

IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT NDOLA AND LUSAKA
(Civil Jurisdiction)

Appeal No 40/2017

BETWEEN:

UNITED QUARRIES LIMITED

AND

CHONGWE DISTRICT COUNCIL

Coram: Mchenga, DJP, Chishimba and Kondolo, JJA



APPELLANT

RESPONDENT

On 1st August 2017 and 3rd May 2018

For the Appellant: K.M. Shepande, Shepande & Company

For the Respondent: Z.S. Mulenga, In house counsel

J U D G M E N T

Mchenga, DJP, delivered the judgment of the court.

Cases referred to:

1. Edith Tshabalala v The Attorney-General [1999] Z.R. 139
2. Neddy Nzowa v Able Construction Limited [2004] Z.R. 159

Legislation referred to:

1. The Local Government Act, Chapter 281 of the Laws of Zambia,
2. The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999
3. The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 104 of 2003
4. The Mines and Mineral Act, Chapter 213 of the Laws of Zambia.

This is an appeal against a High Court judgement which ordered that, the appellant pay sand levy to the respondent for the period January 2000 to December 2006. The court also ordered that the amount due be assessed by the Registrar.

The history of the matter can be summarised as follows; during the material period, the appellant, a limited liability company which was registered with the Ministry of Mines and Minerals Development and a payer of mineral royalty tax, operated a quarry in Chongwe district, where the respondent is the local authority. In the year 2000, the respondent's officers approached the appellant seeking information on how much crushed stone they had mined and sold. This information was not made available until March 2007, when the appellant indicated that 318,513 tons of crushed stone had been produced and sold.

The respondent then demanded that the appellant pay levies amounting to K797,805,000.00, but the appellant declined, arguing that the levy was payable on sales and not production. They also argued it was the respondent's responsibility to collect such levy at checkpoints from the appellant's customers and that since there was no checkpoint on their premises, they were only required to pay mineral royalty tax. The responsibility of paying the levy at the checkpoints lay on the transporter or buyer of the stone they had quarried.

The trial judge found that under **section 69 of the Local Government Act**, the respondent was entitled to impose a levy, through By-laws, on persons who were carrying on business, trade or occupation, in their area and where such levy was not paid, it was recoverable as a civil debt. She found that pursuant to **the Local**

Government Act, the respondent had passed **The Chongwe District Council (Sand Levy) By-laws, Statutory Instrument No. 62 of 1999**, which was subsequently amended by **The Chongwe District Council (Sand Levy) By-laws, Statutory Instrument No. 104 of 2003**. Under these by-laws, the appellant was under an obligation to pay a levy at determined rate, per tonne. She found that the appellant was also precluded from quarrying stone without paying the levy. Further, the said statutory instruments did not limit the collection of the Levy to the checkpoint or to persons who had bought the crushed stone from the appellant, it merely provided that it could be paid at any checkpoint.

In addition, the trial judge found that there was no evidence showing that the appellant was exempted from paying the levy on account of being a holder of a mining right under **section 74 of the Mines and Mineral Act**. She also found that the levy can be claimed in arrears as a civil debt because the appellant was approached in 2000 for production information and only provided it in 2007. She ordered that the levy due be assessed by the Registrar.

Dissatisfied with that judgment, the appellant has advanced 3 grounds of appeal, these are that:

1. Learned trial judge erred in law and in fact in holding that the sand levy is payable at any point and not just at any checkpoint established by council.
2. The learned trial judge erred in law and in fact in holding that the sand levy is payable in arrears.

3. The learned trial judge erred in law and in fact in holding that a person who mines sand or sells it does not necessarily need to go through a checkpoint to pay levy.

At the hearing, counsel for both the appellant and the respondent indicated that they would rely on the written heads of arguments that they had respectively filed on 2nd May 2017 and 1st September 2017.

As we see it, this appeal case is concerned with the interpretation of **sections 3 and 4 of The Chongwe District Council (Sand Levy) By-laws, 1999, sections 3 and 4 The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 104 of 2003 and section 69 (3) and (4) of the Local Government Act**, in so far as they relate to when sand levy is collectable. In the case of **Edith Tshabalala v The Attorney-General**¹, commenting on the approach when interpreting statutes, Ngulube CJ, at page 143, held as follows:

“The fundamental rule of interpretation of a statute is that it should be construed according to the intent expressed by Parliament: This means that the literal and grammatical meaning will prevail where there is nothing to indicate or suggest that the language should be understood in any other special sense.”

