

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

APPEAL NO. 09/2024

BETWEEN:

KONKOLA COPPER MINES PLC

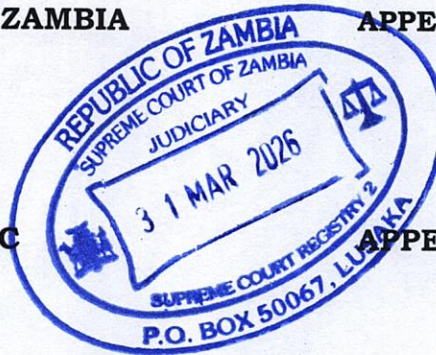
AND

**ATTORNEY GENERAL
SHENZEN RESOURCES LIMITED
KAKOSA METALS LEACH LIMITED**

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT



Coram : Musonda, DCJ, Kaoma and Mutuna, JJS
On 4th February, 2026 and 31st March, 2026

For the Appellant : *Mr. T. Chibeleka and Ms C. Mukuka of
Messrs ECB Legal Practitioners
Mr. G. Chipoya and Mr. N. Chaleka, In-House
Counsel Konkola Copper Mines PLC*

For the 1st Respondent : *Mr. M. Muchende SC - Solicitor General, Mr. P. S.
Phiri, Mr. Mundia Mukelebai and Ms Mudenda
Hamasamo of the Attorney General's Chambers.*

*For the 2nd
and 3rd Respondents* : *Mr. R. Musumali of Messrs. SLM Legal
Practitioners
Mrs. S. Phiri – Hinji of Messrs Chifumu Banda and
Associates
Ms M. V. Chilembo of Messrs T. S. Chilembo
Chambers.*

J U D G M E N T

Mutuna, JS delivered the judgment of the Court.

Cases referred to:

- 1) *Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited and Others* – CAZ Appeal No. 74 of 2018
- 2) *Konkola Copper Mines Plc v Sensele Enterprises Limited* - CAZ Appeal No. 133 of 2018
- 3) *Chikuta v Chipata Rural Council* (1974) ZR 241 (SC)
- 4) *New Plast Industries v Commissioner of Lands and Attorney General* (2001) ZR 51 (SC)
- 5) *Kalymnos Processing Limited & Another v Konkola Copper Mines* – CAZ Appeal No. 74 of 2023
- 6) *Antonio Ventriglia and Emmanuela Ventriglia v Finsbury Investments Limited* - SCZ Appeal No. 2 of 2019

Legislation referred to:

- 1) *The Mines and Minerals Development Act, No. 11 of 2013*
- 2) *Rules of the Supreme Court 1965*
- 3) *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.*

Introduction

- 1) In the recent past a number of disputes have been brought to our courts which arise from allocation of mining rights by the Ministry of Mines and Minerals Development (the Ministry) over areas subject to other mining rights. The disputes almost always involve the appellant as one of the parties which has a number of mining rights and it alleges trespass or unlawful

allocation of mining rights against entities granted consent by the Ministry to conduct mining activities on its properties.

- 2) The main issue that arises in these disputes is the mode of commencement of the actions. It is usually contended that where the appellant is aggrieved by the actions of the Ministry in relation to allocation of mining rights to third parties over its mining rights, recourse lies in appealing to the Minister and thence the Mining Appeals Tribunal in accordance with **sections 97 and 98 of the Mines and Minerals Development Act, (the Act).**

- 3) The dispute in this appeal is one such disputes which questions the mode of commencement of the action by the appellant against the second and third respondents in the High Court. It arises from a decision of the Court of Appeal setting aside the decision of a High Court Judge as determined that she had jurisdiction to deal with the matter as it was properly commenced.

