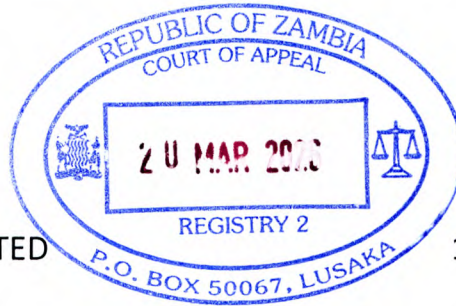


**IN THE COURT OF APPEAL OF ZAMBIA**

**Appeal No. 12 of 2025**

**HOLDEN AT NDOLA**

(Civil Jurisdiction)



**SUNDAY SPECIAL SECURITY LIMITED**

**1<sup>st</sup> APPELLANT**

**SHUKRI ESIDIEG AHMED EL JAIDI**

**2<sup>nd</sup> APPELLANT**

**AND**

**LAICO ZAMBIA LIMITED**

**RESPONDENT**

**CORAM: SIAVWAPA JP, CHISHIMBA & PATEL, JJA**

**On 17<sup>th</sup> & 20<sup>th</sup> March 2026**

For the Appellant: Mr. W. Phiri

Messrs Miyanda Williams L.P.

For the Respondent: Mr. E. B. Kaluba

Messrs Emmanuel & Onesimus L.P.

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**J U D G M E N T**

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**Patel, JA, delivered the Judgment of the Court.**

**Cases referred to:**

1. Royal British Bank v Turquand (1856) 6 E & B 327
2. Bahamasair Holdings Ltd v Messier Dowty Inc [2018] UKPC 25
3. Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R 172 (SC)
4. Attorney General v Marcus Kampumba Achiume (1983) Z.R 1
5. Nkhata and Four Others v The Attorney General (1966) Z.R 124
6. Colgate Palmolive Zambia v Abel Shemu Chuka- SCZ Appeal No. 181 of 2005
7. Khalid Mohamed v Attorney General (1982) Z.R. 49 (SC).
8. The Minister of Home Affairs, Attorney General vs Lee Habasonda (2007) Z.R 207
9. Kansanshi Mine Plc v Maini Joseph Mudimina & Others -SCZ Appeal No. 149 of 2010
10. Sun Country Limited and others v Rodger Redin Savory and Another- SCZ Appeal No. 122 of 2006
11. Zambia Telecommunications Company Limited v Aaron Mulwanda and Paul Ngandwe -SCZ Appeal No. 63 of 2009
12. Abel Hachaambwa and others v Cheelo Mweemba - SCZ Appeal No. 175 of 2016
13. Engen Petroleum Zambia Limited v Pjp Associates Limited -CAZ Appeal No. 174 of 2023.
14. Galaunia Farms Limited v National Milling Company Limited (2004) Z.R. 1

## **Legislation & Rules referred to:**

1. The High Court Rules Statutory Instrument No. 58 of 2020

### **1.0 INTRODUCTION**

- 1.1 This is an appeal against the whole Judgment of **Honourable L. Mwanabo J**, of 30<sup>th</sup> December 2024, in an action commenced by Writ on 28<sup>th</sup> June 2024, in the commercial division of the High Court at Lusaka.
- 1.2 The Appellants and the Respondent before us, appeared as 1<sup>st</sup> and 2<sup>nd</sup> Defendants and Plaintiff respectively in the lower Court.
- 1.3 The appeal before us centres mainly on findings of fact as established by the lower Court and the circumstances in which an appellate Court will set them aside. It also examines whether the lower Court misapprehended the issues as framed by the Court as opposed to what had been settled by the pleadings.
- 1.4 The appeal also interrogates the rule known as the Rule in the **Turquand case**<sup>1</sup> and the position of third Parties who deal with a person presumed to be in authority.
- 1.5 The Parties shall be referred to as they appear in the appeal before us.
- 1.6 The Record of Appeal (ROA) consists of one volume and reference to page numbers shall refer to the ROA unless otherwise indicated.

