IT

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

APPEAL NO. 97/2012
SCZ/8/295/2012

BETWEEN:

MUTUNGULU WANGA AND 2 OTHERS — APPELLANT

AND

THE ATTORNEY-GENERAL — RESPONDENT

CORAM: Phiri, Malila and Kaoma, JJS

2nd June, 2015 and 27th October, 2015

For the Appellants: In Person

For the Respondent: No Appearance

JUDGMENT

Kaoma, JS delivered the Judgment of the court.

Cases referred to:

1. *Mweemba v Kasongo and another – SCZ Judgment No. 27 of 2006*
2. *Chief Constable v Evans (1982) 3 All ER 141*
3. *Chiluba v Attorney General (2003) Z.R. 153*
4. *Mazoka and others v Mwanawasa and others (2005) Z.R. 138*
5. *CK Scientific Group Zambia Limited v Zambia Wildlife Authority – SCZ Judgment No. 5 of 2014*
6. *Council of Civil Service Union v Minister of Civil Service (1985) AC 374*
7. *IRC v National Federation of Self Employed and Small Business Limited (1982) A.C. 617*
8. *R v Secretary of State for the Home Department, ex p. Rukshanda Begum and Angur Begum (1990) COD 107*

Legislation referred to:

1. *Rules of the Supreme Court 1999, Order 53 rule 3(2), 53/14/27, 53/14/55 and 53/14/62*
2. *Societies Act, Cap 119, sections 6, 7 (1), 8 and 16 and Rule 8*
3. *Constitution of Zambia, Articles 20 and 21*

This appeal is against a refusal by the High Court at Lusaka to grant the appellants leave to apply for judicial review under *Order 53 rule 3(2)* of the RSC 1999. At the hearing of the appeal, the appellants who appeared in person were represented by Sitali Simbotwe and they solely relied on their filed heads of argument. There was no appearance by the respondent. However, we have taken into account the respondent's filed heads of argument.

The undisputed facts are that on 16th July, 2010 the appellants formed a society called Movement for the Restoration of the Barotseland Agreement (MOREBA). On 19th July, 2010 they applied to the Registrar of Societies for registration of MOREBA. In a letter dated 17th November, 2010, the Registrar rejected the application but did not give any reasons for the rejection as required by *section 8 of the Societies Act, Cap 119* (the Act).

On 23rd November, 2010 the appellants wrote to the Registrar asking to be furnished with the reasons for rejection of their application. On 8th December, 2010 they appealed to the Minister of

Home Affairs pursuant to *section 16 of the Act.* In a letter dated 21st January, 2011, allegedly given to the appellants on 7th March, 2011, the Permanent Secretary, Ministry of Home Affairs informed the appellants that their appeal was rejected by the Minister and advised them to cease carrying out any activity in the name of MOREBA. The letter was accompanied by Form S.O.4 signed by the Registrar and dated 17th November, 2010.

The appellants alleged that the letter was backdated and that this was erroneous as Form S.O.4 should have accompanied the letter of 17th November, 2010 and that the letter from the Permanent Secretary did not disclose the basis on which the appeal failed. Further that Form S.O.4 did not state the reasons for rejection of the application thereby rendering it invalid in terms of *section 8 of the Act* which compels the Registrar to state the reasons for refusal of registration.

The appellants contended that the actions of the Registrar contravened the law governing registration of societies and that in ignoring the rules of procedure the Registrar deliberately and consciously chose to circumvent the law to achieve an unlawful act. They also alleged that by omitting to delve into the grounds of

appeal, the Minister also consciously chose to be an accomplice in the Registrar's unlawful enterprise and had failed to adjudicate on the matter. The appellants further contended that the action by the Registrar and the Minister to put a veil on the reasons for rejecting the application was intended to disable the members of MOREBA from exercising their constitutional rights enshrined in *Articles 20 and 21 of the Constitution of Zambia.*

The appellants also sought a declaration that the manner in which the Registrar dealt with their application contravened the Regulating Act and is, therefore, null and void; and that the Minister's directive to the members of MOREBA to cease operations in the name of the Society was ultra vires the Constitution as it was a direct repudiation of their freedom of association and assembly.

