

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



2025/HP/0714

IN THE MATTER OF:

**AN APPLICATION FOR EXTENSION OF TIME
AND LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

IN THE MATTER OF:

**THE IMMIGRATION AND DEPORTATION ACT
NO 18 OF 2010**

AND

IN THE MATTER OF:

**ORDER 53 OF THE RULES OF THE SUPREME
COURT OF ENGLAND (WHITE BOOK), 1999
EDITION**

AND

IN THE MATTER OF:

**AN ACTION BY THE DIRECTOR GENERAL OF
IMMIGRATION OF WITHHOLDING THE
RESIDENCE PERMIT BELONGING TO MEHBUB
ALI UMARJI SANSARIYA**

AND

IN THE MATTER OF:

**AN ACTION BY THE DIRECTOR GENERAL OF
IMMIGRATION OF WITHHOLDING PAASPORT
NUMBER W5630015 BELONGING TO MEHBUB
ALI UMARJI SANSARIYA**

BETWEEN:

MEHBUB ALI UMARJI SANSARIYA

APPLICANT

AND

**THE DIRECTOR GENERAL OF IMMIGRATION
THE ATTORNEY GENERAL**

**1st RESPONDENT
2nd RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 28th
DAY OF AUGUST, 2025**

*For the Applicant : Mr N. Nsamba and Mr B. Bundebunde, Messrs Sameta
Mapushi Legal Practitioners*

For the Respondent : Ms Z. Kasauka, State Advocate

R U L I N G

CASES REFERRED TO:

1. *New Zealand Shipping Co Ltd v Societe` De Ateliers Et Chantiers De France* 1919 AC 718
2. *Alexander Machinery (Dudley) Ltd v Crabtree* 1974 IRC 120
3. *Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Limited* 1981 2 ALL ER 93
4. *R v Epping and Harlow General Commissioners, Ex-parte Goldstraw* 1983 3 ALL ER 257
5. *R v Secretary of State for the Home Department, ex-parte Rushanda Begun* 1990 C.O.D 102
6. *Dr Ludwig Sondashi v The Attorney-General* SCZ No 27 of 2000
7. *Chiluba v The Attorney General* Appeal No 125 of 2002
8. *Konkola Copper Mines Plc v Mitchell Drilling International Ltd & Mitchell Drilling (Z) Ltd* Selected Judgment No 22 of 2015
9. *Folayinka Obisaiye Oladipo Esan v The Attorney General* Selected Judgment No 47 of 2016
10. *Sylvester Musonda Shipolo v The University of Zambia and the University of Zambia Council* 2017/HP/010
11. *Zega Limited v Zambia Revenue Authority* Appeal No 96 of 2018
12. *Agro-Fuel Investments Limited v Energy Regulation Board* Selected Judgment No 4 of 2019
13. *Zambia Community Resources Board Limited and another v The Attorney General* Application No 31 of 2020

LEGISLATION REFERRED TO:

1. *The Rules of the Supreme Court of England*, 1965, 1999 Edition
2. *The Immigration and Deportation Act* No 18 of 2010
3. *The Passport Act* No 28 of 2016

OTHER WORKS REFERRED TO:

1. *Black's Law Dictionary*
2. *S.A De Smith Judicial Review of Administrative Action* 3rd Edition

1. INTRODUCTION

- 1.1 Mehbub Ali Umarji Sansariya, moved this Court on 22nd May, 2025, by Notice of Application for leave to apply for extension of time, and for leave to commence judicial review proceedings, pursuant to ***Rules 3 and 4 of Order 53 of the Rules of the Supreme Court of England, 1965, 1999 Edition.***
- 1.2 The Notice was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.3 The Notice was opposed by an affidavit and a List of Authorities and Skeleton Arguments in opposition, which were filed on 25th June, 2025.
- 1.4 An affidavit in reply and a List of Authorities and Skeleton Arguments in reply were filed on 3rd July, 2025.

2. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR MEHBUB ALI UMARJI SANSARIYA

- 2.1 In making the applications, Counsel for Mehbub Ali Umarji Sansariya, stated that they applied for leave and for extension of time for leave to commence judicial review. It was Counsel's submission that they relied on the affidavit which was filed in support of the Notice together with the List of Authorities and Skeleton Arguments in support.
- 2.2 In augmenting, Counsel submitted that the application had been necessitated by the inertia to render a decision or the failure to render a decision by the Director General of

Immigration to issue an approved permit to Mehbub Ali Umarji Sansariya.

