

HOLDEN AT KABWE

(CIVIL JURISDICTION)

BETWEEN:

MUSUNKA SILUNGWE

APPELLANT

AND

ZAMBIA INSTITUTE OF ARCHITECTS

RESPONDENT

CORAM: Wood, Kajimanga and Musonda, JJS.

On 1st August, 2017 and 14th August, 2017.

For the Appellant: No Appearance

For the Respondent: No Appearance

JUDGMENT

Wood, JS, delivered the Judgment of the Court.

Legislation referred to:

- (1) *Section 34 of The Zambia Institute of Architects Cap 442 of the Laws of Zambia*

This is an appeal against a decision of the High Court which dismissed the appellant's application for leave to apply for judicial review of a decision made by the Respondent's Council not to

accept proxies at an annual general meeting held in Lusaka on 29th November, 2013.

The facts leading to this appeal are not in dispute. The appellant is an architect and a member of the Zambia Institute of Architects (“the Institute”). He decided to stand as President of the institute in 2013. In furtherance of his ambition to do so he garnered ten proxies in preparation for his bid to stand as President of the Institute. The proxies were however rejected and as a result he lost the elections even though he had the highest number of votes when the proxies were taken into consideration.

The appellant decided to challenge the procedure adopted by the Council during the election by way of judicial review. The learned Judge rejected the application for leave to apply for judicial review primarily because according to her, the appellant had not exhausted the appellate process as Section 34 of the Zambia Institute of Architects Cap 442 of the Laws of Zambia provides for any person aggrieved by a decision of the Council to appeal to the Minister within 30 days.

Dissatisfied with this decision, the appellant has appealed to this court on one ground namely, that the learned judge erred in law and infact and misinterpreted the law in her ruling of 1st August, 2014 when she relied upon and based her judgment on the basis of section 34 of the Zambia Institute of Architects Act, a section which had no application at all to the matter before the said learned judge.

The appellant has argued that section 34 of the Zambia Institute of Architects Act relates to the registration of architects and has nothing to do with voting by proxy for President of the Institute. The appellant's argument stems from the fact that section 34 of the Act provides that:

"A person aggrieved by a decision made by the council under this part may within thirty days appeal to the Minister."

Part IV of the Act under which section 34 falls, deals with the registration of architects and it is divided into sections dealing with registration, qualification and disqualification of architects, exemption from registration, cancellation of practicing certificates and section 34 in particular, deals with appeals relating to the various matters dealt with in Part IV of the Act. The learned

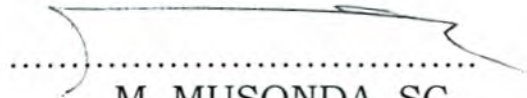
judge interpreted section 34 to include even the conduct of elections by the Council as being subject to an appeal to the Minister. We have no hesitation in agreeing with the appellant that it was a misdirection on the part of the learned judge to rely on Part IV of Cap 442 as the basis for dismissing the appellant's application for leave to apply for judicial review. Section 34 of the Act makes it clear that any person aggrieved by the Council "under this Part" may within thirty days appeal to the Minister. Section 34 refers to Part IV of Cap 442. A perusal of Part IV shows that it does not deal with the conduct of elections for members of the Institute. As indicated earlier, it deals in broad terms with the registration of architects and should not have been relied upon as a basis for rejecting the application for leave to apply for judicial review. We accordingly allow the appeal, set aside the ruling and order that this matter be remitted to the High Court for hearing before another Judge. Costs shall abide the outcome of the proceedings in the court below.



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A.M.WOOD
SUPREME COURT JUDGE



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C. KAJIMANGA
SUPREME COURT JUDGE



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M. MUSONDA, SC
SUPREME COURT JUDGE