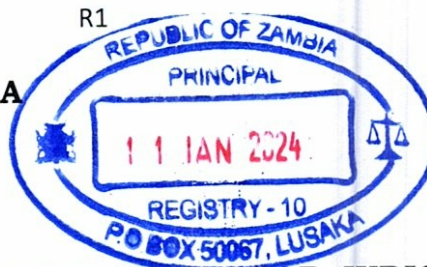


**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)



2022/HP/0925

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF: SECTIONS 7, 48, AND 57 OF THE ZAMBIA  
WILDLIFE ACT NO. 14 OF 2015**

AND

**IN THE MATTER OF: THE PUBLIC PROCUREMENT ACT NO 8 OF  
2020 OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: ARTICLE 23 OF THE CONSTITUTION OF  
ZAMBIA CAP 1 OF THE ZAMBIA**

BETWEEN:

**ZAMBIA COMMUNITY RESOURCES BOARD  
ASSOCIATION LIMITED  
MOPANE SAFARIS LIMITED  
KWALATA SAFARIS LIMITED  
MVU SAFARIS LIMITED  
NTENGU SAFARIS LIMITED  
KOVANGO SAFARIS LIMITED**

**1<sup>st</sup> APPLICANT**

**2<sup>nd</sup> APPLICANT**

**3<sup>rd</sup> APPLICANT**

**4<sup>th</sup> APPLICANT**

**5<sup>th</sup> APPLICANT**

**INTENDED 6<sup>th</sup> APPLICANT**

AND

**THE ATTORNEY GENERAL**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 11<sup>th</sup>  
DAY OF JANUARY, 2024**

*For the 1<sup>st</sup> & 2<sup>nd</sup> Applicants : No appearance*

*For the 3<sup>rd</sup> & 4<sup>th</sup> Applicants : No appearance*

*For the 5<sup>th</sup> Applicant : No appearance*

*For the intended 6<sup>th</sup> Applicant : Mr L. Zulu, Mr A Chuni & Mr M Ngulube, Messrs  
Equitas Legal Practitioners*

*For the Respondent : Mr C. Watopa, Senior State Advocate*

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**R U L I N G**

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CASES REFERRED TO:

1. *The Attorney General v Aboubacar Tall and Zambia Airways Corporation Ltd* 1995 SJ
2. *London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza and LCM Company Limited and United Bus Company of Zambia Ltd (Liquidator)* 1999 ZR 75
3. *Mike Hamusonde Mweemba v Kamfwa Obote Kasongo Zambia State Insurance Corporation Limited (Intended Joinder)* 2006 ZR 101
4. *Hotelier Limited and Ody's Works Limited v Finsbury Investment Limited* 2012 Vol 1 ZR 17
5. *Enala Chirwa v Kachena Financial Limited, Annie Zulu and Noah Mwansa* SCZ/8/180/2011
6. *Sampa and another v Wina and another* 2014 Vol 3 ZR 335
7. *Stanbic Bank v Micoquip Zambia Selected Judgment No 22 of 2018*

LEGISLATION REFERRED TO:

1. *The Rules of the Supreme Court of England, 1999 Edition*
2. *The High Court Rules, Chapter 27 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. *Zambian Civil Procedure: Commentary and Cases, Vol 1, by Patrick Matibini Lexis Nexis, 2017*

**1. INTRODUCTION**

1.1 In this application, Kovango Safaris Limited, seeks to be joined as the 6<sup>th</sup> Applicant to these proceedings. The application which was filed on 8<sup>th</sup> September, 2023, is made pursuant to **Order 14 Rule 5 (1) of the High Court Rules, Chapter 27 of the Laws of Zambia**, as read with **Order 15 Rule 6 of the Rules of the Supreme Court of England, 1999 Edition**, and is supported by an affidavit and a List of Authorities and Skeleton Arguments.

1.2 In opposing the application, the Attorney General filed an affidavit in opposition and a List of Authorities and Skeleton Arguments on 28<sup>th</sup> November, 2023.

