

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

**CAZ/08/21/2020**  
**Appeal No. 151 of 2020**

**BETWEEN:**

**TULANI CHISENGA**

**AND**

**MTN ZAMBIA LIMITED**

**KEITH KWALELA KHUZWAYO**



**APPELLANT**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

***Coram: Mchenga, DJP, Chishimba and Sichinga, JJA.***

***On 20<sup>th</sup> January, 2021 and 26<sup>th</sup> February 2021***

*For the Appellant:*

*Mr. T. S. Milimo of Messrs Levy  
Mwanawasa and Company*

*For the 1st Respondent:*

*Mr. S. Chisanga of Messrs Corpus Legal  
Practitioners*

*For the 2nd Respondent:*

*N/A*

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## **JUDGMENT**

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**Sichinga, JA** delivered the Judgment of the Court.

Cases referred to:

- 1. Bishopsgate Motor Finance Corporation Limited v Transport Brake Limited (1949) 1 KB 322***
- 2. Lewis v Avery (1972) 1 QB 198***

3. *Turnkey Properties v Lusaka West Development Company Ltd., B.S.K. Chiti (Sued as Receiver) and Zambia State Insurance Corporation Ltd*<sup>3</sup> (1984) Z.R. 85
4. *African Supermarkets T/A Shoprite Checkers v Bether Mumba and Another Appeal No. 48 of 2018*
5. *Amiran Limited v Bones (Appeal No. 42/2010) [2016]*
6. *Finance Bank Zambia Ltd v Dimitrios Monokandilo Filandria Kouri (2012) Z.R. 484, Volume 1*
7. *Hadmar Production Limited v Halmiton (1983) 1 AC 191*
8. *Barclays Bank Plc V Zambia Union of Financial Institution and Allied Workers (2007) Z.R. 106*
9. *GDC Logistics Zambia Ltd v. Joseph Kanyata and 13 Others S.C.Z Judgment No.17 of 2017*
10. *Victor Zimba V Elias Tembo, Lusaka City Council and Commissioner of Lands- CAZ Appeal No. 26 of 2016*

Legislation referred to:

1. *Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia*
2. *The Sale of Goods Act of 1893*

## **1.0 Introduction**

- 1.1 This appeal is against a ruling of the Industrial Relations Division of the High Court (M. K. Chisunka J) dated 4<sup>th</sup> December, 2019 (hereafter ‘the Ruling’). The court below in the said Ruling granted the 1<sup>st</sup> respondent’s application for an interim order attaching a motor vehicle, an Isuzu KB300, registration number BAB 7754 (hereafter “the

subject motor vehicle”), pending final determination of the matter or until further order of the court.

## **2.0 Background**

2.1 The 2<sup>nd</sup> respondent herein (complainant in court below) filed a complaint against the 1<sup>st</sup> respondent, his former employer on 19<sup>th</sup> December, 2019, in the Industrial Relations Division of the High Court, claiming the following reliefs:

- a) Damages for wrongful and/or unlawful dismissal;
- b) Payment for accrued leave days;
- c) An order that the motor vehicle, Isuzu KB300, BAB 7754 was wrongly taken by the 1<sup>st</sup> respondent from the 2<sup>nd</sup> respondent; and
- d) Damages for loss of use of the said motor vehicle.

2.2 In October, 2018, MTN, the 1<sup>st</sup> respondent applied for an order of interim attachment of property. On 25<sup>th</sup> October 2018, the court below ordered the 2<sup>nd</sup> respondent to deliver possession of the motor vehicle to the 1<sup>st</sup> respondent’s head office at Foxdale, Lusaka for its custody and preservation until final determination of the matter. The 2<sup>nd</sup> respondent had to comply with the order within seven (7) days’ of the order. The 2<sup>nd</sup> respondent did not comply with this order.

2.3 The appellant then applied to be joined to the action as intervener and to discharge the custody and prevention order on the basis that she owned the motor vehicle. The lower court having found that the appellant had a similar interest in the subject motor vehicle as the other parties, that is, a claim for its ownership, made an order joining the appellant as a party to the action.

