

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

**APPEAL NO. 82/2025**

**BETWEEN:**

**KENNETH KAIRA**

**(Suing in his capacity as acting Secretary General of  
United National Development Independence Party UNIP)**

**APPELLANT**

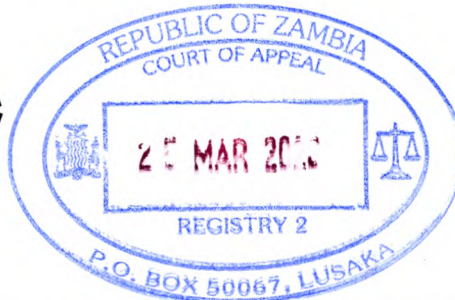
**AND**

**MULENGA MWICHE**

**1<sup>ST</sup> RESPONDENT**

**MIKE KAIRA**

**2<sup>ND</sup> RESPONDENT**



**CORAM: MAKUNGU, NGULUBE AND CHEMBE JJA**

**On 19<sup>th</sup> and 25<sup>th</sup> March, 2026**

For the Appellant : Mr. G. Hakainsi - Messrs L.M  
Chambers

For the Respondents : No appearance

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**JUDGMENT**

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

**Cases Referred to:**

- 1. *National Milling Company Limited vs A. Vashee SCZ  
Judgment No. 23/2000***
- 2. *Secretary-General of the United National Independence  
Party vs Elias Marko Chisha Chipimo (1983) Z.R. 125 (S.C)***

3. *Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe vs United Independence Party (1978) Z.R. 388*
4. *Jarious Chakulunta and Others vs Kenneth Kaira (Sued in his capacity as Secretary General for United National Independence Party and Others 2013/HP/0427*
5. *Timothy Kafa Nyirenda vs Tilenji Chanda Kaunda (Sued in his capacity as President of UNIP) 2004/HP/1136*
6. *Major Richard Kachingwe vs Dr. Nevers Mumba (2013) Vol.3 Z.R. 17*
7. *Susan Nakazwe and Boniface Kabwe Musondamwaume vs Dr. Guy Scott 2007/HP/0332*
8. *Greyford Mwale vs Winstone Chibwe (Sued in his capacity as Secretary General of the United Party for National Development (UPND) Appeal No. 98/2013*
9. *Mutati and Others vs Winnie Zaloumis (Sued in her capacity as Acting National Secretary for the Movement for Multiparty Democracy (MMD) 2016/HP/0989*
10. *McFoy vs United Africa Company Limited (1961) 3 ALL ER 1169*
11. *Francis Xavier Nkhoma vs Tilyenji Kaunda – Secreatry General 2000/HP/1422*
12. *Collet vs Van Zyl Brothers Ltd (1966) Z.R. 65*
13. *Mutale vs Zambia Consolidated Copper Mines Limited (1993-1994) Z.R.94*
14. *YB and F Transport vs Supersonic Motors Limited SCZ Judgment No. 3/2000*

15. *Musonda vs Simpemba and General Nursing Council of Zambia vs Mbangweta (2008) Z.R. Vol.2 105*
16. *Zambia Breweries vs Central and Provincial Agencies Limited (1983) Z.R. 15*
17. *Chick Masters Limited and Another vs Investrust Bank Plc Appeal No. 74/2014*
18. *Kafamuyeke Mukelabai v. Esther Nalwamba, Commissioner of Lands and the Attorney General (2013) Vol 2 Z.R. p312*

## **1.0 INTRODUCTION**

- 1.1. This is an appeal against the Ruling delivered by Honourable Mrs. Justice K. Newa dated 14<sup>th</sup> June, 2024, in which the lower court allowed the preliminary issues raised by the Respondents and accordingly dismissed the action instituted by the Appellant.
- 1.2 The Appellant was the Plaintiff in the Court below while the Respondents were the Defendants. In this judgment we will refer to the parties as they appear in this court.

