IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO. 92/2003

B E T W E E N:

ABEL MULENGA & 36 OTHERS — APPELLANTS

AND

MABVUTO ADAN"AVUTA CHIKUMBI
AND OTHERS — 1ST RESPONDENT

AND

ATTORNEY-GENERAL — 2ND RESPONDENT

CORAM: LEWANIKA, DCJ., MAMBILIMA, SILOMBA JJS.
On 24th May, 2005 and 14th March, 2006

For the Appellants: M. MALILA of Phoenix Partners
For the 1st Respondent: N.K. MUBONDA of D.H. Kemp & Co.
For the 2nd Respondent: Mrs. C.N. TEMBO, Senior State Advocate

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JUDGMENT

LEWANIKA, DCJ, delivered the judgment of the court.

AUTHORITIES REFERRED TO:

1. **THE ATTORNEY GENERAL VS ABUBACAS TALL AND ZAMBIA RAILWAYS CORPORATION LTD, 1995/97, ZR 54**
2. **WILSON MASAUSO ZULU VS AVONDALE HOUSING PROJECT, 1982, ZR 172**
3. **LONDON NGOMA AND 3 OTHERS VS LCM COMPANY LIMITED AND UBZ (LIQUIDATOR) SCZ NO. 22 OF 1999**
4. **QUAZI VS QUAZI, 1979, 3 AER. 424**
5. **BLAKE VS SUMMERS BY 1889, W.N. 39**

6. N.B. MBAZIMA AND OTHERS JOIN LIQUIDATORS OF ZIMCO LIMITED (IN LIQUIDATION) VS REUBEN VERA. SCZ NO. 30 2000

This is an appeal against the Ruling of the Industrial Relations Court made on 21st February 2003 refusing the Appellants leave to be joined in the proceedings between the 1st Respondent and the 2nd Respondent.

The short history of this matter is that the 1st Respondent who were all former employees of the National Agricultural Marketing Board, (hereinafter referred to as NAMBOARD) instituted proceedings against the 2nd Respondent and two others pursuant to Section 85 (4) of the Industrial and Labour Relations Act on the following grounds:-

1. that the failure by the Government of the Republic of Zambia to pay terminal benefits to the Applicants is unfair and wrongful;

2. that the Government is in breach of its obligations as former employer to pay the terminal benefits due to the Applicants;

3. that the transfer by Zambian Cooperative Federation Limited of the applicants to G.R.Z. was in breach of the Employment Act, Cap 268 of the Laws of Zambia;

4. that the sale agreements between the Applicants and G.R.Z in respect of the ex-NAMBOARD houses and flats are valid, legal and binding.

The 1st Respondent sought the following reliefs:

(i) Payment of terminal benefits less what has already been paid;

(ii) Payment of percentage increase of 75% on conditions used to compute terminal benefits;

(iii) Payment of interest on the terminal benefits with effect from the date of termination of employment;

(iv) A declaration that the transfer of the Applicant's employment contracts from Zambia Cooperative Federation Limited to G.R.Z. on 30th April, 1996 was in breach of the Employment Act and therefore wrongful

(v) Damages against Zambia Co-operative Federation Limited for wrongful transfer of the Applicant's employment contracts;

(vi) A declaration that the sale agreements between the Applicants and government in respect of ex NAMBOARD houses and flats are valid, legal and binding;

(vii) An order against all the three Respondents for vacant possession of the said houses and flats and that government and National Housing Authority process title deeds thereof in favour of the Applicants;

(viii) Damages for mental distress and inconvenience against all the Respondents;

(ix) Any other order or award as the court may consider just.

On 20th July 2000 by consent of all the parties, judgment on all the claims was entered for the Applicants. However the parties asked the court to determine whether the Applicant's terminal benefits in the form of their redundancy payments are to be computed in accordance with the 1993/94 or 1996/97 Z.C.F. conditions of service, and whether the ex NAMBOARD employees are entitled to purchase former NAMBOARD houses. The Industrial Relations Court delivered its judgment on 22nd December 2000

confirming that the terminal benefits were to be computed on the 1996/97 conditions and that the 1st Respondent, who were the Applicants, were entitled to purchase the ex NAMBOARD houses. There has been no appeal from this judgment.

On 17th April 2002, the Appellants filed a summons for joinder of parties and for review of judgment pursuant to Rules 32 and 55 of Cap 269. The summons sought an order in the following terms:

(a) That the former and current ZFC employees whose names are reflected in the affidavit in support hereof be joined collectively as fourth Respondents to this action;

(b) That the judgment of this Honourable court dated 22nd December, 2000 be reviewed on grounds contained in the affidavit in support hereof.

