IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 06/2014**

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

THE ATTORNEY GENERAL **APPELLANT**

AND

DAVID LUBUWA & 49 OTHERS **RESPONDENTS**

CORAM: Mwanamwambwa DCJ, Hamaundu, Kabuka, JJS.
On the 7th June, 2016 and 13th June, 2016.

FOR THE APPELLANT: Ms. C. Mulenga, Deputy Chief State Advocate, Attorney- General's Chambers.

FOR THE RESPONDENTS: N/A

JUDGMENT

Kabuka, JS, delivered the Judgment of the court

Cases referred to:

1. Masterton Holmes Pty Limited v Palm Assets [2009] NSWCA 234.
2. Prenn vs Simmonds [1971] 3 ALL E R 237.
3. Carmichael -v- National Power [1999] 1 WLR 204.
4. Jinikson v Oceana Gold (NZ) Limited [2009] ERNZ.

5. Protectacoat Firthglaw Limited v. Szilagyi (2009) EWCA Civ 98; (2009) IRLR 365.

Legislation referred to:

The Employment Act Cap. 268 SS. 3; 24 (1) (5); 26B (1) (b); 28,48 (1), (3), (4) (b).

Other Works:

Blacks Law Dictionary 9th Edition Page 605.

This appeal is against a Judgment of the High Court at Lusaka, which found the Respondents were not casual or seasonal workers but permanent employees of the Zambia Air Force (ZAF).

The record shows that the case arises from the Respondents' contention in the Court below, that they were all employed by ZAF as civilians. They worked on the Appellant's farm at Mumbwa over various periods of time but between 1999 and 31st July, 2003 when their services were terminated. Certificates of Service issued to them thereafter, stated the termination was on account of a reorganisation of the farm. It was their further contention that since they had worked continuously for a period of over six months, they were permanent workers. Consequently, they were, pursuant to S.26 B of the Employment Act, claiming entitlement to payment of redundancy benefits at the rate of two months' salary, for each year served; accumulated leave days; any other relief the court might consider equitable; together with costs.

The Appellant in defence averred that the Respondents were engaged as seasonal/casual workers. They were engaged on three months' contracts at the beginning of each farming season around October and were released at the end of the season around July. All wages and benefits due to them under the contracts of service, were paid at the expiration of each term. Their initial contracts were for six months and specifically indicated the conditions under which they were engaged, only entitled them to daily wages as determined by the Government. They further indicated that the Respondents were not entitled to any allowance; contribution to NAPSA or transport. Their wages were determined on a daily rate of K4, 867.00 (K 4.87) or K146.00 for 30 days. They were, however, paid monthly, as that is how the money was remitted to Mumbwa by ZAF Headquarters.

It was the Appellant's evidence in the Court below that the Certificates of Service issued to the Respondents on 31st July, 2003 were intended as a recommendation, to assist them secure employment elsewhere. The use of the word 're-organisation' must accordingly, be understood in that context.

In its Judgment rendered after trial, the Court below found that it was not in dispute that the Respondents had worked at the ZAF farm in Mumbwa. The only issue requiring determination was whether or not the Respondents were employed on permanent basis, or were just seasonal/casual workers. In establishing the

status of the Respondents, the Court referred to S.3 of The Employment Act No. 15 of 1997 Cap. 268 of the Laws of Zambia, which defines a casual worker as:

> **"Any employee, the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months."**

The Court found, evidence led that the Respondents were not paid daily, but monthly, disclosed breach of S.3 quoted above. The Court also found that by signing contracts with the Respondents, the Appellant was in breach of S.24, which requires an oral contract to be prepared in a prescribed form, with a duplicate given to the employee. The Court observed, the Certificates of Service issued to the Respondents also stated they had worked at the ZAF farm from 1999 until 31st July, 2003; and that their termination was due to a reorganisation. The Court found, this evidence implied, although the Respondents were seasonal workers, they were in permanent employment. The Court was of the view that, written letters giving a character reference for each individual would have sufficed.

The Court below accordingly held, from evidence led showing that the Respondents: (i) had worked for a longer period than the six months provided under S.3 for a casual worker; (ii) they were paid on monthly basis; and (iii) were awarded Certificates of Service. The only conclusion to be drawn is that, the Respondents could not be classified as casual or seasonal

workers. In support of the finding, the Court relied on sections 24 (1); (2); (3) and (4) of the Employment Act, which provide for keeping of records of oral contracts.

