

**DECISION OF THE REGISTRAR OF COPYRIGHT IN THE MATTER OF AN
APPLICATION FOR ARBITRATION PURSUANT TO SECTION 23 OF THE
COPYRIGHT AND PERFORMANCE RIGHTS ACT CHAPTER 406 OF THE
LAWS OF ZAMBIA**

BETWEEN:

ZAMBIA REPROGRAPHIC RIGHTS SOCIETY

CLAIMANT

AND

MINISTRY OF EDUCATION

RESPONDENT

Before Mr. Benson Mpalo : Registrar of Copyright

**For the Applicant : Ruth Simujayang'ombe
CEO - Zambia Reprographic Rights Society**

**For the Respondent : Mrs. Dorris Sizimba - Sichula
Legal Officer - Ministry of Education**

RULING

LEGISLATION REFERRED TO

Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia.

CASES REFERRED TO

1. Faustin Kabwe and Bimal Thaker v Ndola Trust School Limited and Attorney General (SCZ/8/11/2022) [2024] ZMSC 7.
2. Citibank Zambia Ltd v Dudhia (Appeal No. 6 of 2022) [2023] ZMSC 1.



3. Kansanshi Mining PLC v Zambia Revenue Authority (SCZ 8 162 of 2014).

BACKGROUND

1. This dispute relates to a Copyright Reproduction Licensing Agreement (“the Agreement”) between the Zambia Reprographic Rights Society (“the Claimant”) and the Ministry of Higher Education, now called Ministry of Education (“the Respondent”). The Agreement was executed on 16th August 2017 to regulate the reproduction and use of literary and artistic works within public higher learning institutions. Under the Agreement, the Claimant, acting as a Collective Management Organisation mandated by copyright holders, granted the Respondent a non-exclusive licence to reproduce and use copyrighted material for educational and research purposes. This licence covered activities such as photocopying, scanning, storing, and distributing both physical and digital copies of protected material to authorised users such as students, lecturers, and researchers.
2. The Agreement sought to ensure that reproduction of copyrighted material by public institutions was conducted lawfully and fairly, in compliance with the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia. It specifically aimed to prevent unauthorised copying and commercial exploitation of copyrighted works while allowing limited reproduction strictly for teaching, learning, and research. To achieve this, the Respondent was required to notify all authorised users of the licence terms, credit authors appropriately, and ensure that copying did not substitute for the purchase of original works.
3. In return, the Respondent undertook to remunerate the Claimant based on the level of copying carried out in institutions within its mandate. Payments were to be calculated annually according to the number of students and



academic staff, following a formula set out in the Agreement. The arrangement was designed to promote respect for intellectual property rights within the education sector while enabling access to essential learning materials in a structured and rights-compliant manner.

4. According to the Claimant, the Respondent did not honour its end of the Agreement. Following from the failure to honour the Agreement, on 7th March 2023 the Claimant wrote to the Respondent seeking a formal engagement and resolution of the dispute regarding the Respondent's non-compliance with the Agreement. The Respondent did not reply to the correspondence.
5. The Claimant then commenced these arbitration proceedings pursuant to section 23 of the Copyright and Performance Rights, 1994 for the resolution of the dispute.

THE HEARING

6. A hearing of the matter was conducted on 3rd April 2025. Both parties were represented by Counsel. Ms. Ruth Simujayang'ombe appeared on behalf of the Claimant, while Mrs. Dorris Sizimba-Sichula appeared for the Respondent
7. At the commencement of the hearing, I invited Counsel to address me on the issue of jurisdiction, specifically, whether the Registrar is competent to hear and determine this matter. Ms. Simujayang'ombe, for the Claimant, submitted that jurisdiction is conferred by Section 23 of the Copyright and Performance Rights Act, Chapter 406, which empowers the Registrar to adjudicate disputes of this nature.



8. Mrs. Sichula, learned Counsel for the Respondent, also stated that the Respondent raised no objection to the jurisdiction of the Registrar and was agreeable to the matter being heard and determined by way of arbitration.
9. Having considered the submissions of both parties on the issue of jurisdiction, I proceeded to invite the parties to present their respective cases
10. The Claimant, through its Counsel, submitted that it was seeking arbitration in respect of a longstanding agreement entered into with the Respondent in 2017, which has not been practically implemented to date.
11. Counsel for the Claimant contended that, pursuant to the Agreement, the Respondent was under a contractual duty to facilitate, communicate and ensure the effective and practical implementation of its terms. However, Counsel averred that the Respondent had failed to carry out these obligations, thereby frustrating the implementation of the Agreement.
12. Counsel further submitted that, on several occasions, the Claimant sought to engage with the target institutions under the Respondent's oversight. However, some of these institutions asserted that they were exempt from the Agreement, while others declined to provide information or participate in meetings with the Claimant. It was additionally submitted that, although the Claimant bore the responsibility to invoice the institutions directly, the Respondent was obliged to ensure that these institutions were made aware of their licensing obligations. Counsel argued that the Respondent failed to issue any circular or other official communication to that effect. As a result, all attempts by the Claimant to engage with the said institutions were unsuccessful.



