IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 84/2009**

HOLDEN AT LUSAKA **SCZ/8/86/2009**

(Civil Jurisdiction)

BETWEEN:

NFC AFRICA MINING PLC **APPELLANT**

AND

JIMMY STEWART JILOMBO **1ST RESPONDENT**

EVASON MUCHUZI SIMUKOKO **2ND RESPONDENT**

CORAM: Mambilima, D.C.J, Chibesakunda, Mwanamwambwa, J.J.S.

On the 1st of June, 2010 and 20th January, 2014

For the Appellant: Mr. W. Forest, Messrs Forest Price and CO.

For the Respondent: Mr K. Bota of Messrs William Nyirenda and Co, appearing as Agents for Nyirongo and co.

JUDGMENT

Mwanamwambwa, JS, delivered the Judgment of the Court.

Cases referred to:

1. **Frederick Kunongona Mwanza V. Zambia Publishing Company Limited (1981) Z.R. 234.**
2. **Wilson Masauso Zulu V. Avondale Housing (1982) Z.R 172.**

3. **Augustine Kapembwa V. Danny Maimbolwa and the Attorney General (1981) Z.R. 127.**
4. **Thynne V. Thynne (1955) 3 ALL ER 129 at page 145.**
5. **Lewanika and others V. Chiluba (1998) Z.R. 79.**
6. **Walusiko Lisulo V. Patricia Lisulo (1998) Z.R. 75.**
7. **Pesulani Banda V. The People (1979) Z.R. 202 (SC).**
8. **Richman Chulu V. Monarch (Z) LTD (1983) Z.R. 33.**

Legislation referred to:

1. **The Rules of the Supreme Court, 1999, Order 82 rule 3(1) and Order 20 r. 11.**

Other works referred to:

1. **Halsbury Laws of England, 4th Edition, Volume 28, paragraph 10.**
2. **Atkins Court Forms, 2nd Edition, Volume 25, at page 109.**

This is an Appeal against two Judgements of the High Court dated 17th October, 2008 and 31st March, 2009 respectively.

The brief facts of the matter are that on the 22nd of July, 2004, the Respondents instituted an action against the Appellant, for:

1. Damages for wrongful and unlawful dismissal;
2. Damages for false imprisonment;

3. **Damages for defamation of character;**
4. **Any other relief the Court may deem fit; and**
5. **Costs.**

The evidence from the Respondents was that sometime between April and May, 2004, the Appellant Company received a consignment of oxide ore which the Plaintiffs working together with other members of staff sampled, prepared and graded. Later, it was alleged that the Respondents had exaggerated the grading of the said oxide ore and thus leading to a loss of US$600,000 on the part of the Appellant. The matter was reported to the Zambia Police. On the 11th of June, 2004, the Police detained the Respondents for 24 hours to help with investigations. When they were released, they were told to report themselves at the Police Station everyday as the investigations continued. On the 24th of June, 2004, the Respondents were informed by letter that they had been absent from work without excuse, from the 13th of June, 2004. They were told that failure to report for work by the 28th of June, 2004, would result in dismissal. On the 2nd of July, 2004, the Appellant terminated the Respondents contracts of service. On the 9th of July, 2004, the Zambia Police cleared them of all the allegations. On the 19th of July, 2004, the Respondents were reinstated back into

employment, following the letter from the Police. On the 22nd of July, 2004, the Respondents brought out an action in the High Court.

On the 22nd of October, 2008, the Learned trial Judge made the following finding:

> **"it has been shown that the plaintiffs herein were employees of the defendant. That following reports that the plaintiffs were engaged in the falsification of copper ore samples during the performance of their duties for the Defendants, they were together with other workers of the Defendants detained by the Zambia Police Service to help with investigations into the reports. The Zambia Police Service cleared the Plaintiffs of any wrong doing and communicated this to the Defendants by a letter dated 9th July, 2004. In the meantime, the Defendants had, by a letter dated 2nd July, 2004 dismissed the Plaintiffs. Following the letter of 9th July, 2004 from the Zambia Police Service clearing the Plaintiffs, the Defendants on 19th July, 2004 wrote to the Plaintiffs informing them that they had been re-instated in the Defendant Company's service and that they were to report for work on the 20th July, 2004.**
>
> **The Plaintiffs instituted the present civil proceeding against the Defendants on 22nd July, 2004 seeking the reliefs in their summons and statement of claim herein, which include...The record will show that the Defendants have denied unlawfully dismissing the Plaintiffs and shown that they had been re-instated but on their own, refused to return to their work. The Plaintiffs' claim based on unlawful dismissal then falls off...The Defendants also have denied imprisoning the Plaintiffs and shown that the Plaintiffs were detained by the Zambia Police Service for purposes of helping with investigations... However, there is no evidence showing even on a balance of probabilities that the Plaintiffs were dishonest hence the allegations levelled against them which resulted in their being detained and investigated were without justification. The Plaintiffs were cleared by the Police and the Defendants did not show anything to support their allegation against the Plaintiffs. The accusations were defamatory of the Plaintiffs. They were made to be considered as dishonest employees, a thing that lowered the Plaintiffs reputation in the estimation of right thinking members of their society. I am therefore, satisfied**

> **that the Plaintiffs have proved on a balance of probabilities that the Defendants herein had defamed them when they alleged that they are dishonest when they was no evidence to show the dishonesty. their claim on this head succeeds and I find in their favour..."**

After the Judgment was delivered, the Respondent in the case issued summons with an affidavit in support, for the interpretation of some parts of the Judgement. On the 31st of March, 2009, the learned trial Judge delivered what he termed as a 'correction' of the earlier Judgment. In that 'correction', he stated the following:

> **"I perused the affidavit filed in support and the Judgment in question and am satisfied that there is need for the said judgment to be interpreted as there are evident accidental omissions. I am also mindful that nothing has intervened which would render the correction inexpedient or inequitable. I note too that such a correction of judgment is permissible pursuant to the provisions of Order 20 rule 11 of the Rules of the Supreme Court (White Book) 1999 Edition.**
>
> **I hereunder therefore, state the order that I meant to pronounce in this case,**
>
> **'The Plaintiffs have succeeded in their claims for damages for false imprisonment and defamation of character. The quantum of damages due, to be assessed by the learned Deputy Registrar, the amounts found due will attract interest at the short term Bank deposit rate from the date of the writ to the date of judgement, thereafter at the current Bank lending rate approved by the Bank of Zambia to the date of satisfaction. The Plaintiffs will have their costs to be agreed, in default of agreement to be taxed by the Assistant Registrar..."**

The Appellant now appeals against the two Judgments.

There are six Grounds of Appeal in this matter. These are:

Ground one:

The Learned trial Judge misdirected himself in giving Judgment for the 1st and 2nd Plaintiffs as the 2nd Plaintiff did not give evidence and his claim was not proved or supported by the evidence.

Ground two:

The reliance by the learned trial Judge on the evidence assumed from the Police Report was a serious misdirection. The Report dated the 9th July, 2004 by the Police refers to "theft by servant" but in fact it refers to a loss of US$600,000.00. No allegation was made by the Appellant of a suspected fraud. No complaint of theft by servant was made. The later letters by the Police dated 18th August, 2004 and 30th August, 2004 revoked the Report of the 9th July, 2004 which was relied on by the Court. In any event, the 3 letters amounted to hearsay evidence and did not corroborate the 1st Plaintiff.

Ground three:

The Judgment of the 22nd October, 2008 and the correction of the 31st of March, 2009. The Judgment failed to make an order or finding on the evidence, the correction which was made was in fact a different judgment and not a correction under Order 20 Rule 11 of the White Book.

Ground four:

The Plaintiffs were terminated for absenteeism as they refused to work. They were reinstated by the Defendant but refused to work.

Ground five:

The Learned trial Judge referred to and relied on a report by A.H Knight and co Zambia Limited. It was not given in evidence and therefore, such reliance was a misdirection.

Ground six:

Such further or other Grounds which are raised at the hearing of the Appeal.

We must state from the onset that the Appellants Heads of Argument did not follow the above order of the Grounds of Appeal. Grounds four to six were changed in the Heads of Argument. We shall take it that the Grounds of Appeal which did not appear in the

Heads of Argument were abandoned. The following are the Grounds of Appeal from the Heads of Argument:

Ground one:

The Learned trial Judge misdirected himself in giving Judgment for the 1st and 2nd Plaintiffs as the 2nd Plaintiff did not give evidence and his claim was not proved or supported by the evidence.