The Court went on to consider, the word 'reorganisation' as used in the Certificates of Service and the defence evidence that, at no time did the farm stop operating, but was improving yearly. It found this was a re-organisation in the process of which a small work force was retained. In the circumstances, the Respondents could be deemed to have been terminated by way of redundancy, as envisaged under S. 26B (1) (b) of the Employment Act, which states that:

> **"26B. (1) The contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to-**
>
> **(b) the business ceasing or reducing the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable going concern."**

For the said reasons, the Court below also found, the Respondents were entitled to payment of their terminal benefits in form of redundancy pay; and accumulated leave days at the rate of two days per month, in accordance with section 15 (1) (i). Amounts found due were to carry interest at the average Bank of Zambia lending rate, until payment. The Respondents were also awarded costs of the action.

Dissatisfied with the said Judgment, the Appellant now appeals to this Court on six grounds:

1. **That the learned trial Judge erred in law and fact when she found that the Respondents were not employed as casual/ seasonal workers.**

2. **That the learned trial Judge erred in law and fact when she found that the Appellant was in contravention of the employment Act No. 15 of 1997 in view of the fact that the Respondents were not paid on a daily basis but on monthly basis.**

3. **That the learned trial Judge erred in law and fact when she found that the Appellant was in breach of S.24 of the Employment Act No. 15 of 1997 by reason of signing contracts of employment with Respondents.**

4. **That the learned trial Judge erred in law and fact when she ignored the evidence from both the Appellant's and Respondents' witnesses and construed the Certificates of Service as implying that even though the Respondents were seasonal workers, they were on permanent employment by virtue of the statement that they had worked since 1999 until the 31st day of July, 2003.**

5. **That the learned trial Judge erred in law and fact when she held that the Respondents' employment could be "DEEMED" to have been terminated by reason of redundancy.**

6. **That the learned trial Judge erred in law and fact when she found that the Respondents were entitled to be paid terminal benefits in the form of redundancy benefits accumulated leave days and interest on the said payments.**

At the hearing of the appeal, there was no appearance by Counsel for the Respondents and they did not file a Notice of non-attendance or Heads of Arguments. Upon confirmation by the Marshall, that the Respondents were notified of the hearing date through the Cause List which was duly served on their Counsel, we proceeded to hear the appeal.

Appellant's Counsel informed the Court she was relying wholly on written Heads of argument which were earlier, on 13th January, 2014 filed on record. In the Heads of argument, grounds 1, 2, and 4 of the appeal were argued together and so were grounds 5 and 6; while ground 3 was argued separately.

In arguing grounds 1, 2, and 4, Counsel for the Appellant re-iterated, the issue in all these grounds is that the Respondents were employed as casual/seasonal workers. It was her submission, the fact that they were paid their daily rate monthly, did not alter that position. Nor did Appellant's signing of contracts of employment with the Respondents. As authority for the submission, S.3 of the Employment Act was relied on which defines a casual employee as:

> S. 3 **"..... any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months"**

Counsel argued that the above definition provides what she referred to as a two-part test for determining who is a casual worker. These are: (i) that he is paid at the end of each day; and (ii) the employment should not exceed six months.

On the first part of the definition, requiring such employee to be paid at the end of the day; and the finding of the Court below,

that the Appellant contravened the Employment Act when it paid the Respondents monthly, Counsel referred us to S.48 of the same Act which allows the parties to agree a monthly payment. Counsel noted, defence evidence in the Court below was that, in November, 1999 the casual workers' daily rate was K4,867.00 (K4.87) or K146.00 for 30 days. It was her submission that this evidence clearly demonstrates the Respondents were paid an accumulated daily rate at the end of each calendar month. That such payment was allowed by law under S.48 (3). Hence, the one month interval of payment did not alter the fact that the Respondents were casual workers.

Regarding the second part of the definition of 'casual employee', allowing a maximum six months' duration for a casual contract of employment, Counsel noted, the common cause evidence was that the initial contracts were for six months, commencing 13th November, 1999 to 13th February, 2000. This contract was renewed for a further 3 months from the 13th February, 2000 and ended on 13th May, 2000. Counsel argued that the standard contracts of employment which were produced in the Court below clearly stated that the Respondents were engaged as casual labourers. When their services were no longer required, the Certificates of Service issued to them confirmed they had all been employed on a monthly basis, as casual/seasonal labourers for the entire period in issue from 1999-2003.

