

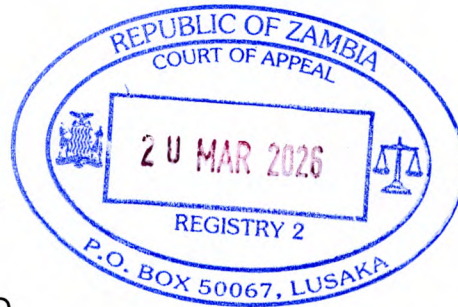
IN THE COURT OF APPEAL OF ZAMBIA

Appeal No. 13 of 2025

HOLDEN AT NDOLA

(Civil Jurisdiction)

STANLEY KATEBE



APPELLANT

AND

METALEX AFRICA LIMITED

1ST RESPONDENT

GABRIEL AYOBAMIGBE SOPITAN

2ND RESPONDENT

SEVAAN BAZIL

3RD RESPONDENT

CORAM: SIAVWAPA JP, CHISHIMBA & PATEL, JJA

On 17th & 20th March 2026

For the Appellant: Ms. M. Bwalya standing in for
Messrs Nsapato & Co Advocates

For the Respondents: Mr. S. Mutembo standing in for
Mesdames Anna Mwitwa L.P.

JUDGMENT

Patel, JA, delivered the Judgment of the Court.

Cases referred to:

1. Chikuta v Chipata Rural Council (1974) ZR 241
2. Murray & Roberts Construction Limited and Kaddoura Construction Limited v Lusaka Premier Health Limited -SCZ Appeal No. 141/2016
3. Corpus Legal Practitioners v Mwandani Holdings Limited - SCZ Judgment No. 50 of 2014.
4. Development Bank of Zambia and Anr v Sunvest Ltd and Anr (1995-1997) Z.R. 187
5. Pan Electronics Limited and others v Multiadous (1988-1989) Z.R. 19
6. Nevers Sekwila Mumba v Muhabi Lungu (suing in his capacity as National Secretary of the MMD)- SCZ Selected Judgment No. 55 of 2014,
7. Road Development Agency v Safricas Zambia Limited - SCZ Appeal No. 03/2024.
8. Sylvester Musonda Shipolo vs Shadreck Maipambe - SCZ Appeal No. 1 of 2016

Legislation & Rules referred to:

1. The High Court Rules and the High Court Act Chapter 27 of the Laws of Zambia
2. The Companies Act No. 10 of 2017

1.0 INTRODUCTION

- 1.1 This is an appeal against the Judgment of **Honourable L. Mwanabo J**, of 30th December 2024, in an action commenced by Writ on 20th September 2023, in the commercial division of the High Court at Lusaka.
- 1.2 The Appellant and the three Respondents before us, appeared as Plaintiff and the three Defendants in the lower Court.
- 1.3 From the Statement of Claim filed in the lower Court, the Appellant is stated to be a director and Company Secretary of the 1st Respondent Company, (the Company), while the 2nd and 3rd Respondents are also stated to be shareholders in the Company.
- 1.4 The discontent and the source of the dispute and the claims before the lower Court relate to the alleged refusal to allocate 2.5% shares in the Company to the Appellant who has also been removed from his position as company secretary and director of the Company.
- 1.5 The nature of the dispute will require us to consider the provisions of the Companies Act with respect to claims by a 'shareholder' with no evidence of shareholding, save for verbal agreements.
- 1.6 The host of claims made will also require us to pronounce on the mode of commencement of action, a subject often misapprehended by litigants as well as the Court.
- 1.7 The Parties shall be referred to as they appear in the appeal before us.
- 1.8 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 Appellant commenced an action as noted above by Writ of Summons and Statement of Claim dated 20th September 2023 claiming several reliefs. We have noted that page 2 of the Writ of Summons is missing from the ROA and we shall endeavour to piece the missing gaps in the Pleadings. We have also noted that the claims enumerated in the Writ appear from number (ix) to (xvi) while those in the Statement of Claim appear as (xvii) to (xxxii). These are noted from **pages 38, and 41 to 42** of the ROA.

