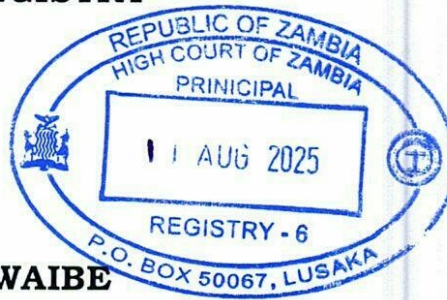


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2018/HP/1780



BETWEEN:

MWALA MARTIN MUKWAIBE

(Suing on his own behalf, and on behalf of 15 employees of
Kariba North Bank Company Limited Retrenched on 9th November 2003)

PETER MULEKWA GOLOTA

(Suing on his own behalf, and as a former employee of
Kariba North Bank Company Limited Retrenched on 9th November 2003)

JOHN ZULU

(Suing on his own behalf, and as a former employee of
Kariba North Bank Company Limited Retrenched on 9th November 2003)

DICKSON KAMANGA

(Suing on his own behalf, and as a former employee of
Kariba North Bank Company Limited Retrenched on 9th November 2003)

AND

ZESCO LIMITED

**POWER GENERATION AND ALLIED
WORKERS UNION OF ZAMBIA**

PLAINTIFF

2ND PLAINTIFF

3RD PLAINTIFF

4TH PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

**Before the Hon. Mrs. Justice M.M. Bah-Matandala
On the 11th August, 2025**

For the Applicant: Mr. K. Mambwe & Mr. M. Ngonga – Messrs. Ferd Jere & Co.
For the Defendants: Mr K. Mweemba, Ms. M. Simalambo and Mr. S. Chiboka – In-house
Counsel

R U L I N G

Legislation Referred:

1. The High Court Act Rules, Chapter 27 of the Laws of Zambia
2. Statutory Instrument No.58 of 2020, the High Court (Amendment) Rules, 20
3. The Supreme Court Rules (White book) 1999 Edition

Cases Referred:

1. Attorney General v Tall and Zambia Airways Corporation Limited (1995/1997) Z.R 54
2. Stanbic Bank v Micoquip Zambia Limited Selected Judgment No. 22 of 2018
3. Status Mineral Exploration Ltd v Ocean Ore Ltd and Another HPC 174 (2012) [2017] ZMHC 117
4. Abel Mulenga v Chikumbi and Others (2006) Z.R 33
5. London Ngoma v LCM Appeal No. 122 of 2017

1.0 Introduction

1.1 This is a ruling following the 1st Defendant's application dated 1st October 2024, by way of Summons, accompanied by an Affidavit in Support as well as List of Authorities and Skeleton Arguments, for leave to appeal against an Order of Joinder of the 2nd, 3rd and 4th Plaintiffs dated 13th September 2024. The application was made pursuant to **Section 23(1)(e) of the Court of Appeal Act No.7 of 2016, Order 36 Rule 10 of the High Court Rules and Order 45 Rule 2 of the Rules of the Supreme Court.**

2.0 Background

2.1 The background of the matter is that, in an Amended Writ of Summons and Statement of Claim dated 9th May, 2022, the Plaintiffs claimed the following against the Defendants:

1. A declaration that the Plaintiffs' redundancy is illegal owing to the want of registration of the redundancy agreement relied upon to carry out the redundancy with the Labour Commissioner;

2. A declaration that the Plaintiffs have continued to be employees of ZESCO

Limited, the Defendant above named not withstanding their purported redundancy by Kariba North Bank Company Limited, and are entitled to their full wages and proper wages, without any diminution whatsoever due to the said purported redundancy, until the last day of payment of their actual redundancy benefits in accordance with section 26B of the Employment Act, 1965 Cap 268, of the Laws of Zambia as amended by the Employment Act, 1997;

3. Interest on the wages at the average of the short-term deposit rate per annum prevailing from the date of the cause of action to the date of judgment, and thereafter at the highest lending rate;

4. Damages;

5. Costs and;

6. Further of such relief the court may deem just.

2.2 By a judgment of this Court dated 19th June, 2023; the Court upheld the Plaintiffs' claims and ordered as follows:

- 1. That the Plaintiffs' redundancy is illegal owing to the want of registration of the redundancy agreement with the Labour Commissioner;**
- 2. That the Plaintiffs be paid according to the collective agreement of 1997;**
- 3. The Plaintiffs are therefore further awarded damages equivalent to three months' salary;**
- 4. The Plaintiffs are further awarded interest on all sums due at short term deposit rate in accordance with Order XXXVI Rule 8 of the High Court Rules from the date of the Writ up to date of Judgment and thereafter at Current Bank of Zambia Lending Rate;**
- 5. Costs are in the cause.**

