IN THE SUPREME COURT OF ZAMBIA APPEAL NO.104/2014
HOLDEN AT NDOLA SCZ/8/55/2014
(CIVIL JURISDICTION)

BETWEEN:

BONIFACE JOSEPH SAKALA APPELLANT

AND

ZAMBIA TELECOMUNICATIONS COMPANY LIMITED RESPONDENT

CORAM: MAMBILIMA, CJ, AND KAOMA AND MUSONDA, JJS

ON 6TH DECEMBER, 2016 AND 12TH DECEMBER, 2016

For the Appellant: Mr. M. Mando of M.L. Mukande and Company
For the Respondent: Mr. N.Nchito, SC of Nchito and Nchito

JUDGMENT

KAOMA, JS delivered the Judgment of the Court

Cases referred to:

1. **Mendai v Zamtel - 2001/HP/246**
2. **Donovan v Gwetoys Limited (1990) 1WLR 472**
3. **Zambia Oxygen Limited and another v Chisakula and another (2000) Z.R. 27**
4. **Kankomba and others v Chilanga Cement Plc (2002) Z.R. 129**
5. **Zambia Consolidated Copper Mines and another v Sikanyika (2000) Z.R. 105**
6. **Kasengele and others v Zambia National Commercial Bank (2000) Z.R. 72**
7. **Kitchen v R.A.F Association & Others (1958) 2 ALL ER 241**
8. **Shaw v Shaw (1954) 2 ALL ER 638**

9. **Maamba Collieries Limited v Daglus Siakalanga and others - Appeal No. 51 of 2004**
10. **Sablehand Zambia Limited v Zambia Revenue Authority (2005) Z.R.109**

Legislation and works referred to:

1. **Rules of the Supreme Court 1999, Order 14A**
2. **Limitation Act 1939, sections 2 and 26 (b)**
3. **Halsbury's Laws of England, 4th edition, Volume 28**
4. **Telecommunication Act, Cap 469 of the Laws of Zambia**

This is an appeal from a judgment of the High Court delivered on 31st January, 2014 following an action commenced by the appellant by writ of summons claiming for terminal benefits and interest thereon in the sum of K1,469,936.00; damages; and interest on the principal amount. The main issue raised by the appellant in the statement of claim was that the respondent intentionally concealed from him the fact that he was entitled to allowances for purposes of calculating his terminal benefits.

The respondent entered conditional appearance and later raised a preliminary issue under Order 14A of the Rules of the Supreme Court 1999 and applied by chamber summons to dismiss the action for being statute barred contrary to section 2 of the Limitation Act 1939. The respondent's contention was that the

appellant ought to have brought the action within a period of 6 years from the time he retired and not 14 years later.

The appellant did not dispute that as a general rule, a matter is statute barred unless commenced within 6 years but argued that the action fell within the ambit of section 26 (b) of the Limitation Act which provides for postponement of the limitation period in case of fraud or mistake, and states, in particular, in paragraph (b) that where the right of action is concealed by the fraud of the defendant or his agent or any person, through whom he claims or his agent, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be.

The court below heard the parties and in a ruling dated 27th April, 2012 acknowledged that the expiry of the limitation period provides a defendant with a complete defence to a claim and agreed with the respondent that the appellant had not demonstrated that there was fraud on the part of the respondent by which the event giving rise to the extension of time, that is, the discovery of the letter of the Minister of Finance was concealed from the appellant. However, the Judge took the view that fraud could only be proved

by way of adducing evidence and that the respondent needed to raise limitation as a defence. The respondent was granted leave to file its defence within 14 days and the court decided that it would determine the issue of limitation after hearing the appellant's claim.

Following that, the respondent filed a defence denying the appellant's claims. On 12th June, 2012 the appellant filed a reply joining issue with the respondent upon its defence. The next day the appellant filed an amended writ and statement of claim, without leave of court, claiming retirement benefits and interest thereon inclusive of allowances; damages; allowances on long service gratuity already paid; and housing allowance until full payment of the retirement package.

On 18th December, 2012 the respondent filed an amended defence and averred in paragraph 12 that the appellant's action was out of time and therefore statute barred. The record does not show whether the appellant filed a reply to the amended defence or reacted to the limitation defence.

The matter proceeded to trial. The appellant's testimony was that he was employed by the General Post office (GPO) in May, 1966

under the Civil Service conditions of service. In 1988, the Government of the Republic of Zambia (the Government) transformed the GPO into the Posts and Telecommunications Corporation (PTC) which came under Zambia Industrial Mining Corporation Limited (ZIMCO).

