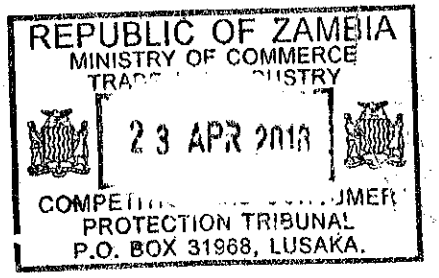
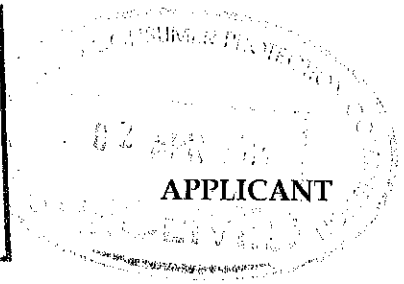
DLA

IN THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL **2018/CCPT/004/COM**

HOLDEN AT LUSAKA





BETWEEN:

INVESCO LIMITED **APPLICANT**

AND

COMPETITION AND CONSUMER PROTECTION COMMISSION **1ST RESPONDENT**

COCA COLA CORPORATION LIMITED **2ND RESPONDENT**

CORAM: Mr. Willie A. Mubanga, SC (Chairperson), Mrs. Miyoba B. Muzumbwe Katongo (Vice Chairperson), Mr. Chance Kabaghe (Member), Mr. Rocky Sombe (Member) and Mrs. Eness C. Chiyenge (Member)

For Applicant: Mr. N. Nchito, SC - Messrs. Nchito & Nchito

For 1st Respondent: Mrs. M. B. Mwanza, Director Legal & Corporate Affairs; Mrs. M. M. Mulenga, Manager Legal & Corporate Affairs; Ms. M. Mtonga, Legal Officer; Ms. N. Pilula, Legal Officer - Competition and Consumer Protection Commission

For 2nd Respondent: Mr. R. Pettersen – Messrs. Chibesakunda & Company

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RULING

Cases referred to:

1. BP Zambia Plc v. Zambia Competition Commission, Total Aviation and Export Limited, Total Zambia Limited (S. C. Z. Judgment No. 21 of 2011).
2. Paolo Marandola & 2 Others v. Gianpietro Milanese & 4 Others (SCZ Judgment No. 6 of 2014).
3. Zambia Consolidated Copper Mines and Jackson Munyika Siame and 33 Others (2004) Z.R. 193 (S.C.).
4. Zambia Consolidated Copper Mines Limited v. Elvis Katyamba and Others (2006) Z.R. 1 (S.C.).
5. KCM v. Kanswata, Appeal No. 91 of 2002 (unreported).
6. Puma Energy (Ireland) Holdings Limited v. The Competition and Consumer Protection Commission 2012/CCPT/010/COM.
7. Competition and Consumer Protection Commission v. Puma Energy Zambia Limited (2014/HP/A/048 (unreported)).

8. Oliver John Irwin v. The People (1993) S.J. 6 (S.C.)

Legislation referred to:

9. Competition and Consumer Protection Act No. 24 of 2010, sections 60, 70 (1) and 71 (1) (b).
10. Acts of Parliament Act, Chapter 3 of the Laws of Zambia, section 4.
11. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, section 85 (3) and (5).
12. The Competition and Consumer Protection (Tribunal) Rules, 2012 (S.I. No. 37 of 2012), Rule 19.

Other Works referred to:

13. Black's Law Dictionary

This ruling is on an application by Invesco Limited (whom we shall refer to as "the Applicant") for leave to appeal out of time a decision of the Competition and Consumer Protection Commission (whom we shall refer to as "the 1st Respondent") delivered on 6th March 2017.