2.3 A subsequent application was made by Summons dated 8th December, 2023, in which the Plaintiffs sought the following orders:

- 1. Assessment of damages pursuant to the judgment delivered on 19th June, 2023;**

- 2. That the aforementioned damages be reckoned from the commencement of the Plaintiff's action at the Ndola High Court;**
- 3. That interest recoverable by reason of the said judgment be reckoned from the commencement of the Plaintiffs' action;**
- 4. That the rate of the Plaintiff's salaries be calculated based on the prevailing quantum of ZESCO Limited's current employees as of the Court's judgment of 19th June, 2023;**
- 5. That the assessment of the 19th June 2023 judgment be undertaken by the trial court unless expressly directed otherwise; and**
- 6. That the Plaintiffs' costs recoverable be reckoned from the filing of the action at the Ndola High Court.**

2.4 By a ruling dated 15th February, 2024, this Court dismissed the aforementioned application for irregularity, holding that:

“This application cannot be heard by this court because it is functus officio following the delivery of the judgment dated 19th June, 2023. Furthermore, the Plaintiff, having gone before the District Registrar and both parties having raised several applications before that Court, if the Plaintiff is not satisfied with the District Registrar’s decision, the ideal position is to appeal rather than bringing a fresh application before this court.”

2.5 After the aforementioned ruling, the Plaintiffs made an application dated 9th August, 2024, for the interpretation of the Judgment dated 19th June, 2023. The application resulted in a ruling dated 30th August, 2024, where this Court made the following declarations:

1. The judgment sum in the judgment dated 19th June, 2023, it being a legal instrument shall be deemed to be a reference to the re-dominated currency in line with the law.

2. The question of inflation cannot be brought under the application for interpretation or clarification of the judgment as it is an issue outside the judgment.

3. The reflection of a fair value in accordance with the International Financial Reporting Standards (IFRS) and General Accepted Accounting Principles (GAAP) are also questions outside the Court's judgment which cannot be considered under this application.

4. Each party will bear its own costs.

2.6 There was a further application dated 27th August 2024, made pursuant **to Order 14 Rule 5 of the High Court Rules** as read with **Order 15 Rule 6 of the Rules of the Supreme Court of England** to add three more Plaintiffs.

2.7 On 13th September 2024, this Court granted an ex-parte Order joining the 2nd, 3rd and 4th Plaintiffs.

2.8 As a result, the 1st Defendant made an application for an Order for leave to appeal against the Order of joinder of the 2nd, 3rd and 4th Plaintiffs.

3.0 Affidavit in Support of the Application

3.1 The 1st Defendant's Affidavit in Support dated 1st October 2024, was deposed to by the 1st Defendant's Principal Human Capital Officer – Employee Relations, Derrick Ngubai.

3.2 It was deposed that the 1st Defendant is dissatisfied with the Order to join the 2nd, 3rd and 4th Plaintiffs, as the application to join them came too late because it was after judgment had been passed, thereby rendering the Court *functus officio*.

3.3 It was averred that joinder made after delivery of judgment can only be done if there is an appeal, another hearing or review of the judgment.

4.0 The 1st Defendant's Arguments

4.1 At the hearing dated 5th March 2025, the 1st Defendant relied on the Affidavit in Support, as well as the List of Authorities and Skeleton Arguments dated 1st October 2024.

- 4.2 The 1st Defendant cited **Section 23(1)(e) of the Court of Appeal Act, Order 36 Rule 10 of the Court of Appeal Act, Order 36 Rule 10 of the High Court Rules, Order 45 Rule 11 of the Rules of the Supreme Court and Order 59 Rule 14 of the Rules of the Supreme Court of England.**
- 4.3 The 1st Defendant argued that there appears to be no finality in the matter because new Plaintiffs were added after judgment, setting a precedent that there is nothing that stops the Plaintiffs from adding parties to a matter which has been concluded. The 1st Defendant further expressed dissatisfaction that the application was made ex-parte.
- 4.4 It was submitted that the power to join a party after judgment should be exercised if there is something pending before the court, such as an appeal or review, the idea being that the party joined must be heard. It was also submitted that Joinder cannot be granted ex-parte.
- 4.5 Reference was made to the case of **Attorney General v Tall and Zambia Airways Corporation Limited¹**, where it was held thus:

“In our view, a true construction of the words “at or before the hearing of suit” as

contained in our order 14 of Cap. 50 mean or must be interpreted to mean before the delivery of a judgment in suit. This to us appears to be the only reasonable interpretation of that phrase in the Order before delivery of a judgment is a hearing of and a process of a suit. It follows therefore that in a proper case a Court can join a party to proceedings when both the Plaintiff and the Defendant have closed their cases and before judgment has been delivered by invoking order 14 rule 5.”