## **2.0. BACKGROUND TO THE MATTER IN THE COURT BELOW**

- 2.1. An action was commenced in the Court below by way of writ of summons accompanied by a statement of claim on 1<sup>st</sup> June, 2022

by the Appellant where he sought declarations that the Respondents were suspended from the party and had no authority to suspend the party president. Before trial commenced, on 26<sup>th</sup> February, 2024 the Respondents filed a Notice of Motion pursuant to Order 14A and Order 33 Rules 3 and 7 of the Rules of the Supreme Court of England raising the following preliminary issues:

- i. Whether or not the unpreferred charges and unheard suspensions in respect of Mulenga Mwiche and Mike Kaira have elapsed and become nullities due to effluxion of time of a period of over 21 months from 4<sup>th</sup> May, 2022 and 17<sup>th</sup> May, 2024 respectively;***
- ii. Whether or not the former party President Bishop Trevor Selwyn Musonda Mwamba who was suspended and subsequently expelled by the Party's Central Committee in his personal/individual capacity for some disciplinary offences preferred against him can validly maintain a joint action before Court in a representative capacity through Kenneth Kaira;***

- iii. Whether or not, this Honourable Court can entertain and proceed to hear and determine this matter wherein the substance, practice and procedure are substantially flawed and arising from the purported disciplinary offences which have since lapsed due to effluxion of time or period of over 21 months and in contravention of the party constitution, rules and regulations;*
- iv. Whether or not, Kenneth Kaira's action is an abuse of the court process having been commenced prematurely by having unprocedurally preferred the purported disciplinary offences against Mulenga Mwiche and Mike Kaira and having not properly and duly exhausted the disciplinary process as provided by the party constitution rules and regulations.*

2.2. The lower court heard the application and identified two issues for determination as follows:

2.2.1. *Whether the proceedings should have been terminated as the Respondents' suspensions had been in place for a*

*period over twelve (12) months, and thus the appropriate body to deal with disciplinary proceedings of party members was the party itself and not the court.*

*2.2.2. Whether Kenneth Kaira as acting Secretary General of UNIP, could maintain an action in relation to the suspension and subsequent expulsion of the UNIP President Bishop Trevor Selwyn Musonda Mwamba, when the charges were preferred against Bishop Trevor Selwyn Musonda Mwamba in his individual capacity.*

2.3. The lower court proceeded to render its Ruling on 14<sup>th</sup> June, 2024 granting the application which is the subject of this appeal.

### **3.0 DECISION OF THE COURT BELOW**

3.1. After considering the spirited arguments and authorities cited by the parties, the learned Judge in her Ruling, in relation to the first issue for determination, placed reliance on Articles 20 (2), 22 (g), 98 (v), 100 (2) and (4) of the UNIP Constitution as well as Rule 13 (e) and (f) (iii) of the UNIP Disciplinary Rules in finding

that the suspensions of the Respondents had ended as the period of 12 months had elapsed.

- 3.2. The learned judge further decided that the Appellant did not have any common interest with the persons he claimed to be representing as thirty-three (33) members of the Central Committee of UNIP disputed he was the acting Secretary General.
- 3.3. The learned judge further found that since the suspension period of a member was only for a period of twelve (12) months, and such period having elapsed in respect of the Respondents, it was not for the court to extend the period but for the appropriate structures within UNIP to take up any other necessary steps that would be appropriate.
- 3.4. With regard to the second issue for determination the learned judge having found that the Appellant had no locus standi in the proceedings nor any common interest to represent other party members, held that any claims relating to the party president could not stand. The lower court further found that any claims that the party President may have had, could have been pursued

by the president in his individual capacity. The action was, accordingly, set aside.

#### **4.0 THE APPEAL**

4.1. Dissatisfied with the determination by the learned Judge, the Appellant appealed to this Court advancing four (4) grounds as follows:

1. ***That the learned Judge in the Court below erred in law and in fact when she held that action against the Respondents could not be maintained because the suspension had lapsed after Twelve (12) Months when in fact the United National Independence Party Constitution does not anywhere provide that the suspension of a member lapses twelve (12) Months of being on suspension.***
2. ***That the learned Judge in the Court below erred in law and in fact when she held that the Appellant lacks locus standi to bring the action on behalf of the party when in fact he has locus standi having been duly appointed as acting Secretary General for the United***

***National Independence Party in line with the party constitution.***

- 3. That the learned Judge in the Court below erred in law and in fact when she held that the President of United National Independence Party Bishop Trevor Selwyn Musonda Mwamba could have pursued the matter in his individual capacity which holding is contrary to the law relating to administration of clubs /incorporated entities.***
- 4. That the learned Judge in the Court below erred in law and in fact when she proceeded to hear the Respondents' application under Order 14A of the Rules of the Supreme Court of England, 1999 Edition and proceeded to make determination of questions or issues which were out suitable for determination without a full trial of the matter.***