A similar view was echoed in **Neddy Nzowa v Able Construction Limited**², where the Supreme Court, held, *inter alia*, that:

“the primary rule of interpretation of statutes is that the meaning of any enactment is to be found in the natural and ordinary meaning of the words used.”

Sections 3, 4 and 5 of The Chongwe District Council (Sand Levy) By-laws, 1999 provide as follows:

3. A person who mines sand within the area or exports sand from the area shall pay to the Council sand levy at a rate of five hundred kwacha per tonne.

4. A person shall not mine sand within the area or export sand from the area for which no sand levy has been paid to the Council.
5. Sand levy is payable at any check-point and shall be received by a collector who shall immediately issue an official receipt for the payment.

In 2003, **sections 3 and 4 of The Chongwe District Council (Sand Levy) By-laws, 1999**, were amended. They were replaced with **sections 3 and 4 The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 104 of 2003**. They now provided as follows:

3. A person who sells or transports sand within the area or exports sand from the area shall pay to the council sand levy at the rate of two thousand kwacha per tonne.
4. A person shall not sell sand within the area or export sand from the area for which no sand levy has been paid to the council.

Also relevant to this appeal are **section 69 (3) and (4) of the Local Government Act**.

They provide as follows:

- (3) The proceeds of a levy shall accrue to the Council
- (4) The amount of any levy which is not paid shall be recoverable by the Council as a civil debt

Having considered these provisions, we satisfied that the intention of the legislator can be discerned from the natural and ordinary meaning of the provisions in the By-laws.

In support of the first ground of appeal, counsel submitted that **section 5 of The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999**, clearly provides that the levy is payable at a checkpoint and the collector receiving it immediately issues an official receipt. This being the case, the trial judge erred when she found that it was payable anywhere. Counsel also submitted that since the provision clearly indicates that the levy is only payable at a checkpoint and there was none on the appellant's premises, no levy was payable.

In response to this ground of appeal, counsel for the respondent submitted that the trial judge was on firm ground when she found that the levy can be collected at any point which the respondent has designated for that purpose. Reference was made to **sections 3 and 4 of The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999** and **The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 104 of 2003** and it was submitted that they allow for the collection of the levy from places other than a checkpoint. This being the case, it can even be collected from a mine.

Section 5 of The Chongwe District Council (Sand Levy) By-laws, 1999 provides that the levy is "**payable at any check-point and shall be received by a collector who shall immediately issue an official receipt for the payment**". Contrary to counsel's submission, the provision does not indicate that the levy is only payable at a checkpoint. **The online Merriam-Webster Dictionary** defines the word "payable" as "that may, can, or must be paid".

In the circumstances, we agree with counsel for the respondent, that the trial judge, cannot be faulted, for coming to the conclusion that the word "payable" **Section 5 of The Chongwe District Council (Sand Levy) By-laws**, identifies a check point as being one of the places and not the only place, at which the levy can be paid. It follows, that the argument that since there was no checkpoint on the appellant's premises, they were under no obligation to pay the levy, is flawed. We find no merit in the first ground of appeal and it fails.

Coming to the second ground of appeal, it was argued on behalf of the appellant that the requirement in **section 5 of The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999**, that a receipt is issued "immediately" after payment of the levy, is indicative that the levy must be paid immediately after the quarried stone has been collected by the buyer. In this case, since the levy was not collected immediately, no arrears could have accrued to the respondent.

In response to this ground of appeal, counsel for the respondent submitted that **Section 69(3) of the Local Government Act** provides that all payable levies shall accrue to the council. Counsel also referred to **section 69(4) of the Local Government Act**, which allows unpaid levies to be recovered as a civil debt, and submitted that it is absurd to argue that if it is not immediately collected, then the levy cannot be collected.

In our view, the words "immediately" in **Section 5 of The Chongwe District Council (Sand Levy) By-laws, 1999**, refer to the issuance of the official receipt after payment has been made. It does not refer to payments being made immediately after the quarried stone has been bought or collected. In fact, the By-laws envisage a number of scenarios in relation to the payment of the levy. Section 4 provides that a person shall not sell or export sand from the area for which no sand levy has been paid to the council. This is indicative that there are instances where the levy can be paid upfront or just before the product is removed to outside Chongwe district.