Ground two:

The Learned trial Judge erred in law by relying on the letter of 9th July, 2004 which was revoked by the letters of 18th August, 2004 and 30th August, 2004 and the 3 letters were based on hearsay evidence and did not corroborate the 1st Plaintiff.

Ground three:

The Judgment of the 22nd October, 2008 and the correction of the 31st of March, 2009. The Judgment failed to make an order or finding on the evidence, the correction which was made was in fact a different judgment and not a correction under Order 20 Rule 11 of the White Book.

Ground four:

The Learned trial Judge erred in both fact and in law by referring to and relying on a report by A H Knight and co Zambia Limited being that it was not given in evidence but just mere submissions.

Ground five:

The Learned trial Judge erred in law by stating that the Plaintiffs were defamed when the defendant alleged that they were dishonest.

Ground six:

The Learned trial Judge erred by stating that the Plaintiffs had succeeded in their claims for damages for false imprisonment, they were not imprisoned, but detained by a proper authority for that purpose.

When the matter came up for hearing, Mr Forest informed the Court that he would rely on the Heads of Argument filed into Court. Mr Bota told the Court that he was instructed to apply for an adjournment. The Court however adjourned the matter for Judgement. The Respondents were given 30 days within which to file their Heads of Argument. However, they did not file any Heads of Argument. We shall therefore deal with the appeal on its merits.

Under Ground One, Mr Forest submitted that the trial Court should not have relied on the evidence of the 2nd Respondent who did not give evidence and his claim was not proved by the evidence. He stated that it is trite law that arguments and submissions at the Bar, spirited as they maybe, cannot be a substitute for sworn evidence. He added that according to the lower court, the Respondents were defamed. That the learned trial Judge held the view that the Respondents had proved on a balance of probabilities that they were defamed by the Appellant when the Appellant alleged that the Respondents were dishonest.

We shall begin with the issue of defamation before dealing with the issue of the evidence of the 2nd Respondent.

In the case of **Frederick Kunongona Mwanza V. Zambia Publishing Company Limited (1)**, defamation was defined as:

> "Any imputation which may tend to injure a man's reputation in a business, employment, trade, profession, calling or office carried on or held by him."

Halsbury's Laws of England, Volume 28, paragraph 10, defines a defamatory statement as,

> "a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling or trade or business."

Further, the learned authors of **Atkins Court Forms, 2nd Edition at page 109** state the following on defamation actions:

> "in libel actions, the indorsement on the writ which must be in general and not special, must state sufficient particulars to identify the publications in respect of which the action is brought..."

At page 111, they state that:

> "the statement of claim in an action for defamation is usually divided into four parts:
>
> 1. the introductory averments;
> 2. the allegation of publication and reference to the plaintiff;
> 3. the innuendo; and
> 4. the allegation of damage.
>
> It is usual to include introductory averments describing the occupations of the Plaintiff and the Defendant (if material) and the relationship, if any, of the parties with one another. When the Plaintiff is not mentioned by name in the words complained of, the Plaintiff must, as is stated below, give particulars of the facts relied upon in support of his allegation that reasonable persons would understand them to refer to him...

> **It is the invariable practice to allege that the defendant published the words falsely and maliciously. The statement of claim must allege that the words were published of the Plaintiff... The statement of claim must set out the precise words complained of..."**

Further, **Order 82 rule 3(1) of the Rules of the Supreme Court, 1999**, provides that:

> **"Where in an action for libel or slander the Plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense."**

From the above, it is clear that there has to be a word or words complained of by the person bringing an action for defamation. In the case before us, there is no where on record where the Respondents stated which word or words were defamatory to them. The Appellant reported the two Respondents to the Police for alleged falsification of results from the sampling of copper. In the Statement of Claim, there are no particulars of the defamation. The body of the Statement of Claim does not say anything about defamation. The issue of defamation only appears in the particulars of the claim. Further, we do not know what words the Appellant used which made the Respondents contend that they were defamed by virtue of the fact that they were reported to the Police. The words complained of should have been specifically

stated and a meaning attached to them. We do not know how the learned trial Judge arrived at a finding that the Respondents were defamed without examining the words, statement or statements which were regarded as defamatory by the Respondents. The learned trial Judge found that the Respondents were regarded as dishonest by members of society. However, we do not know at which point the word 'dishonest' was used by the Appellant against the Respondents. There is nothing on record to indicate that the Respondents were called or referred to as dishonest by the Appellant. The Respondents were simply reported to the Police for been suspected of having falsified the grading of copper ore which the Respondents admitted having worked on. It appears the Judge made the finding without considering the pleadings. And evidence before him.