## **5.0 ARGUMENTS IN SUPPORT OF THE APPEAL**

- 5.1. The Appellant filed heads of argument dated 7<sup>th</sup> April, 2025. In arguing ground 1, Rule (f) of the UNIP Disciplinary Rules was relied upon in disputing the argument that a party member could

be suspended for a period of up to twelve (12) months only. According to the Appellant, the interpretation of the said provision meant that the Central Committee could not impose a suspension of over twelve (12) months when it imposed a sanction on the erring member. The Appellant further argued that the suspension of the Respondents was not the final sanction but was rather meant to pave way for the institution of the disciplinary processes.

- 5.2. The minutes of the Extra-Ordinary Central Committee's meeting that was held on 14<sup>th</sup> May, 2022 appearing on pages 298 to 304 of the Record of Appeal were referred in supporting the position that the suspension of the 1<sup>st</sup> Respondent was confirmed at the said meeting. It was submitted that the learned Judge misapprehended the nature of the suspension and arrived at an erroneous conclusion.
- 5.3. In ground 2, it was submitted that the Appellant being the duly appointed acting Secretary General for the Party had the locus standi to bring an action on behalf of the Party. The Appellant submitted further that the learned judge wrongly asserted that some party members disputed the Appellant's appointment as

party's secretary general in the absence of such evidence. As such the Court below misdirected itself.

5.4. With regard to ground 3, the Appellant maintained that the issue relating to the misconduct of the Respondents was not a personal issue that the Party president would have pursued in his individual capacity. Similarly, the issue surrounding the suspension of the party President by the Respondents bordered on the welfare and administration of the party and the Appellant being the acting Secretary General was the suitable person to institute the action in his representative capacity on behalf of other party members. The cases of **National Milling Company Limited vs Vashee (Suing as Chairman of Zambia Farmers Union<sup>1</sup>, Secretary-General of the United National Independence Party vs Elias Marko Chisha Chipimo<sup>2</sup> and Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe vs United National Independence Party<sup>3</sup>** in support of the proposition that only a secretary general of a party may sue or be sued on his own behalf or that of other members.

5.5. In the last ground of appeal the Appellant submitted that the issues raised by the Respondents in their notice of Motion could

have been more appropriately dealt with through a full trial. The parties should have been given an opportunity to adduce evidence proving their claims and thus the learned Judge misdirected herself when she proceeded to determine the substantive issues without a full trial.

## **6.0 RESPONDENTS ARGUMENTS OPPOSING THE APPEAL**

- 6.1. The Respondents filed heads of arguments on 9<sup>th</sup> June, 2025. Grounds 1 and 4 were argued together. The Respondents entirely relied on the Party Constitution and Party Regulations and Disciplinary Rules particularly Articles 7, 20, 22 and 150 (1) of the Constitution, Regulations 8, 13, 14 and 16 as well as Rule 1 (a) to (g) of the disciplinary rules in submitting that it was not the role of the courts to decide when the suspensions meted out to party members would elapse. Parties are responsible for disciplining their members by following their own constitution, regulations and rules. In support of this the cases of **Jarious Chakulunta and Others vs Kenneth Kaira<sup>4</sup>, Tilyenji Chanda Kaunda and Njekwa Anamela<sup>5</sup>, Timothy Kafa Nyirenda vs Tilyenji Chanda Kaunda<sup>6</sup>, Susan Nakazwe and Boniface Kabwe Musondamwaume vs Dr. Guy Scott<sup>7</sup> Greyford Monde**

**vs Winstone Chibwe<sup>8</sup> and Mutati and Others vs Winnie Zalomis<sup>9</sup>** were referred to.

6.2. It was further submitted that as observed from the letters of suspension, the former party president and the Appellant did not follow the party disciplinary regulations and rules relating to the Disciplinary Code before prematurely commencing the action in court. Pages 162 and 305 of the record of appeal were referred to, submitting that disciplinary procedures were not exhausted as the Respondents were not charged with any disciplinary offences following their suspension. The Respondents relied on the doctrine of exhaustion which provides that no one is entitled to relief for a suspended or threatened injury until the prescribed administrative remedy has been exhausted. The Appellant argued that grounds one and four were devoid of merit and ought to be dismissed.