The appellant was taken on by PTC and he served under ZIMCO conditions of service. In 1994 ZIMCO split PTC, creating Zambia Postal Services Corporation Limited (Zampost) and Zambia Telecommunications Company Limited (Zamtel). The appellant was taken on by Zamtel which had its own conditions of service.

He testified further that in 1995, the then Minister of Finance, Mr. Ronald Penza issued a directive on behalf of the Government which was the sole beneficial shareholder in ZIMCO that basic salary for non-represented staff should be merged with allowances when calculating terminal benefits. On 30th June, 1996 the appellant was retired under medical grounds at the position of Principal Engineer which was in grade Z9/8. He testified that he believed he retired under the ZIMCO conditions of service as he was

paid gratuity based on his basic salary which did not include allowances.

The appellant also testified that the circular from the Minister of Finance was concealed from him by the respondent as it was not availed to him and that he only came to know about this after the High Court judgment of 20th January, 2010 in the case of **Mendai v Zamtel**[1]. That was when he opened his eyes that the respondent had misled him into believing that he was accurately paid when he was not. Had he known earlier, he would have brought his claim within the stipulated time frame.

The respondent's evidence was that upon retirement, the appellant was paid his benefits in full comprising 3 months basic salary for each year served and pro rata for an incomplete year, repatriation and pension; that the Zamtel conditions of service applicable at the time did not provide for merging allowances and salary when computing terminal benefits, as basic salary did not include allowances; and that the respondent did not implement the directive by the Minister of Finance because Zamtel was no longer a member of ZIMCO. The ZIMCO conditions of service ceased to exist

when the PTC was disbanded in 1994, and when Zamtel was formed, the Board of Directors came up with new conditions of service which had nothing to do with ZIMCO conditions of service.

It was also the respondent's position that the appellant was aware of the Zamtel conditions of service because there were allowances he was being paid on a monthly basis which were not applicable under the ZIMCO conditions of service and that he accepted the allowances. Further, that as the appellant was paid his benefits in full; he was not entitled to housing allowance.

The trial Judge decided to consider the issue of limitation after consideration of the appellant's claims despite accepting that the case involved an action relating to an employment contract which ought to have been brought within 6 years of the cause of action and that the appellant retired in 1996 and received his retirement package then.

The judge also accepted that there was evidence on record that upon the appellant's integration into Zamtel in 1994, he was paid allowances which he had not enjoyed under the ZIMCO conditions of service whilst in the employ of PTC, which evidence was

unchallenged. He was at pains to accept that the appellant only became aware of the Zamtel conditions of service after the **Mendai**[1] **case**. He found that even if the respondent had not communicated the Zamtel conditions to the appellant in 1994 during the transition from PTC to Zamtel, or in 1996 when the appellant retired, he was on those occasions put on notice to inquire.

After reviewing the evidence of DW1 on the Zamtel and ZIMCO conditions of service, the Judge found that the ZIMCO conditions could only apply to those subsidiaries of ZIMCO that did not have their own conditions of service; and that there was no evidence justifying that Zamtel was a subsidiary of ZIMCO or that the appellant was entitled to both Zamtel and ZIMCO conditions concurrently. The judge held that the appellant was entitled to be paid under the prevailing Zamtel conditions of service and that the appellant had constructive notice of those conditions.

In relation to the argument by the appellant that the Zamtel conditions were concealed by the fraud of the respondent, the judge found that there was no evidence on record asserted by the appellant to show that the respondent was fraudulent; and that the

appellant having failed to prove that the respondent acted fraudulently, the action was statute barred.

We wish to pose here to comment on the procedure which the trial Judge had adopted in this matter, particularly in relation to the preliminary issue which the respondent had raised. In our view, the procedure which the trial Judge adopted put the parties to a lot of expense and wasted valuable judicial time which could have been avoided had the judge determined the issue of limitation immediately.

The application made by the respondent under Order 14A of the RSC was for dismissal of the action on a point of law and it is trite that a point of law can be raised at any stage of the proceedings. The case of **Donovan v Gwetoys Ltd**[2], applied by the trial Judge, shows that the purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is, a claim with which he never expected to have to deal.

In this case, the trial Judge allowed the matter to be heard on the merits and he actually determined the appellant's claims before he ruled that the action was statute barred and that he could not

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grant the reliefs sought and dismissed the action. In effect, the Judge ended up making two decisions on the same issue which was a waste of time. We urge trial judges to familiarise themselves with the correct procedures in order to avoid not only inconveniencing litigants and put them to great but avoidable expense.

