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## Editorial Note

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## Editorial Note

We are glad to present Volume 5 Issue 3 of the Saipar Case Review (SCR). This edition consists of 14 entries. The first case is that of *Chief Justice Mogoeng v Africa4Palestine and Others [2021] JSC/819/20; JSC/825/20; and JSC/ 826/20*. Although this decision implicated the highest-ranking judge in South Africa, the significance of this case resonates across the continent and the globe. With this appeal judgment, Mogoeng has gone down in African history as the first Chief Justice in a democratic country to be disciplined for speaking on matters outside the courtroom.

The second case is that of *Bizwayo Newton Nkunika v Lawrence Nyirenda and Electoral Commission of Zambia 2019/CCZ/005 (1 March 2021)*. This was the first major case that presented the Constitutional Court with an opportunity to interpret the import of article 70(1)(d) of the constitution which lists possession of a grade 12 certificate or its equivalent as a requisite qualification for one to run as a parliamentary candidate.

*Toyota Motors South Africa (Pty) Ltd v NUMSA obo Njini and Others (D 692/19 [2022] ZALCD 12 (14 July 2022)* is the third case discussed. Mr Njini's case is a clear demonstration that the Constitution is a living document; and that the right to culture is inextricably linked other constitutional rights, such as the right to fair labour practices and the right to dignity.

The fourth case is that of *Charity Oparaocha v Winfrida Murambiwa (2004) Z.R. 141 (S.C.)*. The case brings out two significant issues, the definition of who a dependent is and the jurisdiction of the Local Court.

*Chimanga Changa Limited v Export Trading Limited (SCZ Appeal No. 3 of 2022)* is the fifth case. It has set a clear and resounding tone as well as a sound precedent in the Jurisprudence of Zambian Corporate Insolvency law, specifically in relation to how voluntary business rescue proceedings should be commenced, when they commence and most importantly that an application objecting to the commencement of business rescue proceedings pursuant to section 22(1), does not answer to the definition of a legal proceeding for purposes of effecting a moratorium within the confines of section 25 of the Act.

In *Livingstone Motor Assemblers Limited (In Receivership) v Indeco Estates Development Company and Others (Supreme Court Judgment No. 1 of 2013)*, the Supreme Court illustrated that it possible for liquidation and receivership to occur simultaneously. The case also emphasizes the fact that secured creditors are a special specie of creditors who have priority over unsecured creditors listed in the perking order table of the Act and therefore not affected by liquidation proceedings.

The seventh case is that of *S v Lifumbela and Others 2022 (1) NR 205 (SC)*. *Lifumbela* is an important judgment, but certainly not because of the way it (mis)handled participation in crime and incomplete crimes. If anything, *Lifumbela* exemplifies the sort of fuzzy logic that judges should fiercely guard against. One could, nevertheless, single out as noteworthy the court's efforts to discern conspiracy and common purpose.

The eighth case is that of *Eva Chiboni v. New Future Finance Company Limited 2020/HPC/0776*. The decision in *Eva Chiboni* has been seen by some as a victory for vulnerable groups of people in Zambia, compared to bigger entities that do at time take advantage of parties with less bargaining powers. However, as this article has demonstrated, it reached an outcome not supported by principles of law, particularly those relating to the need to provide lucid and clear evidence of a vitiating factor or illegality to declare a contract null and void.

The ninth case is that of *Emporium Fresh Foods Limited t/a Food Lovers Market and Gourment Market Limited v. Kapya Chisanga CAZ Appeal No. 44/2021*. The decision in *Emporium Fresh*

*Foods Limited t/a Food Lovers Market and Gourment Market Limited v. Kapya Chisanga* is a landmark decision in Zambia. The case aptly provides that considering the introduction of the Employment Code Act, an employee ought to be afforded an opportunity to heard prior to summary dismissal, notwithstanding the seriousness of the offence and the nature of the gross misconduct.

The tenth case is that of *Zambia Electronic Clearing House Limited v. James Kalengo CAZ Appeal No. 239 of 2020*. In this case, the Court of Appeal's decision in *James Kalengo* is crucial because it demonstrates that the concept of a legitimate expectation of renewal, as a principle and concept exists under *Zambian employment law*.

The eleventh case is that of *Mark Tink and Others v. Lumwana Mining Company Limited CAZ Appeal No. 41/2021*. The decision in *Mark Tink and Others v. Lumwana Mining Company Limited* is an important decision because it clarifies and restates that law that a valid reason, that is substantiated is required when an employer initiates termination of the contract of employment.

*Ackim Chirwa, Levy Joseph Ngoma and U-Fuel (Z) Limited v. Mini Mart Development Corporation Limited CAZ Appeal No. 68/2021* is the twelfth case. The decision in this matter is important because it once again brings to the fore issues of corporate governance in Zambia.

*Standard Chartered Bank Plc v Celine Meena Nair [2019] ZMCA 221* is the thirteenth case review. The case is one of a kind and therefore significant for several reasons in the jurisprudence of *Zambian Employment Law*. The case highlights that the employer-employee relationship is one founded on the implied term of mutual trust and confidence which entails that both parties must accord each other due trust and respect regardless of status.

The decision in this case, sets a clear and stern tone in cases of constructive dismissal bordering on toxicity within the working environment. Thus, employers are put on notice to adhere to their own grievance procedures particularly in cases involving bullying, harassment and victimization such as the *Nair* case, lest malice be implied for such failure on their part, as affirmed in the *Singogo* case.

The final case review is that of *Molosoni Chipabwamba and 12 Other Displaced Village Owners v Yssel Enterprises Limited Appeal No.104/2020 (ZMCA) 2022*. In this case, the Court of Appeal agreed with the decision of the High Court that the conversion of the land in dispute from customary tenure to statutory tenure was null and void.

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

***O'Brien Kaaba and Kafumu Kalyalya***  
Editors