6.3. In ground 2, Articles 100 Clause 6 and 103 Clause 1 (j) and (k) of the party constitution were brought to our attention. It was submitted that these rules explicitly provide for mandatory ratification of a member of the Central Committee acting in any position of the Central Committee of the party. It was submitted

that the Appellant had not adduced any evidence to prove that he was duly ratified by the Central Committee and thus his acting as Secretary General was null and void.

- 6.4. The case of **McFoy vs United Africa Company Limited**<sup>10</sup> was cited, in support of the submission that the actions of the Appellant were void as he lacked the requisite authority. It was submitted that the meeting that was held on 14<sup>th</sup> May, 2022 was irregular and incompetently held as the party President was *functus officio* and should not have proceeded to preside over the 1<sup>st</sup> Respondent's suspension hearing.
- 6.5. Under ground 3, the Respondents submitted that the party president faced disciplinary processes in conformity with the party Constitution and Regulations as evidenced by pages 165-175 of volume 1 of the record of appeal. The Respondents contended that upon his removal by the Central Committee, Bishop Mwamba ought to have challenged his suspension and subsequent removal in person and not through the Appellant.
- 6.6. Contrary to the Appellant's position that the party president was suspended by the Respondents, it was argued that according to the attendance Register for the meeting held on 14<sup>th</sup> May, 2022

the 1<sup>st</sup> Respondent was not in attendance as he was suspended by the president at the time.

6.7. The authors of Halsbury's Laws of England were referred to in submitting that where a committee or members have properly followed rules relating to expulsions, the court has no jurisdiction to interfere. In further augmenting that the Bishop Mwamba ought to have challenged his removal in person, the case of **Francis Xavier Nkhoma vs Tilyenji Kaunda**<sup>11</sup> was referred to where the UNIP President was wrongly suspended by the Central Committee and he challenged the suspension in person. Therefore, it was submitted that the Appellant lacked the required locus standi and ground 3 should accordingly fail.

## **7.0 THE CROSS-APPEAL**

7.1. The Respondents filed a cross-appeal on 5<sup>th</sup> July, 2024 and advanced three grounds of appeal couched as follows:

***1. The Honourable judge in the Court below erred and misdirected herself in law and fact when she failed to exercise her discretion judicially by refusing to condemn the Appellant in costs who had clearly abused the Court process in commencing and maintaining before court the action when***

*no formal charges were ever preferred against the two Respondents nor were their purported disciplinary proceedings ever disposed of and expeditiously.*

*2. The Honourable Judge in the lower court erred and misdirected herself in law and fact when she failed to exercise her discretion judicially by refusing to condemn the Appellant in costs by denying the 1<sup>st</sup> and 2<sup>nd</sup> Respondents their receipt and enjoyment of monies as allowances payments attached to their respective positions as Secretary General and Vice President/Acting arising from inappropriate and unjustified Order of Injunction obtained in the Ruling dated 23<sup>rd</sup> September, 2022 and from then until the 14<sup>th</sup> June, 2024 as provided for under Article 97 of the Party (UNIP) Consultation.*

*3. The Honourable Judge in the lower court erred and misdirected herself in law and fact when she on the basis of the alleged different factions at controversy in UNIP failed to exercise her discretion judicially by declining to award the two Respondents costs in spite of having found and up-held all four (4) Preliminary Issues, and in particular, the lack of locus standi and the Abuse of the Court Process respectively.*

## **8.0 THE RESPONDENTS' ARGUMENTS IN SUPPORT OF THE CROSS-APPEAL**

8.1. The Respondents argued grounds 1 and 3 together. It was submitted that the learned Judge found the Appellant had no common interests with the persons he claimed to have represented and thus lacked the required locus standi to have commenced the action. The Respondents argued that this conduct was tantamount to abuse of court process. Paragraphs 4.56-4.64 on pages 30-33 of the record of appeal were referred to. In referring to paragraph 5.1 on page 34 of the record of appeal, the Respondent submitted that the fact that there were different factions in controversy in UNIP was not a justifiable reason to deny the Respondents costs.

