IN THE COURT OF APPEAL FOR ZAMBIA **Appeal No. 146/2017**

HOLDEN AT NDOLA

(Civil Jurisdiction)

BEWEEN:

SANAT LIMITED **APPELLANT**

AND

SHAILESHKUMAR SURYAKANT AMIN **RESPONDENT**

CORAM: Chashi, Siavwapa and Ngulube. JJA

On: 20th February, 2018 and 4th June, 2018

For the Appellant: M. Ndalameta, Messrs Musa Dudhia and Company

For the Respondent: A. Tembo, Messrs Tembo, Ngulube and Associates

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JUDGMENT

NGULUBE, JA, delivered the Judgment of the Court

CASES REFERRED TO:

1. Ituna Partners v Zambia Open University Limited, Appeal No 117 of 2008
2. Sennar (N0 2) [1985] 1WLR 490
3. Hussein Safieddine v the Commissioner of Lands, SCZ Selected Judgment No 36 of 2017
4. Janov v Morris, (1981) 3 All ER 780

5. Bank of Zambia v Jonas Tembo and Others, (2002) Z.R 103
6. New Plast Industries v The Commissioner of Lands and the Attorney General, SCZ Judgment No 8 of 2001
7. Gaedonic Automotives Limited and Another v Citizens Economic Empowerment Commission, SCZ Judgment no. 39 of 2014.
8. Electricity Supply Nominees Limited v Farrell (1997) 2 All ER 499
9. Ruth Kumbi v Robinson Caleb Zulu, (2009) ZR 183
10. Dipak Kumar Patel v David Kangwa Nkonde (selected Ruling No 33 of 2017/SCZ Appeal No 125 of 2010
11. Philip Mutantika and Mulyata v Kenneth Chipungu, SCZ Judgment No 13 of 2014

LEGISLATION AND OTHER WORKS REFERRED TO:

1. Halsbury's Laws of England, 4th Edition, vol 29 at paragraph 390.
2. *Black's Law Dictionary, 10th Edition, Thomson Reuters 2014*
3. The High Court Act, Chapter 27 of the Laws of Zambia.
4. The Supreme Court Act, Chapter 26 of the Laws of Zambia.

This Appeal is against the Ruling of the High Court delivered on 4th September, 2017 following an application by the Respondent to raise a preliminary issue, pursuant to Order 33 rule 7 of the Supreme Court Practice, (White Book) 1999 edition. By the said application, the Respondent (as Defendant) sought a determination on whether a court that has become *functus officio* has jurisdiction to hear an application to restore to the active cause list a matter it dismissed.

The backdrop leading up to the Ruling is that the Appellant commenced an action against the Respondent by way of Writ of Summons and Statement of Claim on 31st March 2015 and the action became the subject of various interlocutory applications. At a hearing

on 30th of November 2016, the lower court instructed the Appellant to file Order for Directions in the usual format which was done on1st December 2016. The Court then set 22nd February 2017 as the date for a status conference. The Respondent failed to file a Defence in accordance with the Order for Directions and consequently, Judgment in Default of Defence was entered on 5th January, 2017.

The Respondent subsequently filed an application for Stay of Execution and to set aside the Default Judgment. This application was settled by consent of the parties on 8th February 2017. The lower court then gave fresh directions leading up to trial. On 22nd February, 2017, the court below sat, but none of the parties were in attendance and the court recorded that no reasons were advanced for non-attendance. It struck out the matter with liberty to restore within 21 days and further ordered that the matter would be dismissed if not so restored.

On 29th March, 2017, the lower court dismissed the matter and on 7th April, 2017, the Appellant then applied to set aside the Dismissal Order. However, before this application could be heard, the Respondent raised a preliminary issue on 19th May, 2017, asking the

court to determine whether a court that became *functus officio* has jurisdiction to hear an application to restore to the active cause list a matter it had dismissed. The lower court delivered its Ruling on 4th September, 2017, a Ruling which the Appellant has appealed against before us raising four grounds of appeal. These are that-

1. The court below erred in law and in fact when it held that it had become *functus officio* and could therefore not entertain the Appellant's application to set aside the Dismissal Order;
2. The court below erred in law and in fact by holding that despite the principle of res judicata not applying to the substantive issues, it had become *functus officio*;
3. That the court below erred in law and in fact when it decided that the High Court for Zambia may still entertain an action commenced afresh despite the High Court becoming functus officio;
4. The court below erred in law and in fact when it decided that it does not retain inherent jurisdiction at all times to supervise its own orders and proceedings.