## **2.0 BACKGROUND**

- 2.1 The Respondent is known as the Libyan African Investment Co. Zambia Limited, whose main activity is real estate management, rental of residential villas and administrative offices. It owns the property known as the Millenium Village in Longacres in Lusaka.
- 2.2 The 1<sup>st</sup> Appellant is a security company and had rendered security services to the Respondent.
- 2.3 The 2<sup>nd</sup> Appellant is a national of Libya, and on secondment of the Respondent, a former employee of the Respondent.
- 2.4 The secondment of the 2<sup>nd</sup> Appellant with the Respondent, was subsequently terminated on 22<sup>nd</sup> January 2022.
- 2.5 The Parties entered into a contract for security services (the contract) with effect from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022.
- 2.6 By letter dated 21<sup>st</sup> November 2022, the Respondent informed the 1<sup>st</sup> Appellant of its decision not to renew the contract upon its expiration and asked for it to vacate its premises and hand over to the new security company of its choice.
- 2.7 The 1<sup>st</sup> Appellant maintains that it received a renewal of its contract for security services by letter authored by the 2<sup>nd</sup> Appellant (the disputed contract) and refused to vacate the premises.
- 2.8 Emanating from the above matrix of facts, a dispute arose between the Parties.

2.9 The Respondent commenced an action on 12<sup>th</sup> May 2023, seeking the following reliefs:

1. *An injunction ordering the 1<sup>st</sup> Defendant to immediately vacate the premises of the Plaintiff;*
2. *An injunction ordering the 2<sup>nd</sup> defendant to stop holding himself out and masquerading as an employee of the Plaintiff when the contract of employment has been terminated;*
3. *A declaration the purported extended security contract is void ab initio and is of no effect pending the determination of the matter for lack of capacity and authority for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to enter into the extended security agreement;*
4. *Cost for and incidental to this action;*
5. *Any other relief the court may deem fit.*

2.10 The Writ of Summons and Statement of Claim are noted from **pages 156 to 162** of the ROA.

2.11 The 1<sup>st</sup> and 2<sup>nd</sup> Appellants defence and counterclaim is noted from **pages 165 to 176** respectively.

2.12 At the close of pleadings, the matter proceeded to trial based on the evidence of the Parties as contained in the four Witness Statements, two for each party, appearing from **pages 184 to 203** respectively.

### **3.0 DECISION OF THE LOWER COURT**

3.1 In addressing his mind to the several claims placed before the Court, the learned Judge delivered his now assailed Judgment on 28<sup>th</sup> June 2024, and framed three issues for his consideration, namely:

- (i) *Whether the 2<sup>nd</sup> Defendant had legal authority and capacity to renew the contract for the provision of security services by the 1<sup>st</sup> Defendant, to issue the letters relating to contracts with third parties and to undermine the powers of PW1 over management of the Plaintiff?*
- (ii) *Whether the contested contract for provision of security services by the 1<sup>st</sup> Defendant to the plaintiff is valid and enforceable?*
- (iii) *Whether the counterclaims by the Defendants can be sustained?*

3.2 In his reasoned judgment, the learned Judge granted the reliefs as prayed by the Respondent against the two Appellants and dismissed the counterclaim with costs to the Respondent.

### **4.0 THE APPEAL**

4.1 Dissatisfied with the whole Judgment of the Court below, the Appellants filed their Notice and Memorandum of Appeal on 10<sup>th</sup> July 2024, advancing ten (10) grounds of appeal, namely:

1. *The court below misdirected itself when it determined the matter on the basis of the 2<sup>nd</sup> Appellant's authority and capacity to issue letters relating to contract with the third parties when the principal issue for determination was*

