IN THE HIGH COURT FOR ZAMBIA **2017/HP/1016**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

HIGH COURT OF ZAMBIA
OF PRINCIPAL
28 JUN 2018
REGISTRY
P.O. BOX LUSAKA

IN THE MATTER OF: **ORDER 53 RULE 3 OF THE RULES OF THE SUPREME COURT**

IN THE MATTER OF: **AN APPLICATION FOR JUDICIAL REVIEW**

B E T W E E N :

KALOWA MOOTO (suing as Secretary General of the Zambia Association of Timber and Forestry Based Industries) **APPLICANT**

AND

THE DIRECTOR OF FORESTRY **1ST RESPONDENT**
THE ATTORNEY GENERAL **2ND RESPONDENT**

Before Honorable Mrs. Justice M. Mapani-Kawimbe on the 28th day of June, 2018

For the Applicant : *Mr. N. Inambao, Messrs ICN Legal Practitioners*
For the Respondent : *Ms. S. Mulenga, State Advocate, Attorney General's Chambers*

J U D G M E N T

Cases Referred To:

1. *Council for Civil Service Union v Minister for Civil Service Union (1985) 1 A.C 374*
2. *Lloyd v Mcmallon (1987) 1 ALL ER 188; (1987) AC 625*
3. *RVS Roberts. Exparte, Scur (1924) 2 KB 695 & Westminister Corporation v LXN Railways (1905) AC, 244.430*
4. *Associated Provincial Picture House Limited v Wednesbury Corporation (1948) 1 KB 223*
5. *Chief Constable of North Wales Police v Evans (1982) 1 WLR 1152*
6. *R v Hillingdon London B.C ex p Puhlhofer (1986) A.C. 484*
7. *Nyampala Safaris (Z) Limited, Baobab Safris (Z) Limited, Nyumbu Safaris (Z) Limited, Exclusive Safaris (Z) Limited, Busanga Trails (Z) Limited v Zambia*

Wildlife Authority, Zambia National Tender Board, Attorney General, Luangwa Crocodile and Safari Limited, Sofram and Safaris Limited, Leopard Ridge Safaris Limited, Swanepoel & Scandrol Safaris Limited (2004) Z.R 49 (S.C)

8. *Bolag v Hatchison (1905) A.C 55*

Legislation Referred To:

1. *Rules of the Supreme Court, 1999 Edition*

Other Works Referred To:

1. *Constitutional and Administrative Law by Elizabeth Guissani, 1st Edition, London, Sweet and Maxwell, 2006*
2. *McGregor on Damages, 18th Edition, Thomas Reuters (Legal) Limited, USA, 2009*

I was moved by a Notice of Motion for Judicial Review filed pursuant to Order 53, Rule 3 of the Rules of the Supreme Court 1965 (White Book), wherein the Applicant seeks the following reliefs:

(i) An order of certiorari to remove into the High Court for Zambia and to quash the said decisions.

(ii) An order of mandamus to oblige the 1st Respondent to reconsider his aforesaid decisions in accordance with the law and/or the Applicant's legitimate expectations, which are:

a. To allow exports of timber which is ready for export.

b. To issue concession licences that were approved and paid for.

c. To issue export permits, conveyance licences and production licences and to renew such licences and permits that have expired due to the unwarranted irrational restrictions.

d. To refrain from issuing verbal restrictions for the Applicant's members to operate.

(iii) An order for damages for loss of business to members of ZATFBI due to the failure to issue forest concessions, export permit licences, conveyance licences, production licences and loss of business due to impounded trucks.

(iv) An order for costs.

In doing so, the Applicant seeks the Court to quash by *certiorari*:

(i) *The Minister of Lands and Natural Resources' decision made at a press briefing on 13th June, 2017, that banned the export of all types of timber species for an indefinite period.*

(ii) *The verbal restrictions issued by the 1st Respondent, which affected the operations of the members of the Zambia Association of Timber and Forestry Board Industries.*

Further, by mandamus to direct the 1st Respondent to:

(a) *Authorise the export of timber which is ready*

(b) *Issue forest concession licences paid for by the members of the Zambia Association of Timber and Forestry Board Industries.*

(c) *Issue export permits, conveyance licences and production licences paid for by the members of the Zambia Association of Timber and Forestry Board Industries.*