Counsel further argued, the Respondents' contracts of service were partly written and partly oral. This was so, since some terms and conditions of service, such as the duration of the contracts, were in writing. She submitted, it is trite law that in order to ascertain the terms and conditions of service involving a partly written and partly oral contract, all the surrounding circumstances must be considered. The New South Wales Court of Appeal case of **Masterton Holmes Pty Limited v Palm Assets PTY Ltd (1)** was cited, which held that:

> *"where a contract is partly written and partly oral, the terms of the contract are to be ascertained from the whole of the circumstances as a matter of fact."*

A host of other cases were cited, to the same effect. The submission on the point was that, the Court below should have examined the Respondent's evidence, claiming they worked continuously from 1999-2003. Had it done so, it could have noted from the 'Casuals Registers' that the name of Respondent's second witness (PW2) did not appear on some of those Registers, as admitted by himself in cross- examination.

In that event, the Court below would not have construed the Certificates of Service issued to the Respondents as implying, even though they were seasonal workers between 1999 and 2003, the Respondents were actually in permanent employment. The House of Lords (Supreme Court) decision in the case of **Prenn vs**

Simmonds (2) was cited which held to the effect that, any determination regarding the correctness of a document must be premised on the factual background. Counsel submitted that the Certificates of Service which are the documents in issue should have been considered as a whole, including the portions that state that the Respondents were seasonal workers. In this regard Counsel referred to **Blacks Law Dictionary 9th Edition Page 605,** which defines seasonal work:

> **" as an occupation possible during limited parts of the year, such as a summer camp Counsellor; a baseball bank Vendor; or shopping mall Santa."**

Counsel re-iterated the definition of a 'casual employee', to the effect that, in order to determine whether employment was seasonal/casual; the duration and manner of payment were paramount. Her submissions on the point were that, evidence led shows the Respondents were never employed for any period exceeding three months. Evidence led, further showed that the Respondents acquiesced to be paid their accumulated daily pay at the end of the month. In the premises, the conclusion was inescapable, that the Respondents were actually casual workers.

Regarding the use of the word 'reorganisation' of the farm as appears in the Certificates of Service. The submission was that, where an entity is re-organising and laying off some workers as a result, a casual worker of the organisation cannot be deemed to have been declared redundant. That Appellant's witness at the

trial explained that the term 'reorganisation' was used as a mere recommendation, intended for the benefit of the Respondents. It was to assist them secure alternative employment, but they now seek to illegally abuse and take benefit of it.

On ground 3, Counsel attacked the finding of the Court below that in signing contracts of service with casual workers, Appellant breached S. 24 which provides for oral contracts of employment. Counsel acknowledged, a casual contract of service is not one of the contracts of employment listed in S.28 that are required to be in writing. She however submitted that the Act equally does not prohibit such contracts from being in writing. Neither does it prohibit the said contracts to be partly oral and partly written, as was the case here. Counsel argued, S.24 relied on by the Court below which mandates that a record of oral contracts of service be maintained, in sub section (5) specifically excludes keeping of records for contracts for casual employees, when it provides that:

> "S. 24 (5) Where any dispute arises as to the terms and conditions of an oral contract **other than a contract for the employment of a casual employee,** and the employer fails to produce a record of such contract made in accordance with the provisions of this section, the statement of the employee as to the nature of the terms and conditions shall be receivable as evidence of such terms and conditions unless the employer satisfies the court to the contrary." (Emphasis by boldfacing supplied)

Finally, on grounds 5 and 6 of the appeal, faulting the finding of the Court below when it deemed the Respondents as having been terminated by reason of redundancy; and on that basis, proceeded to find they were entitled to redundancy benefits. Learned Counsel maintained that the Respondents were employed as mere casuals who are excluded from entitlement to payment of redundancy benefits by law, under Section 26B (1) (b) (4) which states that:

> **26B. (1) (4) The provisions of this section shall not apply to**
> **(b) a casual employee;**

Counsel concluded her submissions by urging that the Respondents' employment in the circumstances could not and cannot be deemed to have been terminated by reason of redundancy. Consequently, that they were not entitled to payment of redundancy benefits.