- 4.6 It was contended that the Supreme Court in ***Stanbic Bank Zambia v Micoquip Zambia Limited***² provided exceptional cases in which a party can join a matter even after judgment, namely where there is an appeal or application for review.
- 4.7 In addition, it was submitted that Mutuna J., in the case of ***Status Mineral Exploration Ltd v Ocean Ore Ltd***³ had the following to say about **Order 59 of the Rules of the Supreme Court of England:**

“It is clear from the foregoing Order that at High Court level, leave will be granted as a general rule, except where the grounds of appeal have no realistic chance of success. As such, in making an application for leave to appeal, an applicant must demonstrate to the court that the grounds he has advanced or intends to advance have a realistic chance of success.”

It was argued that the 1st Defendant in this case has a good chance of succeeding in their appeal.

5.0 The Plaintiffs’ Affidavit in Opposition

- 5.1 The Plaintiffs’ Affidavit in Opposition dated 21st November 2024, was deposed to by the Mwala Martin Makwaibe, the lead Plaintiff in this matter.
- 5.2 It was averred that the 1st Defendant’s contentions were bereft of merit as the Court is at liberty to join parties even after judgment, and that therefore the 1st Defendant failed to demonstrate the prospect of success of the appeal or indeed any special circumstances.

5.3 In addition, it was averred that the 1st Defendant's application is irregular as they ought to have applied to set aside the Order or apply to vary it as opposed to appealing against it.

6.0 The Plaintiffs' Arguments

6.1 The Plaintiffs contended that the application to join the new Plaintiffs was properly done, having been made pursuant to **Order 14 Rule 5(1) of the High Court Rules**.

6.2 A plethora of cases were cited in order to demonstrate the Court's power to join persons who have sufficient interest in the matter. One of the cases referred to is the case of **Abel Mulenga and Others v Chikumbi and Others**⁴, where it was held that:

"In order for the applicant to be joined as a party to the action, the applicant ought to have shown that they have an interest in the subject matter of the action and that the mere fact that the applicant may have been affected by the decision of the court below does not clothe them with the

***sufficient interest or locus standi with
entitling them to be joined to the dispute.”***

- 6.3 The Plaintiffs also drew the Court’s attention to the case of ***London Ngoma v Lumwana Copper Mines***⁵, arguing that a party can be added to proceedings after judgment. It was argued that it is within the Court’s discretion to order for joinder of the parties after the judgment, and hence the principle of finality was not applicable.
- 6.4 In addition, it was argued that the suggestion that there would be room for persons to be added by the Plaintiffs defies **Order 14 of the High Court Rules** which restricts the Court to only join a party that has demonstrated sufficient interest.
- 6.5 Further, it was contended that an Order or Judgment obtained ex-parte cannot be appealed against, but that the Court has jurisdiction after an application for reviewing or setting aside, to either set it aside on sufficient grounds or where the Court rejects the application to review or setting aside, the dissatisfied party can appeal against that decision.

7.0 Analysis and Determination

7.1 I have carefully considered the application before this Court. I have looked at the affidavits in support and in opposition to the application, together with the skeleton arguments, as well as the oral contentions made at the hearing.

7.2 From the outset, it is imperative to determine whether this Court has the jurisdiction to grant the application being sought by the 1st Defendant. In this endeavour, I turn my attention to **Section 23(1)(e) of the Court of Appeal Act** which provides as follows:

"An appeal shall not lie from an order made in chambers by a judge of the High Court or by a quasi-judicial body or from an interlocutory order or interlocutory judgment made or given by a judge of the High Court or by a quasi-judicial body, without the leave of that judge or quasi-judicial body or, if that has been refused, without the leave of a judge of the Court."

7.3 From the cited authority, it is clear that this Court has the power to grant leave to appeal an Order made by this Court, such as the one before me.

7.4 The question that ought to be determined by this Court therefore is simply whether this is an appropriate case where leave to appeal can be granted. In determining that question, I am aided by **Order 59 rule 14 Subrule 18 of the White Book**, which states thus:

“The general test which the Court applies in deciding whether or not to grant leave to appeal is this: leave will normally be granted unless the grounds of appeal have no realistic prospect of success. The Court of Appeal may also grant leave if the question is one of general principle, decided for the first time or a question of importance upon which further argument and a decision of the Court of appeal would be to the public advantage.”

7.5 In my considered view, I find that this is an appropriate case in which to grant leave especially considering the application was granted ex parte and I accordingly grant it.

8.0 Conclusion

8.1 The application succeeds.

8.2 Leave to appeal against an Order of Joinder of the 2nd, 3rd and 4th Plaintiffs dated 13th September 2024 is hereby granted.

Dated at Lusaka, this 11th August, 2025.



M.M. Bah-Matandala
HIGH COURT JUDGE.