Background

- 4) The appellant is the registered proprietor of the land where Kakosa Tailing Dump (the Dump) is located and it has a large-scale mining licence over the Dump granted to it by the Ministry.
- 5) In or about 2010, the second respondent expressed an interest in conducting mining activities in the Dump by way of a joint venture with the third respondent and engaged the Ministry for this purpose. The engagement resulted in the Ministry granting the second respondent a mineral processing licence for a period of fifteen years. Later, the Director Mining Cadastre gave the second respondent consent to conduct mining activities on the Dump after the appellant declined to grant its consent.
- 6) The appellant was not notified of the grant of the consent to the second respondent over the Dump by the Director Mining Cadastre. The appellant later took out an action in the High Court against the second and third respondents after it discovered that the two were conducting mining activities on the Dump. The first respondent was joined to the action later.

The matter in the High Court

- 7) The appellant commenced the action in the High Court by way of writ of summons and statement of claim. It claimed for: a declaration that the respondents had no rights over the Dump and that the appellant was the rightful owner of the Dump; alternatively, a declaration that the respondents had no right to enter upon the Dump without its prior consent; a declaration that the appellant had reasonable grounds to withhold its consent in respect of access to the Dump by the second respondent; an injunction restraining the respondents from crossing the appellant's surface and mining rights entered upon or carrying on any activities thereon; damages for interference with the appellant's operations and trespass; and costs.

- 8) After the appellant commenced the action and served process upon the respondents, the first respondent filed a preliminary objection pursuant to **Order 14A rule 1** as read with **Order 33** of the **Rules of the Supreme Court 1965 (white book)**. It contended that the appellant had wrongly commenced the

action and the court, therefore, had no jurisdiction to entertain it.

- 9) The basis of the objection was that since the appellant was aggrieved with the decision of the Director Mining Cadastre granting consent to the second respondent to access and carry out mining activities on the Dump, it ought to have appealed against that decision and not commenced an action in the High Court.

Decision by the Learned High Court Judge

- 10) Following the hearing of the motion for the preliminary objection, the Learned High Court Judge (Patel, J as she then was) identified the issue for determination as being whether the action was properly before her. Put differently, she asked herself if she had jurisdiction to determine the matter.
- 11) In arriving at her decision, the Learned High Court Judge began by considering the pleadings filed by the appellant and relief sought. She also considered decisions of the Court of Appeal which raised a similar issue as the one before her, in particular

the decision in the case of *Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited and Others*¹.

- 12) The Judge concluded that the law is settled that she could entertain the action before her as an action in tort on the ground of trespass. She, therefore, held that she had jurisdiction to hear the matter and dismissed the preliminary objection. The respondents were aggrieved by the decision of the Learned High Court Judge and appealed to the Court of Appeal.

Decision of the Court of Appeal

- 13) After the Court of Appeal heard the appeal, it held that the matter before the High Court was wrongly commenced because the appellant should have appealed against the decision of the Director Mining Cadastre granting consent to the second respondent in accordance with **section 97** of the **Act**. The basis of the court's decision was that the action as it then stood for trespass could not be sustained because the Director Mining Cadastre had granted consent to the second respondent to

conduct the mining activities after the appellant unreasonably withheld its consent.

- 14) As a consequence of the facts in the preceding paragraph, the court held further that the second respondent was not a trespasser and for that reason, the case before it could be distinguished from its earlier decisions in the cases of **Konkola Copper Mines Plc v Sensele Enterprises Limited²** and **Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited and Others¹**. The court concluded that the Learned High Court Judge had no jurisdiction to entertain the matter because it contravened the principles set out in our decisions in the cases of **Chikuta v Chipata Rural Council³** and **New Plast Industries v Commissioner of Lands and Attorney General⁴** on commencement of actions. It accordingly set aside the decision of the Learned High Court Judge.