8.2. It was contended that the Appellant clearly abused the court process as can be evidenced from pages 35-41 and 233-316 of the record of appeal. It was submitted that the administrative process was totally disregarded and as such the Respondents having been successful should not have been denied costs. Authorities on the award or refusal of costs to successful litigants were brought to our attention namely **Collet vs Van Zyl Brothers Limited**<sup>12</sup>,

**Musamba vs Simpemba (T/A Electrical and Building Contractors<sup>13</sup>, Mutale vs Zambia Consolidated Copper Mines Limited<sup>14</sup> and Y.B. & F Transport Limited vs Supersonic Motors Limited<sup>15</sup>.**

8.3. The Respondents contended that costs are awarded in the discretion of the court which must be exercised judicially. The case of **General Nursing Council of Zambia vs Ing'utu Milambo Mbangweta<sup>16</sup>** was cited in this regard. It was submitted that the Appellant having abused the court process ought to have been penalized in costs. The case of **Zambian Breweries vs Central and Provincial Agencies Limited<sup>17</sup>** was referred to as the case on point in supporting this argument.

8.4. In concluding the arguments for grounds 1 and 3 the Respondents further submitted that the Appellant's conduct not only wasted the court's time but it equally wasted the court's scarce resources and for that reason should have been condemned to costs. **Chick Masters Limited and Another vs Investrust Bank Plc<sup>18</sup>** was referred to in that regard.

8.5. In ground 2 The Respondents argued that the 1<sup>st</sup> Respondent being the substantive Secretary General of the Party and the 2<sup>nd</sup>

Respondent being the substantive Vice President are full time members of the Central Committee who are entitled to allowances as per Article 97 Clause 1 of the party Constitution. It was argued that the Respondents have continued to be denied their allowances by virtue of the Injunction Order that was granted on 23<sup>rd</sup> September, 2022 and as such it was only just and fair that the Respondents are awarded costs. We were implored to up hold the Cross-appeal with costs for both this Court and the Court below.

## **9.0 HEARING**

9.1 At the hearing, Counsel for the Respondents did not appear. The 1<sup>st</sup> Respondent who was in court explained that Counsel had suffered a breakdown in Kabwe. We decided to proceed in the absence of Counsel and consider the Respondents' heads of argument in determining the appeal. Counsel for Appellant relied on the written heads of argument. He submitted that the Court below had misapprehended the import of rule F which limited the period of submission. He maintained that the rules did not state what would transpire after the lapse of 12 months and the trial judge erred in finding that the suspension lapsed. He urged us to allow the appeal.

## **10.0 CONSIDERATION AND DECISION**

10.1 We have carefully read the record of appeal, the supplementary record of appeal together with the arguments by both parties. The issues raised in the main appeal are whether the suspension of the Respondents from their positions in the United National Independent Party (hereinafter referred to as the Party) had lapsed by effluxion of time and whether the Appellant had locus standi to commence an action on behalf the Party and Bishop Trevor Selwyn Musonda Mwamba. The Appellant also challenges the use of Order 14A of the Rules of the Supreme Court to dispose of the matter when the issues therein were more suitable for determination through trial.

10.2 We shall first address ground 1 first, then grounds 2 and 3 together and then lastly tackle ground 4. In ground 1 the gist of the Appellant's argument is that the UNIP Constitution does not provide that a suspension of a member lapses after 12 months. Article 100 (3) of the Party constitution provides for suspension of a member of central committee by the Party President. The Article provides as follows:

***“The President may suspend a member of the Central Committee for gross misconduct and inform the Central Committee accordingly.”***

Whilst the above provision does not limit the period of suspension, disciplinary rules of the Party clearly state that the sanction of suspension shall not exceed 12 months. (see pages 411 to 414 of the record of appeal.)

10.3 In our view, by applying the ejusdem generis rule, the period of suspension in the Party constitution is also limited to 12 months. The duty of this court is to give effect to the rules of the party. The fact that the disciplinary rules limit the suspension period to 12 months can only mean that the suspension lapses thereafter.

