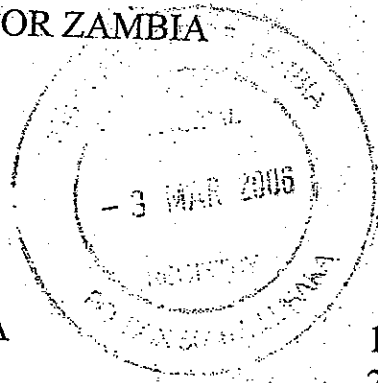


(Civil Jurisdiction)



BETWEEN:

GEORGE BULAYA
SONIA DORAS
BISHOP MATEYO
FRED CHANGOCHO
FRANCIS MUMBA
REVEREND SICHELA

1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
6TH APPLICANT

AND

ATTORNEY-GENERAL

RESPONDENT

Before the Hon. Mr. Justice Timothy A. Kabalata in chambers on the 3rd day of March, 2006.

For the Applicants: Mr. C.K. Banda, SC, Chifumu Banda and Associates
For the Respondent: Mr. S.B. Nkonde, Solicitor-General, Attorney-General's Chambers

RULING

Cases referred to:

1. Zambia National Holdings Limited and United National Independence Party vs. The Attorney-General 1993/1994 ZR 115
2. R.V. Epping and Harlow General Commissioners, ex p. Goldstraw (1983) 3 All E.R 257 at p. 262.

Legislation referred to:

Town and Country Planning Act Cap. 283 S29(1) and (2)

This is an application for leave to apply for judicial review. The application is supported by affidavits sworn by George Bulaya, a Kafue Estates resident and Francis Mumba, also a Kafue resident.

The respondent opposes this application through affidavits sworn to by Kabinga Jacob Pande, the Minister of Tourism, Environment and Natural Resources in the Government of the Republic of Zambia and by Andrew Mulenga, the Minister of Local Government and Housing in the Government of the Republic of Zambia.

Suffice it to say that I have carefully considered the affidavits in support of the application as well as those in opposition to this application.

In my considered view, the Applicants have failed to state what was ultra vires and against what about the decision of the Minister of Tourism, Environment and Natural Resources. Furthermore, the Applicants have not provided any facts to sustain their allegations that the Minister's decision was unfair and an abuse of authority. Further still, no facts have been provided by the Applicants to sustain their allegation that the Minister's decision was unfair and an abuse of authority.

In paragraph 7 of the Applicants' affidavit in support of this application, they allege that the Minister's decision was unreasonable and contrary to the rules of natural justice and yet no facts have been provided to support such an allegation.

As regards the allegation that the Minister of Local Government and Housing allowed the rezoning of the site in issue prior to the upholding of the appeal by the Minister of Tourism, Environment and Natural Resources, the evidence by the Minister of Local Government and Housing is that the rezoning approval was made on the 25th of November 2005 while the Appeal had been upheld earlier on 13th October 2005. Furthermore, despite an advertisement being placed in the press and giving objectors the opportunity to file their objections before the 6th August 2005, the Applicants herein only filed their objection to the rezoning dated 25th August 2005, clearly outside the 28 days period allowed by the law.

Further still, the 5th Applicant's affidavit does not even disclose what was wrong or irregular about the decision of the Minister of Local Government and Housing in approving the rezoning. Besides, there is procedure for appeal against a decision to approve the rezoning which the Applicants have not utilized.

Section 29(1) and (2) of the Town and Country Planning Act, Cap 283 of the Laws of Zambia read:

"(1) Where application is made under this Part to the Minister or planning authority to whom functions have been delegated under section twenty-four for permission to develop or subdivide land, or for any approval of that planning authority required under a development order or subdivision order, and that permission or approval is refused by the Minister or planning authority, or is granted subject to conditions, then, if the applicant is aggrieved by the decision, he may, within twenty-eight days from the receipt of notification of the decision or such longer period as the Tribunal in writing may agree, and in the manner prescribed, appeal to the Tribunal.

- (2) Any person, other than an applicant, or any local or township authority who is dissatisfied with any decision made by the Minister or a planning authority to whom functions have been delegated under section twenty-four in connection with an application for permission to develop or subdivide land, may, within twenty-eight days from the making of such decision or such longer period as the Tribunal in writing may agree, and in the manner prescribed, appeal to the tribunal."

Quite clearly, the Applicants are caught by the provisions of Section 29 of Cap 283.

I draw inspiration from the decision of our Supreme Court in **Zambia National Holdings Limited and United National Independence Party vs. The Attorney General**(1) which said that:

"The High Court has unlimited jurisdiction in that no cause is beyond its competence and authority but it is not exempt from adjudicating in accordance with law and complying with procedural requirements and substantive limitations such as mandatory sentences and types or choice of relief or remedy available to litigants under the various laws or causes of action."

In the light of the above Supreme Court decision which is binding on this court, I find that it would be incompetent for this court to entertain this application by the applicants on the grounds of non-compliance with procedural law.

In **R. V. Epping and Harlow General Commissioners, ex p Goldstraw** (2), Sir John Donaldson M.R. stated thus:

"It is a cardinal principle that, save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised where other remedies were available and have not been used."

I find no exceptional circumstances in this application and if they are, such have not been disclosed by the Applicants.

For the foregoing reasons therefore, the application for leave to apply for judicial review is hereby denied with costs to the respondent. Leave to appeal is granted to the Applicants.

Delivered on the 3rd day of March 2006.



Timothy A. Kabalata
JUDGE