In the affidavit in opposition to the application for leave to apply for judicial review, the Registrar of Societies, Wayne Siafwa deposed that Form S.O.4 was issued on 17th November, 2010 at the time he refused to register MOREBA but he inadvertently omitted to state the reasons as to why he refused to register MOREBA both in the letter written to the appellants and in the form. He also deposed that when the appellants informed him of the omission to state the

reasons for rejection of registration, he wrote to them on 29th November, 2010 conveying the reasons for refusal of registration, namely, it appeared that amongst the objects of MOREBA, it was likely to pursue or be used for an unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Zambia. He further deposed that he took into account that the constitution of MOREBA going by its clause 18.4 primarily aimed at fully restoring the Barotse Agreement of 1964.

In their affidavit in reply, the appellants denied that they were availed with the letter of 29th November, 2010. According to them, the reasons given in that letter were an afterthought particularly that the appeal to the Minister revolved around the Registrar's failure to furnish reasons for rejecting their application.

In her ruling, the learned trial judge, analysed *Order 53/14/55 of the RSC 1999,* which explains the purpose of the requirement for leave to apply for judicial review, and then considered the issue as to whether the relief sought by the appellants was frivolous, vexatious and hopeless and whether it was fit for further investigation.

On the first relief sought, namely that the manner in which the Registrar rejected the application tc register MOREBA be declared null and void, the trial judge found that the Registrar indicated the grounds for rejecting the application in the letter of 29th November, 2010 and not Form S.0.4; and that the appellants appealed to the Minister in accordance with *Section 16 of the Act,* so judicial review against the decision of the Registrar was improper and the first claim was misconceived, frivolous and vexatious.

Regarding the second relief sought that the Minister's directive to the members of MOREBA to cease operations in the name of the society was ultra vires the Constitution of Zambia, the trial judge found that prior to the Minister requesting to ask the appellants to cease operating under the name of MOREBA, he had made a decision on the appeal, which he was entitled to make, so the directive was in line with his decision on the appeal. In the end, the trial judge found that the case was frivolous, and vexatious, and not fit for further investigation and refused leave.

It is this decision which the appellants have appealed on three grounds. In ground 1, the appellants alleged error in law and fact on the part of the trial judge for holding that the Registrar of

Societies had furnished them with reasons for rejecting their application to register their society.

In ground 2 the appellants faulted the trial judge for determining the issues contested by the parties at leave stage by holding that the Registrar's purported letter of 29th November, 2010 was authentic and that it was availed to them prior to their application for leave to apply for judicial review.

And in ground 3 the appellants attacked the trial judge's holding that the remedy of judicial review was not available to them.

The gist of the appellants' argument on ground 1 is that the reasons for the Registrar's decision to deny them registration were only conveyed to them in court by way of affidavit in opposition and the letter of 29th November, 2010 was backdated and did not exist prior to their application for leave. They argued that the trial judge erred when she elected to rely on a document whose authenticity is in question; that they have no idea why their submission that the letter was a forged document failed to impact on the trial judge, so they seek re-examination of the issue by this court; and that it is the duty of the court to determine all matters in controversy.

To buttress this argument, the appellants relied on the case of *Mweemba v Kasongo and another*[1], where we expressed hope that trial courts should bear in mind that it is their duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined with finality and that a decision which, because of uncertainty or want of finality, leaves a door open for further litigation on some issues between the same parties can and should be avoided.

On ground 2 of the appeal, the appellants argued that their application for leave was made *ex parte* in line with *Order 53 of the RSC*, but the trial judge decided to hear it *inter partes* and the entry of the respondent at leave stage introduced conflicting evidence in form of the disputed letter purporting to contain reasons for the Registrar's refusal to register MOREBA, which did not form part of the exhibits in their affidavit in support as they did not have and were not aware of its existence except that in their affidavit in reply they challenged the authenticity of the letter.

It is also the appellants' argument that the application for judicial review was anchored on the principle of procedural impropriety on the part of the Registrar by failing to tender reasons

for his decision and the Minister's irrationality in refusing to address this anomaly which they elaborated in their appeal.