2.2 Be that as it may, there being sixteen (16) claims, we shall adopt the same numbering as appears on the Statement of Claim, the Writ being incomplete.

2.3 Following the disagreement referred to in **paragraph 1** above, the Appellant presented a series of claims before the lower court as follows:

(xvii) *A declaration that the Plaintiff is entitled to 2.5% shareholding in the 1st Defendant Company as consideration for his services in incorporating the company;*

(xviii) *A declaration that the removal as director and Company Secretary in the Defendant Company was incompetent and a violation of the provisions of the Companies Act No. 10 of 2017 and Articles of Association and as such, rendering the alleged subsequent removal of the Plaintiff from the board a nullity;*

(xix) *A declaration that the 2nd and 3rd Defendants as shareholders of the 1st Defendant Company lacked the authority to usurp the powers of the directors*

- in relation to decisions relating to management of the 1st Defendant Company and the removal of the Plaintiff as Company Secretary;*
- (xx) *A declaration that the exclusion of the Plaintiff from shareholding and management of the 1st Defendant Company was unlawful, unfair and wrongful;*
- (xxi) *A declaration that the affairs of the 1st Defendant Company by virtue of the 2nd and 3rd Defendants' conduct which led to the alleged removal of the Plaintiff as director and Company Secretary have been carried out in a manner that was oppressive, unfairly, discriminatory and unfairly prejudicial to the Plaintiff's interests as a minority shareholder in the 1st Defendant Company contrary to Section 134 (1) and (9) of the Companies Act;*
- (xxii) *An order cancelling the alleged resolution removing the Plaintiff as director and Company Secretary of the 1st Defendant Company and directing the Defendants to reinstate the Plaintiff as director and Company Secretary in the 1st Defendant Company and ensure that the records of the 1st Defendant Company at the Patents and Companies Registration Agency are rectified to reflect that correct information that the Plaintiff is a bona fide director and Company Secretary of the 1st Defendant Company;*
- (xxiii) *An order that a general meeting of the shareholders of the 1st Defendant Company, including the Plaintiff, be called and carried out based on section 64 of the Companies Act and an order that a meeting of the board of directors of the 1st Defendant Company, including the Plaintiff, be called and carried out based on section 86 (1) of the Companies Act;*

- (xxiv) *An order that the 1st Defendant pays the sum of \$1 for every ton of every mineral exported by the 1st Defendant Company;*
- (xxv) *An order directing that the affairs of the 1st Defendant Company be conducted in a manner that is not unfairly prejudicial to the interests of the Plaintiff as a minority shareholder, but in accordance with the provisions of the Articles of Association, and the Companies Act;*
- (xxvi) *An order directing that the 1st Defendant Company to purchase the 2.5%shareholding of the 1st Defendant belonging to the Plaintiff at fair market value;*
- (xxvii) *Damages for breach of contract, the articles of association and the provisions of the Companies Act;*
- (xxviii) *Quantum Meruit for services rendered by the Plaintiff as a director and Company Secretary of the 1st Defendant Company equivalent to ZMW 300,000;*
- (xxix) *An account as to profits made by the 1st Defendant Company and calculation of the requisite dividends due to the Plaintiff based on 2.5% shareholding in the 1st Defendant Company;*
- (xxx) *An account as to profits made by the 1st Defendant Company in relation to the sale of Zinc ore by the 1st Defendant and an inquiry as to damages or at the Plaintiff's option an account of sums due and payment of all sums found due taking such inquiry or account and interest on the amounts found to be due to the Plaintiff;*
- (xxxii) *Costs; and*

(xxxii) *Any other relief the Court shall deem fit.*

2.4 The Respondents for their part settled their combined defence, the gist of which was to deny any claims made by the Appellant and place him on strict proof thereof. The Defence is noted from **pages 46 to 49** of the ROA.

