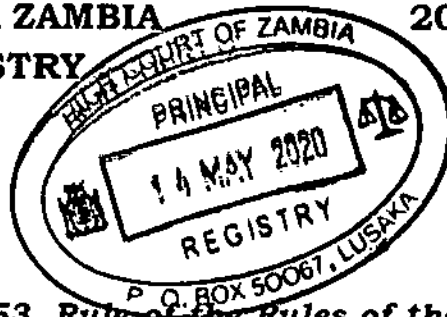


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2019/HP/0337



In the matter of: **Order 53, Rule of the Rules of the Supreme Court of England, 1999 Edition**

And

In the matter of: **An Application for leave to apply for Judicial Review by Elias Ngoma**

BETWEEN:

ELIAS NGOMA (Suing in his capacity as Secretary
General of **Small Livestock Association of Zambia**)

APPLICANT

AND

THE ATTORNEY GENERAL

1ST RESPONDENT

CONFIDENCE CHATIKA

2ND RESPONDENT

CORAM: HONORABLE MR. JUSTICE MWILA CHITABO, SC

For the Applicant: **Mr. R. Mainza of Messrs Mainza and Company**

For the 1st Respondent: **Ms. N.K Chongo – State Advocate**

For the 2nd Respondent: **A. Mukande of Messrs H.H Ndhlovu and Company**

R U L I N G

Legislation referred to:

1. *Societies Act, Chapter 119 of the Laws of Zambia*
2. *Rules of England, White Book, 1999 Edition*

Cases referred to:

1. *Chitala (Secretary of the Democratic Congress) v. Attorney General (1995 – 1997) ZR 91*
2. *R v. Inland Revenue Commissioners Ex Parte National Federation of Self Employed and Small Business Limited (1982) AC 617*
3. *Ludwig Sondashi v. The Attorney General SCJ No. 27 of 2000*
4. *Wilson Masauso Zulu v. Avondale Project Limited (1982) ZR 172*
5. *Development Bank of Zambia and another v. Christopher Mwanza and 63 others SCZ/8/103/08*

On 7th March, 2019, the Applicant launched an exparte notice for leave to apply for judicial review. The reliefs sought were:-

- (a) An order of certiorari to move the High Court to quash the decision of the Chief Registrar made on 19th February, 2019 nullifying the election of the Executive Committee of the Small Livestock Association of Zambia conducted on 12th October, 2018.
- (b) A declaration that the decision of the Chief Registrar of Societies made on 19th February, 2019 nullifying the election of the Executive Committee of the Small Livestock Association

of Zambia of 12th October, 2018 is *ultra-vires* the powers vested in the Chief Registrar of Societies by the Societies Act, Chapter 119 of the Laws of Zambia and null and void and of no effect.

(c) A declaration that the decision by the Chief Registrar of societies breached the Rules of Natural justice when she made the decision complained of without affording the Executive Committee of the Small Livestock Association of Zambia an opportunity to be heard.

(d) The applicant anchored the application on Rule (3) of Order 53 of the Rules of the Supreme Court²

(e) That if leave to apply for judicial review is granted, such leave was to operate as a stay of the decision of the Chief Registrar of Societies until the hearing of the application for judicial review or further order.

(f) That if leave is granted, a direction that the hearing of the application for judicial review is expedited.

The reliefs sought were anchored on the following grounds:

- 1) That the Applicant is the current Secretary General of the Small Livestock Association of Zambia having been elected as

such on 12th October, 2018 by the members of the said Small Livestock Association of Zambia.

- 2) The Small Livestock Association of Zambia is fully registered with the office of the Registrar of Societies pursuant to Section 7(1) of the Societies Act.
- 3) The resolutions made during a meeting held in the office of the Chief Registrar of societies on 14th September, 2018 attended by members of Small Livestock Association of Zambia and chaired by the said Chief Registrar of Societies, it was resolved inter alia that the Association holds elections on 13th October, 2018 to usher in a new Executive.
- 4) The meeting also resolved that an Interim Committee comprising of one Chasha Trust, Bubala Oscar, Malama Charles, Chisenga Chrispin, Muyenga Jimmy and Chatika Confidence be constituted to spearhead the organisation of the elections.
- 5) That pursuant to the said resolutions referred to above, one Oscar Bublala, Dennis Mambwe, Christopher Mwepu, Trust Chasha and Confidence Chatika acting on behalf of the Small Livestock Association of Zambia compiled a final register comprising of members of the Association who were eligible to vote.