- 2.3 In still submitting, Counsel stated that the sequence of events showed that a residence permit was approved. However, that notwithstanding, the Director General of Immigration, had not issued a permit, and had not given any reasons for such refusal. It was added that Mehbub Ali Umarji Sansariya had been told to wait without any lawful cause.
- 2.4 Counsel went on to state that it is trite that judicial review is concerned with the decision-making process, and that Mehbub Ali Umarji Sansariya had made several advances towards the Director General of Immigration to seek clarity as to why a permit had not been issued.
- 2.5 It was also stated that in pursuit of the application, Mehbub Ali Umarji Sansariya's passport had been withheld without a proper reason, notice or communication whatsoever. Thus, extension of time and leave to commence judicial review proceedings was sought.

**RESPONSE BY COUNSEL FOR THE DIRECTOR GENERAL
OF IMMIGRATION AND THE ATTORNEY GENERAL**

- 2.6 In response, Counsel submitted that an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition were filed on 25th June, 2025. It was Counsel's submission that suffice to say, judicial review had a threshold which an aggrieved person had to meet, which was

to appeal to the authorities in charge for purposes of challenging a decision that was made by such an authority.

- 2.7 Counsel still in submission, stated that the available administrative remedies had not been explored by Mehbub Ali Umarji Sansariya.
- 2.8 Counsel acknowledged that a residence permit had not been issued to Mehbub Ali Umarji Sansariya, and she stated that this was for the reasons that had been given in the affidavit in opposition.
- 2.9 Further submission was made, that the issuance of a residence permit had just been delayed, and Mehbub Ali Umarji Sansariya had rushed to Court prematurely, knowing very well that there was no decision to be challenged.
- 2.10 In still submitting, Counsel stated that the action that had been taken by the Director General of Immigration was within the law, and on that premise, the prayer was that leave to extend time, and for leave to commence judicial review proceedings be denied, as the threshold for leave to commence judicial review proceedings had not been satisfied.
- 2.11 Reliance was placed on **Order 53/14/7 of the Rules of the Supreme Court of England**, with Counsel submitting that the said provision states that the Courts will not normally grant judicial review where there is another avenue of appeal.
- 2.12 Thus, as no decision had been made, the application should not be granted.

**REPLY BY COUNSEL FOR MEHBUB ALI UMARJI
SANSARIYA**

- 2.13 It was stated in reply, that reliance was placed on the affidavit in reply and the List of Authorities and Skeleton Arguments in reply.
- 2.14 Counsel submitted that the administrative challenge that should have been triggered before Mehbub Ali Umarji Sansariya came to Court under **Section 10 of the Immigration and Deportation Act** did not apply, as by virtue of the said Section, a decision needed to have been made within Fourteen (14) days, and communicated to Mehbub Ali Umarji Sansariya, so that he could exhaust the administrative channels.
- 2.15 It was submitted that the Director General of Immigration had conceded to having approved the issuance of the residence permit to Mehbub Ali Umarji Sansariya, but had stated that there had merely been delay in issuing, it for the reasons stated in the affidavit.
- 2.16 The view that Counsel took, was that those reasons were being brought for the first time in these proceedings, and no reasons had been given in the affidavit to show that action had been taken. It was added that when Mehbub Ali Umarji Sansariya followed up on the failure to issue the permit, the request went ignored, and no reasons and justification were given.
- 2.17 Thus, he was left in limbo and the Director General of Immigration under the regulations, had a duty to issue an

approved permit. Still in submission, Counsel stated that where that was not done, the Court by way of judicial review, was entitled to check the Director General of Immigration.

- 2.18 Reliance was placed on the case of ***Zambia Community Resources Board Limited and another v The Attorney General*** ⁽¹³⁾ stating that the Court of Appeal in that matter, reviewed by way of judicial review, where no decision was made by the Attorney General to defeat the proceedings.
- 2.19 It was further submitted that as shown on exhibit 'MAM3', the stamps which were endorsed by the Director General of Immigration, were to the affect that Mehbub Ali Umarji Sansariya was not entitled to work during the period.
- 2.20 Thus, grounds of irrationality and unreasonableness had been set out, and it could not be argued that the threshold for leave to commence judicial review proceedings had not been satisfied.
- 2.21 Also submitted, was that for the past Ten (10) years, Mehbub Ali Umarji Sansariya had provided full documentation that was required to renew his employment permit, and the reliance by the Director General of Immigration on the ***Immigration and Deportation Act*** as to why no decision had been made, was flawed as the Section required him to give reasons in writing for withholding the permit and passport.
- 2.22 It was reiterated that it was only through these proceedings, that communication had been received from the Director General of Immigration. The prayer was that time be

extended and leave be granted to commence judicial review proceedings.