Appeal to this Court and arguments by parties

- 15) The appellant appealed against the decision of the Court of Appeal and advanced four grounds as follows:

- 15.1) The Court of Appeal erred in law and fact when it held that the second respondent commenced mining activities on Kakosa Tailings Dump as a licensee having obtained consent from the Director Mining Cadastre. The Director Mining Cadastre has no authority under the **Mines and Minerals Development Act** to grant consent to a party to enter upon another person's land even in circumstances where the person had initially withheld his consent;
- 15.2) The Court of Appeal erred in fact and law when it held that the Director Mining Cadastre can give consent to a holder of a mining right where it has been denied by a surface rights holder without giving the circumstances and law under which such powers are exercisable with far reaching consequences of compulsory acquisition;
- 15.3) Consequent to the above, the Court of Appeal erred in law and fact when it ruled that the appellant ought to have appealed against the Director's decision to the

Minister as prescribed by **section 97(1)** of the **Mines and Minerals Development Act**. The court did not address its mind to **section 56** of the **Act** which provides for procedure that may be undertaken by the Director Mining Cadastre when there is a dispute as to consent to conduct mining activities over surface rights; and,

- 15.4) The Court of Appeal erred in law and in fact when it ruled that the High Court had no jurisdiction to hear the matter. The court erred in not drawing a distinction between surface rights held by a title holder (by virtue of the **Lands and Deeds Registry Act**) who can lawfully commence an action for trespass and mining rights exercised pursuant to the **Mines and Minerals Development Act**.
- 16) The dispute which is defined by these grounds of appeal is beyond the issue which is the subject of this appeal, namely, did the appellant adopt the correct mode of commencement of the action in the High Court? Apart from enlarging the dispute before us, the grounds of appeal also invite us to delve into the

dispute which is before the High Court arising from the manner in which the Court of Appeal determined the appeal before it.

- 17) In our determination of this appeal, we have considered only the issue which we have defined in the preceding paragraph and have restricted our consideration of the parties' arguments to those arguments which address the issue. For this reason and for purposes of contextualising the dispute before us, at the hearing of the appeal, we posed certain questions to counsel for the parties which we have referred to later in this judgment along with the undisputed facts as we see them.

- 18) In advancing the appellant's arguments in support of the appeal, counsel for the appellant argued grounds 2 and 3 of the appeal together. They began by setting out the facts leading up to the dispute which were that after the second respondent obtained its mining licence, it applied to the appellant for its consent to conduct mining activities on the Dump. The appellant declined to grant its consent which prompted the second respondent to seek consent from the Director Mining Cadastre which was granted.

- 19) Counsel argued that after the Court of Appeal considered these background facts, it held that the second respondent's presence on the Dump was not as a trespasser but in accordance with the **Act** which permitted the Director Mining Cadastre to issue consent to an entity with a mining licence to conduct mining activities in an area which is already subject to mining rights. This holding, according to counsel, was a misdirection on the part of the Court of Appeal because there is no provision in the **Act** which empowers the Director Mining Cadastre to grant consent where it was withheld by the person or entity with mining rights over the property in issue.
- 20) To reinforce their argument counsel submitted that the Court of Appeal, while endorsing the argument by the second respondent that it was lawfully conducting mining activities on the Dump because of the Director's consent, did not cite any provision of the **Act** to support its decision. Counsel submitted that the **section** in the **Act** which deals with consent is **section 52** and that it does not give power to the Director Mining Cadastre to grant such consent. According to counsel, the effect

of **section 52** of the **Act** is that a mineral rights holder must first seek the consent from a surface rights holder where there is one, alternatively from an appropriate authority that is in charge of the area where the mineral right has been given.

- 21) Advancing their arguments, counsel submitted that the only role which the Director Mining Cadastre plays is under **section 52(2)** to arrange for arbitration as a means of resolving any dispute relating to the consent which has been withheld. This function, counsel argued, is not mandatory because the **section** uses the word "*may*" and not "*shall*".

- 22) The next limb of counsel's arguments addressed the effect of **sections 96** and **97** of the **Act**. They argued that **section 96** obliges the Minister, Committee or any Director making a decision which affects a holder or applicant of a mining right, to inform such holder or applicant of the decision, the reasons thereof and the right to appeal against such decision. As for **section 97**, counsel argued that it grants any person aggrieved by a decision of the Committee or Director the right to appeal to the Minister within 30 days.