Heads of argument in support of the appeal were filed on 16th November, 2017 and those in opposition on 21st February, 2017.

Ground one of the appeal attacks the lower court's finding that it became *functus officio* and therefore could not entertain the Appellant's application to set aside the Dismissal Order. The Learned Counsel for the Appellant referred us to the definition of *functus officio* as per the authors of **Halsbury's Laws of England[1],** that "*functus officio*" is an instance where justice or indeed the court has discharged all its judicial functions in a case.

Further, Counsel submitted that the term *functus officio* is also defined in the **Black's law Dictionary[2]** as..... "*without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.*"

Learned Counsel argued that the lower court did not do anything that would amount to accomplishing the duties and functions of the original commission. He cited the case of **Ituna Partners v Zambia Open University Limited[1],** in which the Supreme Court held inter alia that, ***"a court becomes functus officio when all the substantive issues in the cause are determined by it. If such***

matters are not determined by the Court, like in the Jack Lwenga case, then the Court is not functus officio. In the instant case, the lower Court did not rule on the issue as to who should bear the cost, between the Respondent and the Advocates. Therefore, we do not accept the argument that the lower Court was functus officio on the issue of costs. This is definitely not a matter that should be dealt with by way of review or an appeal."

Counsel also submitted that similarly, the lower court was not *functus officio* at the time the Appellant applied to set aside the striking out and Dismissal Orders. He submitted further that to date, the Appellant's case remains unresolved because nothing has been decided by the lower court. Counsel contended that a court may only be *functus officio* with reference to specific issues emanating from the subject matter of the dispute which he submitted was not the case in the court below. He stated that the principle of *functus officio* may only arise when a court has given its final judgment in a matter and that the court below did not determine the dispute between the

parties on its merits in order for the court to have become *functus officio* as was held by the Supreme Court in the **Ituna partners case.**

Counsel further cited the case of **Sennar (NO 2)**[2] In which it was stated that a decision on the merits;

"Is one which establishes certain facts as proved or not in dispute; states what the relevant principles of law applicable to such facts are; and expresses a conclusion with regard to the effect of applying those principles to the factual situation concerned."

In explaining the above cited quote in relation to this matter in issue, Counsel submitted that the Dismissal Order merely determined the matter on purely procedural grounds. That the court below did not establish any facts, not even the fact of service on either or both of the parties, of the Striking Out Order or the Dismissal Order, nor did the lower court apply any principles of law to the issues between the parties before dismissing the matter. Counsel submitted further that it was consequently erroneous to hold that a situation making the court *functus officio* had arisen.

In response to ground one of appeal, it was submitted on behalf of the Respondant that, Black's Law Dictionary defines the term dismissal as **"Termination of an action or claim without further hearing especially before trial of the issues involved".** Counsel submitted that the Learned author's of Atkins Court Forms states at page 16 paragraph 18, that the effect of a dismissal of an action is that; **" Dismissal finally terminates the dismissed action and no further steps can be taken in relation to the claims made in it....."**

Counsel explained that the sentiments of the court below are trite law as once a matter has been dismissed, the court becomes *functus officio* and as such can not entertain any further steps to be taken in that matter.

In responding to the Appellant's argument that the court below was not *functus officio* on account that it did not determine all substantive issues in the dismissed matter, Counsel submitted that a technical disposal of a matter due to the non-attendance of a party achieves the same results as a matter that has been disposed of after a full hearing as in both instances, the court would have pronounced itself

and the matter effectively disposed of and thus going by the definition of the term *functus officio* as defined by the Black's Law Dictionary, the court would have no further authority or legal competence to preside over a matter that has been technically disposed of on account of the non-attendance of a party because the duties and functions of the original commission which is to preside over the matter would have been fully accomplished

Counsel further submitted that the court below became *functus officio* when the matter was dismissed because it had no legal authority or competence to entertain anymore steps in the matter. He submitted further that even if it was to be assumed, without conceding, that the court was not *functus officio* on certain aspects of the matter, the same would not have related to the appellant's application to set aside the dismissed order as the said application related to issues that the court had already pronounced itself on and which fact led to the matter being dismissed.

Counsel further contended that the court below was on firm ground when it held that it had become *functus officio* and could therefore not entertain the Appellant's application to set aside the Dismissal

Order and prayed that ground one of the appeal be dismissed for lack of merit.