It was also argued that the Registrar's claim that he had complied with the requirement to tender reasons as against their position that this was false, produced a contentious issue that could only be determined by further inquiry; that the judge's position amounted to determining a substantive matter at leave stage; and that the learned judge dismissed the application on the basis of untested and unsubstantiated evidence which was challenged. They relied on *Order 53/14/55* and *53/14/62 of the RSC.*

With regard to ground 3, it was submitted that the determination that the remedy of judicial review was not available to the appellants arose out of the erroneous assessment that the Registrar had complied with the provisions of *section 8 of the Societies Act,* but where rules of procedure are ignored or breached by members of the Executive or inferior courts the remedy of judicial review is available to the injured party. *Order 53/14/27* of the RSC was cited to support this argument.

It was further contended that both the Registrar and the Minister acted outside jurisdiction by ignoring the guidelines and rules of the Societies Act, their intentions notwithstanding. The case of *Chief Constable v Evans*[2] was relied on where it was stated that judicial review is not an appeal from a decision but a review of the manner in which the decision was made, and therefore, the court is not entitled on an application for judicial review to consider whether the decision itself was fair and reasonable. We were urged to allow the appeal to enable settlement of issues on the merit.

In its written heads of argument in response, the respondent first referred to the case of *Chiluba v Attorney General*[3] wherein we discussed the remedy of judicial review. Then regarding ground 1, it was submitted that we should consider whether the non-rendering of the reasons, which were inadvertently omitted in the letter of 17th November, 2010 was fatal or not. That evidence was laid before the court below to the effect that the respondent had furnished the appellants with reasons for rejection of the application through Form S.O.4; in the formal letter of even date, advising the appellants that their application had been rejected; and through the subsequent letter of 29th November, 2010.

It was also argued that the affidavit in opposition sufficed in assisting the court in arriving at its decision. We were again referred to the *Chiluba*[3] *case* and our decision to the effect that when the High Court is reviewing a decision of a public body, it will not admit evidence which is relevant as to whether the decision is a reasonable one; but it will permit evidence which is relevant to whether the decision is one which the body had power to make or whether it was made in circumstances in which a reasonable body could have made it. And that in all applications for judicial review, the principal source of evidence is from affidavits and the only witnesses that may give viva voce evidence on applications for judicial review are the deponents of the affidavits on record.

We were further referred to the case of *Mazoka and others v Mwanawasa and others*[4] on the function of pleadings and it was argued that the respondent had in its pleadings furnished the appellants with the reasons for refusal, so the learned judge rightly concluded that the appellants had been furnished with the reasons.

In response to ground 2, it was submitted that there was no need for the trial judge to authenticate the letter which had already been referred to in the affidavit in opposition. Further, the

respondent sought to distinguish the case of *CK Scientific Group Zambia Limited v Zambia Wildlife Authority*[5] where it was stated that a judge plays the role of an unbiased adjudicator who listens to both parties present their case before him on *ex parte* application, that the role of a judge does not extend to him or her producing evidence from the bench, and that it is not the role of the judge or court to begin to look for evidence and rely on it.

It was then submitted that the learned judge was on firm ground when she relied on the evidence adduced before her; and that the inadvertent omission by the respondent to timely inform the appellants of its reasons for refusal of the application to register MOREBA should not be used to dispel the authenticity of the letter of 29th November, 2010.

It was further contended that the remedy of judicial review is not available to litigants as a matter of right, so we must determine whether or not the test in the *Chiluba*[3] *case* was met by the trial judge; and that the learned judge properly directed herself to consider *Order 53/14/55 of the RSC* and the purpose for the requirement to obtain leave to apply for judicial review.

It was also argued that the learned judge did not have to determine whether the entry of the respondent into the proceedings at leave stage had a negative bearing on the application, thus the *inter partes* hearing at an early stage of the proceedings assisted the learned judge to determine the worthiness of the application, which invariably was found to be frivolous and hopeless; and that, in any case, it is within the court's discretion to hear the application for leave *inter partes*, depending on the circumstances.