- 23) Regarding the form which the notice under **section 96** should take, counsel contended that it must be in writing, set out the reasons for the decision and inform the affected person of their right to appeal. They argued that there are no documents that have been presented by the respondents which prove the Ministry complied with the requirements under **section 96** when it granted consent to them.
- 24) Coming to grounds 1 and 4 of the appeal, we would like to state from the outset that it is not our intention to summarise the arguments relating to ground 1 as presented by the appellant because they relate to the main dispute which is before the High Court. The question of whether or not the second respondent's presence on the Dump is legitimate pursuant to the consent granted or trespass is for the High Court to determine if we uphold this appeal. So is the question whether the Director Mining Cadastre has power under the **Act** to grant consent to exercise mining rights over an area already subject to mining rights. Our task, as earlier stated, is limited to determining

whether the mode of commencement of the action in the High Court was the correct one.

- 25) Under ground 4 of the appeal, counsel's argument merely emphasised the appellant's contention that the second respondent was a trespasser, therefore, the action against it lay in tort which is commenced by way of a writ of summons.
- 26) The first respondent's arguments as they related to ground 1 of the appeal mirrored those of the appellant as they also addressed the main dispute before the High Court. We have, therefore, not summarised them.
- 27) As for ground 2 of the appeal, the Learned Solicitor General, Mr. M. Muchende SC began by quoting at great length passages from the decision of the Court of Appeal in the case of *Kalymnos Processing Limited and Another v Konkola Copper Mines Limited*⁵. The court in that case held that recourse to courts of law can only be had after the grievance procedure set out under **section 97** of the **Act** has been exhausted. Further, **section 98** clearly provides for complaints

by aggrieved parties in relation to decisions on mining rights to lie to the Director within the Ministry, thereafter, to the Tribunal and finally to the courts of law.

28) Mr. M. Muchende SC went on to argue that the Court of Appeal concluded that the appellant in that matter, having been denied consent, should not have trespassed upon the mineral rights holder's land but rather raise a complaint of unreasonable withholding of consent to the Director Mining Cadastre. Applying the foregoing principles to this case, he argued that since the second respondent only commenced mining activities after it had been granted consent, it had complied with the law and the Court of Appeal was, therefore, on firm ground when it held that the High Court lacked jurisdiction to adjudicate upon the matter.

29) In respect of ground 3 of the appeal, Mr. M. Muchende SC repeated the arguments on the effect of **section 97** of the **Act**. He went on to state that while **section 56** of the **Act** does provide for mechanisms for addressing disputes over surface rights, it is not intended as an alternative avenue for challenging

the decision of a Director arising from powers conferred by the **Act**.

- 30) As for ground 4 of the appeal, Mr. M. Muchende SC submitted that the decision of the Court of Appeal is firmly rooted in the statutory framework and supported by judicial precedent. Therefore, the appellant's arguments fail to properly account for both the legislative intent and the judicial interpretations which clearly demarcate the respective roles of administrative and judicial forums in resolving disputes. Mr. M. Muchende SC concluded by drawing our attention to the decision in the case of *Antonio Ventriglia and Emmanuela Ventriglia v Finsbury Investments Limited*⁶ in which we said jurisdiction is everything, without it, a court has no power to adjudicate upon a matter.
- 31) In opening the arguments for the second and third respondents, Mr. Musumali, dealt with ground 1 of the appeal first. He began by explaining the effect of **section 16** of the **Act** which he said sets out the steps which should be taken by a mineral right holder prior to entering upon a mineral right held by someone

else. According to counsel, the second respondent had complied with the provisions of **section 16** because it first sought the consent of the appellant and once the consent was denied it approached the Director Mining Cadastre who granted it.