We have seriously considered the submissions by both Counsel relating to ground one. We have also considered the Ruling by the Learned Judge in the court below. The question to be determined under ground one, is whether the court below had jurisdiction to set aside its order dismissing the matter in question. Ground one raises the issue whether the court below had become *functus officio* after the Dismissal Order.

The thrust of the Appellant's arguments in support of this ground of appeal is that the principle of *functus officio* can only arise where a court has given its final judgment in a matter and that in casu, the matter was merely dismissed on procedural grounds. It seems to us that the thinking of the court below in holding that it had become *functus officio* the moment the order to dismiss the case was effected comes from its definition of the word dismissal.

The Learned Authors of the **Black's Law Dictionary**[2] define the word dismissal at page 502 as "*termination of an action or claim without further hearing especially before the trial of the issues involved.*"

On the other hand, the term *functus officio* is defined at page 696 of the **Black's Law Dictionary**[2] as *"without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."*

What this definition seems to mean in simple words is that, the court has got no further authority to deal with the matter because the matter has been heard and determined on its merit. Closely related to the principle of *functus officio* is the legal maxim **"interest reipulicaisut sit finis litum"** meaning that it is in the public interest that there should be an end to litigation. The Learned Counsel for the Appellant went to great lengths in the heads of argument to explicate the principle of *functus officio* as espoused by the Supreme Court of Zambia in various decided cases. We do agree with Learned Counsel's submissions. It is very clear from the definition of *functus officio* above, that a matter must have been heard on its merits for a court to become *functus officio.* In the matter at hand, the matter was not heard and determined on its merits, as such, there is no way the court below could have become *functus officio.* We will accordingly allow this ground of appeal.

Grounds two and three of the appeal allege that the lower court erred in law and in fact by holding that, despite the principle of *res judicata* not applying to the substantive issues, it had become *functus officio.* Furthermore, it was stated that the lower court erred in law and fact when it decided that the High Court for Zambia may still entertain an action commenced afresh despite the High Court becoming *functus officio.*

The Learned Counsel for the Appellant submitted that the principle of *res judicata* has been described by the Learned Authors of **Halsbury's Laws of England**[1] as "*a fundamental doctrine of all courts that there must be an end to litigation. It entails that all legal rights and obligations of the parties are concluded by the earlier judgment*"

Further, Counsel cited the case of **Hussein Safieddine v The Commissioner of Lands**[3] in which it was held that "*there must be an end to litigation, and that there must be good administration of justice.*"

It was submitted on behalf of the Appellant that a court can only become *functus officio* after the discharge of its obligations, by which it simultaneously becomes *res judicata.* According to Counsel for the Appellant, you cannot have one without the other; both *functus officio*

and *res judicata* go hand in hand even though the latter is normally pleaded or determined in circumstances where a court is faced with a second action, similar or exactly the same as the first.

Counsel went on to explicate his understanding of the two concepts that they are inextricably linked and cannot be divorced from each other. He submitted that it is only that in practical terms, they fall to be determined at two different points on the same trajectory. When a plea of res judicata succeeds, it is not because the second case makes the particular matter res judicata. Rather, it is because the matter in question became res judicata immediately upon being determined in the first instance. Incidentally, immediately upon the particular court becoming *functus officio.*

Counsel went on to submit that as far as the nomenclature goes, it is evident from the application of the twin concepts that *functus officio* is used to refer to the court that has exercised its powers in relation to the matter, while res judicata is used to refer to the matter or the dispute after it has been resolved or determined.

Counsel further contended that, from the above exposition on the interrelatedness of the two concepts, that the underlying

considerations when one considers the concept of *functus officio* are the same as those applied for *res judicata.* It is therefore respectfully unfathomable that on the one hand a matter may be said not to be *res judicata* because the issues therein have not been determined but at the same time the court held to be *functus officio* in respect of the same case. He submitted that this sort of reasoning is what leads to and compounds the problem of multiplicity of actions.

Counsel submitted that assuming, without accepting, that indeed the lower court had become *functus officio*, it would then have no jurisdiction to hear the matter afresh. He further submitted that assuming the Appellant commenced a fresh action raising the same cause of action that the High Court declared that it had no jurisdiction to hear, owing to the fact that it had become *functus officio*, it is unclear how the same High Court will then have jurisdiction to entertain the very matter it had declared itself to have no jurisdiction over.