In the light of **section 69 (3) and (4) of the Local Government Act**, which provides that any levy which is not paid is recoverable as a civil debt, the trial judge cannot be

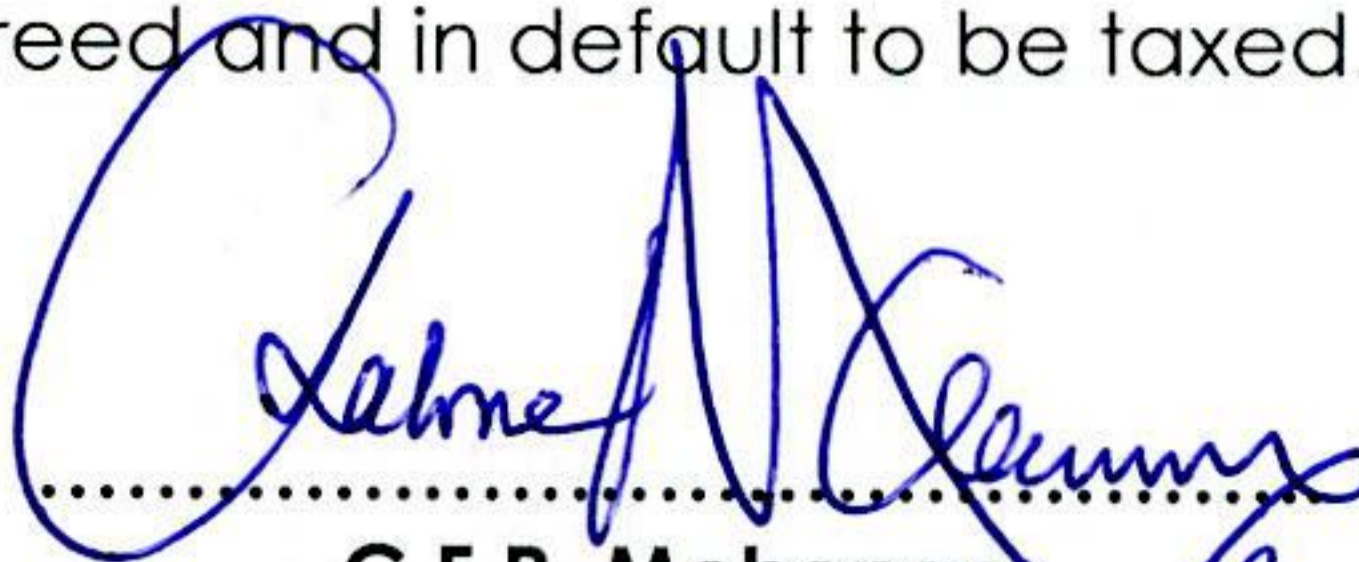
faulted for finding that the levies not paid by the respondent between January 2000 and December 2006, were recoverable in arrears. We find no merit in this ground of appeal and it fails.


In support of the third ground of appeal, counsel submitted that the word "shall", in **section 5 of The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999**, is indicative that, it is mandatory that one who has bought quarried stone must pass through a checkpoint and it is at such checkpoint that the levy must be paid. It follows, that the trial judge failed to properly construe the provision when she found that it was not necessary for one to pass through a checkpoint before making a payment.

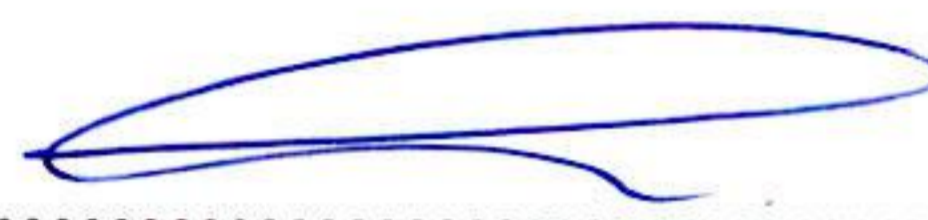
In response to the third ground of appeal, counsel for the respondent submitted that it is not correct to claim that the levy can only be collected at a checkpoint. Counsel referred to **sections 3 and 4 of The Chongwe District Council (Sand Levy) By-Laws, Statutory Instrument No. 62 of 1999** and was submitted that the do not stop the collection of levies from the mines, they actually allow its collection from mines.

We have already indicated that the trial judge was on firm ground when she found that the levy was payable at places other than a check-point. This being the case, it is immaterial that there was or was no check point on the appellant's quarry. The appellant was supposed to ensure that the stones they had mined and crushed were paid for and they did not do so. There being no evidence that the transporters of the crushed stones paid the levy, the appellant was liable to pay the levy because they had either mined or sold the stones. We equally find no merit in this ground of appeal.

The three grounds of appeal having all been unsuccessful, this appeal fails. It is dismissed with costs, to be agreed and in default to be taxed.


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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT


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F.M. Chishimba
JUDGE OF THE COURT OF APPEAL


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M.M. Kondolo SC
JUDGE OF THE COURT OF APPEAL