- 32) Counsel went on to submit that once the consent was granted the recourse open to the appellant was to appeal to the Minister in accordance with **section 97(1)** of the **Act**. He submitted that at appeal stage the question for determination by the Minister is whether or not the consent from the mineral rights holder was reasonably withheld.
- 33) As for ground 2 of the appeal, the arguments by counsel focused on the powers of the Director Mining Cadastre pursuant to **section 52(2)** and **(3)** of the **Act**. We have not summarised these arguments because they are not relevant to the issue before us.
- 34) Counsel's arguments in respect of ground 3 of the appeal focused on negating the appellant's arguments in respect of **section 56** of the **Act** which provides for arbitration as one of the means of resolving disputes arising from the **Act**. They

argued that since the decision which is the subject of this dispute was given on 13th December, 2010 before the enactment of the **Act**, it is not subject to the **Act** but rather the **Mines and Minerals Development Act No. 7 of 2008 (Act No. 7 of 2008)** which preceded it. Therefore, the proper course for the appellant to take in challenging the decision was to appeal to an appropriate authority which includes the Minister or such public officer as the Minister may authorise to give the requisite consent in accordance with **section 127 of Act No. 7 of 2008**.

- 35) As for ground 4 of the appeal, counsel's arguments focused on emphasising the fact that what is at stake here are the appellant's mineral rights which have no bearing on its ownership of the Dump or its surface rights. To this end, they drew our attention to the fact that the certificate of title from which a person derives ownership of land, while vesting surface rights in that person, excludes all minerals, oils and precious stones situate upon or under such property.
- 36) The appellant's arguments in response in so far as they were relevant to the dispute before us were as follows:

- 36.1) **Section 97(1)** of the **Act** must be read with **section 96** which requires the Director, Committee or other officer to inform the holder or applicant affected by a decision subject to appeal;
- 36.2) Arising from 36.1 above, the first respondent has not referred this court to any evidence showing that the appellant was notified when the Director Mining Cadastre granted the consent; and,
- 36.3) The letter of 13th December, 2010, which the second and third respondents allege constitutes the consent, has not complied with the provisions of **section 96 of the Act** which require a holder to be notified of a decision of the Minister, Director or Committee, its reasons and the right of appeal.
- 37) At the hearing, we invited counsel to confirm that the gist of the appellant's grievance is that it was not notified when the Director Mining Cadastre granted consent to the second respondent to exercise mining rights over the Dump. They all

confirmed this fact, which is also captured in the notes of the proceedings at the stage permission to appeal was being sought from a single Judge of this court.

38) Having established the undisputed fact in the preceding paragraph, we invited counsel to address us on the effect of **sections 16** and **97** of the **Act**, and any other provisions of the **Act**, on that undisputed fact.

39) For the appellant Mr. T. Chibeleka responded as follows:

39.1) In considering this appeal, the court should also consider when the Director Mining Cadastre granted his consent because this affects which law is applicable to the dispute. Is it the **Act No. 7 of 2008** or the **Act**?

39.2) There has been no decision made by the Director Mining Cadastre granting consent to the second respondent which was communicated to the appellant;

39.3) Since no notice was given to the appellant regarding the decision of the Director Mining Cadastre granting

consent to the second respondent, the procedure set out in **section 97** of the **Act** could not be invoked; and,

39.4) The action commenced by the appellant is rooted in trespass, therefore, the appellant was on firm ground when it commenced the action in the High Court in the manner it did.

40) The response by Mr. M. Muchende SC for the first respondent was as follows:

40.1) The dispute in this matter as contained in the correspondence passing between the Minister and the parties reveals that it started prior to the enactment of the **Act** but the appellant's cause of action arose after enactment of the **Act**. Therefore, the dispute is governed by the **Act** and not its fore-runner, **Act No. 7 of 2008**;

40.2) The provisions of **section 16** of the **Act** do not apply to this dispute because it refers to mining rights as opposed to mineral processing or non-mining rights which are the issue in this appeal;

- 40.3) In terms of **section 16** of the **Act**, it was the second respondent which should have applied to the appellant for consent and not the Minister;
- 40.4) The correspondence on record reveals that the Ministry was attempting to broker a deal between the second respondent and appellant;
- 40.5) Where an applicant has no consent from the mineral rights holder or the Director Mining Cadastre or other authority, a mineral rights holder can commence an action in tort against such applicant if he undertakes any mining activity;
- 40.6) The dispute with which we are engaged involves a situation whereby the mineral rights holder withheld its consent which prompted the director Mining Cadastre or appropriate authority to give consent in accordance with **section 52(2)** of the **Act**;