Counsel referred this Court to the provisions of section 4 of the High Court Act[3]. The said section reads as follows;

"Subject to any express statutory provision to the contrary, all the Judges shall have and may exercise, in all respects, equal power, authority and jurisdiction, and, subject as aforesaid, any Judge may exercise all or any part of the jurisdiction by this Act or otherwise vested in the Court, and, for such purpose, shall be and form a Court."

It was Counsel's contention that the High Court being of the view that it has become *functus officio*, deprives it of jurisdiction over the matter, with the absurd result that the Appellant would never be able to have its case determined on the merits.

Counsel argued further that it is his understanding that the High Court is not constituted based on which Judge is sitting to hear the matter. Rather, as long as one Judge sits, that Judge exercises the jurisdiction of the court and can not be said to leave residual jurisdiction for another judge to deal with the matter. The reasons for this is twofold; firstly, if there is residual jurisdiction for another Judge to exercise upon commencement of a fresh action, there is no reason why the first Judge can not exercise the said residual jurisdiction, since all puisne Judges are equal. Secondly, if there is no residual jurisdiction, then the Appellant is shut out with nowhere

left to go, through no fault of its own because the next Judge, upon commencement of a fresh action, will be in the same position as the initial Judge.

The learned Counsel submitted that he impugns the lower court's finding and contends that too many nuances have been created by the Ruling subject of this appeal. He further stated that there is no guarantee that if the Appellant commenced a fresh action raising the same cause of action, the same would be heard and determined as there is a likelihood that the second action may be seen as an abuse of court process. In support of this argument, Counsel, cited the case of **Janov v Morris**[4] in which the English Court of Appeal held as follows;

"*Where an action had been struck out on the ground of the plaintiff's disobedience of a peremptory order of the court and the plaintiff commenced a second action within the limitation period raising the same cause of action, the court had a discretion under RSC Ord 18, r 19 (1)(d) to strike out the second action on the ground that it was an abuse of the court's process. In exercising that discretion, the court*

would have regard to the principle that court orders were made to be complied with....."

Counsel prayed that, this court allows the Appellant's appeal because the Appellant is needlessly being exposed to risk of being found to be abusing court process if it commenced a fresh action.

In response to the Appellants arguments on ground two and three, it was submitted that the court below did not err in law and in fact by holding that, despite the principle of *res judicata* not applying to the substantive issues, it had become *functus officio* and that the Lower Court did not err in law and fact when it decided that the High Court for Zambia may still entertain an action commenced afresh despite the High Court becoming *functus officio.* In support of this proposition, learned Counsel cited the case of **Bank of Zambia Vs Jonas Tembo and Others**[5] in which the Supreme Court stated that "*In Order that a defence of res judicata may succeed, it is necessary to show that the cause of action was the same, but also that the plaintiff had an opportunity of recovering and but for his own fault might have recovered in the first action that which he seeks to recover in the second. A plea of res judicata must show either an actual merger*

or that the same point had been actually decided between the same parties."

Counsel explained that as stated by the Appellant in its heads of argument, the doctrine of *res judicata* arises in circumstances where a court is faced with a second action similar to an earlier action concluded by a Judgment of the court. Therefore, where the court has not passed a Judgment on a particular set of facts, a second action based on the same facts can not be caught by the doctrine of res judicata. Counsel submitted that in casu and particularly in the Respondent's response to ground one, the Respondent submitted that by virtue of the court below pronouncing itself on the matter, that forms the basis of this appeal by way of Dismissal Order on account of non-attendance of the plaintiff, the court became *functus officio.*

He submitted further that the concept of *functus officio* may be interrelated with that of *res judicata* in one way or the other but that the said concepts are manifestly distinct and arise in different circumstances. Counsel contended it must be noted that the effect of the two concepts are also manifestly distinct in that with respect to

the concept of *functus officio*, where a court has pronounced itself on the matter by way of technical dismissal, which renders the court *functus officio*, a new action based on the same set of facts can not be caught up by the defence of *res judicata*. However, where a matter has been disposed of by a Judgment, the court is said to be *functus officio* and a new action commenced based on the same facts as the previous actions is susceptible to be dismissed on account of being *res judicata*.