13. Counsel submitted that the Claimant was seeking enforcement of the Agreement by the institutions falling under the Respondent's supervision. She argued further that the Respondent must be compelled to issue formal and unequivocal communication directing all higher learning institutions under its authority to comply with the licensing obligations prescribed in the Agreement. Counsel further submitted that, should the arbitration be resolved in favour of the Claimant, consideration ought to be given to the nine (9) years during which the Agreement remained unimplemented, to the detriment of the Claimant.

14. In response, Learned Counsel for the Respondent acknowledged that the Agreement had remained unimplemented since its execution. She submitted that the Respondent had, on its part, written to some higher learning institutions; however, these institutions declined to make payment. Counsel further questioned the basis upon which the Respondent signed the Agreement on behalf of the institutions, noting that although the Respondent exercises regulatory oversight over them, it does not have the authority to direct how they allocate or utilise their funding. She added that, where institutions refuse to pay, the Respondent is unable to settle the licence fees on their behalf as it has no mandate or authority to do so.

15. Counsel submitted that, following the execution of the Agreement, the Respondent became aware that it had signed the Agreement on behalf of the institutions without prior consultation with the said institutions. She explained that instruments such as Cabinet Memoranda and circulars would assist in ensuring compliance by the institutions; however, she explained that such instruments are issued by the Cabinet Office and not by the Respondent.

16. After the hearing, the parties were directed to file written submissions in support of their oral arguments



SUBMISSIONS AND ARGUMENTS BY COUNSEL

17. The Claimant filed its Statement of Claim on 2nd May 2025. In its Statement of Claim, the Claimant stated that it is a duly authorised Collective Management Organisation under the Copyright and Performance Rights Act, Cap 406 of the Laws of Zambia and manages reproduction rights in literary and artistic works on behalf of copyright holders. It was stated that the Claimant entered into an Agreement with the Respondent and that the latter was acting on behalf of public higher education institutions. It was submitted that the Agreement was a non-exclusive licence to reproduce and use protected materials such as photocopying and digital reproduction for teaching, research, and academic purposes within the bounds of copyright law.
18. The Claimant asserted that while it duly performed its obligations under the Agreement by granting the licence, the Respondent failed to reciprocate by fulfilling the financial and administrative terms of the Agreement. It was submitted that the Respondent was required to notify all authorised users within 30 days of execution, ensure compliance with the licence conditions, and make annual payments calculated according to the number of students and academic staff at the covered institutions. However, the Claimant contends that the Respondent neither made the required payments nor provided the necessary data for the computation of licence fees, despite repeated reminders and correspondence.
19. The Claimant further alleged that the Respondent ignored formal communications, including a letter of demand dated 7th March 2023, which sought to resolve the breach amicably. The Respondent's persistent silence and failure to regularise its position were said to constitute a continuing violation of both the contract and the copyright law. According to the Claimant, the Respondent's inaction effectively deprived copyright owners



of their rightful remuneration and undermines the principle of lawful reproduction envisaged by the Agreement.

20. As a result, the Claimant sought redress through arbitration to compel the Respondent to comply with its obligations. The Claimant maintained that the Respondent's institutions have continued to reproduce and distribute copyrighted materials without authorisation, thereby engaging in unauthorised and illegal reproduction of protected works.

21. The Claimant prayed for the following reliefs as arising from the alleged breach of the Agreement:

(i) An order and/or declaration that the Respondent is in breach of the parties' Agreement.

(ii) An order for specific performance, directing the Respondent to fulfil its contractual obligations by:

(a) Procuring all its unauthorised persons' compliance with the terms of the said Agreement, and to that end, submitting to the Claimant all requisite outstanding information (being number of students and academic staff from 2017) within 30 days of the making of the order.

(b) Procuring all its unauthorised persons' submission to the Claimant of the information mentioned at (a) above at the beginning of every academic year as well as on such occasions as the said information may reasonably be required by the Claimant (in any event not later than 30 days of receipt of the Claimant's request for such information).



(c) Such further and/or alternative relief as will meet the justice of this case.

22. The Respondent did not file their written submissions despite being directed to do so at the hearing and being reminded in writing.

DECISION OF THE REGISTRAR

23. I have carefully considered the submissions made by the parties at the hearing, together with the Claimant's Statement of Claim and the Agreement in issue.

24. Before addressing the merits of the case, the first issue to be determined is whether I have jurisdiction to adjudicate this dispute. Counsel for the Claimant submitted that I am clothed with jurisdiction under Section 23 of the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia. The Respondent raised no objection to jurisdiction and expressed its willingness to proceed with the matter by way of arbitration.