This application was brought to Court by **Mr. Kalowa Mooto**, the Secretary- General, of the Zambia Association of Timber and Forestry Board Industries (ZATFBI) on behalf of the other members. The members of ZATFBI gain their livelihood from felling and exporting timber. The 1st Respondent is the Director of Forestry and responsible for the administration of the Forests Act in the country. Under section 53 of the Forests Act, he has authority to issue forest licences or permits. Under section 62 (2) of the Forests Act, the 1st Respondent can suspend or cancel licences or permits. On 5th June, 2017, the 1st Respondent suspended the issuance of production and conveyance licences that had been paid for by the ZATFBI members. In addition,

on 13th June, 2017, the Minister of Lands and Natural Resources at a press briefing banned the export of all timber species for an indefinite period. The ban posed a threat to the ZATFBI members' businesses and they declared this dispute with the Respondent.

The grounds for review were revealed in the Notice of Application as follows:

(a) Illegality/Procedural Impropriety

By a letter addressed to the Applicant dated 5th April, 2017, the 1st Respondent purported to suspend the issuance of tree felling permits (production licences) and forest produce conveyance permits (conveyance licences) for timber. The letter had immediate effect and would subsist until all timber licence holders in all provinces complied with the Terms and Conditions of the licence as follows:

i. *Employment of qualified foresters under clause 2.1;*
ii. *Payment for tree felling under clause 4.2;*
iii. *Submission of returns of the logging operations under clause 5.3*

The Applicant stated that the 1st Respondent never notified the ZATFBI members that their licences were suspended and did not consult them before his decision. By failing to take these steps, the

Applicant contended that the Respondent's decision was illegal and marred with procedural impropriety.

(b) Irrationality

On irrationality, the Applicant stated that the failure of the 1st Respondent to issue forest concession licences even after the letters of approval had been issued was irrational, malicious, improper, excessive and taken in bad faith.

c) Damages

On damages, the Applicant averred that since the 1st Respondent's decision was made in bad faith, his actions gave rise to a claim for damages of misfeasance in public office.

On 7th July, 2017 following an *ex parte* application for leave to commence judicial review proceedings by the Applicant, this Court granted leave. The evidence of the Applicant was presented by Affidavit and revealed that the 1st Respondent wrote a letter dated 5th April, 2017, addressed to all Principal Forestry Officers in the provinces suspended the issuance of tree felling permits (production licences) and forest produce conveyance permits (conveyance licences) for timber. The letter had immediate effect and all licence holders in the provinces were expected to comply with the terms and conditions

of the licences by employing qualified foresters, paying for tree felling and submission of returns of logging operations according to exhibit "**KM1**."

The Applicant stated that by a letter dated 7th June, 2017, he issued a demand notice on behalf of ZATFBI members to the 1st Respondent and according to exhibit "**KM2**" complained about the following:

(i) The 1st Respondent's failure to issue forest concession licences which he approved and had been paid for by the members of ZATFBI;

(ii) The 1st Respondent's failure to issue export permits, conveyance licences and production licences; and

(iii) The new restrictions issued by the 1st Respondent, which adversely affected the operations of the ZATFBI members.

According to the Applicant, the 1st Respondent's verbal instructions caused alarm in the operations of the ZATFBI members and on 7th June, 2017, a meeting was held between the Applicant and the 1st Respondent to discuss the concerns. At that meeting, the 1st Respondent disclosed that he was acting on instructions from State

House and had no authority to intervene. He later told the Applicant that he had escalated the complaint letter to the Minister of Lands and Natural Resources who asked for time to deal with the grievances.

On 12th June, 2017, the Applicant wrote the 1st Respondent another letter and stated that ZATFBI members who had valid documents and operating within their boundaries of concession were being harassed. Further, according to exhibit "**KM3**", the members were arrested by the armed forces and their timber seized. The Applicant prayed to Court to grant the ZATFBI members the reliefs sought in their application.

The Respondents response was by way of an Affidavit in Opposition filed on 7th March, 2018 after leave for judicial review was granted. **Ignatius Makumba**, Director of Forestry, Ministry of Lands and Natural Resources (1st Respondent) deposed that there were a number of reports of illegal exports of timber species in the country. Upon that information, the Minister of Lands and Natural Resources banned the export of all types of timber species at a press briefing that was held on 13th June, 2017 and shown in exhibit "**IM1**." By a letter dated 5th April, 2017, the 1st Respondent directed all the Principal

Forestry Officers in the provinces to suspend the issuance of production and conveyance licences as shown in the exhibit marked "**IM2**." He introduced new Terms and Conditions that were to be met by all licence holders. The applicants who met the Terms and Conditions were issued licences.