Coming back to the issue at hand, the appellant has appealed against the dismissal of the action advancing the following grounds:

1. **The lower court misdirected itself both in law and fact when it held that the appellant migrated to into a newly formed company called the Zambia Telecommunications Company Limited (Zamtel).**

2. **The lower court misdirected itself both in law and fact when it refused to apply the John Paul Mwila Kasengele and 40 Others v Zambia National Commercial Bank Plc SCZ appeal no. 161 of 1999 on account that the Appellant accepted new allowances.**

3. **The lower court misdirected itself both in law and fact when it refused to award the Appellant retirement package under the Zambia Telecommunications Company Limited (Zamtel) conditions of service.**

4. **The lower court misdirected itself in law and fact when it refused to order payment of housing allowances from the date of retirement up to the date of payment.**

5. **The lower court misdirected itself both in law and fact when it held that the Appellant's cause of action is statute barred and that the Appellant failed to adduce evidence of fraud.**

In supporting the appeal, Mr. Mando, counsel for the appellant filed written heads of argument. Although five grounds of appeal

have been argued by the appellant, we shall first deal with the fundamental question raised by ground 5, namely whether or not at the time of its commencement, the appellant's action was statute barred. If the determination of this question is in the affirmative, then there would be no need for us to consider the other grounds of appeal. However, as the arguments on grounds 1, 2 and 5 are interwoven we shall review the arguments on these three grounds, though in brief.

In respect of ground 1, it was argued that the trial court misdirected itself when it treated the entity that existed prior to Zamtel as a separate entity from Zamtel. To buttress this argument, Mr. Mando entirely relied on the **Mendai**[1] case and urged us to adopt the reasoning of the High Court in that case. Counsel submitted that the appellant is entitled to integration of allowances into his salary for purposes of calculating his long service gratuity not necessarily based on the ZIMCO conditions of service but on the shareholder directive to do so.

Counsel contended that the notion that ZIMCO conditions of service were phased out when ZIMCO was liquidated and that the

respondent became a new company is baseless and contrary to our decision in the case of **Zambia Oxygen Limited and another v Paul Chisakula and another**[3] where we held that conditions of service already being enjoyed by an employee cannot be altered to his or her disadvantage without the employee's consent.

In addition, the cases of **Kankomba and others v Chilanga Cement Plc**[4] and **Zambia Consolidated Copper Mines and another v Sikanyika**[5] were cited where it was held, respectively, that the change in shareholding does not change the company even if there is in place a new management; and that change in ownership of shares cannot result in the corporate entity becoming a new employer.

It was argued that the fact that ZIMCO could have been phased out and Government took over does not mean that Zamtel was a new employer so as to necessitate change in the conditions of service and that the respondent is bound by the directive from the shareholder to merge allowances into the salary because the directive became part of the appellant's conditions of service.

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In ground 2, it was asserted that the trial Judge misdirected himself when he reasoned that by accepting new allowances the appellant can no longer claim under ZIMCO conditions of service. It was contended that the basis for the appellant's claim of incorporation of allowances into the basic salary is not the ZIMCO conditions of service per se but the shareholder directive. In this regard, the case of **Kasengele and others v Zambia National Commercial Bank**[6] was cited where we stated as follows:

> **"...there can be no doubt from this letter that Government and/or the Minister of Finance, the sole shareholder in ZIMCO and its subsidiaries decided that employees' salaries and allowances be merged. The decision was unqualified and embraced all companies"**

The substance of the appellant's argument in ground 5 is that the appellant's case is not statue barred; that the respondent's witness testified that employees were not consulted when the Zamtel conditions of service were being changed and that no document was written to the appellant informing him of the change in the conditions of service. It was submitted that although the Limitation Act sets the limitation of six years after the accrual of a cause of action, there are exceptions and of relevance to this case is section 26(b) under which the appellant's case falls.

It was contended that at the time of the appellant's retirement, the respondent knew of the existence of the Zamtel conditions of service but never brought the document to his attention, meaning that the cause of action arising from the conditions of service was concealed by the fraud of the respondent. To support this proposition, counsel relied on a passage from **Halsbury's Laws of England, 4th edition, Volume 28** which states as follows:

> **"It is not necessary, in order to constitute fraudulent concealment of right of action, that there should be active concealment of the right of action after it has arisen: the fraudulent concealment may arise from the manner in which the act which gives rise to the right of action is performed ... "Fraud does not necessarily imply moral turpitude; it is enough if the conduct of the defendant or his agent is so unconscionable that it would be inequitable to allow him to rely on the limitation period"**

We were also referred to the cases of **Kitchen v R.A.F Association & Others**[7] and **Shaw v Shaw**[8] which were earlier referred to in the court below. The question posed by the appellant is this: is it conscionable for an employer to change an employee's conditions of service from the ZIMCO conditions of service to the Zamtel conditions of service without availing the new conditions to the employee?