It was also the respondent's contention that the actions of the Registrar did not demonstrate any procedural impropriety. To support this argument the respondent relied on the case of *Council of Civil Service Union v Minister of Civil Service*[6], where Lord Diplock described "*procedural impropriety*" as a failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision... and also a failure by an administrative tribunal to address procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

It was submitted that the learned judge was on firm ground when she refused the application for leave; that it should never be for the court to decide each and every minute administrative oversight, which does not form a mandatory procedural requirement; and that it is a matter of construction whether the later communication of the reasons for refusal amounted to a breach of statutory procedure within the meaning of *sections 8 and 9 and Rule 8 of the Societies Act* and since these provisions were complied with by the Registrar, there is no reason for us to interfere with the finding of the trial judge that there was no procedural impropriety on the part of the Registrar.

It is also the respondent's argument that the Minister did not act irrationally when he refused to entertain the appeal. The case of *Council of Civil Service Unions v Minister of Civil Service*[6], was again quoted wherein Lord Diplock stated that "By *irrationality'* he meant what can now be succinctly referred to as "*Wednesbury unreasonableness*", ... and that it applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Based on the foregoing, it was contended that the Minister's decision was not outrageous that it could be held by a reasonable person to be irrational and that he acted in accordance with *section 16 of the Act.* According to the respondent, an appeal on the refusal of registration by the Registrar of Societies lies only to the Minister and not the court and there is nothing in the language of *section 16* that infers the manner in which the Minister is supposed to make a decision, or the considerations the Minister is supposed to take into account when arriving at a decision.

Finally, it was argued that the learned judge did not determine the substantive matters for judicial review and she rightly held that the only avenue on resolution of grievances that was available to the appellants was to appeal to the Minister of Home Affairs. Further, that this avenue was pursued and exhausted by the appellants, who have no further recourse of action before the court.

On ground 3, the respondent simply relied on the arguments advanced on grounds 1 and 2, but agreed with the appellants' argument that judicial review is not concerned with the decision.

And in their heads of argument in reply, the appellants simply repeated their main arguments in support of the appeal, thus we do not intend to restate the arguments.

We have considered the record of appeal and the arguments for and against the appeal. We propose to deal with the three grounds of appeal altogether as they are connected. The facts of the matter and the law applicable to registration of a society under the *Societies Act, Cap 119* are not in dispute.

The appellants had formed a society called MOREBA and afterward applied to the Registrar of Societies for registration in accordance with *section 6 (1) of the Act.* According to *section 7(1)* of the Act, the Registrar was required, subject to the provisions of the Act, upon due application being made by any society, for registration, to register such society.

However, by *section 8 of the Act*, the Registrar had discretion whether or not to register MOREBA. This section provides that the Registrar may refuse to register any society where it appears to him that such society has among its objects, or is likely to pursue or to be used for, <u>any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia, or</u>

that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration of such society (underlining ours for emphasis).

Of course, *Rule 8 of the Societies Rules* requires the Registrar, where he refuses to register a Society to send to the society notification of his refusal in Form S.O.4 set out in the first schedule to the Rules. In the said form, the Registrar is required to disclose the grounds for refusal to register a society.

And under *section 16 of the Act,* any society, other than those mentioned therein, which is aggrieved by the refusal of the Registrar to register such society may within 21 days or such extended period, as the Minister may allow, appeal against such refusal to the Minister.

In this case, by the letter of 17th November, 2010, the Registrar rejected the application to register MOREBA. However, he did not send to MOREBA notification of his refusal in Form S.O.4 as required by *Rule 8*, or give his grounds for rejection of registration. On 23rd November, 2010, the appellants wrote to the Registrar asking him to furnish them with the reasons for rejecting their application within fourteen days from date of receipt of the letter.

According to the appellants there was no response to their letter, and so, on 8th December, 2010 they appealed to the Minister pursuant to *section 16 of the Act*, requesting him to annul the decision of the Registrar which they termed irregular, arbitrary and unconstitutional. In that letter they indicated that the Registrar tendered no reasons for his decision and that their request to him to furnish his reasons had drawn no response.

On 21st January, 2011 the Permanent Secretary, Ministry of Home Affairs informed the appellants of the Minister's rejection of their appeal and enclosed Form S.O.4 signed by the Registrar of Societies and dated stamped 17th November, 2010. But no grounds for rejection were given by the Minister in the enclosed form. So, on 17th March, 2011, the appellants applied to the High Court for leave to apply for judicial review. As we have already said, the High Court refused the application.