In that decision, the 1st Respondent released the 2nd Respondent unconditionally from a Memorandum of Understanding (MoU) entered into in 2001. In this MoU, the parties made undertakings, which included an undertaking to honour in totality the then existing franchise agreement between the Applicant and The Coca Cola Corporation Limited (whom we shall refer to as "the 2nd Respondent"). This undertaking, which is the subject of the application before us, was part of a number of undertakings made to the 1st Respondent by Zambian Breweries Plc and the 2nd Respondent upon Mergers and Acquisitions between the two parties. The undertakings were given in order to avoid the effect of substantially lessening competition in the national market for the supply and distribution of non-alcoholic beverages as a result of the said Mergers and Acquisitions.

Under the franchise agreement between the Applicant and the 2nd Respondent, the Applicant was licensed to produce the 2nd Respondent's core brands (Coke, Fanta and Sprite) in polyethylene terephthalate ("PET") bottles exclusively for sale to Zambia Bottlers. Zambia Bottlers was manufacturing (also under a franchise agreement) all the 2nd Respondent's core brands (Coke, Fanta and Sprite) in Returnable Glass Bottles ("RGB"). The 1st Respondent's decision of 6th March 2017, which the Applicant is seeking leave to appeal, unconditionally released the 2nd Respondent from the MoU, upon review of the MoU on an application by the 2nd Respondent filed in 2014.

The Applicant filed an ex-parte summons for leave to appeal out of time and for an order of stay of execution of the 1st Respondent's decision, alleging in its Affidavits in Support that despite its unconditional release from the MoU, the 2nd Respondent made undertakings to renew its franchise agreement with the Applicant thereby giving comfort to the Applicant who, as a result, is not appealing the 1st Respondent's decision.

Further, that the 2nd Respondent afterwards terminated the said agreement, hence the application for leave to appeal the 1st Respondent's decision.

At our first sitting in this matter, we ordered that we would hear the application inter-parte, starting with the application for leave to appeal out of time. The main reasons we gave were that the Respondents ought to be given an opportunity to be heard and that we could not entertain an application to stay execution of the 1st Respondent's decision when the appeal was not before us.

Following adjournment to facilitate filing of Further Affidavit in Support and service of the Summons and Supporting Affidavits, both Respondents filed Affidavits opposing the application. Advocates for the Applicant and counsel for the 1st Respondent also filed skeleton arguments which they augmented with oral submissions, while counsel for the 2nd Respondent made oral submissions.

The hearing of the application turned on the question whether the Tribunal has jurisdiction to extend the time for appeal from a decision of the 1st Respondent, provided by section 60 of the Competition and Consumer Protection Act (the Act). The 1st Respondent opposed the application for leave solely on the ground that, in their view, the Tribunal has no jurisdiction to grant the leave sought by the Applicant. Counsel for the 1st Respondent relied on section 60 of the Act and the Supreme Court decision in the case of **BP Zambia Plc v. Zambia Competition Commission, Total Aviation and Export Limited, Total Zambia Limited** (SCZ Judgment No. 21 of 2011) (the **BP Zambia Plc** case). The 2nd Respondent supported the argument that the Tribunal does not have jurisdiction to extend the time for appeal.

State Counsel Mr. Nchito, both in the skeleton arguments and oral submissions on behalf of the Applicant canvassed the position that the Tribunal has jurisdiction to grant leave to appeal out of time. He argued that while section 60 of the Act requires that an appeal should be lodged within 30 days (of receiving the order or direction), the effect of section 71 (1) (b) of the Act is that the Tribunal is clothed with the discretionary power *"to take any other course which may lead to the just, speedy and inexpensive settlement of any matter before the Tribunal"*. State Counsel argued that this provision or its equivalent was absent in the Competition and Fair Trading Act on the basis of which the Supreme Court made its decision in the **BP Zambia Plc** case. (The said Act was repealed and replaced by the current Act.)

He went on to argue that the Applicant's particular concern was justice, which the leave being sought would aid. He argued that the **BP Zambia Plc** case was distinguishable from the present application on two points, namely that:

(i) the repealed Act under which the case was decided did not have the provision found in section 71 (1) (b) of the current Act or its equivalent; and

(ii) therefore, there was no argument in the said case on the effect of the said provision or its equivalent.