The 1st Respondent stated that his decision to suspend or cancel licences was prompted by the fact that the majority of the concession licence holders had not complied with the Terms and Conditions according to exhibit "**IM3**". He dismissed the allegation that licence holders who complied with the Terms and Conditions were being harassed, arrested or that armed forces seized their timber. Instead, the armed forces worked in conjunction with the Forestry Department to curb the illegal production and movement of timber. Only those who were found guilty of forest offences were restricted from transporting timber. The 1st Respondent prayed to Court to dismiss the application because it lacked merit.

The matter came up for hearing on 7th March, 2018 and both Learned Counsels placed reliance on the Affidavits filed herein. Only Learned Counsel for the Applicant filed Skeleton Arguments for which

I am grateful. He submitted that the 1st Respondent did not notify the licencees of his intention to suspend or cancel their licences. He also did not consult them as required by the Forests Act. By failing to do so, the 1st Respondent's actions amounted to illegality and procedural impropriety. Counsel called in aid the case of **Council of Civil Service Union v Minister for the Civil Service**[1] to support his assertion. He next adverted to the case of **Lloyd v Mcmallon**[2] to illustrate the principle that the Court could infer what constitutes compliance with the mandatory requirements of a statute.

On irrationality, Counsel placed reliance on the case of **RVS Roberts. Exparte. Scur & Westminister Corporation v LXN Railways**[3] and submitted that the Court could infer what constitutes bad faith and improper purposes from the circumstances of a case. He also cited the case of **Associated Provincial Picture House Limited v Wednesbury Corporation**[4] to demonstrate the principle of irrationality. He further submitted that only the Director of Forestry could suspend or cancel any timber licence if he believed that such licence or permit was obtained by force or deliberate or negligent submission.

In concluding, Counsel submitted that the 1st Respondent's decision contravened section 62 of the Forests Act and was null and void. The Minister's decision indicated bad faith and was actionable to a claim for damages and misfeasance in public office because she had no authority to ban timber exports. He prayed to Court to grant the Applicant the reliefs sought.

I have anxiously considered the pleadings, evidence adduced and submissions filed herein. I will begin my determination of this application by firstly considering the purpose of the relief of judicial review.

It is a well settled principle of law under Order 53 Rule 14 Sub Rule 19 of the Rules of the Supreme Court that:

> **"The remedy of judicial review is concerned with reviewing and not the merits of the decision in respect of which the application for judicial review is made but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that an individual is given a fair treatment by the authority to which he has been subjected."**

Accordingly, I am not called upon in a case of judicial review to determine the merits or demerits of a decision made by the body concerned but rather the decision making process of the body

concerned. I also have to determine whether an aggrieved person was afforded fair treatment in the decision making process.

On judicial review, the English Courts in the case of **Chief Constable of North Wales Police v Evans**[5], stated that:

> **"The Court will not, however, on a judicial review application act as a "Court of Appeal" from the body concerned; nor will the Court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction, or the decision in Wednesbury unreasonable. The function of the Court is to see that lawful authority is not abused by unfair treatment."**

Similarly in the case of **R v Hillingdon London B.C ex p Puhlhofer**[6], Lord Brightman expressed that:

> **"(It) is not, in any opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case. The ground on which the Courts will review the exercise of an administrative discretion is abuse of power, e.g. bad faith, a mistake in constructing the limits of the power, a procedural irregularity or unreasonableness in the Wednesbury sense...i.e. unreasonableness verging on an absurdity:... Where the existence or non-existence of a fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the Court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."**

Likewise, our Zambian Supreme Court in the case of **Nyampala Safaris (Z) Limited and Four Others v Zambia Wildlife Authority**

and Six Others[7], restated the purpose of judicial review when it held that:

> **"(a) The remedy of judicial review is concerned not with the merits of the decision but with the decision making process itself.**
> **(b) That it is important to remember that in every case, the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the judiciary or the individual judges for that authority constituted by law to decide the matter in question;**
> **(c) A decision of an inferior Court or public authority may be quashed by an Order of Certiorari where that Court or authority acted-**
> **(i) without jurisdiction; or**
> **(ii) Exceeded its jurisdiction; or**
> **(iii) Failed to comply with the rules of natural justice where those rules are applicable; or**
> **(iv) Where there is an error of law on the face of record.;**
> **(v) Or the decision is unreasonable in the Wednesbury Sense, namely that it was a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably could have reached."**

The grounds on which an application for judicial review can be made were aptly stated in the case of **Council of Civil Service Union v Minister for Civil Service**[1], where Lord Diplock famously categorized them as follows:

> **"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety."**

On the first head of judicial review, which is 'illegality', Lord Diplock stated that:

"'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it."