The Industrial Relations Court in its Ruling dismissed the application for joinder, hence the appeal now before us.

Counsel for the Appellants initially filed four grounds of appeal but abandoned the fourth ground at the hearing of the appeal. The three grounds which were argued were as follows:-

1. **It was a travesty of justice for the court to decline the application for joinder from the Appellants in the face of overwheliming authorities;**

2. **In declining the application for joinder of the Appellants the court**

started by considering contentious facts as to who should rightly be entitled to the housing units in issue. This was wrong premises to proceed from thereby leading the court into grave error;

3. **The court misdirected itself when it failed to consider the real questions before it, namely, whether or not it had power to join the Appellants and whether or not there would be any prejudice to any party if the Appellants were joined and the real issues decided once and for all.**

At the hearing of the appeal Counsel for the Appellants submitted that he was relying on the heads of argument filed herein which he augmented with oral arguments. Counsel further argued grounds 1 and 3 together.

In his submissions Counsel stated that the Appellants had demonstrated through their affidavits in the court below that they were interested parties in what was clearly part of the subject matter of the court's judgment dated 22nd November, 2000, namely houses which they occupy and have occupied even long before the 1st Respondents commenced their action. He said that there can be no argument that as sitting tenants in the subject houses, they are parties that are affected by the decision of the Industrial Relations Court which stated inter alia that:-

> ***"Since the houses belonged to NAMBOARD and not ZCF, the tenants who are occupying them, either legally or illegally, should be given notice to terminate the tenancy agreement and at the end of the notice the tenants should be forced to vacate the houses. All the tenants should pay rent for the periods they have occupied the houses, whether legally or illegally if they were not paying rent."***

Counsel said that it is now settled law that in the interest of finality and to avoid unnecessary contradictions and conflicts in the judgments of the court and in order that all matters in dispute are determined at once to avoid a multiplicity of actions, all parties who are likely to be affected by any judgment or order a court is likely to make, must be joined as parties to the action. He referred us to the case of **THE ATTORNEY-GENERAL VS ABUBACAS TALL AND ZAMBIA AIRWAYS CORPORATION LIMITED** (1) on the point. He also referred us to the case of **WILSON MASAUSO ZULU VS AVONDALE HOUSING PROJECT LIMITED** (2).

Counsel stated that being persons affected by the Court's judgment, the Appellants are properly interested in the action and ought to have been joined as parties to the proceedings long ago. He said that both Respondents knew or ought to have foreseen that any judgment of the court was likely to affect the interests of the Appellants as sitting tenants. That, however, neither of the Respondents deemed it appropriate to join the Appellants. He said that neither of the Respondents should be allowed to raise the non joinder of the Appellants to defeat the Appellant's right to be heard on a matter in which they are properly interested.

Counsel further submitted that the court below should have joined the Appellants as parties to the action so that they were heard before an order dispossessing them of properties they occupied was made. That having made that order without the persons affected by it being joined, the court ought to have accepted the application for joinder.

Counsel further submitted that the Industrial Relations Court has the power to join interested parties to an action before it. He referred us to Rule 32 of the Industrial Relations Court Rules which provides that:-

> ***Rule 32*** ***"The Court, may on the application of any person or of its own motion, direct that any person not already a party to the proceedings be added as a party, or that any party shall cease to be a party and in either case may give such consequential directions as it considers necessary."***

He said that Rule 55 of the same Rules also vests wide powers in the Industrial Relations Court ***"to make such order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court."*** He further pointed out that Section 85(5) of the Industrial and Labour Relations Act clearly indicates that the main object of the court shall be to do substantial justice between the parties before it. That this, by logical extension, includes parties wishing to be joined to an action before the court. Counsel also referred us to the case of **LONDON NGOMA AND 3**

OTHERS VS LCM COMPANY LTD AND UBZ(LIQUIDATOR) (3) where it was held that parties can be joined to an action even after judgment has been obtained.

Counsel further submitted that the argument that ***'proceedings'*** as used in Rule 32 relates only to steps that can be taken before judgment is legally flawed. He referred us to the case of **QUAZI VS QUAZI** (4) where lord ORMORD said that:-

> ***"The ordinary or natural meaning or meanings of the word 'proceedings' standing by itself, without any adjectival description, are so general and imprecise that the dictionary definitions do not carry the matter any further. The phrase 'judicial proceedings' implies some form of adjudication and some kind of order of a court or of some other person or body acting in a judicial capacity."***

Counsel said that since the Court had power to join the Appellants to the action, it was only proper that on the application of an interested party, it invoked those powers, joined the Appellants and hear the evidence in full.