State Counsel further argued that the Tribunal has in the past granted such applications. He cited the case of **Pinda Energy (Ireland) Holdings Limited v. The**

Competition and Consumer Protection Commission 2012/CCPT/010/COM (the **Puma Energy** case) where, he said, the Tribunal granted leave to appeal out of time. He argued that this case, in which both himself and counsel for the 2nd Respondent in the present application appeared, proceeded on appeal all the way to the Supreme Court and none of the parties questioned the power of the Tribunal to grant leave to appeal out of time.

In addition, State Counsel argued that under Rule 19 of the **Competition and Consumer Protection (Tribunal) Rules, 2012,** the Chairperson is empowered by a Practice Direction issued on 1st March 2017, to grant ex-parte orders of an interlocutory nature such as the one presented by the Applicant.

On behalf of the 1st Respondent, counsel for the 1st Respondent both in the skeleton arguments and oral submissions, argued that the Tribunal does not have jurisdiction to extend the time provided by section 60 of the Act for filing an appeal. In the skeleton arguments, it was argued that the Supreme Court in the **BP Zambia Plc** case held that the effect of section 37 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia, was that where a statute provides a time limit for doing a certain act, then the time for doing such an act can only be extended if there is an express provision in that statute permitting such extension.

Counsel for the 1st Respondent Mrs Maureen Mwanza argued orally that section 60 of the Act does not give the Tribunal such power and that the power conferred upon the Tribunal by section 71 (1) (b) of the Act has to be exercised within the boundaries set by the Act. That the boundary set by the Act in this case is that while liberty to appeal is given, this liberty has to be exercised within the prescribed time frame. Counsel argued that an enabling Act making provision for appeal within a specific time frame may also give power for extension of the time. She added that in the present case, section 60 of the Act gives no room for leave (extension of the prescribed time). She gave as an example the High Court Act, which she said provides for appeal within a time frame of 14 days but further gives room for special leave to appeal out of time. Counsel went on to argue that the decision of the Supreme Court in the **BP Zambia Plc** case was not limited to the now repealed Competition and Fair Trading Act but applies to all statutes providing specific time frames for appeals, such as the Competition and Consumer Protection Act.

On behalf of the 2nd Respondent, counsel Mr. Pettersen, agreeing with counsel for the 1st Respondent, argued that the Act limits the right to appeal to a time of 30 days. In response to the submission on behalf of the Applicant concerning the **Puma Energy** matter, counsel for the 2nd Respondent said that State Counsel in his submissions pointed out that the issue of jurisdiction to grant leave to appeal out of time was not raised, either before the Tribunal, before the High Court or indeed before the Supreme Court. Therefore, counsel argued, the decision could not support or aid the determination of the question whether or not the Tribunal had the jurisdiction that the Applicant was seeking to invoke. He argued that the decision in the **BP Zambia Plc** case, which was cited by both the Applicant and the 1st Respondent, was still the law. He submitted that the Supreme Court was categorical that where a statute provides

for a time within which to do an act but does not provide for extension of the time, no extension can be given.

Mr. Pettersen went on to argue that a similar question was put before the Supreme Court in the case of **Paolo Marandola & 2 Others v. Gianpietro Milanese & 4 Others** (SCZ Judgment No. 6 of 2014) (the **Paolo Marandola** case). Counsel submitted that in that case, the law in issue was section 17 (3) of the Arbitration Act which provides that, *"An application for setting aside may not be made after three months has elapsed from the date on which the party making that application had received the award or, if a request has been made under article 33 of the First Schedule , from the date on which that request had been disposed of by the arbitral tribunal."* Counsel submitted that on the question whether the court could extend the three months period provided for in section 17 (3), the Supreme Court had this to say at J11 of the judgment:

> *"In our view, if Parliament intended to grant the court power to extend the period of three months, the section could have expressly provided for such an extension. We do not see that intention from this section."*

Counsel for the 2nd Respondent concluded his arguments by stating that the Supreme Court had been consistent, as could be seen from its decisions in the **BP Zambia Plc** case of 2011 and in the **Paolo Marandola** case of 2014, that unless the enabling statute expressly provides for extension of time, no such power exists. Further, that to read and interpret section 71 (1) (b) of the Competition and Consumer Protection Act in the manner suggested by the Applicant would be to do injustice to rules of interpretation and to the intention of the legislature.