- 6) That by letter dated 26th September, 2018, one Oscar Bubala acting in his capacity as Interim Committee Secretary requested the Town Clerk of Lusaka City Council to make available Nakatindi Hall to the Small Livestock Association of Zambia for purposes of elections.
- 7) That by letters dated 5th, 6th and 7th October, 2018 respectively, one Charles Madubeko, Charles Malama, Christopher Mwanza, Robert Silwimba and Precious Nayame resigned as employees of the Small Livestock Association of Zambia in order to enable them contest the elections.
- 8) That as 13th October, 2018 was a Saturday the Interim Committee which was tasked to organize the elections decided to bring forward the election date to 12th October to accommodate members of the Association who belong to the Seventh Day Adventist (SDA).
- 9) That for purposes of elections, all members of the Association whose names appear on the Final Register referred to above were issued with Identity Cards.
- 10) That on the election day namely 12th October, 2018, all members of the Association who were eligible to vote whose names were captured on Final Register referred to in paragraph 9 above gathered at Nakatindi Hall for purposes of participating in the elections.

- 11) That before entering the Voting Hall, members who were eligible to vote were scrutinized with the aid of the Final Register and Identity Cards by two members of the Interim Committee namely, Christopher Mwepu and Oscar Bubala.
- 12) Upon entering the Voting Hall voters were once again scrutinized by two members of the Interim Committee namely Confidence Chatika and Dennis Mambwe in the presence of Officers from the Zambia Police and officials from Lusaka City Council.
- 13) That before voting started, one Daniel Chonde read out a speech on behalf of the Acting Permanent Secretary for Ministry of Fisheries and Livestock in which he inter alia commended the Small Livestock Association of Zambia for holding the Elective General Meeting.
- 14) After the speech by the Acting Permanent Secretary for Ministry of Fisheries and Livestock, the Lusaka City Council officials conducted the elections between about 12:00 hours up to 22:00 hours.
- 15) The candidates with the highest votes were declared duly elected by the Returning Officer.
- 16) That following the elections New Executive Committee proceeded to take up their positions.

- 17) Later the Secretary General submitted a list of the new Executive Committee Members to the Office of the Chief Registrar of Societies in order to facilitate change of Office bearers for the Small Livestock Association of Zambia.
- 18) That for close to four (4) months the Secretary General did not receive any response from the Chief Registrar of Societies regarding the list of the new Executive Members until 28th February, 2019 when he received a letter authored by the Chief Registrar of Societies via Whatsapp platform from one Elias Davison Nkhuwa the former Secretary General of the Small Livestock Association of Zambia inviting one Nkhuwa Elias, Chasha Trust, Chisenga Chrispine, Chatika Confidence, Malama Charles, Bubala Oscar, Sakanya Issac and Enock Sichone to attend a meeting on 1st March, 2019 at the Ministry of Home Affairs Board room.
- 19) That the agenda for the meeting in question was only served on Nkhuwa Elias, Chasha Trust, Chisenga Chrispine, Chatika Confidence, Malama Charles, Bubala Oscar, Sakanya Isaac and Enock Sichone when they arrived at Ministry of Home Affairs Boardroom on 1st March, 2019.
- 20) The meeting held at Ministry of Home Affairs boardroom on 1st March, 2019 was chaired by the Chief Registrar of Societies and that during the meeting in question the said Chief

Registrar of Societies informed the meeting that there were leadership wrangles in the Association and that she had received petitions and complaints from members and stakeholders.

- 21) That for reasons best known to the said Chief Registrar of Societies she never disclosed the names of the Petitioners, complainants and stakeholders to the persons she had invited to attend the said meeting.
- 22) That at the close of the meeting held on 1st March, 2019 the said Chief Registrar of Societies availed Mr. Elias Nkhuwa former Secretary General of the Small Livestock Association of Zambia a letter dated 19th February, 2019 in which she was communicating the nullification of the elections held on 12th October, 2018 which ushered in the New Executive.
- 23) The Executive Committee for the Small Livestock Association of Zambia was not given an opportunity to be heard by the Chief Registrar on the alleged petitions and complaints made against the new executive by the petitioners and stakeholders.
- 24) The Chief Registrar of Societies breached the Rules of natural justice when she failed to accord the new executive committee of the Small Livestock Association of Zambia an opportunity to be heard on the alleged petitions and complaints received by her office from the petitioners and stakeholders before she

made the decision to nullify the elections conducted on 12th October, 2018.