## **2. BACKGROUND**

- 2.1 These proceedings were commenced by way of Judicial Review on 31<sup>st</sup> October, 2022, after the Court of Appeal granted leave on 22<sup>nd</sup> September, 2022. Judgment in the matter was delivered on 12<sup>th</sup> May, 2023 quashing the decision of the Permanent Secretary on the grounds of illegality, procedural impropriety, irrationality, legitimate expectation, and on the basis that the decision was null and void.
- 2.2 The intended 6<sup>th</sup> Applicant, Kovango Safaris Limited now applies to be joined to the matter.

## **3. AFFIDAVIT IN SUPPORT**

- 3.1 The deponent of the affidavit, Mohammed Mitha avers that following the Judgment of this Court, the Attorney General appealed, but subsequently withdrew the appeal. He states that Kovango Safaris Limited is similarly circumstanced with the other Applicants in this matter. It is also deposed that the Ministry of Tourism and Arts advertised the tender in the Zambia Daily Mail newspaper for Safari Hunting/Photographic Tourism Concessions in the Nineteen (19) Hunting Blocks in various Game Management Areas.
- 3.2 The averment is that after the advertisement was placed, Kovango Safaris Limited purchased the bidding document which is exhibited as MM1', and it successfully participated in the tender process, and was informed of the Seven (7) staged process which included:

Stage 1: The Ministerial Procurement Committee (MPC) going through the Bidding Documents and approving them.

Stage 2: The Preliminary and Technical Evaluation.

Stage 3: The Ministerial Procurement Committee meeting to consider both the combined paper of both preliminary and technical evaluations.

Stage 4: Financial Evaluation.

Stage 5: The Ministerial Procurement Committee meeting and considering the combined paper of both preliminary, technical and financial evaluation.

Stage 6: The Wildlife Management Licencing meeting to consider the papers and the hunting concessions.

Stage 7: Negotiations.

- 3.3 It is deposed that the Permanent Secretary wrote a letter to Secretary to the Cabinet on 27<sup>th</sup> November, 2020, requesting for authority to hold a retreat for the Tender and Granting of Safari Hunting/Photographic Tourism Concessions in the Nineteen (19) blocks in various Game Management Areas. Then on 30<sup>th</sup> November, 2020, Kovango Safaris Limited successfully submitted its' technical proposal for the Chifunda Hunting Block before the deadline.
- 3.4 It is also stated that in or around January, 2021, the Evaluation Committee that was appointed by the Permanent Secretary, went into retreat in Siavonga, to consider and evaluate the proposals that had been submitted by the bidders.

- 3.5 He goes on to aver that on 7<sup>th</sup> April, 2021, the Permanent Secretary wrote to Kovango Safaris Limited, enclosing a Bid Acceptance, and inviting it for negotiations for the Chifunda Hunting Block. The said Bid Acceptance and Invitation is exhibited as 'MM2'. It is stated that in response, Kovango Safaris Limited wrote the letter exhibited as 'MM3' to the Ministry of Tourism and Arts, confirming its' availability for the negotiations which were set for 14<sup>th</sup> April, 2021.
- 3.6 The averment is that Kovango Safaris Limited successfully negotiated with the Community Resources Board, on 14<sup>th</sup> April, 2021, as shown by the minutes of the negotiations which are exhibited as 'MM4'. Thus, Kovango Safaris Limited was named as the best evaluated firm for the granting of Safari Hunting/Photographic Tourism Concession in the Chifunda Hunting Block.
- 3.7 Exhibited as 'MM5' is the public notice that was issued by the Ministry of Tourism and Arts, showing the best evaluated bidders. However, the Ministry of Tourism and Arts issued a Notice of Cancellation for the granting of Safari Hunting/Photographic Tourism Concessions in the Nineteen (19) Hunting Blocks.
- 3.8 It is repeated that Kovango Safaris Limited is similarly circumstanced with the other Applicants in this matter and it should be joined to the proceedings.