The Learned Author of Constitutional and Administrative law Elizabeth Guissani at page 268, states that illegality does not have one element, but can be subdivided into the ways in which a decision-maker may have acted illegally. These include:

"(1) Mistakes of jurisdiction, which include acting outside of their power known as simple ultra vires: misinterpreting their own power and so making an error of law and making factual mistakes or misinterpreting his jurisdiction known as error of fact.
(2)Abuse of discretion, which includes taking into account irrelevant considerations and ignoring relevant ones and acting for an improper purpose;
(3) Retention of discretion, which includes a failure to exercise discretion by either limiting his decision-making through the making of rigid rules or illegally delegating his discretion to someone else; and
(4) Acting in a way which is incompatible with the rights contained in the European Convention on Human Rights (ECHR) contrary to section 6 of the HRA."

Moving on to the second head of judicial review, in **Associated Picture Houses Ltd v Wednesday Corporation**[4], Lord Greene M.R set out the proposition of 'unreasonableness' when he held that:

"A person entrusted with a decision must so to speak, direct himself properly in law. He must call his own attention to the matter which he is bound to consider, he must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said, and often is said, to be acting unreasonably."

According to the Learned Author of Constitutional and Administrative law Elizabeth Guissani at page 288, other examples of unreasonableness include:

> **"1. Inappropriate balance of relevant consideration;**
> **2. Lack of logic or flawed reasoning;**
> **3. Oppression"**

In **Council of Civil Service Union**[1]**,** Lord Diplock re-formulated unreasonableness by preferring to use the term "irrationality." Further in that case, Lord Diplock described the third head of judicial review as procedural impropriety, a ground which includes:

> **"a failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision...(and) also (a) failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."**

The Learned Author on Constitutional and Administrative Law Elizabeth Guissani at page 298, draws two different procedural failings which come under this ground of review. Firstly, a failure to comply with procedural requirements found in a statute (procedural ultra vires) and secondly, a failure to observe rules of natural justice. A decision-maker must conform to the procedures set down in the statute by Parliament. The Learned Author further states that a public body may act within its legal powers, or use its discretion

reasonably and according to law, yet fail to act in accordance with the correct procedure.

Having established the law governing judicial review, I will now proceed to determine the case before me. The common cause facts reveal that by a memorandum dated 5th April, 2017, the Director of Forestry directed all the Principal Forestry Officers in the provinces to suspend the issuance of tree permits (production licences) and forest procedure conveyance permits (conveyance licences). The directive had immediate effect and conditioned all licence holders in the provinces to comply with the Terms and Conditions of licence as follows:

i. *Employment of a qualified forester under clause 2.1;*
ii. *Payment for tree felling under clause 4.2; and*
iii. *Submission of returns of the logging operations under clause 5.3.*

The Minister of Lands and Natural Resources subsequently banned the export of all types of timber species on 13th June, 2017 at a press briefing on the ground that illegal exports of timber in the country had escalated. The Applicant has raised three grounds of judicial review namely, illegality, procedural impropriety and irrationality and seeks damages for misfeasance of office. The issue to be determined therefore, is whether the Respondents' decision to

suspend the production licences and conveyance licences is tainted with illegality, procedural impropriety and irrationality?

The Applicant mainly contended that the 1st Respondent's decision to suspend the issuance of licences to ZATFBI members without notice and consultation was illegal and tainted with procedural impropriety. He also contended that the Minister of lands and Natural Resources verbal instructions to ban the export of all timber exports at a press briefing was not supported by law. It caused alarm in the ZATFBI members' operations and they incurred unnecessary costs.

The response of the Respondents was that the decision to suspend the issuance of licences was intended to ensure compliance with the Terms and Conditions issued by the 1st Respondent in the forest sector. Further, there was an escalation of illegal timber activities in the country, which were attributed to the non-compliance of the Terms and Conditions of licences by the majority of forest concession licence holders. Thus, the Respondents were compelled to act in the manner that they did.