25) That the Chief Registrar of Societies' decision to nullify the elections conducted on 12th October, 2018 is *ultra vires* the powers vested in her by the Societies Act, Chapter 119 of the Laws of Zambia.

26) That the Societies Act, Chapter 119 of the Laws of Zambia which the Chief Registrar of Societies claims to have relied upon when making the decisions to nullify the elections in question does not confer power on the Chief Registrar of Societies to nullify elections. On the contrary, the Act only allows the Chief Registrar of Societies to cancel the registration of any Society.

27) At hearing of this application the Applicant intended to rely on affidavit sworn by the Applicant on 5th February, 2019.

The notice was supported by a statement filed pursuant to Order 53 Rule 6 of the Rules of the Supreme Court which is a reiteration of the facts alluded to in the notice.

The notice is also accompanied by an affidavit verifying the facts relied on in support of the application deposed to by one **Elias Ngoma** the applicant herein in his representative capacity as shown by exhibit "**EN1**".

Exhibit **EN2** is evidence of certificate of registration.

In essence, the deponent echoes what is stated in the statement of facts.

Exhibit **EN3** is a copy of a letter dated 18th September, 2018 authored by the Registrar of Societies to the Chairperson of the Small Livestock Association of Zambia confirming a resolution that the Association holds election on 13th October, 2018.

Exhibit **EN4** is a copy of the Final Register of members of the Association.

Exhibit '**EN3**' also attest to an interim committee composed of Chasha Trust, Malama Charles, Bubala Oscar, Chisenga Crispin, Muyenga and Chitika Confidence to spearhead the organisation of the elections.

Exhibit "**EN5**" is a letter by one Oscar Bubala to the Town Clerk of Lusaka requesting for use of Nakatindi Hall for purposes of elections.

Exhibit "**EN6**" speaks to the letters dated 5th, 6th and 7th October, 2018 by Messrs Charles Madubeko, Charles Malama, Christopher Mwanza, Robert Silwimba and Precious Nyambe resigning as employees of the Association so that they are eligible to stand for elections.

Exhibit "**EN7**" is a sample card for members of the Association appearing on the Final Register.

The members were ready for elections on the return date of 12th October, 2018 as evidenced by exhibit "**EN4**".

That voters were scrutinized and that before voting a speech by Acting Permanent Secretary for the Ministry of Fisheries and Livestock was read and elections were conducted between 12 to 22 hours on the election date in the presence of 2 members of Interim Committee officers from Zambia Police Service and officials from Lusaka City Council.

That exhibit "**EN1**" speaks to the duly elected to their respective positions and so declared by the Returning Officer.

The deponent subsequently submitted the list of the New Executive members of the Association to the Registrar.

There was no response from the Chief Registrar until the 28th February, 2019 calling for a meeting on 1st March, 2019 at the Ministry of Home Affairs boardroom as shown by exhibit "**EN9**".

The deponent learnt that during the meeting with chairperson it was reported that there were leadership wrangles and petitions and complaints had been received from members and stake holders though the names of the aggrieved were not revealed. This information came from Charles Malama, Trust Chisha and Isaac Sakanya.

That without affording the affected persons an opportunity to be heard, the Chief Registrar of Societies nullified the elections held on 12th October, 2018 as shown by exhibit "**EN11**".

It was deposed that the applicants were denied opportunity to be heard and sought for the nullification of the decision by the Chief Registrar of Societies letter dated 19th February, 2019 in which she communicated the nullification of the elections held on 12th October, 2018.

That the said Registrar's decision was *ultra vires* the provisions of the Societies Act.

The notice was opposed by an affidavit in opposition deposed to by one **Thandiwe S. Phiri-Mhende** the Chief Registrar of Societies. The gravamen of which was that the records of the applicant reveals that **Elias Davison Nkhuwa** is the Secretary of the Society as shown by letter dated 4th November, 2016 shown as by exhibit "**TMP1**" and not **Elias Ngoma**.

That the voters register was prepared by the Interim Committee namely Oscar Bubala and Confidence Chatika the night before the elections and was not shared with her officer and it was not availed to the members, neither was it shared with the Lusaka City Council Returning Officer Mwanga Teddy dated November, 2018.

That contrary to the instructions given to the interim committee, that all resignation letters were to be copied to the Registrar's office was not complied with.