#### **4. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT**

- 4.1 ***Order 14 Rule 5 (1) of the High Court Rules, Chapter 27 of the Laws of Zambia*** as well as ***Order 15 Rule 6 (2) of***

**the Rules of the Supreme Court of England** are cited as the law that governs the joinder of parties.

- 4.2 The case of **Hotelier Limited and Ody's Works Limited v Finsbury Investment Limited** <sup>(4)</sup> is stated as having held that a party that seeks to join another party to an action, must comply with the requirements for joinder as provided under **Order 14 of the High Court Rules** as well as **Order 15 Rule 6 of the Rules of the Supreme Court of England, 1999 Edition**.
- 4.3 Further reliance is placed on the cases of **Mike Hamusonde Mweemba v Kamfwa Obote Kasongo Zambia State Insurance Corporation Limited (Intended Joinder)** <sup>(3)</sup> and **The Attorney General v Aboubacar Tall and Zambia Airways Corporation Ltd** <sup>(1)</sup> which cases in essence, held that a person may be joined to an action where they are entitled to, or share an interest in the subject matter of a suit or they are likely to be affected by the outcome of the suit.
- 4.4 On the joinder of parties to proceedings after Judgment, reliance is placed on the decision in the case of **London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza and LCM Company Limited and United Bus Company of Zambia Ltd (Liquidator)** <sup>(2)</sup>, stating that the Supreme Court in that matter, held that the Court has inherent jurisdiction to join a party after Judgment has been entered. It is stated that the above was reiterated in the case of **Sampa and another v Wina and another** <sup>(6)</sup>.

- 4.5 Citing the case of ***The Attorney General v Aboubacar Tall and Zambia Airways Corporation (1)***, the argument is that joinder enables the effectual and complete determination and adjudication, and puts an end to further litigation. It is further stated that the learned author ***Patrick Matibini*** in the book, ***Zambian Civil Procedure: Commentary and Cases, Vol 1 Lexis Nexis, 2017*** opines at page 62, that joinder of parties prevents risk of irreconcilable Judgments, and may also give rise to problems of res judicata.

## **5. AFFIDAVIT IN OPPOSITION**

- 5.1 Chingela Watopa, Counsel seized with conduct of the matter on behalf of the Attorney General, agrees that the State withdrew the appeal that was launched in this matter, after the Court delivered its' Judgment on 12<sup>th</sup> May, 2023. He therefore states that there are no further proceedings on appeal, and neither is there an application to review the Judgment. He avers that the Court is functus officio.

## **6. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION**

- 6.1 The Attorney General argues that ***Order 14 Rule 5 (1) of the High Court Rules*** and ***Order 15 Rule 6 of the Rules of the Supreme Court of England*** have been relied on in making the application.
- 6.2 It is stated that in the case of ***The Attorney General v Aboubacar Tall and Zambia Airways Corporation Ltd (1)*** the Supreme Court noted as follows:

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

*order 14 of Cap. 50 mean or must be interpreted to mean before the delivery of a Judgment in a suit. This to us appears to be the only reasonable interpretation of that phrase in the order because the 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 the proceedings when both the Plaintiff and the Defendant have closed their cases and before Judgment has been delivered by invoking order 14 rule 5.”*

- 6.3 Further reliance is placed on the decision in the case of *Stanbic Bank v Micoquip Zambia* <sup>(7)</sup>, stating that in that matter, the Supreme Court observed that:

*“We therefore agree with the appellant that there is merit in the first ground of appeal that the application for joinder was incompetent because it was made long after Judgment had been delivered between the Respondent and the Appellant and in any event there was no appeal as the Appellant had failed to meet the condition for the appeal nor was there any application for review.*

*It follows also that the second ground of appeal must inevitably succeed because the court below had become functus officio as the judgment had been delivered and there was no pending appeal or review to warrant the joinder.”*

## **7. SUBMISSIONS AT THE HEARING**

### **SUBMISSIONS BY COUNSEL FOR KOVANGO SAFARIS LIMITED**

- 7.1 At the hearing, Counsel for Kovango Safaris Limited relied on the affidavit that was filed in support of the application, together with the List of Authorities and Skeleton Arguments. He reiterated that as demonstrated in the affidavit filed in support of the application, Kovango Safaris Limited was similarly circumstanced with the other applicants in this matter.
- 7.2 Therefore, this is a fit and proper case where the Order for joinder should be made. It was further Counsel's submission, that the Attorney General had argued that Judgment in this matter had since been delivered, and therefore the Court is functus officio. However, his response to that contention, was that they had cited authorities that showed that the Court has power to join a party even after Judgment.
- 7.3 Counsel asked the question whether, if Kovango Safaris Limited was not joined to these proceedings, should it commence another action before another Court of competent jurisdiction? He answered the question, stating that this would risk conflicting and irreconcilable decisions being made, which the Courts frown upon.
- 7.4 He therefore submitted that in the interests of justice, and the need to deal with all matters effectually, Kovango Safaris Limited should be joined to the proceedings.

