



**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**BETWEEN:**

**STANBIC BANK ZAMBIA LIMITED**

**APPLICANT**

**AND**

**BRUCE MWEWA**

**RESPONDENT**

**CORAM: Chashi, Lengalenga and Majula, JJA**

**ON: 20<sup>th</sup> January and 31<sup>st</sup> March 2021**

*For the Applicant: L. Mwamba, Messrs Simeza Sangwa and Associates*

*For the Respondent: C. M. Sianondo, Messrs Malambo and Company*

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# **R U L I N G**

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**CHASHI, JA** delivered the Ruling of the Court.

**Cases referred to:**

- **Bidvest Food Zambia Limited and 4 Others v CAA Import and Export Limited - SCZ Appeal No. 50 of 2017**

**Legislation referred to:**

- **The Court of Appeal Act, No. 7 of 2016**

**1.0 INTRODUCTION**

1.1 This motion is for leave to appeal to the Supreme Court against the Judgment of the Court delivered on 23<sup>rd</sup> October 2020.

**2.0 THE MOTION**

2.1 The motion is by way of Notice made pursuant to Section 13 (1) and (4) of **The Court of Appeal Act (CAA)** and is accompanied by an affidavit.

2.2 The intended grounds of appeal are couched as follows:

- (1) That the Court of Appeal erred on a point of law and fact by holding that no VAT would accrue on the settlement as the

supply under the lease agreement was prematurely terminated;

(2) The Court of Appeal erred on a point of law and fact by holding that the Appellant breached the contract between the parties; and

(3) The Court of Appeal erred in law and fact by holding that the High Court was on firm ground when it awarded damages for breach of contract and general damages.

2.3 In the aforestated affidavit, the Applicant has indicated that the main ground of the intended appeal is the first ground as the second and third grounds are dependant on the outcome on the first ground.

2.4 According to the Applicant the intended appeal raises a point of law of public importance and has a reasonable prospect of success, in accordance with Section 13 (3) and (c) **CAA**.

### **3.0 OPPOSITION**

3.1 In opposing the motion, the Respondent filed an affidavit in opposition and arguments. It is the Respondent's argument

that the intended grounds of appeal fall short of the minimum threshold provided for under Section 13 (3) **CAA** as they are mainly an expression of mere unhappiness and therefore, they do not warrant the exercise of jurisdiction of the Supreme Court.

3.2 According to the Respondent, it is patently clear that the lease agreement between the parties provided all the situations and consequences of an accident.

That the only issue remaining for the Applicant is to go to Zambia Revenue Authority and reclaim the VAT which was paid. That certainly, that is not an issue which the Supreme Court should be called upon to determine.

#### **4.0 CONSIDERATION AND DECISION OF THE COURT**

4.1 We have considered the motion, affidavit evidence and the arguments by the parties. The contention by the Applicant is that the intended appeal raises a point of law of public importance and has a reasonable prospect of success.

- 4.2 In arriving at our decision, we have taken into consideration the guidelines enunciated in the Supreme Court case of **Bidvest Food Zambia Limited and 4 Others v CAA Import and Export Limited** as regards consideration of applications for leave to appeal decisions of the Court of Appeal to the Supreme Court.
- 4.3 We note that the first ground of appeal is a recast of what was before us as the first and fourth grounds of appeal in respect to the High Court Judgment. In arriving at our decisions in our Judgment of 23<sup>rd</sup> October 2020, we took into consideration the provisions of the Vehicle and Asset Finance Interim Agreement, the Value Added Tax Act and the advice from Zambia Revenue Authority that VAT was not chargeable.
- 4.4 We therefore see no reasonable prospect of success of the intended appeal. And having made all the necessary interpretations, we do not see any issue needing further interpretation by the Supreme Court. in that respect we do not see any point of law of public importance which has been raised by the Applicant.

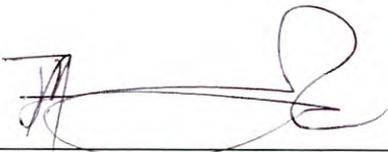
4.5 In the view that we have taken, this is not a proper case for granting the Applicant leave to appeal to the Supreme Court. the same is accordingly refused.

Costs to the Respondent to paid forthwith. In default of agreement, the costs are to be taxed.



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**J. CHASHI**  
**COURT OF APPEAL JUDGE**



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**F. M. LENGALENGA**  
**COURT OF APPEAL JUDGE**



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**B. M. MAJULA**  
**COURT OF APPEAL JUDGE**