

SAIPAR Case Review

Volume 4
Issue 2 November 2021

Article 3

11-2021

Editor's Note

O'Brien Kaaba

University of Zambia; Southern African Institute for Policy and Research, okaaba@yahoo.com

Kafumu Kalyalya

Follow this and additional works at: <https://scholarship.law.cornell.edu/scr>



Part of the [African Studies Commons](#), and the [Law Commons](#)

Recommended Citation

Kaaba, O'Brien and Kalyalya, Kafumu (2021) "Editor's Note," *SAIPAR Case Review*. Vol. 4: Iss. 2, Article 3.
Available at: <https://scholarship.law.cornell.edu/scr/vol4/iss2/3>

This Prefatory Matter is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in SAIPAR Case Review by an authorized editor of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Editor's Note

We are pleased to present *Volume 4: Issue 2* of the SCR 2021. The current issue consists of ten case reviews. The first case is *Semmy Lasco Kavinga v The People Appeal* and, in his review, O'Brien Kaaba posits that when the Court of Appeal sentenced a pastor or apostle at the Spirit of Christ Fellowship church in Lusaka to 105 years in prison with hard labour for the crimes rape, attempted rape, and two counts of indecent assault, the Court of Appeal acted in a manner inconsistent with constitutional norms.

The second case under review is *Mineral Sands Resources (Pty) Ltd and Another v Redell and Others and Two Related Cases*. In his review of the case Dunia P. Zongwe makes the case that the Court introduced a defense mechanism to prevent lawsuits launched by big corporations to silence criticisms. In other words, for the first time in South Africa, a court recognized the SLAPP phenomenon and accepted a defense against this kind of lawsuits.

The Third case under review is *Swartbooi and Another v Speaker of the National Assembly*. In his review of the case Dunia P. Zongwe makes the case that in *Swartbooi*, the Supreme Court failed to give flesh, blood and bones to a theory that could unify the cases that dealt with the separation of powers in Namibia. Though few lawyers would disagree with the outcome of its judgment, the Court nonetheless achieved this outcome by retreating into its legalistic shell.

The fourth case review is *Dipak Patel v. Attorney General*. In that case, the Petitioner, a former Minister, petitioned the Constitutional Court alleging that the Minister of Finance had violated the Constitution by acquiring debt without the prior approval of the National Assembly. The Constitutional Court, by majority decision, dismissed the petition finding that the requirement for National Assembly approval was not mandatory. Josiah Kalala makes the case that contra the majority judgment, National Assembly oversight in debt contraction not only mitigates high indebtedness but also National Assembly oversight over debt contraction is rooted in principles of separation of powers and checks and balances.

The fifth case under review is *Dipak Patel v. Attorney General*. In review of the case, Changa Chungu posits that the fact that the Constitutional Court reached a conclusion that there isn't a mandatory requirement to submit all loans to the National Assembly for approval does not seem to be in line with Article 63(2)(d) which is couched in mandatory terms. Clearly, the intention of the drafters of the Constitution was that the National Assembly should have oversight over all public debt as a matter of good governance, and separation of powers. Such a power does not vest in the Executive. To this end, the minority opinion penned by Justice Munalula is more convincing in this regard.

The sixth case under review is *Guardall Security Group Limited v. Reinford Kabwe*. In that case The Court of Appeal dealt with a judgment of the Industrial Relations Division of the High Court which was passed more than one year after the matter was commenced. The Court of Appeal interpreted section 85(3)(b) (ii) and 94 (1) of the Industrial and Labour Relations Act which prescribe that judgment should be within one (1) year of the filing of the complaint and sixty (60) days from close of trial. According to reviewer, the judgment in *Guardall Security Group Limited v. Reinford Kabwe* is significant because the judgment reinforces the need for the Industrial Relations Division of the High Court to decide matters within one year from the date the Notice of Complaint is filed and within 60 days from the close of trial – and the High Court within 90 days from the filing of Submissions.

The seventh case under review is *Frida Kabaso (Sued as Country Director of Voluntary Services Overseas Zambia) v. Davies Tembo*. This case concerned an appeal from the Industrial Relations Court where an employee was employed on a permanent contract by Voluntary Services Overseas Zambia as an Administrative Officer on 11th July 1996. He was later promoted to the position of Officer Manager. The Industrial Relations Court held that while there cannot be a redundancy where an employee is offered alternative employment, in this case the employee was not offered suitable alternative employment and only took up the position due to his employer's coercion. The court ordered the payment of a redundancy package but declined to award damages for mental distress and anguish. The Supreme Court confirmed that the provisions on redundancy and the (now repealed) Employment Act situated in section 26B do not apply to employees on written contracts. The court guided that for those on written contracts, redundancy only applied if the contract provided, which it did in this case. The fact that the Industrial Relations Court did not consider the provision on redundancy in the contract was a misdirection, according to the Supreme Court.

The eighth case under review is *Albert Mupila v. Yu-Wei*, a landmark employment law decision. In that case an employee was employed on an oral contract of employment since June 2016 by an employer engaged in providing casino services. He was never availed with a copy of his contract and was paid a salary below the prescribed minimum for workers protected by the Shop Workers Order. The Industrial Relations Division held that the employee was entitled to the underpayment of his salary for the years he worked as he was a protected employee covered by the Shop Workers Order. In addition to the underpayment of his salaries, the court exercised its discretion in terms of section 85A of the Industrial and Labour Relations Act to award him severance pay in terms of section 54(1)(c) of the Employment Code Act. According to Chanda Chungu the decision of the Industrial Relations Division is a landmark decision as it comprehensively addresses various issues in the field of employment law that are relevant to the public at large.

The ninth case under review is *Frankson Musukwa (Suing on his own behalf and as Executive Director of Zambia Deaf Youth and Women) & Others v. road Transport and Safety Agency*. This case is significant because it elucidates two important issues, namely: it brings into question what exactly constitutes the freedom of movement and it also reveals the prevailing deficiencies in the law as regards the protection of the rights of disabled people.

The final case under review is *Chimanga Changa Limited v. Export Trading Limited*. According to Chanda Chungu this case is important because the case guided that financial distress and reasonable prospect of rescuing it are the key factors to consider before passing a resolution to place a company under Business Rescue.

We sincerely hope you enjoy this edition of SAIPAR Case Review.

O'Brien Kaaba and Kafumu Kalyalya