That copies of resignation letters were not made available to the returning officer as shown by exhibit "**TPM2**". That it is an abrogation of the Associations' constitution to have employees contest the leadership positions without tendering resignations first.

That the Registrar's office was informed by the Returning officer and **Confidence Chatika** and **Bubala Oscar** in confidence that there was neither scrutiny of any member nor verification of the voter register. Further that not all members that appeared on the voter register were allowed to vote as some members from the interim committee directed Lusaka City Council by word of mouth who was to vote as indicated in the Returning Officers report alluded to earlier.

That it took close to four months to respond to submissions for change bearers on account of the numerous petitions received by the Depondents office as shown collectively by exhibits "**TPM3**" dated 16th and 18th October, 2018, 28th November, 2018 and 1st February, 2019.

That during that period various investigations were conducted with the stakeholders as shown collectively by exhibits "**TPM4**" dated 12th December, 2018 and 12th February, 2019.

That the option not to circulate agenda for the meeting was a stragem by the stakeholders to avoid violence and security concerns. This is shown by exhibit "**TPM5**" speaking to threats of

violence on Mr. Elias Nkhuwa, pictures of assaulted members of the Association.

That the complainants in fact attended the meeting and the petitions received were clearly outlined to them. Further, some names of the complainants were withheld for security reasons.

That communication of the nullification of elections was done through recognized Secretary General of the Association Nkhuwa Elias as shown by exhibit "**TPM6**".

It was deposed that there was no breach of any rule of natural justice. That the Registrar and the complainants and the executive were in engagement on the issues herein as far back as September, 2018 as shown by exhibits collectively marked as "**TPM7**" being copies of conflict resolution and other resolutions.

Finally, it was deposed that the decision by the deponent to nullify the elections held on 12th October, 2018 is not *ultra vires*.

The Applicant filed in an affidavit in reply and in so far as it is not repetitive nor it does not present extraneous considerations or legal argument, it was deposed by Elias Ngoma that the executive committee wherein Davison Nkhuwa was General Secretary was dissolved prior to the holding of the elections and the Applicant was duly elected as shown by exhibit "**TPM1**" in the Respondents affidavit in opposition.

On 17th May, 2019, Messrs H.H Ndhlovu filed in summons for leave for joinder of one **Confidence Chatika**. It was supported by an affidavit deposed to by one **Confidence Chatika**. The essence of which was that part of the members who organized and took part in elections of new office bearers of the Association.

That on 19th February, 2019, the Chief Registrar of Societies wrote to the Applicant and his group notifying them of her refusal to give effect to their notice of change of office bearers. The purported elected executive committee was dissolved and fresh elections set for 20th April, 2019 as shown by exhibit "**CC1**".

That on 25th February, 2019, senior members of the Association of Zambia who had earlier on petitioned the Registrar on the fraudulent elections in which the Applicant was elected, met to nominate an interim committee.

The Applicant deliberately stayed away in order to frustrate the process and directive of the Registrar.

That it was at that juncture that senior members of the Association who included the Petitioners of the disputed elections nominated him and 2 others in order to fill the void that had been created by the dissolution of the committee.

Exhibit "**CC2**" speaks to this position.

On 4th March, 2019, he took out an action 2019/HP/333 against the Applicant who was among 12 others restraining him and his

colleagues from holding themselves out as office bearers of the Association as shown by exhibit "CC3". He later learnt of the action in this Court for judicial review. In his view, the Applicant was in breach of the order in cause 2019/HP/333. He finally deposed that he had sufficient locus standi and he should be made a party to the proceedings.

On 24th January, 2020, I joined the Confidence Chatika as a second respondent.

I am indented on the helpful research by the Learned Attorneys for the Respondents. The following are common cause and I make the following findings of fact.

1. That on 12th October, 2018 the elections were held to choose new office bearers for Small Livestock Association of Zambia.
2. Elias Ngoma was one of the persons who organized and took part in the elections of new office bearers of the Association and he was returned as Secretary General of the Association together with other office bearers.
3. That the returning officer communicated the results of the elections to the Registrar.
4. That the Registrar subsequently received complaints and petitions from some affected persons and stakeholders alleging

various acts of electoral malpractices, threatening violence amongst other allegations.