We still hold the view that a litigant cannot be entitled to judgment in his or her favour if he fails to prove his case. See the case of **Wilson Masauso Zulu V. Avondale Housing (2)**, where it was held that:

> **"A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponents case."**

We find that the tort of defamation was not established from the pleadings and the evidence on record. We therefore reverse the learned trial Judge's finding that that the Respondents were defamed.

The other argument by the Appellant on this ground was that the learned trial Court should not have given judgment in favour of the 2nd Respondent because he did not give evidence. Since we have found that defamation was not proved, we find it unnecessary to deal with the argument as it has automatically fallen away. This Ground of Appeal succeeds.

Under Ground two, the Appellant submitted that the learned trial Judge erred in law by relying on the letter of 9th July, 2004 which was revoked by the letters of 18th August, 2004 and 30th August, 2004, and the three letters were based on hearsay evidence and did not corroborate the 1st Respondent.

We find the Ground of Appeal and the submissions on it very inadequate. We say so because the Appellant does not state what finding the Judge made as a result of the reliance on the letter of the 9th of July, 2004. Counsel should have explained exactly what

finding he is appealing against, and how it affects the case against his client so that this Court is guided on which direction to take. This Court does not know if the Ground relates to the claim for defamation or another claim. We therefore dismiss this Ground of Appeal because we do not know what the Ground of appeal is challenging.

We now come to Ground three of the appeal. Under this Ground, Mr Forest submitted that the Learned trial Judge erred in law in failing to make an order or finding on the evidence. He stated that the correction of 31st March, 2009, which was made, was in fact a different Judgment and not a correction. And that under Order 20, Rule 11 of the White Book, a correction cannot be completely divorced from the Rules of the White Book. That reading the rules under correction in isolation to the other rules of general application is a misdirection. He argued that the Judgment should be reversed. He cited the case of **Augustine Kapembwa V. Danny Maimbolwa and the Attorney General (3)** in support of his argument.

We have looked at the evidence and considered the submissions on this Ground. The issue as to whether a trial Court can amend, rehear, review, alter or vary its judgment was dealt with in the case of **Thynne V. Thynne (4)**. In that case, the parties were secretly married on 8 October 1926, at St Paul's Church, Knightsbridge, and on 27 October 1927, they went through a second ceremony of marriage at the church of St Martin-in-the-Fields. By her petition dated 20 January 1953, the petitioner averred that she was married to the respondent on 27 October 1927, at St Martin-in-the-Fields and that he had committed adultery, and she prayed for a decree nisi of divorce and the exercise of the court's discretion in respect of her own adultery. On 15 May 1953, in the exercise of the court's discretion a decree nisi of divorce was pronounced in her favour and that decree was made absolute on 27 June 1953. Subsequently the petitioner, by summons, sought leave to amend her petition and the decrees nisi and absolute, disclosing in her affidavit in support of the summons that she had been lawfully married to the respondent on 8 October 1926, at St Paul's Church, Knightsbridge. She sought by the amendment to substitute in the petition and decrees the date and

place of the marriage of 8 October 1926, for that of the ceremony of 27 October 1927.

It was held that:

> **(i)a decree of divorce granted after trial by a competent court in accordance with the provisions of the Matrimonial Causes Act, 1950, puts an end to the status of marriage between the parties and, if the decree gives the wrong date or place of the effective marriage ceremony the decree is not thereby rendered void.**
>
> **(ii)the court had power under its inherent jurisdiction to amend an order of the court after it had been drawn up and entered, so as to make the position under it clear and free from ambiguity, although that power did not extend so far as to allow the court to amend an effective part of its order, eg, it would not enable the court to amend a decree of divorce in relation to a question of status or proof of a matrimonial offence, accordingly in the present case, the court being satisfied that the lawful marriage between the petitioner and the respondent was solemnised on 8 October 1926, the decrees nisi and absolute would be amended.**
>
> **(iii) the form of the amendment would be by striking out the date and place of marriage stated in the decrees, as this would affect the intention of the court granting those decrees, viz, to dissolve the marriage subsisting between the parties, and would not create a semblance that the commissioner had considered the marriage of 8 October 1926.**