We have considered the arguments and submissions by Learned Counsel, cases cited, as well as the applicable law. We find the grounds of appeal are all inter-related and that the entire appeal rests on ground 1. That being the case, we will first deal with this ground and depending on our findings, proceed to consider the rest of the grounds.

Ground 1 of the appeal is that, the learned trial Judge erred in law and fact when she found the Respondents were not employed as casual/seasonal workers. In arguing this ground Learned

Counsel relied on the definition of 'casual employee' as provided in S. 3 of the Employment Act. This is the same section that the Court below also referred to in resolving the issue of whether there was breach of that section.

The gist of the argument by Counsel as we understand it, is that, in order to ascertain whether an employee falls in the category of a 'casual' two requirements must be established: (i) his wages must be determined on a daily basis; and (ii) the duration of the contract must not exceed 6 months.

We will start with the argument relating to the mode of payment. The language of S. 3 which defines a casual employee is couched in the following terms:

> "Any employee, the terms of whose employment **provide** for his payment at the end of each day and who is engaged for a period of not more than six months." (highlighting in bold supplied)

We agree with Counsel that to qualify one as a casual employee the terms of employment must provide for payment on a daily basis and a duration not exceeding six months. The question, however, is whether it is mandatory that this payment be made on the actual day that the work is undertaken, as found by the Court below. The Answer appears to be provided in Section 48 (3) of the Employment Act, also relied on by Counsel for the Appellant, which permits monthly payment of daily wages on agreement by the parties, in the following words:

48. (3) Notwithstanding the provisions of subsection (2), **in the case of an employee who is engaged on a contract** of service **for payment of wages at a daily** or an hourly **rate, it shall be lawful for the employer to accumulate such wages for a period not exceeding one month** provided the agreement of the employee concerned has been obtained:

We further note, on the point, that the Record of Appeal in this case shows unchallenged evidence on record is that, the Respondents 1- 3 months contracts, were being renewed on the same terms. It was not in dispute that these terms included monthly payment, at the daily rate, throughout the relevant period in question, from 1999-2003. Initially this rate was K146.00 per month, being the accumulated amount of the K4, 867.00 (K 48.70) for 30 days. In view of this evidence, the submission by Counsel for the Appellant, that there was no breach of this requirement of S.3, as the Respondents had acquiesced to the arrangement of monthly payments, is well founded.

We will now proceed to consider the second requirement of casual employment that limits the duration of the contract to a maximum of six months. Submissions by Counsel for the Appellant were that, none of the contracts signed with the Respondents exceeded 3 months. The standard contracts of employment in issue are on record. They are of various dates and read as follows:

J15

RESTRICTED

MUM/2030/PC

Zambia Air Force
P.O. Box 83011
MUMBWA

Mr./Mrs/Ms Lubuwa B.

NRC No. 161268/15/1

Dear Employee,

RE: **EMPLOYMENT AS A CASUAL WORKER**

1. I hereby inform you that **you are engaged as a casual worker for a period of less than three months** from the month of May 2004 to July, 2004.

2. During this period be informed that:

   a. You will not be a member of NAPSA

   b. **your services may be terminated without notice.**

   c. **You can stop without notice.**

   d. Absenteeism, malingering, during working hours is instant dismissal.

   e. fighting at place of work, stealing and incompetence will also result in instant dismissal.

3. Ensure you observe the above rules.

SIGNATURE.....

NAME.....

APPOINTMENT.....

DATE.....

SIGNATURE OF CASUAL.....

DATE.....

(bold facing for emphasis supplied)

It appears to us the above document which is the same as the others, clearly states the Respondents were being taken on as casual labourers, at the ZAF farm in Mumbwa. The dates on the documents all fall in two categories, either within the few months heralding the onset of rains or towards the end of the rain season. All the contracts also reflect uniform terms and conditions. The terms reflect no mutual obligation as either party could pull out without notice. The durations of employment range from 1- 3 months: October-December; December, November to February; and May to July. There is nothing on record that suggests any contract was entered into beyond a period of 3 months.

We are alive to the fact, the Court below based its finding, that the Respondents were employed from 1999 to July, 2003 on its construction of the Certificates of Service issued to them on termination of their services. Our perusal of these Certificates of Service however, disclosed that the casual 'employee status', was still maintained on termination as it was on engagement. The sample reproduced herebelow reflects this position:

Zambia Air Force

P.O. Box 83001,

MUMBWA

8th July, 2003.

