

**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT NDOLA**
(Civil Jurisdiction)

2024/HN/314

BETWEEN:

FELISTER MUSONDA (*Suing in her capacity
as Administratrix and Beneficiary of the estate
of the Late Victor Mupenda*)

PLAINTIFF

AND

REPUBLIQUE DEMOCRATIQUE DU CONGO

DEFENDANT

CONSULATE GENERAL (*Sued in the capacity as
employer of the deceased*)

***Before Hon. Justice G. Malumani in Open Court on the 31st
day of October, 2024***

For the Plaintiff: National Legal Aid Clinic for Women.

For the Defendant: N/A

R U L I N G

Cases Referred to:

1. *Godfrey Miyanda vs. The High Court S.C.Z. Judgment No. 5 of 1984.*
2. *Zambia National Holdings Limited and United National Independence Party (UNIP) vs. The Attorney-General (1994) S.J. 22 (S.C.).*

3. *Crossland Mutinta & Bashir Seed vs Donovan Chipanda SC2 Appeal No. 40 of 2016.*
4. *Boardroom Investment Limited (T/A Fairways Cafe) vs. Lusaka Golf Club Appeal No. 119 of 2019.*

Legislation Referred to:

1. *The Diplomatic Immunities and Privileges Act Chapter 20 of the Laws of Zambia.*

1.0 Introduction and Background

- 1.1 This matter was commenced on 2nd August 2024, against the Defendant. The Plaintiff seeks for payment of USD \$28,363.00 with Interest and costs.
- 1.2 The pleadings reveal that the Plaintiff is a daughter and administratrix of the estate of the late Victor Mupenda. He died intestate on the 5th June 2010. The deceased, at the time of his demise was an employee of the Defendant and worked as a Clerk from 2002 to 2010.
- 1.3 The Plaintiff has now taken out this action to pursue payment of employment benefits in the sum of USD\$28,363.00 from the Defendant. On file, there is an Affidavit of Service dated 21st August, 2024 confirming

that the Court process was properly served on the Defendant on 20th August, 2024. But there has been no reaction by the said Defendant.

2.0 **Analysis, Determination and Decision of the Court**

2.1 I have very carefully perused the Writ of Summons and Statement of Claim which has disclosed a cause of action against the Defendant, a Consular Office as by Law established. Therefore, this matter is before me for determination. Regarding the power of the Court to determine matters before it, the Supreme Court in the case of **Godfrey Miyanda vs. The High Court**¹ pronounced at page 64 as follows:

"The term "jurisdiction" should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognizance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the appropriate legislation. Such limits may relate to the kind

and nature of the actions and matters of which the particular court has cognizance or to the area over which the jurisdiction extends, or both."

2.2 Further, the Supreme Court made instructive observations on the question of jurisdiction in the case of **Zambia National Holdings Limited and United National Independence Party (UNIP) vs. The Attorney-General**².

The Supreme Court stated that:

"We recall a useful passage from the judgment of DIPLOCK, L.J., in Garthwaite v Garthwaite (1) at pages 241 to 242 where he said: "The High Court is the creation of statute, and its jurisdiction is statutory. As was pointed out by PICKFORD, L.J. in Guaranty Trust Co. of New York -v- Hannay & Co. at page 35 the expression "jurisdiction" of a court may be used in two different senses, a stick sense (which he regarded as the only correct one) and a wider sense. I think, with respect, that he defined the strict sense too narrowly, for it would not

embrace the court's lack of jurisdiction to entertain a suit based on the personality of a party, as for instance against a foreign sovereign or ambassador. However, it is important for the purposes of the present appeal to distinguish between the two senses in which the expression is used. In its narrow and strict sense, the "jurisdiction" of a validly constituted court connotes the limits which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process by reference (i) to the subject-matter of the issue, or (ii) to the persons between whom the issue is joined, or (iii) to the kind of relief sought, or any combination of these factors. In its wider sense it embraces also the settled practice of the court as to the way in which it will exercise its power to hear and determine issue which fall within its "jurisdiction" (in the strict sense), or as to the circumstances in which it will grant a

particular kind or relief which it has "jurisdiction" (in the strict sense) to grant, including its settled practice to refuse to exercise such powers or to grant such relief in particular circumstances. This distinction between the strict and the wider meaning of the expression 40 "jurisdiction" was of little importance in the case of the superior courts so long as they did not owe their origin to statute, for there was no need to distinguish between non-existence of a power and settled practice not to exercise an existing power. However, in the case of courts created by statute, as the Supreme Court of Judicature, comprising the High Court and the Court of Appeal, has been since 1873, the court has no power to enlarge its jurisdiction in the strict sense, but it has power to alter its practice proprio motu within the limits which it imposes on itself by the doctrine of precedent, subject, however, to any statutory rules regulating and prescribing its

practice and procedure made pursuant to any rule-making power contained in the statute.