In reply, State Counsel on behalf of the Applicant argued that section 71 (1) (b) of the Act is part of the principal Act, so this provision and section 60 of the Act stand on par. He argued that the legislature was taken to understand the meaning of the provisions and they should be given due and proper interpretation and further that section 71 (1) (b) is in addition to the rest of the powers conferred by the Act. State Counsel argued further that in response to the example of the High Court Act given by counsel for the 1st Respondent, the nearest example he could give was the Industrial Relations and Labour Act which gives the Court power to do substantial justice.

State Counsel further argued, in response to the issue of jurisdiction not having been raised in the **Puma Energy** case, that the point being made was that the issue was not raised in that case which was subsequent to the decision in the **BP Zambia Plc** case because the jurisdiction of the Tribunal to grant leave to appeal out of time was taken as a given. This argument was apparently in light of the current Act conferring on the Tribunal the power in issue in section 71 (1) (b).

We are grateful to counsel for their resourcefulness, spirited arguments and the authorities cited. We have given consideration to the parties respective Affidavits, counsel's arguments, statutory provisions and case law.

The starting point is section 60 which plainly provides that, *"A person who, or an enterprise which, is aggrieved with an order or direction of the Commission under this Part may, within thirty days of receiving the order or direction, appeal to the Tribunal."* There is no dispute about the time limit prescribed in this section. On the basis of this alone,

we agree with the submissions of counsel for the Respondents that the statute does not provide for extension of the prescribed time limit. It has already been settled by the Supreme Court that unless the statute provides for extension of time limit, no such power exists. In the **BP Zambia Plc** case, where section 15 of the now repealed Competition and Fair Trading Act was in contention (which section limited the time for appeal in terms similar to section 60 of the current Act), the Supreme Court categorically held that (quoting relevant parts only):

"

1. ....
2. ....
3. *Section 15 of the Competition and Fair Trading Act is very precise and provides clearly that an appeal should be lodged within 30 days.*
4. ....
5. ....
6. ....
7. ....
8. *Section15 of the Competition and Fair Trading Act acts like Statute of Limitation because it does not give the Court any discretion to extend time within which an appeal to the High Court shall be lodged by any person who is aggrieved by the decision of the Competition and Fair Trading Commission.*
9. ....
10. .... "(Italics ours)

Having put a time limit for filing of an appeal to the Tribunal in section 60, if the legislature had intended to confer on the Tribunal power to extend the time limit, we do not see any reason it could not have done so expressly. The Supreme Court decision in the **Paolo Marandola** case, which was cited by counsel for the 2nd Respondent, is also consistent with this position. The Court in its holding said at J11 of its judgment:

> *"In our view, if Parliament intended to grant the court power to extend the period of three months, the section could have expressly provided for such an extension. We do not see that intention from this section."* (Italics ours)

At J14, the Court went on to hold as follows:

> *"From the above, it is clear that the Court has no discretion to extend a time frame provided by a statute within which to take a particular action. If the statute expressly provides for an extension, then the Court can exercise such discretion. In the case before us, section 17 of the Arbitration Act does not provide for an extension ...."* (Italics ours)

As the Supreme Court explained in the **Paolo Marandola** case, statutory time limits are intended by the legislature to achieve speedy resolution of disputes in certain matters such as those before arbitral tribunals, compared to ordinary courts.

We have also addressed our minds to the argument by State Counsel Mr. Nchito on behalf of the Applicant that despite the time limit set by section 60 of the Act the Tribunal has discretion to grant extension of the time for filing of an appeal by virtue of section 71 (1) (b) of the Act. State Counsel argued that section 71 (1) (b) stands on par with section 60 and should be given its due and proper interpretation and further that section 71 (1) (b) is in addition to the rest of the powers conferred by the Act.