- whether the 2<sup>nd</sup> Appellant was masquerading as an employee of the Respondent when he renewed the contract for security services.*
- 2. The court below misdirected itself when it nullified the renewed contract for provision of security services on the ground that the 2<sup>nd</sup> Appellant had no capacity to renew the contract for security services on behalf of the Respondent.*
  - 3. The court below erred in fact and in law when it failed to consider all the issues presented before it for determination to the detriment of the Appellants.*
  - 4. The court erred when it made its judgment on the basis of issues which were not pleaded and upon which the parties did not lead evidence in support.*
  - 5. The court below misdirected itself when it made a finding that the 1<sup>st</sup> Appellant knew or ought to have known that the 2<sup>nd</sup> Appellant had no authority and capacity to bind the Respondent at the time of renewal of the contract when there was no evidence to support such a finding.*
  - 6. The court below erred in fact and in law when it ordered the 1<sup>st</sup> Appellant to vacate the Respondent's premises against the Court's own finding that the 2<sup>nd</sup> Appellant was not masquerading as an employee of the Respondent when he renewed the contract for provision of security services in favor of the 1<sup>st</sup> Appellant.*
  - 7. The court below erred in fact and in law when it held that the 1<sup>st</sup> Appellant was aware that the 2<sup>nd</sup> Appellant had no authority or capacity to represent the Respondent on the basis of the meeting held between the 1<sup>st</sup> Appellant and the Respondent when the said meeting only happened in January 2023*

*after the contract for provision of security services had already been renewed on 5<sup>th</sup> October 2022.*

8. *The court below erred in fact and in law when it found as a fact that the 2<sup>nd</sup> Appellant and the Respondent agreed that the documents executed outside jurisdiction were authentic when there is no evidence on record to support such a finding.*
9. *The court below misdirected itself when it predetermined the outcome of the matter before analyzing the facts as can be seen from the question it sought to determine as follows:  
“Whether the 2<sup>nd</sup> Defendant had legal authority and capacity to renew the contract for the provision of security services by the 1<sup>st</sup> Defendant, to issue the letters to contracts with third parties and to undermine the powers of PW1 over management of the Plaintiff?”*
10. *The court below erred when it dismissed the 1<sup>st</sup> Appellant’s counterclaims on the ground that the 2<sup>nd</sup> Appellant had no authority and capacity to bind the Respondent.*

## **5.0 THE APPELLANT’S ARGUMENTS IN SUPPORT OF THE APPEAL**

- 5.1 We have considered and appreciated the detailed Heads of Argument and those in Reply filed by the Appellant on 17<sup>th</sup> January and 25<sup>th</sup> February 2025. Both sets of argument are not paginated. We urge Counsel to pay attention to details such as these.
- 5.2 We also note that the Appellants have abandoned ground 2 of the appeal. We shall speak to this later in our Judgment.

## **6.0 THE RESPONDENT'S HEADS OF ARGUMENT**

- 6.1 We have equally considered and appreciated the Respondents' Heads of Argument filed on 18<sup>th</sup> February 2025.
- 6.2 With reference to the collective arguments above, leaning in favour of clarity and consistency, we will not attempt to recast the arguments of the Parties.
- 6.3 We will therefore state the positions espoused by the arguments together with the reasoning of the lower Court as we determine the grounds of appeal.

## **7.0 THE HEARING**

- 7.1 At the hearing of the appeal, Counsel augmented their respective positions which have been fully considered and appreciated.

## **8.0 ANALYSIS AND DECISION OF THIS COURT**

- 8.1 We must note at the onset the recent disturbing trend of mounting so many grounds of appeal in the hope that one or two may stick. We note also that the appeal is grounded on challenging findings of fact and attacking the quality of the assailed Judgment. It also seeks to challenge the framing of issues by the lower Court.
- 8.2 After losing at first instance, the immediate question is always the same: how to mount an appeal? It is trite that the common law system accords the finder of fact an almost elevated status. Findings of fact are notoriously

difficult to overturn. An appeal is not a second bite at the cherry because it is not a re-trial and only a very naive Appellant will attempt to turn into one.