3. DECISION OF THIS COURT

- 3.1 I have considered the application. ***Order 53 Rules 3 and 4 of the Rules of the Supreme Court of England, 1965, 1999 Edition*** provide that:

“3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

.....

(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.”

- 3.2 The Notice of the application for extension of time and for leave to apply for judicial review which was filed on 22nd May, 2025 shows that leave is sought against the action/ decision by the Director General of Immigration to withhold the residence permit and passport number W5630015 for Mehbub Ali Umarji Sansariya without reason.
- 3.3 Therefore, should leave be granted to commence judicial review proceedings, the relief sought is:

- i. *A declaration that the action/decision by the Director General of Immigration and the Attorney General to*

withhold Mehbub Ali Umarji Sansariya's residence permit and passport is illegal;

- ii. An Order of mandamus directing the Director General of Immigration and the Attorney General to immediately release Mehbub Ali Umarji Sansariya's residence permit and passport;*
- iii. An interim Order directing the Director General of Immigration to issue Mehbub Ali Umarji Sansariya with a Temporary Employment Permit pending hearing of the matter;*
- iv. Damages for:-*
 - (a) Misfeasance/ Non feasance in public office by the Director General of Immigration;*
 - (b) Breach of statutory duty;*
 - (c) Loss of prospective income;*
- v. If leave is granted, that it operates as a stay of any decision by the Director General of Immigration declaring Mehbub Ali Umarji Sansariya as an illegal immigrant until conclusion of the matter.*
- vi. If leave to commence judicial review is granted, a direction that the hearing of the application be expedited.*
- vii. An Order for costs.*

3.4 The grounds upon which leave is sought to commence judicial review proceedings are illegality, procedural impropriety, irrationality, bad faith and legitimate expectation.

- 3.5 In the affidavit which was filed verifying the facts, Mehbub Ali Umarji Sansariya deposed that on 20th June, 2024, he applied for a residence permit for employment holders from the Department of Immigration, having held an employment permit for a continuous period exceeding ten (10) years. He stated that as shown on exhibit 'MAUS1' being receipt number HQV000508068/24, he paid the requisite fees.
- 3.6 Then in July, 2024, he was notified that the Director General of Immigration had on 17th July, 2024, approved his residence permit, as evidenced by the letter which was exhibited as 'MAUS2'.
- 3.7 Further averment was made, that once Mehbub Ali Umarji Sansariya was notified, he proceeded to the Department of Immigration head office, so that he could collect his residence permit. However, to his shock, there, he was served a Notice to Appear before an Immigration Officer which was dated 2nd August, and which was exhibited as 'MAUS3'.
- 3.8 He added that on requesting what the purpose for the Notice to Appear was, he was informed that it was for immigration formalities. It was also his averment, that on reporting to the Immigration Officers at headquarters, he was advised to present himself to the Immigration Officers on Cairo Road.
- 3.9 He stated that when he went there on 12th August, 2024, the Immigration Officers took his passport number W5630015, and they withheld it.

- 3.10 Mehbub Ali Umarji Sansariya further deposed that he appeared before those Immigration Officers for the second time on 19th August, 2024, and that on querying both times why his passport had been withheld, he received no positive feedback.
- 3.11 He averred that the officers had also informed him that he would be communicated to, and the officers would then proceed to stamp his passport and stamp the Notice Form with the same stamp, that stated that he should not work or do any business.
- 3.12 In still deposing, Mehbub Ali Umarji Sansariya stated that in September, 2024, he followed up with the Immigration Officers to enquire about the status of the residence permit, as he had not received any communication. His averment was that in response, he was told to wait as he would be communicated to.
- 3.13 Mehbub Ali Umarji Sansariya deposed that from October 2024 to January 2025, he made follow ups, but he received no communication. Thus, he engaged the advocates Sameta Mapushi Legal Practitioners in or around February 2025, and on or about 28th February, 2025, the lawyer, Mr Ntenge Nsamba approached the Immigration Department, Legal Department, specifically Ms Chabala, to inquire about the release of his residence permit.
- 3.14 It was deposed that Mr Ntenge Nsamba was referred to Mr Frank Michelo, who advised that he could not communicate on Mehbub Ali Umarji Sansariya's residence permit without

the said Mehbub Ali Umarji Sansariya being present before the Immigration Department.