2.4 However, the learned Judge refused to discharge the custody and prevention order on the basis that it was necessary to sustain it to ensure the safety and prevention of the vehicle until such a time that a final decision was made. The appellant did not deliver possession of the vehicle and the 1<sup>st</sup> respondent then applied for an order for interim attachment of the motor vehicle pursuant to **sections 34 and 55 of the Industrial and Labour Relations Act.**<sup>1</sup>

2.5 In support of the application, the 1<sup>st</sup> respondent relied on affidavit evidence to the effect that absolute ownership of the motor vehicle vests in itself, and ownership has not been transferred to the 2<sup>nd</sup> respondent, as he still owes the 1<sup>st</sup> respondent the sum of ZMW703,685.28 in respect of the said vehicle.

2.6 It was stated further that the application was intended to give effect to the custody and prevention order which was extended to the appellant by virtue of the lower court's order joining her to the proceedings. That the appellant

having refused the 1<sup>st</sup> respondent's demand to give up possession of the motor vehicle, the 1<sup>st</sup> respondent required the assistance of the Sheriff of Zambia and/or Zambia Police to retrieve the vehicle in accordance with the custody and prevention order through a warrant of attachment of property.

- 2.7 The 1<sup>st</sup> respondent referred to the appellant's affidavit in support of summons for her application to be joined as intervener, where she stated that she intended to auction the motor vehicle to Auction Tace Zambia Limited and as such, there was sufficient threat of an intention to dispose of the motor vehicle and its attachment was necessary to prevent the court from rendering an academic judgment in relation to the vehicle.
- 2.8 In opposing the application, the appellant deposed in her affidavit in opposition that she was in possession of the certificate of registration of the subject motor vehicle and it belonged to her. She stated that she would be highly prejudiced and deprived of the use of her vehicle, if it was retrieved in accordance with the custody and preservation order.
- 2.9 She deposed further that if the application was granted, the *status quo* would not be maintained. Instead, it would tilt in the 1<sup>st</sup> respondent's favour and it was in the interest of justice to maintain the *status quo*. That the court's custody and prevention order was not capable of

being enforced against the appellant because it was directed to the 2<sup>nd</sup> respondent, and that the said order was superseded by the fact that the motor vehicle was sold to her.

### **3.0 Decision on application for interim attachment**

3.1 The learned Judge in the lower court noted that in his complaint, the 2<sup>nd</sup> respondent sought a declaration that the motor vehicle was wrongly taken away from him, and damages thereon. The Judge stated in this regard that it was clear that the motor vehicle is property that is in dispute and this dispute can only be determined through a final judgment or order of the court.

3.2 Considering that the 2<sup>nd</sup> respondent purportedly sold the vehicle to the appellant notwithstanding that he was well aware that the subject vehicle was entangled in court proceedings in an action that he commenced seeking an order pertaining to the vehicle, the lower court was of the view that the circumstances of the said sale demonstrated an intention on the part of the 2<sup>nd</sup> respondent to obstruct the course of justice.

3.3 The court also referred to affidavit evidence on record relating to the appellant's intention to auction the subject vehicle, which evidence the appellant did not challenge. On this basis, the learned Judge made an inference that this revealed an intention on the part of the 2<sup>nd</sup>

respondent to dispose the motor vehicle through an auction and remove it from the court's reach. As such, the learned Judge concluded that the motor vehicle could be disposed of or removed from the jurisdiction of the court, if it was not attached before final judgment.

3.4 As regards the appellant's argument that the custody and preservation order could not be enforced against her as it was directed towards the 2<sup>nd</sup> respondent before she was joined to the action, the position of the lower court was that the effect of joining the appellant to the action was to attach her to all matters relating to the subject vehicle, including the custody and preservation order. The learned Judge therefore dismissed this argument for lack of merit.

3.5 The court below equally disagreed with the appellant's submission that granting the application for interim attachment would be taking her property away from her, as the said property's ownership was in dispute long before she acquired its possession. That it was this disputed ownership that the court would make its determination on the basis of evidence to be adduced by the parties.