It ought to be borne mind that each section or subsection of an Act is an enactment. Section 4 of the Acts of Parliament Act, Chapter 3 of the Laws of Zambia, states, *"Where an Act contains more than one enactment, it shall be divided into sections and sections containing more than one enactment shall be divided into subsections."* It is a basic rule of legislative drafting that enactments of a statute should be consistent and, likewise, a principle of statutory interpretation that the enactments are to be interpreted consistently. Section 71 (1) (b) in question cannot be interpreted in a manner as to contradict or oust or limit or qualify another enactment of the statute.

Where it is the intention of the legislature to limit, or qualify, or derogate from, a particular enactment of a statute, it provides so expressly, thereby achieving consistency. Provisions that limit, or qualify, or derogate from, a particular enactment in a statute are not unusual and there are various ways draftspersons achieve this. This can be achieved by using words to that effect within the same section or subsection or in a separate section or subsection. In some statutes drafted in old styles it is common to find words such as "Provided ...." (referred to as a proviso), "Notwithstanding ....", "Subject to ...." and "..., save ...." However, modern drafting styles promote precision legislative drafting for simplicity, consistency and clarity.

In ascertaining whether or not section 71 (1) (b) can be applied so as to extend the time for appeal limited by section 60, we have looked at the whole section 71, which reads:

> *"(1) The Tribunal may-*
>
> *(a) order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of proceedings; or*
>
> *(b) take any other course which may lead to the just, speedy and inexpensive settlement of any matter before the Tribunal.*
>
> *(2) The Tribunal may summon witnesses, call for the production of, or inspection of, books, documents and other things, and examine witnesses on oath, and for those purposes, the Chairperson is hereby authorised to administer oaths.*
>
> *(3) Summons for the attendance of any witness or the production of any book, document, or other thing shall be signed by the Chairperson and served in the prescribed manner."* (Italics ours)

State Counsel in his oral submissions in reply on behalf of the Applicant argued that section 71 (1) (b) is akin to the provision in the Industrial and Labour Relations Act requiring the Court to do substantial justice. Section 85 (4) of the Industrial and Labour Relations Act states that:

"The Court shall not be bound by rules of evidence in civil or criminal proceedings, but the main object of the Court shall be to do substantial justice between the parties before it." (Italics ours)

The Supreme Court has in a number of cases interpreted the mandate of the Industrial Relations Court not to be bound by procedural technicalities, but to do substantial justice. However, the Court has not done so in a manner as to oust mandatory statutory provisions such as time limitation for lodging an appeal. In its decisions, the Supreme Court, while giving effect to the mandate of the Industrial Relations Court to do substantial justice, has done so within the parameters of the applicable law.

In the case of **Zambia Consolidated Copper Mines and Jackson Munyika Siame and 33 Others (2004) Z.R. 193 (S.C.)**, the Supreme Court dealt with an appeal against a decision of the Industrial Relations Court upholding the Chairman's decision granting leave to the respondents to lodge their complaint out of time. The Court had the following to say at page 198:

"We entirely agree that the amendments brought in by Section 85 are procedural. Section 85(3) says:-

'(3) The court shall not consider a complaint or application unless it is presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application. Provided that upon application by the complainant or applicant the Court may extend the thirty day period for a further period of three months after the date on which the complainant or applicant has exhausted the administrative channels available to that person.'" (Italics ours)

And at page 199, the Court held:

"We have noted ... that the learned Deputy Chairman in his ruling dealt with the application for leave to lodge the complaint out of time. We are satisfied ourselves that although Section 85(3) of the Industrial and Labour Relations (Amendment) Act (2) introduced time limit on lodging complaints, this amendment did not state any time limit for application for leave. Our view, therefore, is that this amendment never took away the discretion of any court to allow deserving litigants to lodge complaints out of time. Also, more importantly, our view is that because the Industrial Relations Court has a mandate to administer substantial justice unencumbered by rules of procedures and taking into account the Phiri case in which the former group successfully litigatied against the respondent, the learned Deputy Chairman was correct to have used his discretion in granting leave to the applicants to lodge their complaint before the Industrial Relations Court even after seven (7) years." (Italics and underline ours)