2.5 The matter proceeded to trial based on the evidence of the Appellant and the 3rd Respondent which is noted from their witness statements appearing on **pages 55 to 57** and **101 to 105** of the ROA 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 framed three issues for his consideration, namely:

- (i) *Whether the Plaintiff did indeed become a shareholder in the 1st Defendant Company by virtue of the offer to that effect made to him by the 2nd and 3rd Defendants and consequently, entitled to the benefits connected thereto as claimed herein;*
- (ii) *Whether the Defendants' removal of the Plaintiff as Director and Company Secretary in the 1st Defendant Company was valid at law; and*
- (iii) *Whether the Plaintiff is entitled to the sum of USD1 for every ton of mineral exported by the 1st Defendant Company.*

3.2 In his analysis of the first two issues raised by the Appellant, the lower Court was of the opinion that the mode of proceedings was erroneous as the action ought to have been commenced in the manner provided by **Order XLIV** of

the High Court Rules¹. The lower Court relied on the pronouncement of the Supreme Court in the case of **Chikuta v Chipata Rural Council**¹.

- 3.3 The learned Judge declined to deal with the first two claims and for all other reliefs that were ancillary to those claims in so far as they related to breaches of the Companies Act, due to the mode of commencement as this deprived the Court of jurisdiction.
- 3.4 On the third issue identified above, the lower Court awarded the Appellant the claim of US\$1 per ton of zinc ore minerals exported by the 1st Respondent Company up to the time of his separation from the Company. The lower Court referred this issue for assessment and awarded interest as stated in the now assailed Judgment.
- 3.5 The lower Court also ordered that Parties bear their respective costs as the Appellant had been primarily unsuccessful.

4.0 THE APPEAL

- 4.1 Dissatisfied with part of the Judgment of the Court below, the Appellant filed its Notice and Memorandum of Appeal on 16th January 2025, advancing eleven (11) grounds of appeal, namely:
 1. *The Court below erred in law and fact when it held, sua moto, on its own motion, that it had no jurisdiction to determine the Appellant's claims despite the correct mode of commencement being used.*
 2. *The Court below erred in law and fact when it failed to consider that where there are a number of claims with multiple mode of commencement,*

commencement by Writ of Summons and Statement of Claim is the appropriate originating process.

3. *The Court below erred in law and fact when it failed to hold that the Appellant was a shareholder in the 1st Respondent company, with 2.5% shareholding as admitted by the Respondents, who was entitled to an account of profits made and dividends due to him.*
4. *The Court below erred in law and fact when it failed and neglected to find that the Appellant was unfairly oppressed and prejudiced and entitled to have the 1st Respondent company managed in accordance with the law and articles of association, and the purchase of his 2.5% shareholding in the 1st Respondent company at fair value.*
5. *The Court below erred in law and fact when it failed to find that the Appellant was unlawfully removed from his positions as director and company secretary contrary to Companies Act and the articles of association.*
6. *The Court below erred in law and fact when it failed to hold that the 2nd and 3rd Respondents as shareholders of the 1st Respondent could neither override the directors of a company nor deprive the Appellant of managing the 1st Respondent company.*
7. *The Court below erred in law and fact when it failed to order a shareholder's meeting in accordance with section 64 of the Companies Act and a board meeting of the 1st Respondent company.*

8. *The Court erred in law and in fact when it refused to grant damages for breach of the Companies Act and breach of articles of Association in relation to the Appellant's unlawful removal as director and company secretary and exclusion from management.*
9. *The Court below erred in law and fact when it failed and refused to grant the Appellant a quantum meruit as reasonable remuneration for his services as director and company, secretary in the 1st Respondent company.*
10. *The Court below erred in law and in fact when it failed to order the Respondents to produce an account of the Zinc Ore exported to ascertain the sum due to the Appellant, nor order that the Respondent continue to account for future Zinc Ore exports to ensure the contract between the parties is enforced.*
11. *The Court below erred in law and in fact when it did not award the Appellant the costs of the proceedings.*

5.0 THE APPELLANT'S ARGUMENTS IN SUPPORT OF THE APPEAL

- 5.1 We have considered and appreciated the detailed Heads of Argument filed by the Appellant on 20th January 2025. We must however state at once, that the rather small size of the font used by the Appellant leaves much to be desired. It has also not escaped our attention that in order to restrict itself to the 30-page guideline established by the Court, the Appellant has resorted

to a print so minute, a fact which has caused much difficulty to the Court.
This must stop.