3.6 The learned Judge in the court below was of the view that in the circumstances of this case, it was just and convenient to preserve the subject vehicle until final

determination of the matter and avoid any inconsequential judgment being rendered. He therefore allowed the application for interim attachment of the subject motor vehicle.

#### **4.0 The appeal**

4.1 The appellant being dissatisfied with the High Court's ruling, lodged this appeal before us on the following grounds:

- 1. The Honourable High Court Judge misdirected himself in law and fact when he elected to disregard the fact that the appellant had purchased the motor vehicle from the 2<sup>nd</sup> respondent in good faith and with no notice of any defect of title or notice of on-going proceedings before the custody and preservation order was issued notwithstanding the fact that the appellant had provided proof of ownership in the Court below;*
- 2. The Honourable High Court Judge misdirected himself in law and fact when he found that the appellant's communication with the auctioneers revealed an intent on the part of the appellant to dispose of the vehicle through auction and remove it from the Court's reach without considering the fact that at the material time, the appellant believed that the motor vehicle was hers at she was at liberty to do as she pleased with her motor vehicle;*
- 3. The Honourable High Court Judge misdirected himself in law and fact when he gave an order attaching the motor vehicle notwithstanding the fact that the*

*appellant will be severely prejudiced as she has been in possession of the motor vehicle since 17<sup>th</sup> March 2018 and will be deprived of possession and use of her motor vehicle;*

*4. The Honourable High Court Judge misdirected himself in law and fact when he ordered the attachment of the motor vehicle notwithstanding the fact that the appellant and 1<sup>st</sup> respondent are both equal claimants of the motor vehicle and that the status quo will shift to favour the 1<sup>st</sup> respondent; and*

*5. The Honourable Judge misdirected himself in law and fact by granting the interim attachment order attaching the motor vehicle when in fact an earlier order for custody and preservation had been granted and ignored by the 2<sup>nd</sup> respondent.*

## **5.0 Appellant's arguments on appeal**

5.1 In support of this appeal, the appellant filed heads of argument dated 3<sup>rd</sup> April, 2020 and submitted with respect to the first ground of appeal that at the time of the sale of the subject motor vehicle, she acted in good faith as she was unaware of the fact that the 1<sup>st</sup> respondent was the absolute owner of the motor vehicle. On that basis, she proceeded to pay the purchase price without notice of any defect of title or that the vehicle was entangled in court proceedings.

5.2 The appellant then proceeded to cite a number of authorities relating to instances where a buyer can acquire good title when the seller's title is questionable. In this regard, **sections 21(2) and 23 of the Sale of Goods Act<sup>2</sup>** were quoted. The appellant also referred to the case of ***Bishopsgate Motor Finance Corporation Limited v Transport Brake Limited<sup>1</sup>*** as well as ***Lewis v Avery<sup>2</sup>***. We will not reproduce the portions of the provisions of these authorities relied on by the appellant, for reasons we shall state later.

5.3 The appellant further pointed out that the sale of the motor vehicle took place on 17<sup>th</sup> March, 2018, while the custody and preservation order was granted on 25<sup>th</sup> October, 2018, long after the vehicle had passed title to a third party. It was submitted on this basis that the lower court erred when it refused to discharge the custody and preservation order, as the said order was directed to the 2<sup>nd</sup> respondent and was superseded by the sale of the subject vehicle to the appellant, who purchased it in good faith before the issuance of the court order.

5.4 In addition, the appellant submitted that despite producing a motor vehicle registration certificate which is in her name, to establish that she is the rightful owner, the court below misapprehended these facts

and proceeded to order attachment of the motor vehicle.

5.5 In support of the second ground of appeal, the appellant's contention was that the learned Judge in the lower court misapprehended facts by stating that the appellant's communication with Auction Tace Zambia Limited revealed an intent on her part to dispose of the motor vehicle through auction and remove it from the court's reach when in fact she only became aware of the proceedings through the auctioneers when she approached them, at which time she had been in possession of the said vehicle for about a year and a half.