Later, in the case of **Zambia Consolidated Copper Mines Limited v. Elvis Katyamba and Others (2006) Z.R. 1 (S.C.)**, the Supreme Court dealing with the same section 85 (3) of the Industrial and Labour Relations Act, in its holding had the following to say at pages 3 - 4):

"In terms of the law quoted above, it is mandatory for the IRC not to entertain a complaint or application unless such complaint or application is brought before it within thirty days from the date of the occurrence of the event which gave rise to the complaint or application. This means that a party wishing his or her complaint or application

determined by the IRC must file his or her complaint with the court within thirty days of the occurrence of the event which gave rise to the complaint or application. In view of the mandatory nature of the law in Subsection 3 of the Section 85 of the Act, the proviso is, from our point of view, seen as a means of facilitating settlement outside court. This means that if the complainant or applicant can show to the court that during the mandatory period of thirty days he or she had engaged in the process of appeal or negotiations for a better retirement or retrenchment package, the application for an extension of time within which to lodge the complaint or application can be said to be meritorious. As Mr. Chamutangi submitted, we think that an appeal or negotiations for a better package made within the mandatory period has the potential of suspending the mandatory thirty days so that should the court agree with the complainant or applicant, the extension for a further period of three months is, by law, supposed to be from the date the administrative channels have been exhausted." (Italics and underline ours)

In its judgment, the Court also referred to its earlier decision in the case of **KCM v. Kanswata**, Appeal No. 91 of 2002 (unreported) and said the following at page 3:

> *"We have had occasion to visit the case of KCM v Kanswata (1), and our perusal of the case clearly shows that the case is distinguishable. In that case, it was successfully shown that upon his dismissal the respondent (Mr. Kanswata) immediately lodged an appeal as per the disciplinary and grievance procedure code. By so doing, there was compliance with the law...."*(Italics and underline ours)

Therefore, clearly the Supreme Court decisions are instructive that the mandate of the Industrial Relations Court to do substantial justice cannot be used as an avenue for ousting the mandatory time limit provided by law, but to exercise the Court's discretion provided by the same law in a manner that does not permit procedural technicalities to stand in the way of substantial justice. In the same way, section 71 (1) (b) of the Act in issue in the present application confers powers on the Tribunal to enable it to do speedy, inexpensive justice, unfettered by procedural rules or technicalities. It is clear from the wording of the section that the powers conferred on the Tribunal by section 71 relate to its conduct of proceedings in matters before it. The present case, where the application is intended to enable the Applicant to bring an appeal before the Tribunal out of time without a specific enabling statutory provision, and in contradiction of the mandatory time frame set by section 60 of the Act, is completely outside of what is contemplated by the section.

As we have already said, the provision cannot be used to oust the clear intention of the legislative enactment in section 60 of the Act limiting the time for appeal. If section 71 (1) (b) were interpreted in the manner suggested by State Counsel on behalf of the Applicant, then it would follow, for argument's sake, that the Tribunal could also use the subsection to dispense with the quorum provided for in section 70 (1) which states that, "Three members of the Tribunal shall form a quorum" and instead order that the chairperson and one other member shall form a quorum in order to achieve speedy and inexpensive justice. It is evident that interpreting the subsection in the manner argued by State Counsel would d[illegible] to the Act.

In light of the above, we agree with counsel for the 1st Respondent, Mrs. Mwanza, and counsel for the 2nd Respondent, Mr. Pettersen, that the discretionary power conferred upon the Tribunal by section 71 (1) (b) has to be exercised within the boundaries set by the Act, which has imposed a mandatory time limit for lodgement of appeals from decisions of the 1st Respondent. Interpreting the provision in the manner suggested by State Counsel Mr. Nchito would do injustice to rules of statutory interpretation and the intention of the legislature.