6.0 THE RESPONDENT'S HEADS OF ARGUMENT

- 6.1 We have equally considered and appreciated the Respondents' Heads of Argument filed on 11th 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 Bwalya, other than identifying and correcting a few typographical errors, placed reliance on the process before the Court. She equally urged us, based on instructions, to determine grounds 3 to 10 on their substance and merit and based on the Record of Appeal.
- 7.2 Counsel Mutembo equally placed full reliance on the process before the Court.

8.0 ANALYSIS AND DECISION OF THIS COURT

- 8.1 The first two grounds of appeal both relate to the mode of commencement of proceedings and this being what the lower Court considered to be a jurisdictional issue, will be the starting point of our analysis.
- 8.2 It has been extensively canvassed by the Appellant, arguing both though related grounds of appeal separately, that the lower Court fell into grave error when it refused to deal with the claims that were founded on the Companies Act on the basis that the wrong mode of commencement was used.
- 8.3 The Appellant has argued that by relying on the provisions of **Order XLIV rule 1** of the High Court Rules¹, meant that a litigant in this jurisdiction ought to have moved the Court by way of Petition, in accordance with the English Companies Act, a fact which is irreconcilable with the statutory provisions of the Companies Act of Zambia. To this extent, it is argued that the lower Court erred.
- 8.4 It was also argued that by offering a Ruling on its own motion with respect to the mode of commencement, and without giving the Parties an opportunity to be heard, the lower Court fell into grave error. The Appellant relied on a decision of the Supreme Court rendered in the case of **Murray & Roberts Construction Limited and Kaddoura Construction Limited v Lusaka Premier Health Limited**².
- 8.5 We have paid close attention to the issue of mode of commencement. It is trite and the practice is settled that the default mode of commencement is as guided by **Order VI rule 1** of the High Court Rules¹. The salient part of the

Order being “*except as otherwise provided by any written law or these rules an action on the high Court shall be commenced in writing or electronically by writ of summons endorsed and accompanied by....*”

8.6 It is also settled that where a number of claims are mounted which may be commenced by various modes of commencement, the most suitable mode of commencement is by Writ of Summons accompanied by a Statement of Claim. We are fortified in this position by the decision of the Supreme Court rendered in the case of **Corpus Legal Practitioners v Mwandani Holdings Limited**³.

8.7 In that case, the Supreme Court had occasion to deal with the issue of whether the Writ of Summons (as had been used), could be amended to include a claim for the removal of a caveat. It is clearly the position that an action for the removal of a caveat ought to be commenced by way of Originating Summons. The Supreme Court guided as follows:

“From the above, it is clear that the correct mode of commencing proceedings, seeking an Order for the removal of a caveat, is by Originating Summons. However, we must hasten to mention here that the Rural Development Corporation Limited Case’ is distinguishable from the present case in the sense that the relief sought by the Appellant, for the removal of the caveat in this case, is not the only claim which the Respondent is seeking in the Court below. In our view, the position of the law, as stated in the Rural Development Corporation Limited Case’ envisages a situation and is only applicable where the sole claim in an action is for an Order for the removal of a caveat.

We take the further view that, looking at the circumstances of this case, to insist that the claim for the removal of the caveat must be brought in a separate action, commenced by way of Originating Summons, would amount to asking that the different claims in this case, although involving the same parties and arising from the same set of facts, be severed and brought in separate actions. In turn, this would amount to multiplicity of actions, a practice which we have always frowned upon.