ZAMBIA AIR FORCE FARM

CERTIFICATE OF SERVICE

1. This is to certify that.....

.....**has been a seasonal worker at this farm since 1999**. He/she has had hands on experience in the following agricultural practices;

   a. Seed maize growing from planting to shelling
   b. Seed cotton growing
   c. Scouting of pests in cotton
   d. Spraying of cotton using Ultra Low Volume Applicators [ALVA Sprayers].
2. The employee left the farm **due to reorganisation currently taking place at the farm. I STRONGLY recommend him/ her** for any employment in similar capacity. (bold facing for emphasis supplied)

Yours Faithfully

D K KALYANGU

Although common cause evidence was that the contracts did not exceed three months, the argument of the Respondents was that, their cumulative period of service as indicated in the Certificates was from about 1999- 2003 which exceeded the six months' maximum allowed by law, for a casual worker. It is for this reason they claimed that they qualified to be treated as permanent employees and thus entitled to redundancy payment.

Using the dates reflected in the Certificate of Service, specifically that the Respondents worked from 1999 to 31st July, 2003, the Court below found with the Respondents, that their employment was indeed continuous and permanent. Having considered the use of the word 'reorganisation' of the ZAF farm, in the

Respondents' Certificates issued to them following their termination; the Court below found that the facts disclosed a redundancy in terms of S.26 B. It accordingly, proceeded to order redundancy benefits.

We take cognisance of the fact, that although contracts may initially start off as offering casual work. They do at times end in permanent employment of the casual employee. The question whether this is so in a particular case, is a question to be determined on consideration of the surrounding circumstances. In this regard, defence evidence in answer to the Respondents' claim is on record. It was from the Farm Manager Lieutenant Colonel Donald Kalunga Kalyangu and was uncontested.

He explained the surrounding circumstances were that, the Respondents were engaged as casual workers between the period 1998 and 2005. The first contracts were for three months from 13th November, 1999 to 13th February, 2000. These contracts were extended for a further three months until 13th May, 2000 after which point, the Respondents were laid off for a month. They were re-engaged for another month, from mid-June to mid-July, 2000. This trend continued until 2005. He confirmed the Respondents were paid monthly. The initial daily rate was K4,867.00 (K4.87) which for 30 days of work amounted to K146,000.00. The witness referred to some standard contracts signed by the Respondents as earlier reproduced which clearly stated, the Respondents were employed as casual workers.

He further referred to time sheets (Registers) that were used to mark individual attendances. He noted the fact that, the name of the 2nd witness called by the Respondents, was not appearing in some of the Registers for given months; which fact suggested that the Respondents were generally, not bound to take up the casual work whenever it was available from the Appellant.

This evidence of circumstances surrounding the relationship of the parties confirms the Appellant's argument that throughout the relevant period, the nature of the contracts between Appellant and the Respondents was consistently, 1-3 months' contracts of seasonal/casual employment, as reflected in the documents relating thereto, earlier reproduced. These contracts were of course renewable, on similar terms, throughout the relevant period and during relevant times only, when the farm needed casual workers.

In considering a similar question of whether or not tour guides who had been initially employed as casuals had become employees, the House Lords (now the Supreme Court of England) in the case of **Carmichael -v- National Power (3)**, held: casually employed tour guides for a period spanning from 1996-1998, when not working as guides, were in no contractual relationship of any kind with their employer. This was by reason that, there were no mutual obligations to offer and perform work. That the documents in the said case, did no more than provide a

framework for a series of successive *ad hoc* contracts of service or for services which the parties might subsequently make.

The issue also arose in the New Zealand leading case on casualization, **Jinikson v Oceana Gold (NZ) Limited (5)**. The court there stated, in considering such matters, the most important inquiry to make is into the real nature of the relationship and it is significant to note that this may change over time. It may begin as casual but later become permanent. Hence, the need to determine what the nature of the relationship was at the time of dismissal, Couch J, put the position clearly when he opined:

> *"Whatever the nature of the employment relationship, the parties will have mutual obligations during periods of actual work or engagement. The distinction between casual employment and ongoing employment lies in the extent to which the parties have mutual employment related obligations between periods of work. If those obligations only exist during periods of work, the employment will be regarded as casual...."*

Similar observations were expressed in the English and Welsh case of **Protectacoat Firthglaw Limited v. Szilagyi (5),** in the following words:

> *'...if it is asserted, that a document does not describe the true relationship between the parties, it is for the court or tribunal to decide what the true relationship is. When determining the true legal relationship of the parties, the preferable approach is to*

ask whether or not the words of the written contract represent the true intentions or expectations of the parties, not only at the inception of the contract but, if appropriate, as time goes by. The second requirement is that there must be mutuality of obligations for the entire duration of the contract under consideration, both the employer and employee must be under legal obligation to one another.'