Section 5 (1) of the Forests Act states the functions of the Forestry Department as follows:

> **"5. (1) Subject to the other provisions of this Act, the functions of the Department are to do all such things as are necessary for the rationalization of the exploitation of forest resources and the promotion of sustainable forest management."**

According to section 5 (1) of the Act, the Forestry Department is responsible for managing forest resources in a sustainable and rationalised way.

Section 50 of the Forests Act vests the Director of Forestry the authority to control and manage forest produce. It reads:

> **"50 (1) Subject to the other provisions of this Act, the control and management of the licenced felling, cutting, taking and removal of major forest produce on State Land, land under leasehold tenure vested in any person and customary areas shall vest in the Director**
> **(2) A person who intended to fell, cut, work or remove any major forest produce from any State Land, land under leasehold tenure vested in any person or customary area or sell, offer for sale, barter or deal in any major forest produce shall apply for a licence or permit under this part."**

According to section 50 (1) and (2) of the Act, any person who intends to fell, cut, take or remove forest produce in Zambia must obtain a licence from the Director of Forestry. In addition, any person who intends to sell, barter or deal in forest produce must equally obtain a licence or permit from the Director of Forestry.

There are several permits that the Director of Forestry is empowered to issue. However, those that have a bearing on this dispute are found in section 53 of the Forests Act, as follows:

1. **Forest produce conveyance permit, to allow the holder to convey forest produce;**
2. **Forest produce merchant's permit to allow the holder to trade in forest produce;**
3. **Forest produce export permit, to allow the holder to export forest produce;**
4. **Forest produce import permit, to allow the holder to import forest produce;**
5. **Domestic user permit, to allow the holder to harvest or use forest produce for domestic purposes;**
6. **Cord-wood permit, to allow the holder to harvest or use wood for firework or charcoal production;**
7. **Forest fire permit, to allow the holder to set a forest fire for purposes of forest management; and**
8. **Tree-felling permit, to allow the holder to fell a tree or trees.**

The permits stated in section 53 of the Act include the following: conveyance permit, export permit, import permit, domestic user permit, cord-wood permit, forest fire permit and tree felling permit.

According to section 62 (1) of the Forests Act, the Director of Forestry is the only person who can suspend licences or permits. It says:

"(1) Subject to the other provisions of this Act, the Director may suspend or cancel a licence or permit if the holder-

a. Obtained the licence or permit by fraud or deliberate or negligent submission of false information or statements;

b. Contravenes this Act or any terms and conditions of the licence or permit."

The grounds on which suspension or cancellation can be done under section 62 (1) are where a licence or permit has been obtained by fraud or deliberate or negligent submission of false information or statements; or where a licence or permit holder has compromised the Forests Act or any terms and conditions of licence or permit. In the present case, the Applicant's contention hinges on the premise that the 1st Respondent did not comply with the Forests Act when he suspended or cancelled their licences.

Under section 62 (2) of the Forests Act the procedure to be followed by the Director of Forestry in suspending or cancelling a licence or permit is stated thus:

> **"(2) The director shall, before suspending or cancelling a licence or permit in accordance with subsection (1), give written notice to the holder thereof of the intention to suspend or cancel the licence or permit and shall give the reasons for the intended suspension or cancellation and require the holder to show cause, within a period of thirty days, why the licence or permit should not be suspended or cancelled.**
>
> **(3) The Director shall not suspend or cancel a licence or permit under this section if the holder takes remedial measures to the satisfaction of the Director within the period of thirty days referred to in subsection (2).**
>
> **(4) The Director may suspend or cancel a licence or permit if the holder who is notified under subsection (2) fails to show cause or does not take any remedial measures to the satisfaction of the Director within the time specified in that subsection.**
>
> **(5) Where a licence or permit is suspended, the holder of the licence or permit shall cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension.**
>
> **(6) The holder of a licence or permit shall, where the licence or permit is cancelled, cease to be entitled to the rights and benefits conferred under this Act with effect from the date of the cancellation."**

As stated by Lord Diplock in the case of **Council of Civil Servants Union v Minister of Civil Service Union**[1]it is trite that a decision-maker should understand correctly the law that regulates his decision-making power and must give effect to it. Any departure from that principle show a failure to exercise that authority correctly.

