

IN THE CAPITAL MARKETS TRIBUNAL

2021/CMT/A/005

HELD AT LUSAKA



BETWEEN:

STANDARD CHARTERED BANK

1<sup>ST</sup> APPELLANT

ZAMBIA PLC

STANDARD CHARTERED ZAMBIA

2<sup>ND</sup> APPELLANT

SECURITIES NOMINEES LIMITED

AND

SECURITIES AND EXCHANGE COMMISSION

RESPONDENT

CORAM:

Mrs. C. N. Tembo - Chairperson

Mr. B. Kashinga - Member

Mr. M. Muyawala - Member

**For the Intended Appellant:** Mrs. D. Sichone appearing with Ms. D. Mulondiwa and Mr. K. Sakala, In-House Counsel, Securities and Exchange Commission

**For the Intended Respondent:** Mr. P. Chomba Appearing with Ms. C. Bwalya, Messrs Mulenga Mundashi Legal Practitioners

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**RULING ON APPLICATION FOR LEAVE TO APPEAL**

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1. In this Order, we shall refer to the Securities and Exchange Commission as “Intended Appellant before the Court of Appeal” and Standard Chartered Bank Zambia Plc and Standard Chartered Zambia Securities Nominees Limited as “Intended Respondents before the Court of Appeal” respectively because there is currently no Appeal that has been launched before the Court of Appeal against a decision or order of the Tribunal in this matter.
2. This matter came up on Thursday, 9<sup>th</sup> December 2021 at 10:00 hours for an application for leave to Appeal against a Ruling of the Tribunal dated 2<sup>nd</sup> November 2021 permitting the Appellants to file their Appeal out of time not later than 2<sup>nd</sup> December 2021.
3. Dissatisfied with our Ruling of 2<sup>nd</sup> November 2021, the Intended Appellant before the Court of Appeal on 23<sup>rd</sup> November 2021 filed an application for leave to Appeal against the said Ruling to the Court of Appeal by way of Summons pursuant to Rule 39 of the Securities (Capital Markets Tribunal) Rules, Statutory Instrument No. 32 of 2021 (“the Capital Markets Tribunal Rules”) supported by an Affidavit and Skeleton Arguments.
4. The Intended Respondents before the Court of Appeal opposed the application for leave to Appeal to the Court of Appeal by filing an Affidavit in Opposition accompanied by Skeleton Arguments and List of Authorities before the Tribunal on 8<sup>th</sup> December 2021.
5. At the hearing, the Intended Appellant before the Court of Appeal relied on the Affidavit in Support and Skeleton Arguments filed on 23<sup>rd</sup> November 2021 and further augmented them with oral submissions. Counsel for the Intended Appellant before the Court of Appeal argued that Section 23(1)(e) of the Court of Appeal Act No. 7 of 2016 (“the Court of Appeal Act”) as read together with Order X Rule 4(3) and (4) of the Court of Appeal Rules, Statutory Instrument

No. 65 of 2016 (“the Court of Appeal Rules”) confers on quasi-judicial bodies such as the Tribunal, jurisdiction to hear an application for leave to appeal to the Court of Appeal.

6. Notably, Counsel for the Intended Respondents before the Court of Appeal opposed the application for leave to Appeal to the Court of Appeal on the ground that, the Tribunal has no jurisdiction to hear an application for leave pursuant to Section 195(1) of the Securities Act No. 41 of 2016 (“the Securities Act”) which is the enabling law of the Tribunal. As such, Counsel for the Intended Respondents before the Court of Appeal submitted that the application before the Tribunal is irregular for want of jurisdiction.
7. In reply, Counsel for the Intended Appellant before the Court of Appeal argued that Section 195(1) of the Securities Act appears to be in conflict with Section 23(1)(e) of the Court of Appeal Act as read together with Order X Rule 4(3) and (4) of the Court of Appeal Rules. Counsel for the Intended Appellant before the Court of Appeal contended that on the one hand, the Securities Act confers the jurisdiction to grant leave to Appeal against an order or decision of the Tribunal to the Court of Appeal. While on the other hand, the Court of Appeal Act and Rules confer the jurisdiction to grant leave to Appeal to the Court of Appeal to a judge of the High Court or a quasi-judicial body. Counsel for the Intended Appellant before the Court of Appeal contended that a Party can only make an application for leave to Appeal before the Court of Appeal if the Tribunal does not grant the application in accordance with Order X, Rule 4(5) of the Court of Appeal Rules. Counsel for the Intended Appellant before the Court of Appeal urged the Tribunal not to read Section 195(1) of the Securities Act in isolation considering that Rule 39 of the Capital Markets Tribunal Rules provides that an

Appeal against a decision of the Tribunal shall be made in accordance with the Securities Act in conjunction with the Court of Appeal Act.