We have already considered the issue whether the Respondents satisfied the requirements of S.3 of the Employment Act on mode of payment and duration of contracts which evidence on record has confirmed satisfy the requirements of S. 3 for casual employees.

But if for arguments sake, we were to apply the test espoused in the cited cases, the material evidence to be considered, according to the Record of Appeal is as already highlighted, common cause. The contracts of employment in issue which were all in standard form, clearly stated the Respondents were seasonal/casual workers at the ZAF farm in Mumbwa.

The nature of the documents as earlier reproduced, disclose nothing which can be construed to mean from 1999 up to the date of issuing the Certificate on 8th July, 2003, the Respondents had been anything else, other than casual employees. Neither is there any evidence on record suggesting, that during the periods between the contracts, Appellant and the Respondents had any contractual obligations whatsoever between them.

The findings of the Court below were premised on grounds that evidence led showing: (i) the Respondents had worked for a longer period than the six months provided under S.3 for a casual worker; (ii) that they were paid on monthly basis at the rate of K146.00 which was later increased to K348.00.; and (iii) the Respondents were awarded Certificates of Service; implied that even though the Respondents were seasonal workers, they were in permanent employment. These findings were drawn from the documents on record; common cause evidence and sections 3 and 24 of the applicable laws.

We have examined this evidence on record, which discloses that the Respondents served as extra farm hands needed at the beginning and end of the rain season; on *adhoc* contracts which did not exceed three months. That these contracts were renewable for 1-3 months on the same terms, for the entire period in issue from 1999-2003. The periods of duration of the contracts were thus, within the six months' maximum for casual employment allowed under S.3. Although these contracts provided for daily rates, the Respondents had accepted a monthly payment. There is no evidence on record, in this regard, that they ever raised this as an issue throughout the material period from 1999-2003.

The law as contained in S.48 (3) allows parties to agree a monthly mode of payment for wages fixed on hourly or daily, basis. We accordingly accept submissions by Counsel for the Appellant,

that if the Respondents did not agree to monthly payments of their daily wages; they most certainly, acquiesced to such payment and this conduct satisfies S.48 (3).

Further, the law is also clear, that failure to comply with any of the provisions under S.24 (1), (2), (3) and (4), requiring keeping of records of oral contracts; would not have the effect of transforming a contract covered by the section, whether wholly oral, or in part, into a permanent one. At the most, it would only invite penal sanctions on the employer under S. 24 (4) which states that:

S.24 (4) An employer who fails-

(a) to prepare or cause to be prepared such record as aforesaid; or

(b) to issue a copy of a record of contract to the employee concerned;

shall be guilty of an offence.

It is for these reasons, we are unable to uphold the Court below on its findings, that the Respondents were not casual employees. To the contrary, we find evidence on record strongly supports the position, that the Respondents were indeed seasonal/casual employees, as argued by learned Counsel for the Appellant. This being the position, even assuming there was a re-organisation of the ZAF farm, the law as provided in S. 26 B (4) (b), specifically excludes casual employees from any entitlement to redundancy benefits.

Ground 1 of the appeal accordingly succeeds.

Having come to that conclusion, we find it unnecessary to delve into the other grounds of appeal, all of which in any event, were premised on the success of ground 1. Judgment of the Court below dated the 21st day of June, 2013 as held that the Respondents were permanent employees and upon termination of their contracts on grounds of reorganisation were entitled to redundancy benefits, is accordingly, hereby set aside in its entirety.

Taking into account all the circumstances of this case, we find an appropriate order on costs, is for each party to bear own costs, both here and in the court below.

.....

M.S. Mwanamwambwa

DEPUTY CHIEF JUSTICE

.....

E.M. Hamaundu

SUPREME COURT JUDGE

.....

J.K. Kabuka

SUPREME COURT JUDGE