In applying the facts of this case to the law, I find that the Director of forestry is the only person who can suspend or cancel a licence or permit under the Forests Act. According to section 62 (2) of the Forests Act, the notice to suspend or cancel a licence or permit must be conveyed in writing to the concerned holder. It cannot be done through the Provincial Heads of Forestry and by an internal memorandum as the circumstances of this case reveal. By failing to apply the law correctly, I find that the action taken by the 1st Respondent was illegal.

I further find that the Minister of Lands and Natural Resources decision to ban all types of timber exports at a press briefing held on 13th June, 2017 was illegal. It was not supported by any provision in the Forests Act. I therefore, hold that the Respondent's actions were illegal.

Moving on to the ground of procedural impropriety Lord Diplock in **Civil Service Union v Minister for Civil Service**[10], opined that the ground of procedural impropriety seeks to establish failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who is affected by the decision. It also seeks to establish failure by an administrative tribunal to observe procedural rules that are expressly laid down in legislative instruments, by which, jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

From the facts on record, I find that the 1st Respondent disregarded the procedures set out in section 62 (2) of the Forests Act. He did not give written notice of his intended decision to suspend the ZATFBI members licences or permits, neither did he provide the reasons. The licence or permit holders were not availed an opportunity to respond to his notice within 30 days or to take remedial steps as provided by section 62 (2) and (3) of the Forests Act. According to section 62 (4), the 1st Respondent could only cancel the licences or permits if the holders failed to take remedial measures to his satisfaction. By overlooking the requirements of section 62 (2) of the Forests Act and failing to comply with the procedure therein, I hold

that the 1st Respondent's actions were tainted with procedural impropriety and are impeachable under judicial review.

In **Council of Civil Service Union**[1], Lord Diplock stated of irrationality that:

> **"By irrationality, I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'... it applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."**

According to the test laid down by Lord Diplock, a decision that irrational must be so outrageous that it defies logic or accepted moral standards. The Learned Author Elizabeth Guissani on Constitutional and Administrative Law at page 289, states that a defect of a decision-making process which does not fall under illegality could lead to a decision being found to be unreasonable. When a situation arises where a decision-maker has taken into account relevant considerations but put too much emphasis on one of them, a decision could be said to be irrational because a reasonable decision-maker would consider all the circumstances and avoid such a conclusion. A decision can also be said to be unreasonable if it imposes excessive hardship on the person to whom it is made against representing an infringement of one's rights.

From the evidence adduced, I have determined that the Respondent's decisions were illegal and tainted with procedural impropriety. However, I do not find bad faith or irrationality in the Respondent's actions because they based their decision on the need to protect forests in accordance with section 8 of the Forests Act. The section anchors national principles and values on forest management in Zambia as follows:

> **"8. The Minister, Director or persons to whom the Minister or Director has delegated any powers and functions under this Act, shall in implementing this Act, have regard to-**
> **(a) The principle that forests and trees shall be managed as an asset for succeeding generations.;**
> **(b) The need to apply the precautionary principle to the development, management, utilization and conservation of forest ecosystems, biological diversity and habitats, taking into account the best scientific evidence available.**
> **(c) The development, management, utilization and conservation of forests and trees to achieve a sound ecological balance.**
> **(d) The need to achieve optimum utilization and ecologically sustainable development and management of forest ecosystems, biological diversity and habitats.**
> **(e) The need to conserve forests and trees as living resources for both present and future generations and to achieve economic growth, human resource development and employment creation.**
> **(f) The need to protect biological diversity in forest areas and protect the ecosystem as a whole, including species which are not targeted for exploitation.**
> **(g) The need to sustain the potential yield of economic, social and environmental benefits derived from forests.**
> **(h) The need to promote the fair distribution of the economic, social health and environmental benefits derived from forests.**
> **(i) The need to minimize pollution of natural resources, especially forests, land and waters.**
> **(j) The need to develop and manage forests so as to conserve heritage resources and promote aesthetic and cultural values.**
> **(k) The need to achieve to the extent practicable a broad and accountable participation in the decision making processes provided for in this Act, and**
> **(l) The implementation of international agreements to which Zambia is party."**

Section 8 of the Forests Act requires the Minister responsible for forest resources and Department of Forestry to apply precautionary standards in the development, management, utilization and conservation of forests, while attending to ecological sustainable development. It encourages forest conservation, the need for economic growth and human resource development in the forestry sector while ensuring employment creation. The section also contains principles on biological diversity and ecological balance in the conservation of forests as well as the need to minimize pollution of natural resources. The central principle in section 8 of the Act hinges on the need to ensure the efficient and sustainable management of forests for present and future generations.