25. Notwithstanding the parties' stance on the issue, the question of jurisdiction is central to the validity of these proceedings, and it is incumbent upon me to formally pronounce on whether I am competent to hear and determine this dispute. I am guided by the Supreme Court's decision in **Faustin Kabwe and Bimal Thaker v Ndola Trust School Limited and Attorney General**, which emphasised that jurisdiction must be determined at the earliest stage, before proceeding to the merits.

26. In determining whether I have jurisdiction, regard must be had to the provision that forms the basis of this dispute. These proceedings were instituted pursuant to Section 23 of the Copyright and Performance Rights Act, which provides as follows::



“(1) Where a dispute arises between a registered collecting society and a person who requires a licence from the collecting society regarding.

(a) the decision of the collecting society whether or not to grant such a licence; or

(b) the terms and conditions on which the collecting society is prepared to grant such a licence;
the matter shall, upon the application of either party, be referred to the Registrar of Copyright who shall determine the dispute.

(2) The Registrar may, for the purpose of determining a dispute under this section, make such inquiries and give such directions as the Registrar considers necessary.”

27. From this section, it is clear that where a disagreement arises between a registered collecting society, which the Claimant is, and a person seeking a licence, whether concerning the society’s decision to grant or refuse a licence, or the terms and conditions attached to it, either party may apply to have the matter referred to the Registrar of Copyright, who is empowered to determine the dispute.

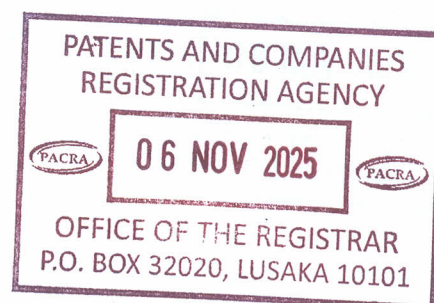
28. I am empowered in my literal interpretation of the section by the case of ***Citibank Zambia Ltd v Dudhia***¹ where the Supreme Court stated that the default position when interpreting legislation is for the court to consider the plain language of the statute itself. Where the language of the statute is simple and unambiguous, it must be applied according to its terms.

¹ (Appeal No. 6 of 2022) [2023] ZMSC 1



Further, in ***Kansanshi Mining PLC v Zambia Revenue Authority***², the Supreme Court reaffirmed that where statutory provisions are clear and unambiguous, they must be applied according to their plain and grammatical meaning.

29. Plain reading of Section 23 of the Act shows that it establishes a statutory mechanism for the resolution of disputes between a registered collecting society and a person or entity seeking a licence from such a society. The provision is confined to disagreements concerning either the grant or refusal of a licence, or the terms and conditions upon which a licence is proposed to be granted. It vests the Registrar with original jurisdiction over disputes arising at the pre-contractual stage, thereby providing an administrative remedy during negotiation or the process of obtaining a licence.
30. The dispute before me concerns the alleged non-performance of payment obligations under a licence agreement that has already been executed, and the Respondent's contention regarding the consent of the beneficiary institutions, who subsequently declined to remit royalties. In these circumstances, I am disinclined to hold that I have jurisdiction to determine a dispute arising after a licence has been granted, as is the case here. Put simply, the present dispute concerns obligations arising under a licence that has already been executed; a matter falling outside the scope of disputes contemplated by Section 23, and therefore not one over which I am empowered to exercise jurisdiction.
31. Secondly, a dispute under Section 23 presupposes the existence of two distinct parties: a registered collecting society on one hand, and a person who, in their own right, requires a licence from that society on the other. It



therefore contemplates a direct relationship between the licensing body and the actual user of the copyrighted work, and does not extend to an intermediary entity, such as the Respondent, acting on behalf of separate institutions that are themselves the intended licensees.

32. In my view, the Respondent cannot be regarded as a “person” within the meaning of Section 23 of the Act. The statutory framework requires two distinct parties: a registered collecting society and a person who independently requires a licence. The Respondent does not meet this criterion, and as such, I lack jurisdiction to adjudicate this matter, despite the Claimant being a duly authorised collecting society.

CONCLUSION

33. The Claimant sought, among other reliefs, a declaration that the Respondent was in breach of the Copyright Reproduction Licensing Agreement dated 16th August 2017, and an order directing the Respondent to ensure compliance by the institutions under its supervision. Having found that I lack jurisdiction to preside over this matter under section 23, I am constrained to grant such a declaration or order.
34. For the foregoing reasons, the Claimant’s application is hereby dismissed. Each party shall bear its own costs.

Dated this.....day of.....2025



Benson Mpalo
REGISTRAR OF COPYRIGHT