- 40.7) **Section 96** of the **Act** requires the Minister, Committee, Director or an authorised officer to notify the holder or an applicant for mineral rights of any decision they make which may affect the holder or applicant. Where a holder of a mineral right has not been informed of any such decision there is an infraction; and,
- 40.8) Where there is failure by the Minister or other authority to notify the holder of mineral rights, recourse lies in invoking the right of appeal under **section 97** of the **Act**.
- 41) The response by Mr. Musumali for the second and third respondents was as follows:
- 41.1) In both **Act No. 7 of 2008** and the **Act**, the procedure is that whenever a person is aggrieved by the decision of the Director, the remedy open to such a person is by way of an appeal;
- 41.2) Where there is failure by the Ministry to comply with the provisions of **section 96** of the **Act** to notify the holder

or applicant affected by the decision, the remedy lies in appealing against such a decision; and,

- 41.3) The holder or applicant's right of appeal arises at the point when he becomes aware of the decision, notwithstanding the expiry of thirty days limit for appealing prescribed in **section 97**.

Consideration and decision of the Court

- 42) In our consideration of this appeal, we will begin by determining which of the two **Acts** is applicable to the dispute. The position taken by the appellant is that the dispute falls under **Act No. 7 of 2008** while the first respondent contends that it is the **Act**. The second and third respondents do not appear to have taken a position on the matter.
- 43) A perusal of the statement of claim reveals that the appellant's grievance began with the grant of the mineral processing licence to the second respondent by the Ministry. The appellant was also aggrieved by the fact that after the grant of the said mineral processing licence, the Director Mining Cadastre granted the

second respondent consent to conduct mining activities on the Dump. It contends that the Director Mining Cadastre has no power to grant such consent. This consent, which the appellant did not initially know about, is what prompted the second respondent to enter upon the appellant's mining right and property.

44) The facts we have set out in the preceding paragraph which form the appellant's cause of action are revealed in paragraphs 16 and 17 of the statement of claim which state in part as follows:

44.1) "The (second respondent) was purportedly granted mineral processing licence ... in respect of copper and cobalt. The said licence was issued on 27th March, 2018 for a period of 15 years from 6th of January, 2010..."

44.2) "The said purported processing licence (for the second respondent) ... was given by the Ministry of Mines in contravention [of] ... the rights of the (appellant) over the

said area and ... there was no written consent sought from or given by the (appellant) ...”

45) In view of what we have said in the two preceding paragraphs, we must agree with the argument by the Learned Solicitor General that it is the **Act** and not **Act No. 7 of 2008** which is applicable to this dispute. The appellant’s cause of action having arisen from the Ministry’s act of granting the licence on 27th March, 2018 (as endorsed in the statement of claim) and the grant of the consent the dispute is governed by the **Act**. Here, we must state that although counsel suggested that the applicable **Act** was an issue in dispute, in articulating their respective positions, they anchored their arguments on the provisions of the **Act** and not **Act No. 7 of 2008**. This, in itself, is an affirmation that they knew that the applicable law was the **Act**.

46) Having held that it is the **Act** which is the governing legislation over the dispute, **sections 96** and **97** thereof were applicable to the steps to be taken after the grant of the consent to the second respondent. That is to say, there was an obligation on the part

of the Director Mining Cadastre in granting the consent to adhere to those provisions. This is crucial to the determination of the sole issue which falls for determination in this dispute which we have identified at paragraph 16 hereof.

47) At this juncture, it is imperative that we set out what the two sections state and their effect in so far as they relate to the issue in dispute.