10.4 There is no dispute that the Respondents were suspended from the party in May 2022. On 1<sup>st</sup> June 2022, the Appellant commenced an action against the Respondents. The disciplinary proceedings against the Respondents appear to have been abandoned which allowed the period of suspension to lapse in May 2023. In February 2024, the Respondents sought to dispose

of the legal proceedings on a point of law that the relief sought in the action was untenable. The declaration sought by the Appellant which was based on the suspension of the Respondents had been overtaken by events as the said suspensions had lapsed. The action could therefore not be sustained.

10.5 Although the Court below relied on Rule (f) (iii) of the Disciplinary Rules which falls under the sanctions available in its finding that the period of suspension should not exceed 12 months, it is clear that the time limit applies even to suspensions pending disciplinary action. In any event it would be unreasonable to conclude that a suspension would subsist beyond its expiry date or indeed indefinitely.

10.6 The argument by the Appellant that the suspension under the party constitution subsists even after 12 months until disciplinary action is concluded is untenable and goes against apparent desire in the rules that disciplinary hearings be conducted within 7 days of the charge. Further, it is illogical that the period of suspension pending disciplinary action is indefinite

when the sanction of suspension is limited to 12 months. In our view, following the expiry of the 12 month period, the suspension of the Respondents lapsed and they reverted to their positions. In view of the foregoing, we see no reason for interfering with the finding of the Court below in that regard.

10.7 With respect to the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal, the Appellant has taken issue with the finding of the Court below that he had no locus standi to bring an action on behalf of the party or the former president of the party. The statement of claim at page 37 of the record of appeal shows that the Appellant commenced the action in his capacity as the Acting Secretary General of UNIP. The Appellant averred that the Respondents had convened an unlawful party central committee meeting which was not sanctioned by the party leadership and had published on social media that Bishop Mwamba had been suspended as president of the party.

10.8 As a result, the Appellant sought declarations that that the Respondents had no authority to act on behalf of the Party or suspend the party president. The Court below found that the

Party, not being body corporate, as held in the case of **Major Richard Kachingwe (suing in his capacity as National Secretary for the Movement for Multi-Party Democracy) v Nevers Mumba (supra)** could only participate in legal proceedings through representative action.

10.9 The Court below also relied on **Order 15/12/2 of the Rules of the Supreme Court of England** which states that in a representative action, there should be some common interest between persons being represented and the representative. However, as correctly observed by the Appellant, the Court below made a finding at page 31 of the record of appeal that there was no common interest between the Appellant and other members of the Party.

10.10 It is difficult to follow the reasoning of the learned judge in the above finding as she had in the preceding paragraph found that there was no evidence to support the assertion by the Respondents that 33 members of central committee disputed that he was the bona fide secretary general of the Party. The Respondents in their arguments do not appear to support this

finding and have instead argued that the Appellant lacked locus standi to represent the Party as his acting appointment was not ratified by the Central Committee as required by the Party Constitution. This argument by the Respondents appears to be an afterthought as it was not made in the Court below. It is therefore our view that the Court below's finding in this regard was perverse as it was not supported by evidence.

10.11 However, the Court below also made a finding that as the suspensions of the Respondents had lapsed, it was up to the other structures of the Party to take further steps. The Court also noted that all the reliefs sought by the Appellant were tied to suspensions of the Respondents which had come to an end by effluxion of time. The action by the Appellant could therefore not be sustained.

10.12 The argument by the Appellant is that he is representing the Party against the illegal conduct by the Respondents. In our view, the Appellant did have locus standi to commence proceedings on behalf of the Party as its duly appointed acting Secretary General. However, after the suspensions of the

Respondents lapsed, there was no basis for continuing with the action in the Court below.

10.13 In relation to the finding that the Appellant had no locus standi to represent Bishop Mwamba, the Court below found that the former party president should have pursued the claims as an individual. The Appellant's position is that the suspension of Bishop Mwamba by the Respondents was an issue that bordered on the general administration of the Party. However, the record of appeal shows that the Appellant sought a very specific remedy on behalf of Bishop Mwamba which was that his suspension be nullified.

10.14 At pages 166-167 of the record of appeal is a letter dated 14<sup>th</sup> May 2022 expressing a vote of no confidence in the Party president by about 34 members of the Party's central committee. We note that the said letter is not signed by the 1<sup>st</sup> Respondent who had been suspended on 4<sup>th</sup> May 2022. But it is signed by the 2<sup>nd</sup> Respondent who had not yet been suspended. Given that the letter was signed by 33 members of the Party's central committee, we find that the claim by the

Appellant that the Respondents suspended the Party president is untrue.