In support of this proposition Counsel cited the case of **New Plast Industries v The Commissioner of Lands and the Attorney General**[6] *where the Supreme Court upheld the decision of the court below dismissing the matter on a technicality and went on to state that; "the Appellant is however, at liberty to commence the proceedings afresh following the procedure by law."*

At the hearing of the matter, Counsel for the Appellant submitted that in relation to the **New Plast Industries v The Commissioner of Lands and the Attorney General**[6] cited by the Respondent, the technicality is different from this case as the parties herein were not aware that the court sat on 22nd February, 2017. With respect to the

argument by the Respondent that the Appellant disregarded an order of the lower court, Counsel submitted that the Order for Directions of 1st December, 2016 was over taken by the Consent Judgment that the lower court signed which appears on page 90 to 91 of the record of appeal. Thus, there was no disrespect on the part of the Appellant.

We have considered ground two and three of the appeal, the spirited arguments from both Counsel as well as all the authorities cited. It seems to us that the real question to be determined by this Court is whether a plaintiff whose action was dismissed by the High Court can commence a fresh action.

We did find under ground one that despite the lower court having terminated the action without further hearing, it did not become *functus officio* as it did not hear the matter on its merits. It follows therefore, that the principle of *res judicata* does not arise under these circumstances. To this extent we do agree with the arguments by the Learned Counsel for the Appellant. However, what we do not agree with, is Counsel's submission that there is no guarantee that if the Appellant commenced a fresh action raising the same cause of action, that action would not be heard and determined as there is a

likelihood that the second action may be seen as an abuse of court process.

The Appellant can commence a fresh action under a new cause after dismissal of the earlier action for the simple reason that the earlier case was not determined on its merit as the parties were not heard. This position was determined by the Supreme Court in the case of **Gaedonic Automotives Limited and Another v Citizens Economic Empowerment Commission[7].** The brief facts of that case were that the Appellants appealed against the Ruling of the High Court at Lusaka, in which the learned Judge held that a plaintiff can commence a fresh action after dismissal of his case for being inactive for sixty days. It was held inter alia that;

"The view that we take of this Appeal is that the Plaintiff can commence a fresh action after dismissal of the earlier action under the ***60 days Rule of the Commercial Court Rules****. The simple reason is that the matter was not adjudicated upon or determined on its merits, as the parties were not heard. Although we agree with Mr. Mulenga's submission that there must be finality or an end to litigation, it is however, our considered view that this does not apply in the*

current case for the same reason that the cause was not determined or adjudicated upon by the court below nor were the parties heard before the earlier cause was dismissed under Order 53 Rule 12 of the Commercial Court Rules. We, therefore, agree with Mrs. Mwanza's submission that litigation only comes to an end after a dispute is heard and determined on its merits by a court of competent jurisdiction. We do not also agree with Mr. Mulenga's "roundabout" argument that the new action should be dismissed on ground that it is res judicata as can be deduced from Counsel's citation and reliance on the case of ***Bank of Zambia vs. Jonas Tembo and Others***[5]*. The reason being that the matter that was dismissed was not adjudicated upon or determined on its merits nor were the parties heard in order for the fresh matter to be res judicata. Our understanding of dismissal under* ***the 60 days Rule*** *is that it means nothing else could be done under that cause. And hence, the reason why the Respondent had to commence a fresh action. We do not, therefore, agree that the second action was an abuse of the court process, as the first cause of action was dismissed under* ***the 60 days Rule,*** *before it was heard or adjudicated upon."*

As explained by the Supreme Court in the **GAEDONIC AUTOMOTIVES LIMITED**[7] case, the effect of a dismissal is that no further action can be taken under that cause by the High Court Judge. However, a new action can be commenced under a different cause. These grounds succeed as well.

Under ground four, Counsel for the Appellant contended that the court below erred in law and in fact when it decided that it does not retain inherent jurisdiction at all times to supervise its own orders and proceedings. In support of this ground, Counsel cited the case of **Electricity Supply Nominees Limited v Farrell**[8] in which it was held that;

"In R v Taxing Officer, ex p Bee-Line Roadways International Ltd (1982) Times, 11 February (cited extensively at [1996] 1 All ER 821–824) Woolf J considered an application for judicial review of a taxing master's decision. He held that although the appeal procedure set out in the rules did not assist the applicants there was no need for them to proceed by way of judicial review because the court had 'an inherent power ... to control its own proceedings conducted by officials of the court, such as taxing masters, as delegates of the judges'. Thus, Mr.

Morgan contends, if the court's power to act be not attributable to the implied liberty to apply, it can be attributed to the inherent power identified by Woolf J."