- 3.15 Therefore, on 3rd March, 2025, Mehbub Ali Umarji Sansariya appeared before the Immigration Department, but no position was communicated. He stated that his lawyer Mrs Ndayi Mapushi advised him that she had approached the Immigration Department, and she was referred to Ms Jane, a Chief Compliance Officer in the Department, who had advised that she would communicate the position at the end of the week.
- 3.16 However, that was not done. Mehbub Ali Umarji Sansariya deposed that he waited for two weeks, and thereafter, together with his lawyer, Mrs Ndayi Mapushi, they did on 25th March, 2025, approach Ms Jane, who referred them to Ms Hazel, a Chief Immigration Officer.
- 3.17 The averment was that Ms Hazel had advised that she would communicate before the end of the day or latest the following day, after she had asked for Mehbub Ali Umarji Sansariya's file number, and she was given the same by Mrs Ndayi Mapushi.
- 3.18 It was deposed that no communication was received and exhibited as 'MAUS4', were the phone messages that were exchanged between Mehbub Ali Umarji Sansariya's lawyer and Ms Hazel.
- 3.19 Further in deposing, Mehbub Ali Umarji Sansariya stated that on 8th April, 2025, himself and his lawyer Mrs Ndayi Mapushi made follow ups in person at the Immigration

Department, and they were informed that the Chief Legal Officer was on leave, and Ms Chabala the Legal Officer, advised that she would communicate by the end of the week.

- 3.20 However, no information was received, and Mehbub Ali Umarji Sansariya feeling hopeless and drained with the manner that he was being treated, and without understanding why his residence permit and passport were being withheld for over six (6) months, instructed his lawyers to issue a demand letter to the Director General of Immigration on 14th April, 2025, which was exhibited as 'MAUS5'.
- 3.21 He further exhibited as 'MAUS6' a copy of his employment permit.
- 3.22 Mehbub Ali Umarji Sansariya also deposed that he is a family man, with a wife and children, stating that they had been subjected to harassment as their movements had been restricted.
- 3.23 It was stated that they had to pay hefty amounts to be granted temporary permits, stating that his son Mohammad Ajeem Ajeem Thompson, paid the sum of K24, 000.00 on 7th April, 2024, as evidenced by the receipt which was exhibited as 'MAUS7'.
- 3.24 Also averred, was that due to the withholding of Mehbub Ali Umarji Sansariya's residence permit and passport without justification, himself and his family had suffered substantial emotional, mental and financial damage, due the action and inaction by the Director General of Immigration.

- 3.25 He stated that in the past couple of years, he had been a heart patient and had been receiving medical treatment at hospitals in India, as shown by the medical records which were exhibited as 'MAUS8'. However, he had been unable to travel for his annual check-up, as the Director General of Immigration had continued withholding his passport.
- 3.26 In the List of Authorities and Skeleton Arguments which were filed in support of the Notice, the argument was that ***Regulation 8 (3) of the Immigration and Deportation (General Regulations)*** requires the Director General of Immigration, to approve and issue a residence permit to an applicant if the requirements in the Regulations and the ***Immigration and Deportation Act*** are satisfied.
- 3.27 It was added that the refusal to issue a residence permit shall be communicated to an applicant within seven days of the Director General's decision.
- 3.28 The argument was that the Director General of Immigration approved the residence permit for Mehbub Ali Umarji Sansariya on 17th July, 2024. Thus, pursuant to ***Regulation 8 (3)***, this gave rise to a non-discretionary obligation to issue the approved residence permit.
- 3.29 However, to date, Mehbub Ali Umarji Sansariya had not been given any explanation for the withholding of the said permit, and there was nothing in ***Regulation 8 (3)*** that provides for the deferment, frustration or unreasonably postponing the issuance of an approved permit.

3.30 The argument was also that the Director General of Immigration's silence as to the withholding of Mehbub Ali Umarji Sansariya's approved residence permit, offended the long-standing principle that failure to give reasons for an adverse decision is itself error of law.

3.31 Reliance was placed on the case of ***Alexander Machinery (Dudley) Ltd v Crabtree*** ⁽²⁾ stating that *Donald P* held as follows in that matter:

“Failure to give a reason for the basis of a decision amounts to denial of justice as is in itself an error of law.”

3.32 It was also argued that in the case of ***Folayinka Obisaiye Oladipo Esan v The Attorney General*** ⁽⁹⁾, the Supreme Court held that the notice of revocation was invalid, as it did not give reasons for the revocation of the permit which was issued under the Act.