8.3 That principle was potently captured in the case of **Bahamasair Holdings Ltd v Messier Dowty Inc<sup>2</sup>**, where the Privy Council reminded appellate courts of the discipline required before interfering with factual findings of the trial court. In that case, at trial, the trial judge found that a manufacturer had failed to warn of a known design weakness in aircraft landing gear. The Court of Appeal disagreed and revisited the evidence in detail, effectively conducting its own re-analysis. The Privy Council intervened. In a concise but illuminating judgment it held that the appellate court had adopted the wrong approach. The question was not whether appellate judges would have reached a different conclusion. The question was whether the trial judge was “plainly wrong.” That is a deliberately high threshold.

8.4 This is to preserve the integrity of Court process and to stop dissatisfied litigants hauling their dispute across all the Courts simply to express their displeasure. The Trial Judge sees and hears the witnesses, tests credibility in real time, absorbs the evidence over days or weeks and develops an instinctive feel for the factual matrix. An appellate court, on the other hand, works from transcripts and a cold record. However diligent the review, it lacks that lived experience of the trial.

8.5 The Board of the Privy Council reaffirmed that duplicating fact-finding on appeal rarely enhances accuracy. It risks undermining the centrality of the

trial itself. The trial is meant to be the main event, not a dress rehearsal.

- 8.6 It follows therefore that an Appellant challenging findings of fact, must show more than just error. It must show that the finding was unsustainable and that it was plainly wrong. Anything less, no matter how exciting, will not be enough to overturn a finding of fact on appeal.
- 8.7 The above principles are not new in our jurisdiction. The law is settled that findings of fact will not be easily overturned or interfered with and the circumstances in which the same can be done are equally circumspect. The cases of **Wilson Masauso Zulu v Avondale Housing Project Limited** <sup>3</sup>, **Attorney General v Marcus Kampumba Achiume** <sup>4</sup>, **Nkhata and Four Others v The Attorney General** <sup>5</sup>, **Colgate Palmolive Zambia v Abel Shemu Chuka** <sup>6</sup> and **Khalid Mohamed v Attorney General** <sup>7</sup> are a clear illustration of the attitude of the appellate Courts.
- 8.8 Whichever way one looks at the appeal, it is apparent that the Judgement of the lower Court is assailed by the Appellants, more for the way it was written and less for what errors of law or fact it may have made. Judgment writing has been the subject of many a decision of the Superior Courts as well as being enshrined by statute.
- 8.9 It is settled that while there is no precise format in which a Judgment must be written, **Order XXXVI rule 2A** of the High Court Rules<sup>1</sup> as amended provides as follows:

*“Where-*

- i. An action is defended, the judgment shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for that decision; and*
- ii. Issues in an action have been framed, the Court shall state in relation to each issue, the court’s finding or decision and the reasons for that finding or decision.”*

8.10 In the case of **Lee Habasonda**,<sup>8</sup> the Supreme Court has addressed the required standard for judgments as follows:

*“We must, however, stress for the benefit of the trial courts that every judgment must reveal a review of the evidence, where applicable, a summary of the arguments and submissions, if made, findings of fact, the reasoning of the court on the facts and the application of the law and authorities, if any, to the facts. Finally, a judgment must show the conclusion. A judgment which only contains verbatim reproduction and recitals is no judgment. In addition, a court should not feel compelled or obliged and moved by any decided cases without giving reasons for accepting those authorities. In other words, a court must reveal its mind to the evidence before it and not just simply accept any decided case.”*

8.11 A similar guidance was issued in the cited case of **Kansanshi Mine Plc v Maini Joseph Mudimina & Others**<sup>9</sup> in which the Supreme Court guided as follows:

*“in our view, there are four purposes of the judgment as enunciated by Justice Roslyn Atkinson, Supreme Court of Queensland: (a) to clarify your own thoughts; (b) to explain your decision to the parties; (c) to communicate the reasons for the decision to the public; and (d) to provide reasons for an appeal court to consider. It is particularly important that the losing party knows why he or she has lost the case. It is natural for someone who loses to feel disenchanted with the legal process, so it is important that the reasons for judgment to show that the losing party has been listened to, that the evidence has been understood, the submissions comprehended, and a decision reached.”*

8.12 The same principles of judgment writing were extensively canvassed by the Supreme Court in the case of **Sun Country Limited and Others v Rodger Redin Savory and Another**<sup>10</sup> which confirmed the stand taken in the case of **Zambia Telecommunications Company Limited v Aaron Mulwanda and Paul Ngandwe**<sup>11</sup> where at page J10 the Court stated as follows:

*“...we held that a Judgment should be thorough, exhaustive, and clear on issues. We further outlined the seven essential elements of a Judgment, namely:*

- 1. An introductory structure, setting forth the nature of the case and identifying the parties;*
- 2. The facts;*
- 3. The law relevant to the issues;*
- 4. The application of the law to the facts;*

5. *The remedy; and*

6. *The order.*”

8.13 In the case of **Abel Hachaambwa and others v Cheelo Mweemba**,<sup>12</sup> the Supreme Court offered guidance in cases where even though the Judgment (the subject of any appeal) may be unconventional in style and structure, it may still be acceptable if there is a decision of sorts which is capable of being enforced. The Court stated as follows:

*“Having said so, however, we must clarify that the poverty of a judgment in terms of style, syntax, or diction, cannot of itself ground the success of an appeal. It has to be established whether, on the particular circumstances of the case as presented, a decision of the court is discernable. In other words, the determinative question should be whether, notwithstanding the decidedly evident defiance of the qualities of a good judgment as we have set them out in numerous case authorities, some of which we have alluded to in this judgment, it is still possible to identify the soul of the decision and order of the court. Our reading of the lower court’s judgment is that in spite of its unorthodox formulation, there is, nonetheless, a decision of sorts and reasons for that decision. In the event the appeal cannot succeed merely on the premise that the shape or structure of the judgment is not conformist; it has to be on the efficacy of the reasons assigned by the judge for his decision, or rather the lack thereof.”*

- 8.14 We echoed much of the above reasoning in a Judgement of this Court rendered in the case of **Engen Petroleum Zambia Limited v PJP Associates Limited**<sup>13</sup>.
- 8.15 In our considered view, the Judgment of the lower Court does in fact satisfy the prescribed criteria of a judgment. This Judgment is seen from **pages 18 to 51** of the ROA. It introduces the Parties and the dispute, it sets out the facts, it identified the law relevant to the issues and applied the law to the set of facts. It ended with its conclusion and orders as appropriate. Obviously, as is the hallmark of the adversarial system, one party remains dissatisfied and hence the appeal.
- 8.16 In *casu*, the Appellant has abandoned ground 2 as it is covered by ground 1. (a fact we had noted). Similarly, ground 3 does not reveal a ground of appeal and is canvassed as general dissatisfaction with the Judgment of the lower Court. This will not be considered. Ground 4 is equally generic and does not specify the error made by the lower Court nor does it give details as to which issues were not pleaded. This will not be considered. Ground 9 is in fact a repetition of ground 1 and will be dealt with together. All remaining grounds, no matter how they are framed are simply reflective of discontent and an attempt to re-litigate the dispute.
- 8.17 Whichever way we look at the remaining grounds of appeal, it is clear from the uncontested factual matrix, that if we resolve the issue and capacity of the 2<sup>nd</sup> Appellant viz the disputed contract of security services, we will have effectively determined the appeal.