**RESPONSE BY COUNSEL FOR THE ATTORNEY GENERAL**

7.5 It was stated in response, that the Attorney General had filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition. The position taken was that the application was misconceived, as it had been made after Judgment had been delivered in the matter.

7.6 The decision in the case of ***Stanbic Bank v Micoquip Zambia*** <sup>(7)</sup> was stressed, stating that the Supreme Court in that matter held that in Order for a party to be joined after Judgment, there had to be an appeal or an application for review, which was not the position in this case. The prayer on that basis, was that the application should be dismissed.

**REPLY BY COUNSEL FOR KOVANGO SAFARIS LIMITED**

7.7 Counsel in reply, maintained that this Court has power to join a party to any proceedings and grant Orders in relation to that party's interests and rights, as those who were successful in the Judgment. In that regard, the decision in the case ***London Ngoma, Joseph Biyela, Richard Ng'ombe, Friday Simwanza and LCM Company Limited and United Bus Company of Zambia Ltd (Liquidator)*** <sup>(2)</sup> was repeated, stating that it was confirmed in the case of ***Sampa and others v Wina and others*** <sup>(6)</sup>.

7.8 It was further submitted that the Attorney General had not shown what prejudice it would suffer if the application was granted, save to argue that the Court is functus officio. Counsel repeated the earlier prayer, that the application be granted to avoid a multiplicity of actions.

## 8. DECISION OF THIS COURT

8.1 I have considered the application. It was made pursuant to ***Order 14 Rule 5 (1) of the Rules of the Supreme Court of England, 1999 Edition*** and ***Order 15 Rule 6 of the Rules of the Supreme Court of England, 1999 Edition***. ***Order 14 Rule 5 (1) of the High Court Rules*** states that:

***“5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either Plaintiffs or Defendants in the suit, as the case may be. In such case, the Court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons, or in such other manner as the Court or a Judge thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:***

***Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may, at any time before judgment in the suit, apply to the Court or a Judge for leave to***

*appear, and such leave may be given upon such terms (if any) as the Court or a Judge shall think fit. The Court or a Judge upon the application of any party may give directions for service upon a new party of copies of any writ of summons or other document or process and also may give such other directions in relation to the adding of such new party as justice and the circumstances of the case may require.”*

8.2 *Order 15 Rule 6 of the Rules of the Supreme Court of England* states that:

*“(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.*

*(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application -*

*(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;*

*(b) order any of the following persons to be added as a party, namely -*

- (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or*
- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.”*

8.3 It can be seen from the above law, as well as the authorities that have been cited in this application, that an application for joinder can be granted where the party to be joined shares some interest in the subject matter of the suit or that they will be affected by the outcome of a suit. Further, an Order for joinder may be made to enable the effectual and complete determination and adjudication of a suit.

8.4 For joinder after Judgment, the authorities relied on state that this is done in the discretion of the Court and in the case of ***London Ngoma, Joseph Biyela, Richard Ng’ombe, Friday Simwanza and LCM Company Limited and United Bus Company of Zambia Ltd (Liquidator)*** <sup>(2)</sup>, the Supreme stated that:

***“We would like to refer to Rule 67 of the Supreme Court Rules. This Rule provides that parties can be joined even after judgment. Rule 67 provides:***

***“When an appeal is called for hearing or at any previous time the court or Judge thereof may, either on the application of any party interested or of its or his own motion, direct that the record of appeal, or any Respondent’s notice, be served on any party to the cause or matter who has not been served therewith, or any other person not already a party to the cause or matter, and may, for the purpose of such service, adjourn the hearing upon such terms as may appear to the court or a Judge thereof to be just, and may give such Judgment and make such order as might have been given or made if the parties served with such record or notice had been original parties.***

***In any case the court or Judge thereof may direct that any additional copies of the record or Respondent’s notice which may be necessary be prepared and served by any party upon any person and may prescribe the time therefore.***

***The arguments by the Respondents that the appellants cannot be joined after the consent Judgment has been entered cannot be***