3.33 In also questioning the validity of the Notice to Appear which was dated 2nd August, 2024, and the validity of whatever decision that arose from there, Mehbub Ali Umarji Sansariya stated that ***Section 4 of the Immigration and Deportation Act*** as read with ***Regulation 6*** provides that the Immigration Department is empowered to issue a Notice to Appear to a permit holder, which requires a permit holder to present themselves at a specified place and time for examination or clarification of their immigration status.

- 3.34 It was further argued that it is a mandatory requirement for the grounds to be set out in the notice which requires a permit holder to appear before an Immigration Officer.
- 3.35 The continued argument was that a Notice to Appear was issued to Mehbub Ali Umarji Sansariya on 2nd August, 2024, which required him to appear before an Immigration Officer on 6th August, 2024, for further immigration formalities at the Lusaka Regional Office.
- 3.36 It was also stated that pursuant to that Notice, which was served on Mehbub Ali Umarji Sansariya, his passport was confiscated, and it was stamped on the said Notice, that he had a right to be in the country, but that he was prohibited from any form of gainful employment.
- 3.37 The argument was further that the said immigration formalities were not clear, or at least Mehbub Ali Umarji Sansariya answered the queries, and he was advised that communication would be given to no avail.
- 3.38 The continued argument was that **Section 10 of the Immigration and Deportation Act** provides that any decision that adversely affects a person other than that relating to deportation or removal, must be communicated to the affected person together with the reasons for the decision, and the affected person must be given an opportunity to make representations within forty-eight (48) hours.
- 3.39 Then thereafter, the Immigration Officer is required to consider those representations, and respond within fourteen

(14) days. It was also argued that a person aggrieved by the decision has a right to appeal to the Minister within forty-eight (48) hours. Then the Minister must consult with the Director General before making a final decision which must be issued within ten (10) days.

- 3.40 The argument was that a person aggrieved by the decision of the Minister has a right to appeal to the Court within forty-eight (48) hours, which may suspend, reverse or modify the decision.
- 3.41 It was argued that there was no decision which had been given within the prescribed timelines, and therefore any decisions regarding the further immigration formalities following the issuance of the Notice to Appear held no legal validity.
- 3.42 The argument was further that any decision or communication that would be made thereafter, would be void due to the failure by the Director General of Immigration and the Attorney General to comply with the procedural requirements under **Section 10 of the Immigration and Deportation Act**.
- 3.43 Reliance in that regard was placed on the case of **Zega Limited v Zambia Revenue Authority** ⁽¹¹⁾.
- 3.44 As to whether or not the Immigration Department had power to confiscate a passport, it was argued that **Section 11 of the Passport Act No 28 of 2016** sets out the exhaustive and specific instances under which a passport could be lawfully confiscated, by either a Chief Passport and

Citizenship Officer or a law enforcement officer, who is defined in **Section 2 of that Act**.

- 3.45 Based on that, the argument was that Immigration Officers had no powers to confiscate a passport unless they were expressly appointed for that purpose, by the Minister under the Act.
- 3.46 It was also argued that in so far as Mehbub Ali Umarji Sansariya was concerned, there was no such appointment that had been made.
- 3.47 In still arguing, it was stated that in any event, **Section 11 of the Passports Act** provides for the instances in which a passport may be confiscated, which were not applicable to Mehbub Ali Umarji Sansariya.
- 3.48 Other arguments were made, which touch on the merits of the arguments against confiscation of the passport which I will not delve into at this stage.
- 3.49 On when time begins to run, the case of **Agro-Fuel Investments Limited v Energy Regulation Board** ⁽¹²⁾ was relied on, and it was stated that inaction could not be considered as a concluded administrative act. Rather, it represented a continuing failure to fulfill a duty of public law, to give effect to a concluded decision.
- 3.50 It was also stated that since the approval had not been reversed, rescinded or otherwise invalidated, the obligation to issue the permit persisted.
- 3.51 The prayer, accordingly was that time be extended and that leave be granted to commence judicial review proceedings.

- 3.52 Morson Mtonga, the Chief Immigration Officer, in the affidavit in opposition, agreed that Mehbub Ali Umarji Sansariya presented himself at the Immigration Headquarters and at the Cairo Road office. He stated that the finer details of the investigations could not be disclosed to Mehbub Ali Umarji Sansariya, and that the matter was not concluded.
- 3.53 Averment was made, that Mehbub Ali Umarji Sansariya was aware of the investigations that had been instituted by the Department of Immigration with regard to his employment permit, although he was not privy to the finer details of the investigations.
- 3.54 It was stated that Mehbub Ali Umarji Sansariya was at liberty to work, and that a non-Zambian who wished to reside in Zambia had to have authority to do so. It was denied that a residence permit was issued to Mehbub Ali Umarji Sansariya.
- 3.55 Morson Mtonga deposed that the application for leave to commence judicial review proceedings had been made prematurely, as Mehbub Ali Umarji Sansariya had not exhausted all the administrative channels that were available to him.
- 3.56 It was his averment, that a work permit for Mehbub Ali Umarji Sansariya was approved, but it was not issued as there were investigations that were instituted into his tertiary qualifications that were used to obtain the employment permit, which he had misrepresented.