10.15 The Appellant has failed to articulate his common interest with Bishop Mwamba. We agree that the relief sought did not reveal any common interest between the Appellant and Bishop Mwamba which would warrant a representative action. The authorities of **National Milling Company Limited v A Vashee (suing as Chairman of Zambia National Farmer's Union)** and **Secretary General of UNIP v Elias Marko Chipimo** (supra) have been cited out of context as they dealt with the correct party to sue and not whether there was common interest between the party representative and the party.

10.16 Our view is that, had the Appellant's interest been the administrative affairs of the party only the first relief sought would have sufficed. We accordingly find no basis for interfering with the finding of the Court below in that regard. The 3<sup>rd</sup> ground of appeal therefore fails.

10.17 In the 4<sup>th</sup> ground of appeal, the Appellant challenges the lower court's decision to dispose of the matter pursuant to Order 14A

and Order 33 Rules 3 and 7 of the Rules of the Supreme Court of England when the issues raised were not suitable for determination without a full trial. Order 14A is a summary procedure invoked to dispose of an entire matter on a point of law without trial. Order 33 Rules 3 and 7 on the other hand can be used to determine a particular issue on a point of law without disposing of the entire cause.

- 10.18 The distinction between Order 14A and Orders 33 Rules 3 and 7 of the Rules of the Supreme Court of England was aptly put in the case of **Kafamuyeke Mukelabai v. Esther Nalwamba, Commissioner of Lands and the Attorney General**<sup>18</sup> as follows:

***“Order 33 Rule 3 of the Rules of the Supreme Court envisages a trial or inquiry into the issue so as to establish it as a matter of fact in the determination of the whole cause or matter. It is not suited to the disposing of the cause or matter on a point of law as envisaged under order 14A.”***

- 2) *Order 14A of the Rules of the Supreme Court empowers the Court to make a final determination of a question of law without the need for prior order of the court under***

***Order 33 rule 3 and 4(2) for the determination of preliminary question of law.”***

The two Orders can therefore be applied separately or together.

10.19 The Appellant has not demonstrated how the issues relating to locus standi and suspension could have benefitted from a trial. It was not disputed that the internal rules of the Party limited the period of suspension to 12 months. What was in issue was the effect of such rules. In our view, there was no evidence that could be called to assist in the determination of that issue. The same applies to the issue of locus standi. We find no merit in this ground.

10.20 In the cross appeal by the Respondents, the issue raised largely relates to the failure by the Court below to award them costs following the setting aside of the action. The Court below ordered each party to pay its own costs on the ground the parties were different factions of the same Party. There is no response to the cross appeal by the Appellant.

10.21 It is trite law that costs are awarded in the discretion of the Court. However, the general principle is that costs follow the

event and a successful litigant should not be denied costs. In the case of ***YB and F Transport Limited v Supersonic Motors Limited*** (supra) the Supreme Court held that

***“The general principle is that costs follow the event; in other words a successful party should normally not be deprived of his cost, unless the successful party did something wrong in the action or in the conduct of it.”***

The right to an award of costs, therefore, is not absolute as a successful litigant may be denied his costs if his conduct during the proceedings was below par.

10.22 According to the learned author of **Zambian Civil Procedure; Commentary and Cases**, where a Court decides not to award costs to a successful litigant it must state reasons for exercising its discretion in that way. In the present case, the learned trial Judge’s reason for deviating from the law and accepted practice was that the parties belonged to different factions of the same organization.

10.23 We are of the view that although an order for costs in favour of the Respondents in this matter would ultimately be paid by the Party, this is not sufficient reason for denying them costs. The Respondents were successful litigants in the court below

and should have been awarded costs. We find merit in the cross appeal and we allow it.

**11.0 CONCLUSION**

11.1 All the Appellant's grounds of appeal having failed, the appeal is dismissed. The cross appeal is allowed. The decision of the court below on costs is set aside. The Respondents are awarded costs here and in the court below.

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C. K. MAKUNGU  
**COURT OF APPEAL JUDGE**

.....  
P. C. M. NGULUBE  
**COURT OF APPEAL JUDGE**

.....  
Y. CHEMBE  
**COURT OF APPEAL JUDGE**