5. On 19th February, 2019, the Registrar wrote to the Association nullifying the elections of the office bearers elected on 12th October, 2018 and directed that fresh elections be held on 20th April, 2019.
6. On 25th February, 2019, senior members of the Association who were disenchanted with the 12th October, 2018 nominated an interim committee inclusive of the 2nd Respondent Confidence Chatika to form interim committee and the names forwarded to the Registrar.
7. On 4th March, 2019, Confidence Chatika took out an action as interim chairman of the Association and obtained an interim order restraining Charles Malama and 12 other defendants by themselves or by their servants or agents or otherwise howsoever from holding themselves out as office bearers of the Association and from doing any act or dealing in any manner with the affairs and assets of the Association until a further order of the court in cause number 2019/HP/0333.
8. That on 7th March, 2019, Elias Ngoma suing in his capacity as Secretary General of the Association launched proceedings for leave for commencement of judicial review proceedings to nullify the Chief Registrar's decision of 19th February, 2019

alleging breach of one of the rules of natural justice of the right to be heard and ultra vires. If leave was granted, the leave to operate as a stay of the said decision by the Chief Registrar.

I will now deal with the law relating to Judicial Review at stage of seeking leave. The starting point is Order 53 Rule of SCR, it provides as follows:-

“No application for Judicial Review shall be made unless the leave of the Court has been obtained”

Practice Note 53/14/55 lays it down that:-

“The purpose of the requirement of leave is (a) to eliminate at an early stage any applications which are frivolous, vexatious or hopeless; and (b) to ensure that the applicant is only allowed to proceed to a substantive hearing if the court is satisfied there is a case fit for further consideration to prevent the time for the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived”

Judicial precedence abound in a host of authorities.

The court of final resort has had occasions to authoritatively pronounce itself in the case of **Chitala (Secretary General of the Democratic Congress) v. Attorney General**¹ where quoting from the case of **Inland Revenue Commissioners Exparte National Federation of Self Employed and Small Business Limited**², they put it this way:-

“We set the purpose of leave at page 95 as follows:- to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public officers and authorities might be left as to whether they would safely proceed with administrative action while proceeding for judicial review of it was actually pending even though misconceived”

I agree with the submission of the Learned Counsel for the 1st Respondent that the Chief Registrar of Societies was within his preserve as provided for in the preamble of the Societies Act when it provided as follows:-

“An act to provide for the better control of Societies by the registration and supervision , and to provide for matters connected herewith and incidental thereto”

Having nullified the elections of the Association held on 12th October, 2018, the Chief Registrar appointed a definite date of 20th April, 2019. That being the case there would be nothing triable to warrant granting leave for Judicial Review.

ALTERNATIVE REMEDIES

It is trite law that where an alternative administrative exist leave ordinarily ought not to be granted. Practice Note 53/14/27 of RSC provides as follows:-

“it is a cardinal principle save as the exceptional circumstances the jurisdiction to grant judicial review will not be exercised where other remedies are available and have not been used”

Judicial precedence abound to support the above legal proposition. In the case of **Ludwig Sondashi v. The Attorney General**³ Madam Justice Chibesakunda, JS (as she then was) in holding iii:-

“It is a requirement in Judicial Review that available remedies must be exhausted before applying for Judicial Review”

MULTIPLICITY AND DUBLICITY

The affidavit of Confidence Chatika the second Respondent reveals that he launched proceedings in the High Court in cause 2019/HP/0333 on 4th March, 2019 and obtained a restraint order against Charles Malama and 12 others (which includes Elias Ngoma the Applicant herein).

By launching fresh proceedings herein on 7th March, 2019, the Applicant was in effect setting two courts on a collision course. In the case of **Wilson Masauso Zulu v. Avondale Project Limited**, Ngulube DCJ (as he then was) held that:-

“A trial court has a duty to adjudicate every aspect of a suit between the parties so that every matter in controversy is determined in finality”

Her ladyship, the Hon. Chief Justice Madam Justice Irene C. Mambilima in the case of ***Development Bank of Zambia and another v. Christopher Mwanza and 63 others***⁵ put it this way:-

“A party who is clearly in default should reap the consequences of his inertia and cannot be allowed to roam the courts like a headless chicken keeping the other party in suspense more so that the party was represented by Counsel”

Allowing the Applicant proceeding to trial by granting leave to proceed with Judicial Review will not be in the interest of justice and good administration of justice. I refuse to be complicit in allowing cases which have the effect of bringing the courts in ridicule and abuse of court process.

The costs are for Respondents to be taxed in default of agreement.

Leave to appeal to the superior Court of Appeal is denied.

Delivered under my hand and seal this ^{14th} day of May, 2020



Mwila Chitabo, SC
Judge