"We would like to associate ourselves with the foregoing which we respectfully adopt. We also recall what was said in Miyanda v The High Court at page 64" (Underlining my emphasis)

2.3 The question prompted by the Pleadings is whether this court has Jurisdiction to hear and determine an action against the Consulate or like offices. The guidance of the Supreme Court in a plethora of authorities is that jurisdiction of the Court to hear and determine matters is everything. It is the gateway to the temple of justice. It must be acquired before a court can proceed to hear and determine a matter.

2.4 For instance, in the case of **Crossland Mutinta & Bashir Seed vs Donovan Chipanda**,³ the Supreme Court had this to say:

"The point should be made that where a statute sets out a condition precedent for a court to acquire jurisdiction (as was the case with section 23 of that case in the Subordinate

Court Act) (and as is now the case with section 19(1) of this case under the Act), it is incumbent upon the court, even if not moved by the parties, to ensure that the condition precedent is satisfied before embarking on hearing the matter." (Underlining my emphasis)

2.5 Furthermore, in the case of **Boardroom Investment Limited (T/A Fairways Cafe) vs. Lusaka Golf Club**⁴ it was held that:

"Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

2.6 Coming to the issue at hand, the Defendant is a Consulate. In Zambia, the **Diplomatic Immunities and Privileges Act Chapter 20 of the Laws of Zambia** is very instructive that a consulate and persons connected therewith enjoy immunity from suits and legal process in respect of things done or omitted to be done in the Course of the performance of their official duties. The issue of payment of employment benefits squarely falls within the

official duties of the Defendant and it is caught up by the said Act. The Consulate and its officers are insulated from legal process such as the present action. This is the principle the Supreme Court, by *obit dicta*, recognised in the case of **Zambia National Holdings Limited and United National Independence Party (UNIP) vs. The Attorney-General (Supra)** when it stated that:

***“I think, with respect, that he defined the strict sense too narrowly, for it would not embrace the court’s lack of jurisdiction to entertain a suit based on the personality of a party, as for instance against a foreign sovereign or ambassador.*”**

2.7 This immunity extends to enforcement of court judgments. Section 7 and 8 of the Diplomatic Immunities and Privileges Act confirms the foregoing in the following terms:

“7. Subject to the provisions of this Act, a consular officer and a consular employee (other than persons on whom immunities and privileges are conferred by virtue of section

three) shall be entitled to immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of his official duties as such, and to such inviolability of official archives and official correspondence as is necessary to comply with the terms of any treaty or other international agreement applicable to Zambia or as is recognised by the principles of customary international law and usage.

8. (1) The President may by order direct that this section shall apply to any State specified in the order, being a State with which a treaty or other international agreement applicable to Zambia is in force providing for matters for which provision is made by this section.

(2) Subject to the provisions of subsection (4), a consular office of a State to which this section applies shall not be entered by a police officer or other person acting in the execution of any warrant or other legal process or in the exercise

of a power of entry under any written law,
except with the consent of the consular officer
or of his nominee or, if that consent is withheld
or cannot be obtained, with the consent of the
Minister:

Provided that this subsection shall not apply to any consular office which for the time being is in charge of a consular officer who is a citizen of Zambia or is permanently resident in Zambia.

(3) The consent of a consular officer or person referred to in subsection (2) shall be presumed in the event of fire or other disaster or in the event that the police officer has reasonable cause to believe that a crime involving violence has been or is being or is about to be committed in the consular office.

(4) In this section, "consular office" means any building or part of a building which is occupied exclusively for the purposes of the official

business of a consular officer. (Underlining my emphasis)

- 2.8 With the above provision of Law and applying the guidance of the Supreme Court in the case of **Zambia National Holdings Limited and United National Independence Party (UNIP) vs. The Attorney-General (Supra)** that:

“The jurisdiction of the High Court on the other hand is not so limited; it is unlimited but not limitless since the court must exercise its jurisdiction in accordance with the law.”

It is thus very safe to hold that the jurisdiction of the High Court of Zambia in this circumstance, is limited by the Diplomatic Immunities and Privileges Act cited above. As such this court has no jurisdiction to entertain and determine the matter.

3.0 **CONCLUSION AND ORDERS**

- 3.1 Granted that the Defendant is a Consulate exempted from jurisdiction of this Court under Section 7 and 8 of the Diplomatic Immunities and Privileges Act, Chapter 20 of the Laws of Zambia, this Court has no more to do and will not proceed further. Aptly put, a Consulate just like an Embassy or High Commission office is a state within a

state. Even enforcement by execution would not be amenable. I, therefore, dismiss this matter for want of jurisdiction on the part of Court.

3.2 Seeing that the matter has been dismissed at the industry of the Court, I order that each part shall bear their own costs incidental to the proceedings if any at this stage.

3.3 Leave to Appeal is unreservedly granted.

DELIVERED AT NDOLA THIS 31ST DAY OF OCTOBER, 2024



G. MALUMANI

HIGH COURT JUDGE