8. Having considered submissions by Counsel for the Intended Appellant before the Court of Appeal, the issue for consideration before us is whether the Tribunal has jurisdiction to hear an application for leave to Appeal against an order or decision of the Tribunal to the Court of Appeal.
9. While we recognize that it is trite law that the right to appeal is a constitutional and legal right in terms of procedure. We agree that Section 195(1) of the Securities Act restricts the Tribunal's jurisdiction regarding applications for leave to Appeal to the Court of Appeal. Section 195(1) provides that:

*“An appellant, respondent or the Commission, if dissatisfied with an order or decision of the Tribunal, as being erroneous in point of law or fact or both law and fact may, within twenty-one days after the delivery of the order or decision or within such other time as may be prescribed by rules issued by the Chief Justice, appeal against such order or decision, with leave of the Court of Appeal [underlined for our emphasis], except that the appellant may appeal to the Supreme Court against the refusal of the leave to appeal”.*

10. In view of the above provision, leave to Appeal ought to be sought before the Court of Appeal for both interlocutory and final Orders or Rulings of the Tribunal.
11. We understand that Section 23(1)(e) of the Court of Appeal Act gives the impression that leave must first be sought before an adjudicative body such as ours before proceeding to the Court of Appeal. An impression that would be consistent with the general practice of procedure before firstly, the High Court under Order 47 of High Court Rules of the High Court Act, Cap 27; secondly under Order X of the Court of Appeals Rules and Rule 24 of the Supreme Court

Rules of the Supreme Court Act, Cap 25. However, the procedure in Section 195(1) of the Securities Act which is the Tribunal's enabling law is clear and if read together with Section 6 of the Securities Act which provides that "*Where there is an inconsistency between this Act and any other written law, the provisions of this Act shall prevail to the extent of the inconsistency*" dictates that the provisions of the Securities Act prevail in an event of inconsistency with other written law. As such, Section 195(1) of the Securities Act in our view takes precedence over Section 23(1)(e) of the Court of Appeal Act as read together with Order X Rule 4(3) and (4) of the Court of Appeal Rules.

12. In any case, Rule 39 of the Capital Markets Tribunal Rules provides that applications for leave shall be made in accordance with the Securities Act and the Court of Appeal Act. In our view, the inconsistency that appears between these two Acts in relation to the jurisdiction to grant leave to Appeal to the Court of Appeal by the Tribunal is addressed by Section 6 of the Securities Act which clearly states that the provisions of the Securities Act prevail in an event of inconsistency with other written laws.

13. We are inclined to maintain the position in the case of **Miyanda v The High Court (1984) Z.R 62** cited with approval by the Supreme Court in the case of **Zambia National Holdings Limited and United National Independence Party (UNIP) v The Attorney General (1994) S.J 22 (S.C)**, that the term jurisdiction means as follows:

*"The term "jurisdiction" should first be understood. In the one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority which a court has to take cognisance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the*

appropriate legislation [underlined for our emphasis]. *Such limits may relate to the kind and nature of the actions and matters of which the particular court has cognisance or to the area over which the jurisdiction extends, or both*".

14. The various aspects of the term "jurisdiction" referred to in the above quotation point to the fact that the Tribunal cannot exercise authority which is not in accordance with its enabling legislation. The Tribunal is a creation of statute particularly, the Securities Act and the scope of its jurisdiction is defined by the said Securities Act. Therefore, the Tribunal would be acting ultra-vires by exercising jurisdiction which it is not clothed with under its enabling law.
15. Furthermore, we are mindful of the fact that, where there is an inconsistency between two statutes on the same subject matter. The later statute prevails. This position is in line with the pronouncements by His Lordship Mr. Justice N.K.Mutuna at page R10 in the case of **Hotelier Limited and Ody's Works Limited v Finsbury Investments Limited – 2011/HP/260** as follows:

*"But even assuming there was conflict in the two pieces of legislation, Act No.7 of 2011 would prevail over Act No.6 of 2011 on account of the former being later in time. This is the case notwithstanding that they were both Assented to on the same day. The former is to be presumed to be later in time by virtue of the fact that it is later in terms of numbering. My finding with respect to the fact that an Act that is later in time prevails over an earlier one which is contradictory, is based on the text **Statutory Interpretation by Francis Bennion**, which states at pages 214 to 215 as follows:*

*"If a later Act cannot stand with an earlier, parliament (though not said so) is taken to intend an amendment of the earlier. This is a*

*logical necessity, since two inconsistent texts cannot both be valid without contravening the principle of contradiction.”*

*The same principle was applied by the then Court of Appeal for Zambia in the case of **Sinkamba-Vs-Doyle(1974) ZR page 1** when it held at page 13, and quoting from **The India**, by **Dr. Lushington** as follows:*

*“The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one;”*

16. On the authority of the above citation, the Securities Act prevails because it is later in time to the Court of Appeal Act and Rules. The Securities Act was assented to on 19<sup>th</sup> December 2016 whereas the Court of Appeal Act was assented to on 2<sup>nd</sup> May 2016 and the Court of Appeal Rules only came into force on 2<sup>nd</sup> September 2016.

17. Accordingly, we hereby order that the Tribunal has no jurisdiction to hear an application for leave to Appeal to the Court of Appeal. Such an application should be brought before the Court of Appeal in accordance with Section 195(1) of the Securities Act.

18. Costs shall be in the cause.

Dated at Lusaka this 13<sup>th</sup> day of December 2021



Chairperson



Member



Member