5.6 The appellant stated further that at the time of the intended auction, she honestly believed that the motor vehicle was hers and it was not until she approached the auctioneers that she became aware that the motor vehicle was entangled in court proceedings.

5.7 The third and fourth grounds were argued together. In support thereof, the appellant repeated her earlier submission that she purchased the motor vehicle in March, 2018 and she provided proof of ownership in the lower court. She added that she had since been servicing the vehicle and insuring it in her name, and that the court order subject of this appeal was

prejudicial to her as it sought to take away her possession and use of the motor vehicle which rightly belongs to her.

5.8 The appellant contended further that the order of the court below gave the 1<sup>st</sup> respondent possession of the motor vehicle and access to use it, despite the two being equal claimants to the vehicle and as such, there was a bias leaning towards one party in the lawsuit and the appellant will be deeply prejudiced. The appellant concluded by stating that if the order of the lower court was upheld, the *status quo* would shift in favour of the 1<sup>st</sup> respondent. On this premise, we are urged to allow ground 4 of the appeal.

5.9 The main argument advanced by the appellant in support of the fifth ground of appeal is that it was a misdirection on the part of the learned Judge in the court below to proceed to order an attachment of the motor vehicle which was no longer in the 2<sup>nd</sup> respondent's possession, following his sale of the vehicle to the appellant. That the lower court should have considered the fact that the 2<sup>nd</sup> respondent at the time did not comply with the custody and preservation order as he had already sold the motor vehicle to the appellant.

## **6.0 1<sup>st</sup> respondent's arguments on appeal**

6.1 In opposing this appeal, the 1<sup>st</sup> respondent filed heads of argument on 8<sup>th</sup> May, 2020, on which it relied upon entirely. In response to the first ground of appeal, Mr. Chisenga submitted mainly that the appellant's arguments in support of the first ground go to the question of ownership of the motor vehicle, on which the court below was yet to make a determination at trial, as it could not do so at an interlocutory stage. The case of ***Turnkey Properties v Lusaka West Development Company Ltd., B.S.K. Chiti (Sued as Receiver) and Zambia State Insurance Corporation Ltd***<sup>3</sup> was relied on, where the Supreme Court considered the effect of interlocutory matters and held as follows:

***“It is improper for a Court hearing an interlocutory application to make comments which may have the effect of pre-empting the decision of the issues which are to be decided on the merits at trial. An interlocutory intimation should not be regarded as a device by which an applicant can attain or create new conditions favourable only to himself.”***

6.2 On this basis, counsel submitted that proof of any alleged legal acquisition of the vehicle by the appellant, or any other party in the proceedings, must be examined by the court at trial, where the parties must be given the opportunity to test the cogency of the evidence adduced through cross-examination.

6.3 In opposing the second ground of appeal, the 1<sup>st</sup> respondent submitted that this ground should be dismissed because it challenges a finding of fact made by the court below, contrary to **section 97 of the Industrial and Labour Relation Act**, which prohibits an appeal on a finding of fact as follows:

**“Any person aggrieved by any award, declaration, decision or judgment of the Court may appeal to the Supreme Court on any point of law or any point of mixed law and fact.”**

6.4 Further, the cases of **African Supermarkets T/A Shoprite Checkers v Bether Mumba and Another<sup>4</sup>** and **Amiran Limited v Bones<sup>5</sup>** were cited. We are quoted as having stated in the former case that:

**“The appellant is essentially asking us to interfere with this finding of fact. It is settled law that section 97 of the Industrial and Labour Relations Act prohibits appealing against findings of fact of the Industrial and Labour Relations Court, now a division of the High Court. According to the section, appeals should be on any point of law or any point of mixed law and fact. See our decision in *Mulambo Mazila Hamene Mukando v African Life Assurance Co. Zambia Ltd.*” Even without the restriction in section 97, it is trite that as an appellate Court, we can only**

***interfere with the findings of a trial Court if they are perverse, not supported by evidence or the trial Judge misapprehended the facts.”***

6.5 The said finding of fact, according to the 1<sup>st</sup> respondent, was that ‘*the appellant communicated with an auction company and had demonstrated an intention to dispose of the vehicle*’. That this finding of fact was arrived at because the appellant did not challenge the 1<sup>st</sup> appellant’s evidence. It was submitted, on this basis, that it is trite law that failure to challenge relevant evidence amounts to an acceptance of the unchallenged evidence.