Morris L.J. in the above case stated the following as some of the circumstances under which a court can exercise its power to vary, modify or extend its orders;

> **"(a) if there is some clerical mistake in a judgment or order which is drawn up, there can be a correction under the powers given O.20, R.S.C;**
>
> **(b) if there is some error in a judgment or order which arises from any accidental slip or omission, there may be correction both under O.20, r.11, and under the Court's inherent powers;**
>
> **(c) if the meaning and intention of the Court is not expressed in its judgment or order then there may be variation;**

> **(d) if it is suggested that a court has come to an erroneous decision either in regard to fact or law then amendment of its order cannot be sought, but recourse must be had to an appeal to the extent to which appeal is available;**
>
> **(e) if new evidence comes to light and can be called, which no proper and reasonable diligence could earlier have secured, then likewise amendment of a judgment cannot be sought: there might be an appeal and an endeavour to come within the rules and the well-settled principles relating to applications in such circumstances to adduce fresh evidence;**
>
> **(f) if a party is wrongly named or described, amendment may in certain circumstances be sought;**
>
> **(g) A court may in the exercise of its inherent jurisdiction in some circumstances of its own motion (after hearing the parties interested) set aside its own judgment. An example of this would be where it comes to the knowledge of a court that a person named as a judgment debtor was at all material times, at the date of the writ and subsequently, non-existent; and**
>
> **(h) Even if a judgment has been obtained by some fraud or false evidence the court cannot amend the judgment: there must be either an appeal or there must be an action to set aside the judgment: the particular circumstances may denote what procedure is appropriate: but a power to amend cannot be invoked."**

The case of **Thynne V. Thynne** was approved by this Court in **Lewanika and others V. Chiluba (5)** and in **Walusiko Lisulo V. Patricia Lisulo (6).** In those two cases, this Court gave guidance on when a trial Court can review its own judgment.

In the case before us, the learned trial Judge acknowledged that in his Judgment of 17th October, 2008, he omitted to address

the claim for damages for false imprisonment by the Respondents. To address the omission, the learned trial Judge stated the following:

> **"I hereunder therefore, state the order that I meant to pronounce in this case, the Plaintiff have succeeded in their claims for damages for false imprisonment and defamation of character. The quantum of damages due, to be assessed by the learned Deputy Registrar, the amounts found due will attract interest..."**

The Judge stated that **Order 20 r. 11, R.S.C, 1999**, was the basis for his finding. **Order 20, r. 11, R.S.C. 1999** provides that:

> **"clerical mistakes in Judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without and appeal."**

In our view, the learned trial Judge amended his Judgment by making a finding on the claim for damages for false imprisonment and awarding the Respondents damages on the said claim. This finding was not there in his Judgment of the 17th of October, 2008. Such an amendment is not permitted under the authorities we have discussed above. Order 20 r. 11, which the Court relied upon is restricted to clerical mistakes which arise due to an accidental slip or omission and not omissions which relate to the merits of the case. We believe the correct procedure that should have been used in such a case should have been to appeal to this Court as the

issues that had not been adjudicated upon related to the merits of the case. We also note that there was no fresh material evidence which was discovered after the Judgment of the 17th of October, 2008 was delivered. Therefore, a review would not equally have been available to either party.

We therefore hold that the learned trial Judge erred in law when he amended his Judgment in the disguise of interpreting it. The application that was before him was for interpretation of the Judgment and not review. We also wish to state that a judgment needs no interpretation. It should be clear and be able to address all the issues in contention. This Ground of appeal succeeds.

We come to the fourth Ground of Appeal. Under this Ground, Mr Forest submitted that the learned trial Judge erred in both fact and law by referring to and relying on a report by A H Knight & Co Zambia Limited which was not given in evidence but just referred to in the submissions.

