

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

SCZ/8/76/1992



BETWEEN:

VANSON GIBSON MUMBA

APPELLANT

AND

**OFFICE OF THE ATTORNEY GENERAL
MINISTRY OF JUSTICE**

1ST RESPONDENT

**OFFICE OF MADAM I. LAMBA (MRS.)
MESSRS CHONGO, MANDA AND ASSOCIATES**

2ND RESPONDENT

**OFFICE OF GENERAL SECRETARY NATIONAL
UNION OF TRANSPORT ALLIED (NUTAW)**

3RD WITNESS

CORAM: Malila, Kaoma and Kajimanga JJS

On 1st December 2020 and 7th December 2020

For the Appellant:	In person
For the 1st Respondent:	Ms D. M. Mwewa, Principal State Advocate
For the 2nd Respondent:	N/A
For the 3rd Witness:	N/A

J U D G M E N T

Kajimanga, JS delivered the judgment of the court.

Legislation referred to:

Supreme Court Rules, Supreme Court Act Chapter 25 of the Laws of Zambia, Rule 76

- [1] The appellant filed three motions. The first motion filed on 27th April 2020 requests the court to rehear and review the appeal and the ruling delivered by this court between 13th January 2012 and 24th April 2012. The second motion filed on 30th September 2020 seeks the reinstatement of the first and second respondents that had been struck off the record by a single judge of this court. The third motion was filed on 17th November 2020 in which the appellant seeks leave to appeal to the court as a poor person pursuant to rule 76 of the Supreme Court rules, Supreme Court Act, Chapter 25 of the Laws of Zambia.
- [2] We decided to hear the second motion first, the one seeking the reinstatement of the first and second respondents that had been struck off the record. In his affidavit in support of the motion, the appellant deposed that the second respondent applied to be misjoined as a party to this matter and the application was granted on 18th June 2020 on the basis that she was not a party to the proceedings when in fact she was the one who attended the first motion before the Supreme Court on 13th January, 2012 and 24th April 2012, thereby joining herself as a party. The second respondent did not disclose to him the firm or

individuals he should cite and serve the legal process on.

- [3] The order striking off the second respondent from the matter was inappropriate in that it was not the appellant who put the second respondent on the scene but she came on board on her own accord and consequently, she cannot be struck off before the logical conclusion of this matter.
- [4] The affidavit also discloses that the second respondent was granted the application to misjoin as a party to the proceedings on 24th August 2020 by a single judge of this court for the reason that the Attorney General was not a party to the proceedings in the lower court and has no interest in this matter when in fact, the Attorney General was the owner of the liquidated companies including United Bus Company of Zambia and ably appointed liquidators for all the parastatal companies under liquidation. The Attorney General, therefore, has interest in this matter on behalf of the Government as well as the Zambian people including the appellant and was not supposed to be struck off as a party to these proceedings. The Attorney General should be ordered to be the proper party to these proceedings, since the privatization process by the State was

done through the Attorney General's office when the matter was before this court. He finally stated that he be granted the order to reinstate the two struck off parties as they were not wrongly cited.

- [5] At the hearing, Ms Mwewa stated that her understanding was that the first and second respondents were misjoined by orders dated 1st October 2020 and 18th June 2020 respectively and that she was in court only as a cautionary measure.
- [6] The appellant orally augmented his written heads of argument, urging us with emotional intensity, to grant his application to reinstate the first and second respondents as in his view, they were properly joined to these proceedings.
- [7] We have considered the appellant's affidavit evidence as well as his written and oral arguments. We have also considered the orders granted by the single judge of this court being assailed by the appellant. After considering the second respondent's application for misjoinder, the single judge stated as follows:

"I have considered the arguments by the parties and supporting evidence. What is apparent from the documents before me is that in the initial action to which the main matter before the full bench of the Supreme Court is based, the parties were Vanson Gibson Mumba and

UBZ in liquidation. The Applicant in this motion was not a party and merely represented UBZ acting as Counsel, through her firm which is named as second Respondent in the main matter along with her. Mr. Mumba, the Respondent to this application has confirmed that the only ground upon which he has included the applicant and her firm is that he was advised to deal with them.

I am satisfied that the applicant i.e. Mrs I. Lamba and Associates have been wrongly joined to the main matter pending before the full Bench of the Supreme Court. I accordingly order that they be struck off from the proceedings as parties.”

- [8] And after considering the first respondent’s application for misjoinder, the single judge stated as follows:

“I have considered the affidavit evidence and arguments by the parties. A perusal of the record reveals that the first respondent was never a party to the proceedings in the court below nor was it joined to the appeal by order of the Supreme Court. This fact is confirmed by the Appellant’s evidence at paragraph 9 of his affidavit in opposition. I accordingly find merit in this application and strike the first Respondent off the record as a party.”

- [9] We note from the record that the appellant has advanced before us the same arguments he made to the single judge of this court. We are unable to fault the single judge in ordering the striking off of the first and second respondents. The reasons are obvious. In the trial court and earlier applications filed in this court, the parties were the appellant and United Bus

Company of Zambia. Neither the first nor second respondents were parties. They were not parties because the appellant could not reasonably lay any claim against them. Although parastatal companies are quasi-government institutions they are legal entities with capacity to sue or to be sued in their own right. It is, therefore, not surprising that the appellant initially sued United Bus Company of Zambia and subsequently obtained leave of court to continue his action against the said company when it went into liquidation. There is no legal basis for the said company to be substituted by the Attorney General as a party to these proceedings. The single judge of this court was therefore on firm ground when he struck off the Attorney General from these proceedings.

- [10] As regards the second respondent, it is not in dispute that Mrs. I. Lamba of Messrs Chongo, Manda and Associates represented United Bus Company of Zambia (in Liquidation) in these proceedings. According to the appellant, he joined the second respondent to these proceedings because he was referred to the law firm by the liquidator of United Bus Company of Zambia. We know not of any legal authority which allows a lawyer

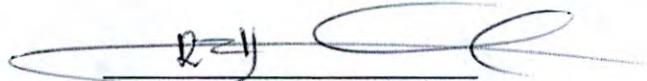
representing a company to substitute that company as a party when the company goes into liquidation. In the circumstances, we cannot agree more with the single judge that Mrs. I Lamba and her law firm, Chongo, Manda and Associates were wrongly joined to this appeal.

- [11] The net result is that we uphold the orders of the single judge of this court to strike off the first and second respondents from these proceedings. They were wrongly joined. This motion is therefore dismissed. The appellant would do well to seek legal opinion if he is still desirous of escalating this matter further.
- [12] The orders of the single judge having been upheld and the motion to reinstate the struck off parties having failed, what then is the fate of the main motion filed on 27th April 2020 and the other one filed on 17th November 2020? The striking off of the first and second respondents leaves only one party (appellant) to these proceedings since Office of General Secretary National Union of Transport Allied Workers (NUTAW) appears as “3RD WITNESS” (whatever that means) and not third respondent. In any case, the court documents do not show that the appellant ever had any claim against NUTAW. It is

inconceivable to have a dispute with only one party. The fate, therefore, is that these two motions have been rendered incompetent. They are improperly before this court and cannot be considered. For obvious reasons, we make no order for costs.



M. MALILA
SUPREME COURT JUDGE



R. M. C. KAOMA
SUPREME COURT JUDGE



C. KAJIMANGA
SUPREME COURT JUDGE