For the reasons we have given, we find no basis to fault the decision by the Judge in the Court below to allow the amendment of these proceedings, which were commenced by way of Writ of Summons, to include the relief of an order for the removal of a caveat.”

- 8.8 The further guidance of the Supreme Court against multiplicity and duplicity of actions is also well settled by cases such as **Development Bank of Zambia and Anr v Sunvest Ltd and Another**⁴ and **Pan Electronics Limited and others v Multiadous**⁵ where the Court stated as follows:

“It is permissible under the general jurisdiction contemplated by section 13 of the High Court Act...for the Court to entertain any combination of issues between the same parties particularly where they stem from a single subject or related transactions and the parties would be best served by resolving all relevant issues between them-thus obviating a multiplicity of legal proceedings between them.”

- 8.9 A close look at the sixteen (16) reliefs sought by the Appellant as noted at **paragraph 2.3** above, reveal that he was seeking five (5) declarations, five (5) orders, one (1) claim for damages for breach of contract, articles of

association and the provisions of the Companies Act, one (1) liquidated claim on a quantum meruit basis for services rendered, one (1) claim for dividends and one (1) claim for an account for profits for the sale of the zinc ore. The remaining two (2) relate to the usual claim for costs and any other relief.

- 8.10 The above synopsis of claims, brings us to the inescapable conclusion that in *casu*, and based on the cocktail of claims fielded by the Appellant, the only permissible mode of commencement was by way of Writ of Summons and Statement of claim. We accordingly find merit in **grounds 1 & 2** and uphold the same.
- 8.11 In an unusual argument, the Appellant has canvassed the position that if we find merit in grounds 1 & 2, which we have, the Court should proceed to determine **grounds 3 to 10** on points of law raised. In support of this power being reposed in an appellate Court, the Appellant has referred to several decisions of the Supreme Court namely, **Nevers Sekwila Mumba v Muhabi Lungu (suing in his capacity as National Secretary of the MMD)**⁶, **Road Development Agency v Safricas Zambia Limited**⁷.
- 8.12 The Court is accordingly urged to consider the points of law in grounds 3 to 10 as the factual matrix being undisputed, it is argued that we can pronounce ourselves on them.
- 8.13 We have deeply introspected this line of argument and have reflected long and hard on the ROA before us. In the absence of conclusive findings of fact made by the lower Court, we find ourselves unable to deal with the grounds wholesomely as canvassed by the Appellant.

- 8.14 Purely for purposes of illustration, **ground 3** challenges the lower Court for failing to hold that the Appellant was a shareholder in the 1st Respondent Company who was entitled to an account of profits made and dividends due to him. If such finding was not made by the lower Court, we cannot with any certainty make the declarations sought by the Appellant on a point of law.
- 8.15 Extensive references to sections of the Companies Act, and or to evidence received by the lower Court, to support the alleged violations thereof, does not mean that an appellate Court can make findings on points of law. This is a dangerous and slippery path to tread on. It is trite also that heads of argument no matter how well articulated, cannot replace findings of fact made by the lower Court which are foundational.
- 8.16 With respect to **ground 4**, on the allegation of oppressive conduct, similar to our reasoning above, there being no finding by the lower Court, does not entitle us to pronounce on any point of law. We are also alive to the decision of the Supreme Court in the case of **Sylvester Musonda Shipolo vs Shadreck Maipambe**⁸ where the Court stated:
- “A Judgment must be anchored on (or supported) by evidence adduced before the Court”.*
- 8.17 For the position that we have espoused, we will not delve into the remaining grounds of appeal, suffice to state that we cannot proceed in the manner proposed by the Appellant.
- 8.18 We accordingly refer the matter back to the High Court to review its Judgment for determination on the claims before the same Judge noting that we have upheld **grounds 1 & 2** herein.


8.19 With respect to **ground 11** on the issue of costs, we will simply order that costs will be determined by the lower Court.



M. J. SIAVWAPA
JUDGE PRESIDENT



F. M. CHISHIMBA
COURT OF APPEAL JUDGE



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