

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

APPEAL NO. 02/2005

IN THE MATTER OF: ORDER 53, RULE 3 OF THE RULES OF
THE SUPREME COURT (1999)

AND

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW

BETWEEN:

THE PEOPLE

VS

THE REGISTRAR OF THE INDUSTRIAL RELATIONS
COURT

EX PARTE ZAMBIA REVENUE AUTHORITY

CORAM: LEWANIKA, DCJ, CHIBESAKUNDA, MUSHABATI, JJS
On 27th June, 2006 and 14th August, 2007

For the Appellant: K. HANG'ANDU of Kelvin Hang'andu & Co.
For the Respondent: D.Y. SICHINGA, Chief State Advocate

JUDGMENT

LEWANIKA, DCJ delivered the judgment of the Court.

AUTHORITIES REFERRED TO:-

1. **THE PEOPLE VS THE REGISTRAR OF THE INDUSTRIAL RELATIONS COURT. EX PARTE ZAMBIA REVENUE AUTHORITY, SCZ JUDGMENT NO. 6 OF 2007**

This is an appeal from the Ruling of a judge of the High Court declining to entertain an application for leave to apply for Judicial Review on the ground that to do so would be tantamount to engaging in an academic exercise, as there were two appeals pending in the Supreme Court whose facts were similar and raised the same legal issues.

The short history of this matter is that there were proceedings in the Industrial Relations Court under Complaint No. 29 of 1999 between **MEBELO MUWELA MUYANGWA** and the Zambia Revenue Authority. At the conclusion of these proceedings the court awarded damages to the Complainant as well as costs to be taxed by the Registrar of the Industrial Relations Court in default of agreement. Pursuant to this judgment, Counsel drew up a bill of costs for taxation before the Registrar of the Industrial Relations Court. Counsel for the Zambia Revenue Authority filed an ex parte application for leave to apply for Judicial Review pursuant to Order 53 Rule 3 of the Rules of the Supreme Court seeking the following reliefs:-

1. **An order of prohibition restraining the Registrar of the Industrial Relations Court from determining the application for party to party taxation of the bill of costs drawn by Kuta Chambers;**
2. **An order of declaration that the Registrar of the Industrial Relations Court has no jurisdiction to tax the bill of costs**

drawn by Kuta Chambers or otherwise to act as taxing master of the Industrial Relations Court.

The grounds on which the reliefs were sought were:-

- (a) That the Registrar of the Industrial Relations Court has no constitutional authority to hear and determine the said application for taxation of costs;**
- (b) Alternatively and without prejudice, the Registrar of the Industrial Relations Court has no lawful authority whatsoever to exercise the judicial powers of the Industrial Relations Court, not to have the judicial power of the court delegated to her, being neither a Judge nor member of the court;**
- (c) That the Registrar of the Industrial Relations Court is employed as a public officer with functions exclusively limited to execution of administrative duties of the Industrial Relations Court.**

As we have stated above, the learned Judge in the court below declined to entertain the application. Counsel for the Zambia Revenue Authority then appealed to this court and has filed the following grounds of appeal:

- (i) That the learned Judge misdirected himself in holding that the aforesaid appeal be stayed as hearing it would be an *'academic exercise.'***
- (ii) That the learned Judge ought to have heard the Appellant's application for leave to apply for Judicial Review, as mandated by Article 18(9) of the Constitution of Zambia;**
- (iii) That the learned Judge ought to have granted the Appellant's application for leave to apply for Judicial Review; and**

- (iv) That there was no evidence on which the learned Judge could find that the application for leave to apply for Judicial Review was re-litigating facts and points of law already under appeal before the honourable Court.

At the hearing of the appeal Counsel for the Appellant relied on his heads of argument which he augmented with oral submissions. Counsel for the Respondent relied on his heads of argument filed in Appeal Nos. 61 and 62 of 2004 which were consolidated and were the subject of our Judgment in the case of **THE PEOPLE VS THE REGISTRAR OF THE INDUSTRIAL RELATIONS COURT. EX PARTE ZAMBIA REVENUE AUTHORITY (1)**. In the view that we take of this appeal we do not find it necessary to restate what Counsel said in their submissions, suffice it to say that we have taken those submissions into account as well as the numerous authorities that were referred to us. The parties in the case of **THE PEOPLE VS THE REGISTRAR OF THE INDUSTRIAL RELATIONS COURT EX PARTE ZAMBIA REVENUE AUTHORITY (1)** were the same as in this appeal and the issues raised were similar. In our judgment in that case we pointed out the fact that the Industrial Relations Court, like the High Court, is a creature of the Constitution of Zambia. That with regard to the jurisdiction of the Industrial Relations Court, the Constitution of Zambia has clearly laid the demarcation

line to show that the jurisdiction of the High Court is not unlimited in civil matters in that the area of Industrial and Labour relations has been exclusively reserved for adjudication by the former.

Article 94(1) of the Constitution of Zambia provides as follows:-

94.1 "There shall be a High Court for the Republic which shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act, unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this constitution or any other law."

The proceedings that gave rise to the taxation of the bill of costs in this matter were commenced and determined in the Industrial Relations Court. So the question of whether or not the Registrar of the industrial Relations Court has authority to tax a bill of costs should have been raised in the Industrial Relations Court and any party aggrieved by the decision of that Court would have appealed to this Court, in the normal way, for redress. In other words the High Court has no power to review the orders or judgments of the Industrial Relations Court and the application for Judicial Review filed by the Appellant in the Court below was misconceived.

We now turn to the question as to whether or not the Registrar of the Industrial Relations Court has the authority to tax a bill of costs which was

the subject of the proceedings in the court below. We have already alluded to the fact that the Industrial Relations Court in its judgment had reserved the question of taxation of costs to the Registrar.

Rule 55 of the Industrial Relations Court Rules provides as follows:-

“Rule 55. 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.”

Rule 76 of the same Rules provides as follows:-

“Rule 76. the Registrar shall have the custody of the records of the court and shall exercise such functions as are assigned to him under these Rules or as may be assigned to him by the Chairman or the Deputy Chairman.”

Thus under Rule 55 the Court is empowered to make such Orders as it deems it necessary to meet the ends of justice. Under Rule 76 the Registrar is empowered to carry out such functions as may be assigned to him or her by the Chairman or Deputy Chairman. In this case, the Registrar was assigned by the court to carry out the function of taxing the bill of costs. The answer to the question that we had posed is that the Registrar of the Industrial Relations Court has the authority to tax a bill of costs. In passing, we would also wish to mention that we do not subscribe to the view that the taxation of a bill of costs involves the exercise of a judicial function.

The sum total of our finding is that we find no merit in the appeal which we dismiss with costs. The costs are to be taxed in default of agreement.

D.M. Lewanika
DEPUTY CHIEF JUSTICE

L.P. Chibesakunda
SUPREME COURT JUDGE

C.S. Mushabati
SUPREME COURT JUDGE