- 3.57 In the List of Authorities and Skeleton Arguments in opposition, the provisions of **Order 53 Rule 4 of the Rules of the Supreme Court of England** were referred to, as providing that applications for leave to commence judicial review must be made promptly, and within three months from the date when the grounds for the application first arose, unless the Court considered that there was a good reason for extending the period within which the application should be made.
- 3.58 The cases of ***R v Secretary of State for the Home Department, ex-parte Rushanda Begun*** ⁽⁵⁾ and ***Chiluba v The Attorney General*** ⁽⁷⁾ were relied on for the test to be applied in applications for leave to commence judicial review proceedings.
- 3.59 On the definition of promptly, ***Black's Law Dictionary at page 1379*** was referred to as stating the same as:
- "Promptly means ready and quick to act as the occasion demands."***
- 3.60 It was stated that in this case, Mehbub Ali Umarji Sansariya had acknowledged that the alleged reason to seek leave to commence judicial review proceedings arose sometime in August 2024, but he did not make the application immediately, or within three months, as prescribed by the law.
- 3.61 Citing the case of ***Sylvester Musonda Shipolo v The University of Zambia and the University of Zambia Council*** ⁽¹⁰⁾, it was argued that leave to commence to judicial

review should be granted sparingly, where the Court considers that there is good reason.

- 3.62 Argument was further made, that under **Section 35 of the Immigration and Deportation Act**, it is a requirement that all persons who submit applications for permits must ensure that they do not give false information.
- 3.63 It was stated that persons who do so, are classified in Class E (d) of the second schedule.
- 3.64 The contention was that after Mehbub Ali Umarji Sansariya applied to renew his residence permit, and the Department of Immigration was in the process of issuing it, it received information relating to his tertiary qualifications. Thus, it was prompted to institute investigations, and it withheld his residence permit before its' issuance and the passport.
- 3.65 It was also argued that Mehbub Ali Umarji Sansariya did not respond to the letter which was written to him on 14th April, 2025, and he had not appealed to the Minister of Home Affairs and Internal Security against the decision of Director General of Immigration.
- 3.66 Therefore, the argument was that Mehbub Ali Umarji Sansariya had prematurely come to Court.
- 3.67 In reply, Mehbub Ali Umarji Sansariya deposed that he was not informed of the investigations that had been instituted against him. He stated that as advised by his advocates, if there were such investigations, the same should have been reduced into writing, so that he could have exercised his rights in respect of the refusal to issue him with a permit.

- 3.68 He also deposed that he had been advised by his advocates that during the meeting that was held, the reason for the non-issuance of his permit was not given.
- 3.69 Mehbub Ali Umarji Sansariya further averred that without his passport, which had currently been withheld by the Director General of Immigration, he could not travel outside Zambia for the necessary medical check-ups.
- 3.70 With reference to the stamps which were on exhibit 'MAUS3' the Notice to Appear, which was exhibited to the affidavit which was filed in support of the Notice, Mehbub Ali Umarji Sansariya deposed that they were clear that he was not allowed to work until his immigration status was cleared.
- 3.71 In still averring, Mehbub Ali Umarji Sansariya stated that he was issued an employment permit from 14th August, 2013 to 12th August, 2023, which was exhibited as 'MAUS1' to the affidavit which filed in support of the Notice, and it was renewed prior to the application being made for the issuance of a residence permit.
- 3.72 He deposed that he could not exhaust all the administrative channels, as no decision was communicated to him regarding his immigration status, and no reason had been given to him.
- 3.73 Mehbub Ali Umarji Sansariya also averred that what was due to be issued to him was a residence permit, and not an employment permit. He further stated that the Director General of Immigration now sought for the first time in these proceedings, to explain that the permit was not issued as

there were investigations into his tertiary qualifications, which was never communicated to him.