Counsel further submitted that in light of the foregoing, he is of the view that the court below misdirected itself in holding that it does not retain the jurisdiction to supervise its orders and proceedings. He submitted that this principle is applicable even to orders that the court made sitting alone which is the case in this appeal. Furthermore, Counsel submitted that this reasoning is consistent with the position of the law as confirmed by the case of **Ruth Kumbi v Robinson Caleb Zulu**[9] in which the Supreme Court held as follows;

"Zambian *Courts, where the "Unless" Order has been made, and there has been failure to comply with the Order within a specified period, that does not necessarily mean that, the action is dead or defunct or that the Court is thereby deprived of the jurisdiction or power to extend time for doing a specific act within a specified time."*

Counsel submitted that the above cited law makes it clear that a court will still retain jurisdiction to bring an action to life where such an action was dismissed for failure to comply with conditional orders.

Therefore, the lower court erred in finding that it had no jurisdiction to hear the Appellant's application to set aside the Dismissal Order for irregularity as there is nothing to suggest that the situation the court was faced with is any different from that dealt with in the authorities.

Additionally, Counsel submitted that they noted that the court below cited the case of **Dipak Kumar Patel v David Kangwa Nkonde**[10] as somehow justifying the conclusion the lower court arrived at altogether. He submitted that to this extent also, the court below fell into error because in fact, rule 71 of the Supreme Court Rules[4], which was being interpreted in the Supreme Court decision permits restoration of a matter after it is dismissed where a party that was absent sufficiently excused their absence. The reason for this is clear; in everyday life, situations arise or things happen that lead to absences of a party. Rather than end up in the Court of Appeal as the Appellant has, the solution is to explain the absence before the relevant Court.

Counsel submitted further that there is nothing in the **Dipak Kumar Patel case** to suggest that no application in a matter can be

entertained after a dismissal. Lastly, Counsel argued that the lower court misdirected itself when it ignored the provisions import for Order 25 rule 5 of the High Court Act that, "*any judgment or order made in the absence of a party, may be set aside by the lower Court, upon sufficient cause being shown.*" Counsel prayed that this Court allows the appeal against the Ruling of the Learned Judge of the High Court as the same raises too many nuances for it to survive scrutiny.

In response, it was submitted on behalf of the Respondent that the High Court has inherent jurisdiction to supervise its own orders and proceedings though the said jurisdiction can not be said to arise in instances where the court lacks the requisite jurisdiction to preside over a matter. Counsel submitted that the literal interpretation of the definition of the term *functus officio* already cited above, is that once a court becomes *functus officio*, it has no authority or legal competence to discharge any duties and functions with respect to that particular matter. The court will be said to have fully accomplished its commission.

Counsel submitted that in casu it is common cause that the Appellant's matter was dismissed on account of non-attendance thus

going by the definition of the term dismissal and as rightly interpreted by the court below. No further action can be taken by a party in a matter that has been dismissed. He submitted that to allow a party to bring further proceedings in a matter that has been dismissed on account of non-attendance is tantamount to abuse of court process and to undermine the authority of court. He submitted further that the importance of parties adhering to rules of court has been emphasized by the courts in a plethora of authorities. He cited the case of **Philip Mutantika and Mulyata v Kenneth Chipungu**[11] in which the Supreme Court stated that *"on our part we have always underscored the need for parties to strictly adhere to the rules of court and that the failure to comply can be fatal to a party's case."*

It was counsel's submission that it is trite that the court has the duty to promote its integrity and process and can only do so if its orders are respected and in casu the order of court was disregarded by the Appellant and it must bear the consequences of its conduct.

We have considered ground four of the appeal. It is trite law that the High Court has inherent jurisdiction at all times to supervise its own orders and proceedings. We agree with the submissions made by

Counsel for the Appellant with respect to this ground of appeal. It is trite that in the dispensation of justice, it is imperative that litigants must at all times adhere to court procedural rules and regulations. We note that the absence of the Appellant on the 2nd of February, 2017 was not deliberate. We have also noticed that the Appellant has been very serious and desirous to prosecute its matter. For these reasons, therefore, we find in the sum total that the appeal has merit. The appeal succeeds, the Ruling of the court below is accordingly set aside with costs to the Appellant. The matter is sent back to the High Court before the same Judge for re-hearing.

Dated the 4th day of June 2018

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J. CHASHI

COURT OF APPEAL JUDGE.

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J.M SIAVWAPA

COURT OF APPEAL JUDGE.

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P.C.M NGULUBE

COURT OF APPEAL JUDGE.