Based on the principles and values on forest management, I am fortified to state that the Respondents' decisions did not reveal bad faith because they were taken to ensure the efficient and sustainable management of forests. Accordingly, the ground of irrationality fails.

In sum, I find that the Applicant has successfully demonstrated that the suspension or cancellation of ZATFBI members licences was

illegal and tainted with procedural impropriety. I therefore, quash by *certiorari*:

(i) The Minister of Lands and Natural Resources decision made at a press briefing on 13th June, 2017 that banned the export of all types of timber species for an indefinite period.

(ii) The verbal restrictions issued by the 1st Respondent which affected the operations of the members of the Zambia Association of Timber and Forestry Board Industries.

The Applicant sought the relief of mandamus to compel the 1st Respondent to authorize the export of timber which is ready; issue concession licences that were approved and paid for; issue export permits, conveyance licences and production licences and to renew such licences and permits that have expired due to unjustified restrictions.

Order 53 Rule 14 Sub Rule 42 of the Rules of the Supreme Court provides that:

> **"An order of mandamus cannot be made against the Crown but it will lie against an officer of the Crown who is obliged by statute to do some ministerial or an administrative act, which affects the rights or interests of the applicant."**

According to that order and sub rule, mandamus cannot lie against the State except where an officer of the State is obliged by statute to perform an administrative act. It is therefore, useful to

consider whether an order of mandamus can lie against the 1st Respondent. In so doing, I find it appropriate to refer to section 53 of the Forests Act. Under that section, the 1st Respondent is empowered to issue licences and permits including those, which are subject of this application. The 1st Respondent also has the authority to issue licences and permits for the export of timber. Accordingly I direct the 1st Respondent by *mandamus* to:

(i) Authorise the export of timber which is ready;
(ii) Issue concession licences that were approved and paid for by the members of the Zambia Association of Timber and Forestry Board Industries; and
(iii) Issue export permits, conveyance licences and production licences which were paid for by the members of the Zambia Association of Timber and Forestry Board Industries and to renew licences or permits that expired as a result of the unjustified restrictions.

The Applicant further sought damages for misfeasance of office for the injury suffered by the ZATFBI members as a result of the Respondents' actions. The Learned Author McGregor on Damages, states at page 20, paragraphs 1-029 states:

> **"In the cases of damages, damages are often said to be "general" or "special" and these two terms are usually contrasted with each other, yet the terms are used in a variety of different meanings are not kept separate, the indiscriminate use of the terms only spells confusion. Such a separation is not seen very often, and it is therefore wise to elucidate these terms at the very start."**

According to the Learned Author, damages can be classified as general or special. A claimant must state whether the damages sought are general or special. The distinction between the damages was stated in the case of **Bolag v Hatchison**[8], where the Court held that:

> **"General damages.... Are such as the law will presume to be direct, natural, or probable consequence of the action complained of. Special damages on the other hand are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in their character, and therefore, they must be claimed specially and proved strictly."**

In other words, general damages result from a direct or natural consequence of an action complained of, while special damages are exceptional in character and must be specially claimed and proved. In casu, the Applicant has not specified the type of damages being claimed nor has he particularized the nature of loss suffered. He has also not adduced any evidence to support the claims, except for stating that the ZATFBI members suffered injury and loss as a result of the Respondents' actions. Accordingly, I find no merit in the Applicant's' claims for damages.

It is worth stating that, section 56 (1) (b) of the Forests Act proscribes compensation for loss suffered by a licence or permit holder. It reads:

"A licence or permit shall not, unless a contrary intention is expressly stated on the licence or permit, grant any exclusive right or confer on the licensee or permit holder any right to compensation for-
(b) loss suffered by the licensee or permit holder as a result of the suspension or cancellation of the licence or permit."

From the evidence on record, I find that the Applicant has not shown that the ZATFBI members' licences or permits entitled them to compensation in the event of suspension or cancellation. In the absence of such proof, I hold that the Applicants' claim for compensation lacks merit and accordingly fails.

For the avoidance of doubt, the application succeeds on the ground of illegality and procedural impropriety. It fails on irrationality, damages and compensation. Costs are for the Applicant to be taxed in default of agreement.

Dated this 28th day of June, 2018.

M. Mapani-Kawimbe
HIGH COURT JUDGE