- 3.74 He denied having made any false representations with regard to his qualifications, stating that he presented them, and they were accepted and approved.
- 3.75 In the List of Authorities and skeleton Arguments in reply, it was reiterated that **Order 53 Rule 4 of the Rules of the Supreme Court of England** gives discretion to the Court to extend time to apply for leave to commence judicial review proceedings. The argument was that the threshold is not rigid, particularly where no definitive decision has been communicated, as in this case.
- 3.76 It was contended that the delay had been occasioned by the Director General of Immigration in deciding or indeed communicating the same to Mehbub Ali Umarji Sansariya.
- 3.77 The case of **New Zealand Shipping Co Ltd v Societe' De Ateliers Et Chantiers De France** ⁽¹⁾ was relied on, as regards a party taking advantage of their default which they themselves had brought about, and the position that the Court took that a man should not be allowed to take advantage of a condition which he himself has brought about.
- 3.78 It was stated that this position was reiterated in the case of **Konkola Copper Mines Plc v Mitchell Drilling International Ltd & Mitchell Drilling (Z) Ltd** ⁽⁸⁾.
- 3.79 Argument was made, that Mehbub Ali Umarji Sansariya's cause of action arose from the continued failure to act, and

not from a concluded decision. So, the judicial review was about challenging maladministration.

- 3.80 Thus, the decision in the case of ***Agro-Fuel Investments Limited v Energy Regulation Board*** ⁽¹²⁾ was stressed, which was that a restrictive application of three months would produce unjust results, as it would shield illegality or maladministration from scrutiny, and would penalize applicants for delay which was in truth due to a failure by the authorities to act.
- 3.81 Further argument was made, that the case of ***Sylvester Musonda Shipolo v The University of Zambia and the University of Zambia Council*** ⁽¹⁰⁾ was distinguishable from the facts of this case, as in this case, no decision had been made, leaving Mehbub Ali Umarji Sansariya in limbo, while a decision had been made in the ***Sylvester Shipolo*** case.
- 3.82 On the reliance on ***Section 35 of the Immigration and Deportation Act***, to justify the withholding of Mehbub Ali Umarji Sansariya's residence permit and passport following an alleged adverse report concerning his qualifications, it was argued that this was a misconception, as the said Section is not free-standing, that allows withholding or delaying the issuance of a permit.
- 3.83 It was stated that the said Section is only operative where a permit is cancelled under ***Section 34***. However, in this case, no cancellation had happened, and that in fact no permit was issued at all or a refusal to issue the permit made.

- 3.84 Further argument was made, that if the Director General of Immigration, intended to refuse to issue the residence permit based on adverse information that was received, it was incumbent upon him to formally communicate that refusal, citing lawful grounds, as stipulated under the Act.
- 3.85 It was stated that Mehbub Ali Umarji Sansariya was entitled to notice, reasons, and the opportunity to be heard, none of which had occurred. Therefore, there was procedural unfairness and administrative silence.
- 3.86 Thus, it was contended, that the provisions of **Section 10 of the Immigration and Deportation Act** could not come into play, as no decision had been made by the Director General of Immigration.
- 3.87 The decision by the Court of Appeal in the case of **Zambian Community Resources Board Association Limited & another v The Attorney General** ⁽¹³⁾ was reiterated which was that:
- “Given that the Director or the Licensing Committee did not make any decision in relation to this matter, we take the view that the respondent’s contention that the applicants could have explored other avenues to appeal cannot be sustained by this Court.”**
- 3.88 The argument was thus, that exhaustion of administrative channels entailed that a decision had been made, and where this was not so, it could not be said that administrative channels had been exhausted.

3.89 Accordingly, it was argued that no appeal could be made, and leave to extend time for leave to apply for and for leave to commence judicial review proceedings should be granted.

DECISION

3.90 It is trite, from the provisions of ***Order 53 Rule 4 of the Rules of the Supreme Court of England***, that applications for leave to commence judicial review proceedings must be made promptly, and in any case, within three months from the date when grounds for the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.

3.91 ***Order 53 Rule 3 (1) of the Rules of the Supreme Court of England, 1999 Edition***, provides that:

“(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule”.

3.92 The rationale for obtaining leave to commence Judicial Review proceedings, is explained in the explanatory notes in ***Order 53/14/21 of the said Rules of the Supreme Court of England*** as:

(a) to eliminate frivolous, vexatious or hopeless applications for judicial review without the need for a substantive inter partes judicial review hearing; and

(b) to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is

satisfied that there is a case fit for further investigation at a full inter partes hearing.”