Furthermore, it would be a serious misdirection to hold that the Tribunal has the jurisdiction in question on the basis that it has set a precedent in the past by granting applications for the leave the Applicant is seeking, or on the basis that the issue was not raised in a particular case where such leave was granted. The application before us must be determined on the basis of the law in issue and its proper interpretation. Since the Tribunal and/or parties appearing before it in the past proceeded on an erroneous footing that the Tribunal had the jurisdiction to extend the time for filing an appeal, the error should not be perpetuated. The Tribunal is not bound by its previous erroneous decisions. Besides, even where a judicial decision of a superior court would otherwise be binding on lower courts or tribunals, there is a general principle of law and practice that a judicial decision made *per incuriam* is not binding. This is a decision wrongly decided because the judge was or judges were ignorant of, or ill-informed about, the applicable law, and thereafter the decision is demonstrably found to be wrong. (See **Black's Law Dictionary**, 7th Edition, edited by Ryan A. and Gardner and the Supreme Court decision in **Oliver John Irwin v. The People** (1993) S.J. 6 (S.C.).

We have perused the **Puma Energy** High Court judgment (see **Competition and Consumer Protection Commission v. Puma Energy Zambia Limited** (2014/HP/A/048 (unreported)) and found that there was no issue of leave to appeal out of time before the High Court, though the background information indicates that there was an appeal out of time in the proceedings below. Suffice it to state that, indeed, as counsel for the 2nd Respondent argued, the fact that the question whether the Tribunal had the jurisdiction in question was not raised or dealt with at any stage in the **Puma Energy** case in the Tribunal, at the High Court and right through to the Supreme Court cannot assist in resolving the issue before us. Above all, we are satisfied that the issue before us has been settled by the Highest Court in the land.

State Counsel also made reference to the discretion of the Chairperson to grant ex-parte interlocutory orders pending inter-parte hearing under Rule 19 of the Competition and Consumer Protection (Tribunal) Rules, 2012 and the Practice Direction issued thereunder. This discretion cannot be exercised in an application seeking leave to file an appeal out of time, which application, we must clarify, is not interlocutory since it is not an application within an appeal. It would be absurd to issue an interim ex-parte order of leave to appeal out of time; logically, such an application has to be brought inter-parte. Similarly, an ex-parte order of stay of the 1st Respondent's decision of 6th March 2017 pending inter-parte hearing could not be granted where there was no appeal before the Tribunal. Furthermore, the discretion to grant ex-parte orders pending inter-parte hearing should be exercised with caution to avoid the process being abused; for instance, by the applicant in an

advantageous position over the respondent or to upset the status quo before hearing both sides and determining the application. We are, therefore, satisfied that an interim ex-parte order could not properly be issued in any of the two applications.

Having determined as we have, we observe, in passing, that among the Applicant's grievances against the 2nd Respondent is that it has allegedly incurred damages or financial losses occasioned by the 2nd Respondent's breach of contract or undertaking when it terminated the franchise agreement. If that be the case, the doors of justice are not closed on the Applicant as it can access other fora where its grievances can be heard.

In conclusion, the application for leave to appeal out of time is dismissed with costs to the Respondents. A person aggrieved with this decision may appeal to the High Court within thirty days, as provided by section 75 of the Act.

Delivered at Lusaka this 23rd April 2018.

REPUBLIC OF ZAMBIA
MINISTRY OF COMMERCE
TRADE AND INDUSTRY
23 APR 2018
COMPETITION AND CONSUMER PROTECTION TRIBUNAL
P.O. BOX 31968, LUSAKA.

Willie A. Mubanga, SC
Chairperson

Miyoba B. Muzumbwe-Katongo
Vice Chairperson

Chance Kabaghe
Member

Rocky Sombe
Member

Eness C. Chiyenge
Member