*supported. The learned District Registrar erred in dismissing their application on the ground that they cannot be joined since a consent judgment had been obtained. In accordance with our decision in The Attorney General v Aboubacar Tall case, the court has inherent jurisdiction. The appeal will succeed on this ground alone. The appeal is allowed. There is no need to consider grounds 2 and 3. In any event, ground 2 talks about Order 13/9/3. The appellants shall be jointed as parties to the action and they are hereby joined. There was consent Judgment of which they were not parties and were not aware of a hearing. This Judgment is stayed until the matter is determined. The case is remitted to the District Registrar to consider the appellants' application for setting aside Consent Judgment."*

8.5 Further, in the case of *Stanbic Bank v Micoquip Zambia Limited* <sup>(7)</sup>, it was noted that:

*"We therefore agree with the appellant that there is merit in the first ground of appeal that the application for joinder was incompetent because it was made long after Judgment had been delivered between the Respondent and in any event there was no appeal as the condition for the appeal had*

*not been met nor was there any application for review.*

*It follows also that the second ground of appeal must inevitably succeed because the court below had become functus officio as the Judgment had been delivered and there was no pending appeal or review to warrant the joinder. In addition, the appellant was never accorded the right to be heard during the trial since it was not a party to the action.”*

- 8.6 In the case of ***Enala Chirwa v Kachena Financial Limited, Annie Zulu and Noah Mwansa*** <sup>(5)</sup>, the Supreme Court noted that the Court has inherent jurisdiction to order the joinder of a party to the proceedings after judgment where exceptional circumstances are disclosed. That by allowing the joinder, the Court will adjudicate all the matters in dispute in one action, and avoid a multiplicity of actions.
- 8.7 The authorities seen above, therefore envision that there must be pending proceedings warranting the joinder of a party after Judgment.
- 8.8 However, in the case of ***Sampa and others v Wina and others*** <sup>(6)</sup> the Supreme Court held that a person may be joined to a matter even after a Consent Judgment is executed where they demonstrate that they have locus standi, sufficient interest and they were not aware of the proceedings.
- 8.9 These proceedings were commenced by way of judicial review. In my ruling dated 20<sup>th</sup> January, 2023, when Ntengu

Safaris Limited, the 5<sup>th</sup> Applicant herein, applied to be joined to the proceedings, I noted that under **Order 53 Rule 9 of the Rules of the Supreme Court of England**, which is a Rule under **Order 53 of the Rules of the Supreme Court of England**, that exclusively governs Judicial Review proceedings, a party that is affected by the proceedings may apply to be heard on the judicial review, even if they were not served the Notice for the hearing.

8.10 I also directed that in line with **Order 53 Rule (5) 3** that the notice of hearing be served on all the parties that were affected by the decision. That Rule provides that:

***“(3) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge.....”***

8.11 There was no proof of service of the notice of hearing of the Judicial Review application on Kovango Safaris Limited which has demonstrated that it was affected by the decision that was challenged in the proceedings. Therefore, it has interest in the proceedings, and ultimately locus standi. That

being the position, being an affected party, it naturally follows that it can be joined to the proceedings.

- 8.12 As to whether such joinder can be made after Judgment, it has been seen that there is no appeal as it was withdrawn. Other than stating that it is similarly circumstanced with the other Applicants in this matter, Kovango Safaris Limited has not shown that it was not aware of the Judicial Review proceedings before this Court.
- 8.13 There is no provision in **Order 53 Rule 9 of the Rules of the Supreme Court of England**, that provides that a party that was not served the Notice of hearing of the Motion can apply to be heard after Judgment. Be that as it may, as there is no proof of service of the notice of hearing of the motion for Judicial Review on Kovango Safaris Limited, the interests of justice demand that it be joined.
- 8.14 I accordingly join the said Kovango Safaris Limited as the 6<sup>th</sup> Applicant to these proceedings, to avoid a multiplicity of actions, and the risk of different Courts giving conflicting decisions on the same subject matter, as this has the potential of bringing the Courts into disrepute. Costs shall be in the cause, and leave to appeal is granted.

**DATED AT LUSAKA THE 11<sup>th</sup> DAY OF JANUARY, 2024**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

REPUBLIC OF ZAMBIA  
HIGH COURT OF ZAMBIA  
11 JAN 2024  
S. NEWA, J  
P.O. BOX 50067, LUSAKA