in the background, the Financial Expert testified on 14<sup>th</sup> July, 2023, and Ruling was reserved.
- 4.53 On 24<sup>th</sup> February, 2024, Zambian Breweries Plc filed an ex-parte application to file a supplementary expert opinion report out of time. There is nothing on the record to show whether it was granted. On 9<sup>th</sup> April, 2024, the matter was before a different Registrar who noted that another Registrar had reserved the matter for Ruling. She therefore referred back the matter to the said Registrar.
- 4.54 The Registrar who had reserved the matter for Ruling, then heard the Notice of Motion which is subject of the re-hearing before me on 10<sup>th</sup> May, 2024, and he delivered the Ruling on 7<sup>th</sup> August, 2024.
- 4.55 These are the events as they transpired in this matter. It can be seen from the narration that I have given, that both parties and the Registrar contributed to the delay in the investigation being carried out as directed by the Judge, and the report being furnished.

4.56 It will be noted that **Order 23 Rule 4 of the High Court Rules** states that:

**“4. The referee may, subject to the order of the Court or a Judge, hold the inquiry at or adjourn it to any place which he may deem most convenient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him. He shall, so far as practicable, proceed with the inquiry de die in diem.”**

4.57 Thus, a Referee has powers to adjourn an enquiry from time to time, as deemed expedient. That being the position, and bearing in mind that Court Orders are made to ensure the timely and efficient adjudication of matters, in the absence of the Order giving a consequence for non-compliance, as well as the fact that in making the Order, it cannot be assumed that the trial Judge contemplated that there would be no delays in concluding the investigation, and the report having been furnished, a purposive approach in interpreting the Order would be the most appropriate in this case.

4.58 Consequently, applying that approach, the Order was intended that the Registrar sitting with Two (2) Financial Experts would investigate and furnish the Court with a report within Sixty (60) days of the Order. This was meant to avoid delay in completion of the trial by tying the exercise to a period of time.

4.59 The Court has inherent jurisdiction to extend time for doing any acts, to ensure that a matter is properly and conclusively adjudicated.

- 4.60 There was delay in the investigation being conducted and the Report being furnished to the Court, which I have found, was attributable to both the Registrar and the Parties. As the Order spelt out no consequences for failure to comply with the same, the Registrar did not lose jurisdiction to investigate the Accounts of the parties, and to render a report thereon.
- 4.61 That aspect of the notice of Motion fails, and it is dismissed.
- 4.62 Coming to whether the report that the Registrar furnished was conclusive of the dispute between the parties, the record shows that the Registrar adopted the report which was done by the Expert who was engaged by Peter Kampamba on 7<sup>th</sup> August, 2024, giving reasons why.
- 4.63 **Order 23 of the High Court Rules in Rules 1-3**, states as follows with regard to the appointment of Referees:

***“1. In any civil cause or matter in which all parties interested who are under no disability consent thereto, and also, without such consent, in any civil cause or matter requiring any prolonged examination of documents or accounts or any scientific or local examination which cannot, in the opinion of the Court or a Judge, conveniently be made by the Court in the usual manner, the Court or a Judge may, at any time, on such terms as it or he may think proper, order any question or issue of fact, or any question of account arising therein, to be investigated or tried before a referee, to be agreed on between the parties or appointed by the Court or a Judge.*”**

**2. Where an order has been made under rule 1, the Court or a Judge shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry. The instructions shall specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.**

**3. The Court or a Judge may, at any stage of the proceedings, direct any necessary inquiries or accounts described in rule 1 to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.”**

4.64 The instruction in this matter, was for the Registrar to sit with Two (2) Financial Experts to investigate the parties Accounts, and to render a report of his findings on the matter. As already seen, a report was rendered. In my view, the Judge directed the Registrar to make a finding in relation to the reconciled Accounts in his report.

4.65 Zambian Breweries Plc indicated that it wishes to cross examine the witnesses for Peter Kampamba in relation to the Accounts.

4.66 A party to any proceedings has a right to adduce evidence in response to any evidence that is placed before the Court in line

with the pleadings, which are before Court. This ensures that all the issues in controversy in a matter, are dealt with, in Order for the Court to arrive at a just decision.

4.67 **Order 23 Rules 9 and 10 of the High Court Rules**, is as follows in provision:

***“9. The proceedings and report in writing of the referee shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them, and the Court shall have power to draw such inferences from the proceedings or report as shall be just.***

***10. The Court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for further inquiry or consideration to the same or any other referee, as often as may be necessary, and shall pass such ultimate judgment or order as may appear to be right and proper in the circumstances of the case.”***

## **5. CONCLUSION**

- 5.1 In line with the above, the Judge still retains power to make any necessary further directions under **Order 23 of the High Court Rules**, where it appoints a Referee to investigate any question or issue, that arises in the proceedings.
- 5.2 As the Registrar did not lose jurisdiction, and bearing in mind, the need to effectually deal with all the issues in controversy, the matter shall proceed with continued trial. The need to proceed with continued trial, is also on account of the fact that Peter

Kampamba claims other reliefs in relation to the reconciliation, which need to be proved at trial.

- 5.3 I accordingly Order that a status conference shall be held on 18<sup>th</sup> March, 2025 at 08:45 hours, so that further directions in the matter are given. Costs shall be in the cause, and leave to appeal is granted.

**DATED AT LUSAKA THE 10<sup>th</sup> DAY OF FEBRUARY, 2025**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