As we see it, the main issue that flows from the three grounds of appeal, is whether the appellants had disclosed a fit case to be investigated at an *inter partes* hearing to warrant the grant of leave. First and foremost, judicial review is a jurisdiction of the superior courts to review the acts, decisions and omissions of Public

authorities in order to establish whether they have exceeded or abused their powers. It is primarily concerned with the legality of a decision and the procedure by which it was made. The merits of the decision are not relevant.

Secondly, certiorari, by which the appellants wanted to impugn the decision of the Registrar and Minister, is one of the remedies available on judicial review. It is an order which brings up into the High Court a decision of an inferior court or tribunal or of a public authority for it to be quashed.

But the remedies on judicial review are discretionary. In exercising its discretion, the court will for instance look at the applicant's motive, and whether the remedy is available to the applicant. In other words, even if a matter falls into one of the categories where judicial review will lie, the court is not bound to grant it. What order or orders the court will make depends upon the circumstances of each particular case.

It is also trite that judicial review has two distinct steps. The first is leave to apply for judicial review which must be granted by a High Court judge on an application made *ex parte*. If successful there is a substantive hearing. As rightly stated by the learned trial

judge, the purpose of the requirement for leave is to eliminate at an early stage claims which are hopeless, frivolous, or vexatious and to ensure that a claim only proceeds to a substantive hearing if the judge is satisfied that there is a case fit for further consideration.

The requirement for leave is designed to 'prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove uncertainty in which public officers or authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review were actually pending even though misconceived' (R *v Inland Revenue Commissioners exp National Federation of Self-Employed and Small Business Limited*[7] at p 642 per lord Diplock).

We must emphasis that leave will be granted only where the court is satisfied that the application discloses that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence (*R v Secretary of State for the Home Department, ex p. Rukshanda Begum and Angur Begum*[8]), and that in case of refusal of the application, the applicant can renew his application for leave to apply for judicial review.

In this case, the appellants alleged procedural impropriety on the part of the Registrar of Societies in failing to abide by *Rule 8 of the Societies Rules*, and irrationality on the part of the Minister in his directive to the members of MOREBA to cease operations in the name of the Society. The appellants have also attacked the Minister for not giving reasons for rejecting the appeal and the trial judge for bringing the respondent into the proceedings at leave stage.

As we have already said, in judicial review, applications for leave are *ex parte*, meaning that orders for leave are given by the court after hearing one party only. There is no notice given to the respondent. Where the facts are such as to clearly warrant further investigation at *inter partes* hearing then leave should be granted and where the facts clearly disclose that there is no arguable case, leave should be refused.

And where the judge is unable to determine whether or not there is in fact an arguable case on the materials before him, the right course is to summon the respondent to attend and make representations, although the hearing should in no way resemble the substantive hearing which would take place if leave is granted.

Therefore, we agree with the respondent that there was nothing amiss in the trial judge hearing the application for leave *inter partes*, or in bringing the respondent into the proceedings at leave stage or in admitting the affidavit in opposition with its exhibits which the appellants alleged they did not have.

We have no doubt that in rejecting the application for leave, the trial judge considered the relief sought by the appellants as endorsed in the statement accompanying the application. And, we are convinced, that in arriving at the decision that the Registrar indicated the grounds for rejecting the application in the letter of 29th November, 2010, the trial judge considered whether there was procedural impropriety or whether the decision maker complied with the laid down procedure.

The appellants are right that making a fair decision entails following laid down procedures. In the case of *Council of Civil Service Unions v Minister of Civil Service*[6], Lord Diplock used procedural impropriety to include a breach of express and statutory procedural requirements and the common law rules of natural justice. Nevertheless, whether or not, a breach of statutory requirement will render the resulting decision void, depends on a

number of circumstances, including the importance of the provision which has been disregarded in the light of the objectives of the statute, whether there was a total or only partial breach of the requirement or whether or not the breach caused any prejudices.