6.6 With regards to the ***Amiran***<sup>4</sup> case, it was submitted that the Supreme Court dismissed two grounds of appeal on the basis that they were based on points of fact only.

6.7 Alternatively, the 1<sup>st</sup> respondent argued that should we be inclined to consider the second ground of appeal on its merits, we should consider that the appellant effectively admitted having the intention to auction the motor vehicle firstly by her own affidavit evidence in support of her application to be joined as intervener and secondly, by her failure to challenge the 1<sup>st</sup> respondent’s contention in this regard. That as such, the lower court cannot be faulted for arriving at the conclusion that it arrived at.

6.8 In response to the third and fourth grounds of appeal, the 1<sup>st</sup> respondent started by submitting that the lower court properly exercised its discretion by granting the order for interim attachment of property, in accordance with **section 55 of the Industrial and Labour Relations Act**, which provides that:

**“Nothing in these Rules shall be deemed to limit or otherwise affect the power of the 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.”**

6.9 Counsel also cited the cases of **Finance Bank Zambia Ltd v Dimitrios Monokandilo Filandria Kouri**<sup>6</sup> and **Hadmar Production Limited v Halmiton**<sup>7</sup> on the issue of the function of an appellate court on appeal against a court’s decision in respect of a discretionary remedy. The 1<sup>st</sup> respondent submitted on this basis that as regards discretionary orders, the function of this Court is one of review, only to determine whether the exercise of the discretion of the court below was wrong in principle.

6.10 Mr. Chisenga argued further that this Court is precluded from setting aside the lower court’s decision merely because the members of the appellate Court would have exercised the discretion differently. In this

regard, counsel argued that the appellant has not demonstrated any alleged errors by the court below in the exercise of its discretion in granting the order for interim attachment of the vehicle.

6.11 In response to the appellant's contention that she will be prejudiced if deprived of possession of the vehicle which she has been using since 2018, counsel submitted on behalf of the 1<sup>st</sup> respondent that the appellant is implying, without evidence that the 1<sup>st</sup> respondent will start using the vehicle if it is parked at the 1<sup>st</sup> respondent's premises. That if the appellant had a concern in relation to the place where the vehicle would be parked, she should have proposed an alternative place in the lower court as opposed to appealing against the entire decision that attached the vehicle.

6.12 The 1<sup>st</sup> respondent's response to ground five was that the 2<sup>nd</sup> respondent's disobedience of the custody and preservation order is not a bar to the 1<sup>st</sup> respondent being granted an order for interim attachment of property. As regards the appellant's contention that the lower court misdirected itself by proceeding to make an order for interim attachment of the vehicle despite it having been sold to the appellant, the 1<sup>st</sup> respondent submitted again that the lower court has not made a determination as to whether title actually passed to the

appellant, as this is a matter reserved for determination at trial. Counsel urged us to dismiss the appeal in its entirety.

## **7.0 Decision on appeal**

- 7.1 Having examined the Ruling of the lower court that is subject to this appeal and after considering the arguments in support of and in opposition of this appeal, we will now proceed to determine the appeal.
- 7.2 In relation to the first ground of appeal, it appears that the appellant is aggrieved that the learned Judge in the court below did not consider evidence on record to the effect that she purchased the subject vehicle from the 1<sup>st</sup> respondent, given that this alleged sale took place even before the custody and preservation order was granted.
- 7.3 If we are to entertain this argument relating to the recognition of the appellant's claim of right to the subject vehicle, we might as well acknowledge that in like manner, the record appears to show that the 1<sup>st</sup> respondent has equally asserted its right of absolute ownership of the motor vehicle on the premise that the 2<sup>nd</sup> respondent did not fully settle the outstanding balance of ZMW703,685.28 in respect the vehicle, and his employment has since been terminated. We are aware that at this stage, we are not dealing with the



substantial issues in dispute for determination by the lower court.