8.18 The question for our consideration is:

*Was the Respondent bound by the terms of the second and what is referred to as the disputed contract for security services viz the role played by the 2<sup>nd</sup> Appellant? In analysing this question, we note that the lower Court had framed the first issue of his three issues for determination as follows:*

*“Whether the 2<sup>nd</sup> Defendant had legal authority and capacity to renew the contract for the provision of security services by the 1<sup>st</sup> Defendant, to issue the letters relating to contracts with third parties and to undermine the powers of PW1 over management of the Plaintiff?”*

8.19 The framing of this issue is also the subject of the challenge in grounds 1 and 9 of the Appellants’ grounds of appeal. Whichever way we look at this appeal, this issue is central and cardinal to resolving the dispute. The lower Court after hearing the evidence, settled the agreed issues at *paragraphs 5.4.1 to 5.4.6*. These are noted on **page 38** (J21) of the ROA.

8.20 In addressing his mind to the issue as framed, the lower Court, after resolving the issue of admissibility of documents, proceeded to reason the relationship between the parties and time frame of the disputed contract. Although we note that ground 8 appears to show discontent with the determination of the learned Judge on this issue, it is, in our considered opinion, simply a red herring, which does not touch on the disputed contract in any way whatsoever. In any event, it does not even aid the Appellants’ arguments in any shape or form. We dismiss **ground 8** altogether.

- 8.21 What is settled is that the Respondent by its letter of 21<sup>st</sup> November 2022, seen on **page 296** of the ROA, addressed to the 1<sup>st</sup> Appellant, clearly confirmed its intention of non-renewal of the security contract upon its expiration on 31<sup>st</sup> December 2022. This letter was received and acknowledged by the 1<sup>st</sup> Appellant the following day.
- 8.22 We have also noted a letter from the 2<sup>nd</sup> Appellant to the Respondent dated 25<sup>th</sup> October 2022, outlining grievances between the two parties with respect to their then estranged relationship. Whilst that issue is not before us on appeal, nor in the lower Court, it immediately draws our attention to the fact that all was not well between the Respondent and the 2<sup>nd</sup> Appellant.
- 8.23 Therefore, it does not come as a surprise that the 1<sup>st</sup> Appellant claims to have received a renewal of the contract, (the disputed contract), by letter dated 5<sup>th</sup> October 2022. At the same time, the critical question is why the fact of this disputed contract was not brought to the attention of the Respondent when it served its letter of termination dated 21<sup>st</sup> November 2022.
- 8.24 We cannot fault the reasoning and eventual finding of the lower Court. Courts do not decide cases on intentions. They decide them on documents. The 1<sup>st</sup> Appellant, having received the notice of termination of the contract, could not seek solace under a contract that was apparently renewed in October 2022. The 1<sup>st</sup> Appellant had been placed on notice and chose to ignore the obvious signs in the hope of pursuing the disputed contract. It is trite that Parties cannot be forced to enter into contracts with each other and the role of the Court has been consistently echoed as being one to honour the terms of what the Parties themselves have agreed to do. The case

of **Abel Shamu**<sup>12</sup> is instructive. We therefore see no value in pronouncing on the indoor management rule or the case of **British Royal Bank v Turquand**<sup>1</sup> as the same have been rendered otiose.

8.25 The lower Court having found that the disputed contract was null and void, it remained an inescapable conclusion that the counter-claims were bound to be and were in fact dismissed. The lower Court relied on the case of **Galaunia Farms Limited v National Milling Company Limited**<sup>14</sup> and found that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had simply failed to discharge the burden in support of its counterclaims respectively.

8.26 The question we ask ourselves was whether the trial judge was “*plainly wrong*.”? In our considered view, he was not.

## 9.0 CONCLUSION

9.1 Having also answered the only relevant question in *casu*, in the negative, it is our view, that all grounds of appeal being hopeless and devoid of merit, the appeal is accordingly dismissed with costs to the Respondent.

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**M. J. SIAVWAPA**  
**JUDGE PRESIDENT**

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**F. M. CHISHIMBA**  
**COURT OF APPEAL JUDGE**

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**A. N. PATEL S.C.**  
**COURT OF APPEAL JUDGE**