As to the second ground of appeal, Counsel for the Appellants submitted that on the application for joinder, it was sufficient for the Appellants to demonstrate as they did, that they were persons sufficiently interested in the subject matter of the judgment and were persons that were in fact affected by the judgment. That the Appellant's interest in the housing units which formed part of the subject matter of the court's judgment, was

widely acknowledged by the Respondents and the court itself. He said that this interest alone should have been sufficient to consider the Appellants' application but the court proceeded to consider the merits or otherwise of the Appellants' case dwelling in the process on matters on which the Appellants ought to have been properly heard in evidence. That the issue of ownership of the disputed housing units was the very essence of the application for joinder by the Appellants. That the Appellants ought to have been given an opportunity to be heard on the issue of ownership.

Counsel submitted that the court below erred in determining otherwise complex contentious issues of ownership and tenancy of the housing units in question solely on the evidence presented by the Respondents although the Appellants had adduced prima facie evidence of interest in the housing units. He urged us to allow the appeal and order that the Appellants be joined as parties to the action.

In reply Counsel for the 1st Respondents submitted that the court below was right to refuse the application by the Appellants for joinder and review of judgment for the following reasons:-

(a) The Industrial Relations Court had no jurisdiction to join the Appellants as parties in April 2002 when proceedings were concluded and the final judgment had been delivered by it in December, 2000;

(b) The Appellants had and have no sufficient interest or locus standi in the matter that was before the Industrial Relations Court;

(c) The power vested in the Industrial Relations Court by Rule 32 of the Industrial Relations Court Rules is discretionary and not mandatory.

Counsel submitted that the application for joinder of parties and for review of the judgment was made pursuant to Rules 32 and 55 of the Industrial Relations Court Rules. The judgment was delivered by the court on 22nd December, 2000 while the application was filed on 17th April, 2002. He said that Rule 32 only applies in a case where the hearing has not yet been concluded and the court has not yet delivered its final judgment. That the purpose of joinder under these circumstances is for the party concerned to be heard before a final judgment is delivered by the court. He said that as the final judgment had already been delivered by the court and there was no appeal and a period of almost two years having elapsed from the date of judgment, it cannot be said that there are 'proceedings' pending to which one can be joined as a party. He referred us to the case of **BLAKE VS SUMMERS BY, 1889, W.N.** where KAY, J defined 'proceedings' as follows:-

> ***"Anything that preceeds the final judgment or order is, in my opinion, a 'proceeding' in the action."***

He also referred us to **WORDS AND PHRASES LEGALLY DEFINED, BUTTERWORTHS, 1969, 2ND EDITION** at page 182 where the learned author stated that a 'proceeding' is a step in the action which comes before the final judgment. The final judgment in the absence of an appeal, as what happened in this matter, concluded the proceedings. He submitted that for Rule 32 to apply, the application to the Industrial Relations /Court should have been made to the court before it delivered its final judgment on 22nd December, 2000. He said further that Rule 55 does not help the Appellants as it does not specifically empower the Industrial Relations Court to make the Order that was requested.

Counsel for the 1st Respondent further submitted that the jurisdiction of the Industrial Relations Court is statutory, and that applications for specific relief should consequently be brought within the stipulated ambit of the Act. He referred us to **CRAIES ON STATUTE LAW (6th Edition) SWEET AND MAXWELL** at page 266 where the learned authors stated the following:-

> ***"When a statute confers jurisdiction upon a Tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with."***

He said that the proceedings in the Industrial Relations Court were commenced in 1999 by the 1st Respondent under Section 85(4) of the Act. That essentially the complaint was concerned with the entitlement to terminal benefits of the 1st Respondent (as former employees) against the 2nd Respondent (as their former employer) for which the Industrial Relations Court has the necessary jurisdiction to hear and determine. That in complete contrast, the Appellants are or were employees of the Zambia Co-operative Federation Limited, a wholly separate legal entity and completely distinct from the government of the Republic of Zambia (GRZ). That the intention of the Appellant in seeking joinder as parties before the court below was to obtain orders entitling them to the housing units which comprise part payment of the 1st Respondents' terminal benefits from GRZ. He referred us to our decision in the case of **N.B. MBAZIMA AND OTHERS JOINT LIQUIDATORS OF ZIMCO LTD (IN LIQUIDATION) VS REUBEN VERA** (6) which he said put the question of the limitation of the Industrial Relations Court's jurisdiction beyond dispute.