7.4 It is evident, and quite obvious that all the parties to this action are asserting, in one way or another, ownership of the motor vehicle that is subject to the proceedings in the court below. However, the objective of the application for an order of interim attachment of property was not to establish who the rightful owner of the vehicle was or who was best suited to retain its possession, as the ownership of the vehicle is one to be determined in the main matter, at trial. The lower court, at page R9 of its ruling, phrased the question for determination as follows:

***“The question, therefore, is whether in this case it is necessary to make an interim order attaching the Isuzu KB 300 pending a final determination in the main action.”***

7.5 In our view, this question was correctly stated, as the Judge’s obligation was to determine whether the facts revealed appropriate circumstances justifying the granting of an order for interim attachment, pending determination of the matter.

7.6 The learned Judge in the court below then went ahead to make his findings on the question for determination, stating the basis for his conclusions as we have set out earlier in this judgment at paragraphs 3.1 to 3.6 above.

In order to assail the findings of the lower court in this regard, it would have been more prudent for the appellant to challenge the basis upon which the Judge made those findings, rather than to assert her right of ownership of the vehicle, which was not in issue in the application before the lower court.

7.7 We are inclined to agree with the 1<sup>st</sup> respondent's submission that the issue of principles of law surrounding a third party's acquisition of property from a person that may or may not have title did not arise in the application before the lower court, nor does it arise in this appeal. It is for this reason, as we stated earlier in paragraph 5.2 above, that we did not reproduce all the legal provisions and authorities cited by the appellant in support of its claim of ownership of the vehicle. We therefore do not fault the learned Judge in the court below for paying no mind to the appellant's evidence asserting ownership of the vehicle as the same had no relevance to the application for interim attachment.

7.8 The appellant is equally precluded from advancing arguments relating to the lower court's refusal to discharge the custody and preservation order, as that was not the subject of the application on which the lower court's Ruling that is subject to this appeal was

premised. We find no merit in the first ground of appeal and we accordingly dismiss it.

7.9 With respect to the second ground of appeal, the 1<sup>st</sup> respondent strongly believes this ground should be dismissed as it is entirely challenging the lower court's finding of fact that *'the appellant communicated with an auction company and had demonstrated an intention to dispose of the vehicle'*.

7.10 A reading of the appellant's submissions in support of this ground suggests to us that the appellant is not disputing having attempted to sell the motor vehicle *via* auction. She contends, however, that she could not have done so with the intention to remove it from the court's reach, as at that time, she believed that the vehicle was hers and she could do as she pleased with it. It is to this extent that she alleges that the Judge misapprehended the facts when he made that finding.

7.11 Findings of fact may indeed be reversed by an appellate court in appropriate circumstances, one of which is if they were arrived at on the basis of a misapprehension of facts. We acknowledged this position in ***African Supermarkets T/A Shoprite Checkers v Bether Mumba and Another Appeal*** *supra* cited at paragraph 6.4 above. This is what the appellant is contending in this ground, in an attempt to persuade

us to reverse the finding of fact in question on the premise that it was made upon a misapprehension of facts. On this basis, we will proceed to determine this ground on its merits.

7.12 The appellant is basically arguing that she did not have the intention to remove the vehicle from the reach of the court at the time she intended to auction the subject vehicle. We have examined the appellant's affidavit in opposition of summons for an order of interim attachment of property dated 30<sup>th</sup> October 2019. This argument was not raised in the court below and it is being raised for the first time in this appeal.

7.13 It is trite law that issues not raised in the lower court cannot be raised on appeal. The Supreme Court case of ***Barclays Bank Plc V Zambia Union of Financial Institution and Allied Workers***<sup>8</sup> is instructive in this regard, amongst other authorities. We are in no position to know how the lower court would have applied this argument, as it did not have the opportunity to analyse it since the appellant did not raise it in the court below.