47.1) **Section 96** states as follows: **“Whenever the Minister, the Committee, any of the Directors or an authorised officer makes a decision against which an appeal lies by virtue of a provision of this part, the holder or applicant affected by the decision shall be informed of the decision and the reasons for the decision by notice, in writing, and the notice shall, inform the person notified of that person’s right of appeal.”**

47.2) On the other hand, **Section 97(1)** states as follows: **“A person who is aggrieved by a decision of the Director of Mining Cadastre, Director of Mines Safety,**

Director of Mines, Director of Geological Survey or the Committee under this Act may, within thirty days of receipt of the decision, appeal to the Minister in the prescribed manner and form.”

- 48) The interpretation we have given to **section 96** is that it compels the Minister, Committee, Director or authorised officer of the Ministry, to communicate any decision made on mineral rights to the affected mineral rights holder or an applicant. This communication should be in writing, giving the reasons for the decision and informing the affected person of their right to appeal.
- 49) On the other hand, **section 97(1)** which takes effect after the steps in **section 96** have been taken, gives the person who is aggrieved by the decision of any Director, Committee or authorised officer in the Ministry, the option to appeal against such decision within thirty days of receipt of the decision. Both **sections** require the decision maker to notify the affected person of the decision. This is for purposes of such person making a decision whether or not to appeal. Absent such

notification, the Ministry will have committed an infraction or contravened the two **sections** as the Learned Solicitor General magnanimously conceded.

- 50) Further, where such notice has not been given, the aggrieved person will not only have been denied his right under **section 96** to an explanation for the decision by the Ministry to arm him with the capacity to appropriately craft his appeal, but also the right to exercise this very right of appeal as he will have been unaware of the decision.
- 51) The facts of this case reveal that the Director Mining Cadastre did not take the steps set out in **section 96**. Therefore, there is no way the appellant could have invoked the appeal procedure under **section 97**. It came to know about the Director's decision well after the prescribed thirty days when it discovered that the second respondent had commenced mining activities on its property. According to Mr. Musumali, at this stage it should then have invoked the appeal procedure set out in **section 97** and not commenced the proceedings in the High Court.

- 52) We do not agree with Mr. Musumali's argument because even assuming its discovery was within the thirty days' period of appeal, it had no basis of appealing because the decision by the Director had not been formally communicated to it nor were reasons furnished to enable it competently exercise this right. At paragraph 50 hereof we have explained the rationale for the notice of the decision and the need for reasons to be furnished. These were not given and, consequently, there was nothing available to the appellant to enable it exercise its right of appeal.
- 53) The question which was before the Court of Appeal was whether the appellant properly commenced the action which is before the High Court. This question mirrors the issue we have identified as falling for determination at paragraph 16 of this judgment. In moving the motion in the High Court and prosecuting the appeal before the Court of Appeal, the first respondent, in concert with the other two respondents contended that since the appellant was aggrieved by the decision of the Director Mining Cadastre, it should have appealed and not commenced the matter in the High Court.

54) In agreeing with the first respondent, the Court of Appeal went to great length at determining the status of the second respondent's presence at the appellant's Dump and concluded that since it had obtained the consent of the Director it was not a trespasser. Therefore, the appellant should have challenged the decision of the Director Mining Cadastre granting consent by way of appeal. The Court of Appeal was not called upon to determine the dispute which is before the High Court i.e. of trespass.

55) In view of what we have said in paragraphs 50 and 51 of this judgment, we hold that the Court of Appeal misdirected itself. The basis upon which it arrived at its decision was flawed because the question as to whether the second respondent is a trespasser is a question to be determined by the High Court and not the Court of Appeal. Its mandate was limited to determining the correctness or otherwise of the mode of commencement of the action by the appellant in the High Court.

Conclusion

56) We accordingly allow the appeal and set aside the decision of the Court of Appeal. In doing so, we remit the matter back to the High Court for determination of the dispute properly deployed before it. The appellant will have its costs, in this and Court of Appeal, which will be taxed in default of agreement.

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M. MUSONDA, SC
DEPUTY CHIEF JUSTICE

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R. M. C. KAOMA
SUPREME COURT JUDGE

.....
N. K. MUTUNA
SUPREME COURT JUDGE