Counsel further submitted that the 1st Respondent's entitlement to the housing units fell clearly within the terminal benefits package and that the Industrial Relations Court has and had jurisdiction to hear and determine

matters or disputes concerning terminal benefits between a former employer and former employees. He said that the jurisdiction to join parties to any proceedings before any court is limited to issues that fall squarely within the ambit of the statute, in this case the Industrial Relations Court, and that the concept of statutory jurisdiction supercedes the inherent jurisdiction that the court may have.

He reiterated that the Appellants have and had no sufficient interest or locus standi in the matter that had been concluded by the Industrial Relations Court. He said that the matter that was before the Industrial Relations Court concerned terminal benefits due to the 1st Respondents from the 2nd Respondent. That in order for one to be joined as a party, such person must have an interest in the subject matter of the action. The said interest should be one which is recognized by law and which the court seized with the action is capable of protecting or enforcing. That the mere fact that the Appellants may have been affected by the decision of the court below did not and does not clothe them with a sufficient interest entitling them to be joined to the action. That the question of entitlement to houses is not an issue which could be determined in the abstract except under the umbrella of terminal benefits. The Appellants being employees or former employees of

Zambia Cooperative Federation Limited, a separate and distinct entity from GRZ, could not possibly have any sufficient interest or locus standi in the matter.

Counsel further submitted that the power vested in the court below in terms of Rule 32 is discretionary and that the discretion must be exercised in conformity or within the ambit of the Act. He submitted that the court below correctly exercised its discretion in terms of the Act and urged us to dismiss the appeal.

Counsel for the 2nd Respondent did not file any heads of argument but submitted orally. She said that the court below was right to refuse the Appellant's application for joinder notwithstanding the fact that Rule 32 does provide for joinder. That the onus of making the application for joinder did not lie on the Respondents as the Appellants were aware of the proceedings before the Industrial Relations Court, which proceedings were commenced in 1999, and yet the Appellants only made efforts to be heard in 2002. She said that a party may only be joined after judgment if such a party were not aware of the proceedings. She pointed out that in this case the Appellants have not claimed that they were not aware of the proceedings in the court below. She said that the Appellants slept on their rights to be

joined to the proceedings. She submitted that the appeal has no merit as the Appellants have already commenced other actions in the High Court and surbodinate courts.

We are indebted to Counsel for their submissions which we have taken into account in arriving at our decision. As we see it, the question as to whether or not the Appellants were entitled to be joined as parties pursuant to Rule 32 hinges on whether or not on the evidence adduced before the court below, they had shown sufficient interest or locus standi to entitle them to be joined as parties before those proceedings. The evidence on record is that the 1st Respondents were former employees of the defunct NAMBOARD who upon dissolution of NAMBOARD had their contracts of service transferred to ZCF and then to GRZ. The 1st Respondents were declared redundant and they instituted proceedings in the court below pursuant to Section 85 (4) of the Industrial and Labour Relations Act claiming, inter alia, terminal benefits from their former employer the 2nd Respondent. The 1st Respondents were successful in their action and the court below ordered the 2nd Respondent to pay them sums of money representing their terminal benefits. By agreement between the 1st and 2nd Respondents, the 2nd Respondents offered to sell to the 1st Respondents some

housing units that belonged to NAMBOARD in addition to or in lieu of the monies that had been awarded to the 1st Respondents as terminal benefits. As fate would have it, some of the housing units offered for sale to the 1st Respondents were occupied by the Appellants.

On the other hand, the Appellants at the time when these proceedings were being instituted were all either employees or former employees of the Zambia Cooperative Federation Limited and were occupying some of the housing units as tenants being employees of Zambia Cooperative Federation Limited. The Appellants sought to join the proceedings between the Respondents in order to assert their rights as sitting tenants to purchase those housing units. As has been pointed out by Counsel for the 1st Respondents, the proceedings before the court below concerned the entitlement to terminal benefits of the 1st Respondent (as former employees) from the 2nd Respondent (as their former employer). In other words this was a dispute between former employees and their former employer which was within the competence of the Industrial Relations Court to determine. In order for the Appellants to be joined as parties to this action, the Appellants ought to have shown that they have an interest in the subject matter of the action. The Appellants were not employees of the 2nd Respondent and did not have any