7.14 Suffice to say that we hold the view that it is sufficient that there was an attempt to sale the vehicle by the appellant, and this is a source of concern for a potential disposal of the vehicle, hence the necessity of

the interim attachment order. We also endorse the position of the lower court that the ownership of the subject motor vehicle was in question long before the appellant acquired possession thereof. On this basis, we dismiss the second ground of appeal.

7.15 We will now address the third and fourth grounds of appeal. Under the third ground, the appellant seems to suggest that the learned Judge in the court below should have considered how inconveniencing an order for attachment would be on herself, as she has been in possession and use of the vehicle since 2018. There is no legal basis upon which this position is premised, as the order of attachment has the effect of suspending the rights or alleged rights of the parties to the proceedings until final determination of who the legal ownership of the vehicle.

7.16 The Supreme Court held in ***GDC Logistics Zambia Ltd v. Joseph Kanyata and 13 Others***<sup>9</sup> that the Industrial Relations Court lacks jurisdiction to make an order of interim attachment as a final order in the proceedings under the *Act*. That was not the intention of the lower court, as it stated categorically at page R13 of the Ruling that *'the said interim order of attachment is granted pending final determination of the matter or until final order of this Court.'*

- 7.17 In addition, the order of the lower court did not and does not transfer ownership or possession of the vehicle to the 1<sup>st</sup> respondent, as that is not the legal effect of an order for interim attachment of property. In any event, the 1<sup>st</sup> respondent equally has a claim to the vehicle and it can also be said that the 1<sup>st</sup> respondent has been inconvenienced and deprived of its possession and use since the 2<sup>nd</sup> respondent's employment was terminated.
- 7.18 It is therefore not a question of convenience, but one of avoiding disposal of property that is subject to proceedings by any party claiming to have an interest in it, including the 1<sup>st</sup> and 2<sup>nd</sup> respondent's, who are also legally barred from use and disposal of the vehicle until judgment or any further order of the court.
- 7.19 As submitted by the 1<sup>st</sup> respondent counsel, in response to the third ground of appeal, our duty as an appellate court in a matter such as this one where the propriety of a discretionary order granted by a lower court is in question is one of review and not substituting our own discretion for that of the lower court. We stated this in ***Victor Zimba v Elias Tembo, Lusaka City Council and Commissioner of Lands***.<sup>10</sup>
- 7.20 Having examined the basis upon which the lower court made the decision to order interim attachment of the

subject vehicle, we hold the view that the lower court's discretion was exercised judiciously. In any event, the appellant has not alleged any error in the exercise of the lower court's discretion, other than prejudice or inconvenience to herself, which is not a primary consideration in an application for interim attachment of property. We find that the third and fourth grounds of appeal are unmeritorious, and we dismiss them.

7.21 Turning to the fifth ground of appeal, we fail to appreciate the legal or even factual basis of this ground of appeal. At the time of the determination of the application for interim attachment, the appellant was already a party to the proceedings. The fact that the 2<sup>nd</sup> respondent did not comply with the order for custody and preservation could not and should not deter the 1<sup>st</sup> respondent from securing its interest and preventing disposal of the subject vehicle. This argument has no relevance to the circumstances in which an order of interim attachment may be properly granted. It does not challenge the decision of the lower court in any material way. We equally dismiss this ground for lack of merit.

**8.0 CONCLUSION**

8.1 For the reasons set out above, we find that this appeal lacks merit and we accordingly dismiss it with costs to the 1<sup>st</sup> respondent.



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*C.F.R Mchenga*

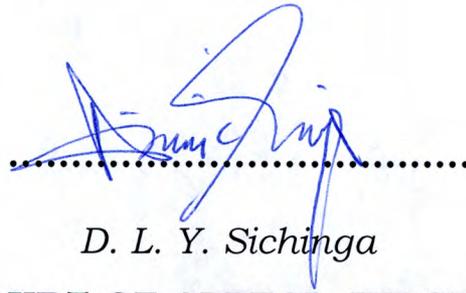
**DEPUTY JUDGE PRESIDENT**



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*F. M. Chishimba*

**COURT OF APPEAL JUDGE**



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*D. L. Y. Sichinga*

**COURT OF APPEAL JUDGE**