In this case, the appellants' major point of contention is that the learned trial judge should not have accepted and relied on the letter of 29th November, 2010 as the existence of the letter during the period leading to the application for leave is not only contested, but that resolution of that issue was only possible through interrogation of both assertions by way of a formal hearing of the matter, and that the trial judge did not indicate why it chose to disbelieve the appellants' evidence that they were not availed the letter of 29th November, 2010 and to believe the respondent's evidence that they were.

We agree with the appellants that in the exercise of judicial discretion, the judge should give reasons for his or her decision and that unreasonable or untenable grounds will entitle an appellate court to set aside the decision. In the present case, the trial judge found that the Registrar indicated the grounds for rejecting the application in a formal letter dated 29th November, 2010 and not in

Form S.O.4. As we have already said, whether or not breach of a statutory requirement will render the resulting decision void depends on a number of circumstances.

In this case, the Registrar had deposed that the omission to enclose Form S.O.4 in the letter of 17th November, 2010 and to give the reasons for refusal of registration was inadvertent and that upon being reminded by the appellants by letter dated 23rd November, 2010, he did in his letter of 29th November, 2010 give the reasons for refusal to register MOREBA.

The learned judge may not have resolved the conflicting stories of the two sides regarding whether or not the appellants were given the letter before their appeal to the Minister, and the appeal to the Minister was anchored on the assertion that the Registrar had not given reasons for rejecting the application to register MOREBA. However, the letter was before the judge and it was open to her to accept that documentary evidence without leaving the issue for substantive hearing. In any case, what the appellants had wanted were the reasons for rejection of their application.

The learned judge went on to find that following the Registrar's rejection of the application for registration, the appellants appealed

against that decision to the Minister in accordance with *section 16 of the Societies Act* and further that the avenue for parties aggrieved by decisions of the Registrar lies in an appeal to the Minister and not to the court for judicial review. In our view, this is the rationale for rejecting leave regarding the first relief sought by the appellants.

The learned judge explained that judicial review is not the appropriate remedy where another avenue is available to a party and the appellants had already exercised their right of appeal. *Order 53/14/27 of the RSC 1999* states, *inter alia*, that the courts will not normally grant judicial review where there is another avenue of appeal and has not been used. Further that even where the applicant has already pursued the appeal, he will not be permitted to re-litigate the matter by means of judicial review.

In this case, the appellants exercised their right of appeal to the Minister who rendered his decision rejecting the appeal and the appellants were advised of the decision by the Permanent Secretary who also enclosed Form S.O.4. Hence, the learned judge was on firm ground when she held that judicial review is not available to the appellants as against the decision of the Registrar.

Certainly, the reasons given for refusal of registration in the letter of 29th November, 2010 were valid and fall within the ambits of *section 8* of the Act and it is not alleged that the Registrar wrongly exercised his discretion in refusing to register MOREBA. In our view, just going by the name of MOREBA and its objectives, it would have been against public policy and national interest to register a society that was calculated to cause confusion and disunity in the nation.

With regard to the relief sought against the Minister's directive to members of the society to cease operating in the name of MOREBA, the appellants' main argument was that their freedom of association was being infringed and that the application for judicial review was also anchored on the Minister's irrationality in refusing to address the anomaly by the Registrar not to give reasons for rejecting registration of MOREBA.

The learned judge found as a fact that prior to the Minister requesting the appellants to cease operating under the name of MOREBA, he had made a decision on the appeal and that the directive was in line with his decision on the appeal. Moreover, as rightly submitted by the respondent, *section 16 of the Societies Act*

does not give or outline the format of the decision to be made by the Minister on appeal, neither does it require the Minister to give reasons for rejecting the appeal. We do not hesitate to find and hold that the appellants did not establish an arguable case of irrationality against the Minister worthy to be investigated at a substantive hearing.

In conclusion, we agree entirely with the position taken by the learned judge and with her finding that the case is frivolous and vexatious and there is nothing on the record to show that she wrongly exercised her discretion in refusing to grant leave.

On the whole we find no merit in all the grounds of appeal and we dismiss the appeal with costs to be taxed if not agreed.

G. S. PHIRI
SUPREME COURT JUDGE

M. MALILA SC
SUPREME COURT JUDGE

R. M. C. KAOMA
SUPREME COURT JUDGE