In the case of **Pesulani Banda V. The People (7)**, this court held that:

> **"If the contents of a document are referred to in evidence either the document should be produced, or acceptable evidence should be given as to why its production is impossible. Lack of objection by a defence counsel does not render admissible that which is inadmissible."**

We have looked at the evidence and considered the submissions on this Ground. The report by A H Knight & Co Zambia Limited, was not produced in court. However, the Judge did not refer to this report in his judgment. There is also no where in the Judgment to suggest that the Judge relied on the said report to make his findings of fact. This Ground of Appeal is therefore dismissed.

We come to Ground five of the Appeal. Under this Ground of Appeal, Mr Forest argued that the learned trial Judge erred in law by stating that the Respondents were defamed when the Appellant alleged that the Respondents were dishonest. He stated that it is every company's policy to investigate employees who they suspect to have committed an offence. Defamation can only be substantiated if the Defendant published to other employees or the general public that the Plaintiffs were being dishonest in their service of employment.

We have looked at the evidence and considered the submissions on this Ground. We are of the view that Ground one of the Appeal covers this Ground. The fact that Ground one of the Appeal has succeeded makes the consideration of this Ground of Appeal academic. For the above reasons, this Ground of Appeal succeeds as well.

We come to Ground six of the Appeal. Under this Ground of Appeal, Mr Forest contends that the learned trial Judge erred by stating that the Respondents had succeeded in their claims for damages for false imprisonment, they were not imprisoned but detained by a proper authority for that purpose.

The issue of false imprisonment was dealt with in the case of **Richman Chulu V. Monarch (Z) LTD (8)**. In that case, the plaintiff was arrested and detained on suspicion of theft, for two days, upon a complaint by his employers - the defendant company. Due to insufficient evidence the plaintiff was discharged and released. He subsequently brought an action for false imprisonment against the defendants since there was no reasonable cause for his arrest. The defendants contended that there was a reasonable and probable

cause since a felony had been committed and the plaintiff was a suspect. The Court held that false imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause. In that case, the learned Commissioner made the following observation:

> **"How could the defendant be put in peril for reporting crime that had been committed at its premises? If I were to condemn the defendant for action taken in this case in absence of Mala fides, I would be giving an opportunity to those dishonest employees who would commit a crime and the employer will fear to report such a commission because of the sanction of damages for false imprisonment if it turned out that the police had not sufficient evidence to prosecute the suspects. That will be a sad day and companies and individuals, would not be protected by the law of their land. In this case, I find that there was no cause for false imprisonment by the plaintiff. The detention was done for the purposes of police investigations and this is the normal police practice. We are not going to depart from this in genuine cases like this one. If there is any discomfort caused to the plaintiff, it is damnum absque injuria. The actions by the defendant were proper and done in good faith. The action by the plaintiff is dismissed."**

In the case before us, the learned trial Judge found as a fact that the Respondents were detained by the Zambia Police to help with investigations. The Judge also found that the detention by the Zambia Police was not justified as the Respondents were cleared of the allegations.

We do not agree with the mere fact that since the detention of the Respondents was not justified, they are entitled to damages for false imprisonment. The report by the Appellant company to the Zambia Police was genuine. There was falsification of the copper ore percentage figures in a particular consignment of copper supplied to the Appellant company. In short, the report to the police was not out of malice or without reasonable cause as a crime had been committed. The Zambia Police is a proper authority to investigate such crime and the police saw it fit to detain the Respondents to help with investigations. We do not believe that because the Respondents were cleared, then they are entitled to damages for false imprisonment. As the Judge rightly observed in the Chulu case that the detention was done to help with investigations and this is normal Police practice.

Further, the award of damages relating to the issue of false imprisonment was made in the 'correction" Judgment. We have already said in Ground three of the Appeal that the Judge erred when he amended his Judgment by making a finding on the issue of false imprisonment and awarding damages on it. The judgment

should have been corrected on appeal. The second judgment was void. This Ground of Appeal succeeds as well.

All in all,

Ground one of the Appeal succeeds.

Ground two of the Appeal is dismissed.

Ground three of the Appeal succeeds.

Ground four of the Appeal is dismissed.

Ground five of the Appeal succeeds.

Ground six of the Appeal succeeds.

In sum total the appeal succeeds. We order that each party bears its own costs.

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L. P. Chibesakunda

Ag./CHIEF JUSTICE

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I.C. Mambilima

DEPUTY CHIEF JUSTICE

.....

M. S. Mwanamwambwa

SUPREME COURT JUDGE