- 3.93 In this matter, Mehbub Ali Umarji Sansariya has explained the delay in applying for leave to commence judicial review proceedings as being due to the fact that he had been following up with the Immigration Department for the issuance of his residence permit which the Director General of Immigration in fact approved.
- 3.94 Exhibit ‘MAUS2’ to the affidavit which was filed in support of the Notice, was said to be the letter that evidenced the approval. That letter is dated July, 2024.
- 3.95 The contention was that following the issuance of the approval letter, when Mehbub Ali Umarji Sansariya followed up on the issuance of the actual residence permit, he was given a Notice to Appear before an Immigration Officer which is exhibited as ‘MAUS3’ to the affidavit which was filed in support of the Notice.
- 3.96 Then from there, Mehbub Ali Umarji Sansariya appeared before Immigration Officers, and he was told to wait for the outcome. He stated that since August, 2024, no decision had been made by the Director General of Immigration.
- 3.97 The response by the Director General of Immigration and the Attorney General, was that during the process of approval of the residence permit to Mehbub Ali Umarji Sansariya, information was received concerning the tertiary qualifications that Mehbub Ali Umarji Sansariya had submitted, and investigations were launched into the same.

They argued that Mehbub Ali Umarji Sansariya was accordingly informed.

3.98 It was contended that Mehbub Ali Umarji Sansariya had come to Court prematurely, as he had not exhausted the administrative channels. Therefore, leave to commence judicial review proceedings should not be granted.

3.99 Mehbub Ali Umarji Sansariya in reply, stated that he could not exhaust the administrative channels as no decision had been made.

3.100 In line with the Immigration and Deportation Act, the administrative channels that Mehbub Ali Umarji Sansariya should exhaust before coming to Court are appeals from the Director General of Immigration to the Minister, and from the Minister to the Court.

3.101 The contention is that the said process cannot be exhausted as the Director General of Immigration has not made a decision. As such, the assertion is that time should be extended and leave to commence judicial review proceedings should be granted, to challenge that maladministration.

3.102 The explanatory notes in ***Order 53/14/27 of the Rules of the Supreme Court of England, 1965, 1996 Edition*** provide that:

"The courts will not normally grant judicial review where there is another avenue of appeal. It is a cardinal principle that, save in the most exceptional circumstances [the jurisdiction to grant judicial review] will not be exercised where

other remedies were available and have not been used."

3.103 In the case of *R v Epping and Harlow General Commissioners, Ex-parte Goldstraw* ⁰ the Court held that:

"But it is a cardinal principle that, save in the most exceptional circumstances, that jurisdiction will not be exercised where other remedies were available and have not been used."

3.104 This approach was also taken in the case of *Dr Ludwig Sondashi v The Attorney-General* ⁽⁶⁾ where it was held that:

"It is a requirement in Judicial review that all available remedies must be exhausted before applying for prerogative writs."

3.105 When administrative action is not taken, *S.A De Smith Judicial Review of Administrative Action 3rd Edition* at pages 129 and 251 states that:

"If no response for an administrative decision is preferred, it does not follow that the Courts are powerless to intervene, for if a person seeking to impugn such a decision establishes a prima facie case of misuse of power by the administrative authority, failure by the administrative authority to offer any answer to the allegation may justify an inference that its' reasons were bad in law or that it had exercised its' powers for a legally inadmissible purpose."

3.106 In the case of ***Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Limited*** ⁽³⁾ the holding was:

“The whole purpose of requiring that leave should be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at this stage. If on quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the Court is exercising at this stage, is not the same as that which it is called on to exercise when all the evidence is in, and the matter has been fully argued at the substantive hearing of the application.”

3.107 I note that while the Director General of Immigration and the Attorney General in the List of Authorities and Skeleton Arguments in opposition alleged that Mehbub Ali Umarji Sansariya did not respond to the demand letter that he was written on 14th April, 2025, by the Director General of Immigration, that letter is not exhibited to the affidavit in opposition.

3.108 As such, it cannot be argued that Mehbub Ali Umarji Sansariya has not exhausted the administrative channels

before applying for extension of time and leave to commence judicial review proceedings.

4. CONCLUSION

- 4.1 There being no decision that was made by the Director General of Immigration, since August, 2024, that would have enabled Mehbub Ali Umarji Sansariya to exhaust the administrative channels, this a proper case that is fit for further investigations.
- 4.2 I accordingly extend time, and grant leave to commence judicial review proceedings. Costs shall be in the cause, and leave to appeal is granted.

DATED AT LUSAKA THE 28th DAY OF AUGUST, 2025


S. KAUNDA NEWA
HIGH COURT JUDGE