It was submitted that the gist of the cited authorities on section 26 (b) of the Limitation Act is that where the cause of action is not known to the appellant and the lack of knowledge of the cause of action is as a result of the conduct of the respondent, then time does not start to run until the appellant discovers the cause of action. It was argued that the respondent was an employer, and in all cases where an employer changes the employee's conditions of service, those changes must be brought to the attention of the employee; it is not enough to communicate a new allowance.

It was further submitted that the respondent's witness testified that the ZIMCO conditions of service were replaced by the Zamtel conditions of service but no evidence of communication of the Zamtel conditions of service was laid before the court and for this reason the appellant proceeded on retirement under the impression that he was fully paid under the ZIMCO conditions of service which he believed he retired under.

In conclusion, it was argued that time did not start running until the appellant discovered the Zamtel conditions of service in 2010 through the **Mendai**[1] case and that the appellant is entitled to

be paid his retirement package as not doing so would result in unjust enrichment of the respondent and is inequitable.

In response, learned State Counsel Nchito, on behalf of the respondent also filed written heads of argument. In the said heads of argument, he gave a backdrop to the matter and disclosed that in 1994, ZIMCO unbundled PTC through the Telecommunication Act, Cap 469 of the Laws of Zambia, and that Zamtel was born out of the unbundling and began its existence and operation as a separate entity, with its own conditions of service for employees.

In response to ground 1, State Counsel Nchito contended that the trial Judge was on firm ground when he found that the appellant had migrated to a new company namely Zamtel; that the conditions of service applicable to the appellant were the Zamtel conditions of service and not the ZIMCO conditions; that the appellant admitted in the court below that he was retired under Zamtel conditions of service; and that he testified that PTC was split into two entities, one of them being Zamtel.

State Counsel cited the case of **Maamba Collieries Ltd v Daglus Siakalanga and others**[9] where it was stated that when

computing terminal benefits of any employee, the existing conditions of service at the time of separation, have to be used for computing such benefits. We were also referred to the evidence of DW1 to the effect that when Zamtel was formed, the Board of Directors came up with a new set of conditions of service which had no relationship with ZIMCO conditions of service.

In response to ground 2, State Counsel Nchito argued that the Minister's directive to the Director-General of ZIMCO advising of the incorporation of allowances into the basic salaries of its employees could not have been implemented by Zamtel, as it was not directed at Zamtel but at ZIMCO and its subsidiaries which did not have their own conditions of service, as properly held by the court below. In this regard, we were referred to the evidence of DW1 to the effect that Zamtel was not a member of ZIMCO at the pertinent time in 1995.

It was argued that this evidence was not controverted and that since at the time the directive was being issued, the respondent had ceased to be a member of ZIMCO, the holding in the **Kansengele**[6] case cannot be used against it.

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With regard to ground 5, State Counsel contended that the court below did not misdirect itself when it held that the appellant's cause of action is statute barred and that the appellant failed to adduce evidence of fraud. That the Limitation Act 1939 requires that actions in contract be brought within 6 years of the cause of action accruing but the appellant waited for 14 years to commence his action.

We were referred to section 26 (b) of the Limitation Act; to the respondent's evidence that the appellant was aware of the changes to the conditions of service prior to his retirement from employment because he accepted the allowances; and to the findings by the court imputing constructive notice of the Zamtel conditions of service upon the appellant, and that there was no evidence asserted by the appellant to show that the respondent was fraudulent.

It was then argued that the claim by the appellant that Zamtel conditions of service were fraudulently concealed from him is unsubstantiated and baseless as he failed or neglected to produce any evidence to this effect at trial. State Counsel further cited the case of **Sablehand Zambia Limited v Zambia Revenue**

Authority[10] where we held that a party wishing to rely on the defence of fraud must ensure that it is clearly and distinctly alleged and at trial must lead evidence to clearly and distinctly prove the allegation. It was submitted that this case falls outside the limitation period and the exceptions stipulated by the Act.

In reply, it was argued, on ground 5, that when the appellant commenced this action, he genuinely believed that he served under the ZIMCO conditions of service and that it was the respondent who first disclosed to him, via its defence, that his conditions of service were changed to Zamtel conditions of service under which he retired. That upon this realisation, he amended his statement of claim to include claims under the Zamtel conditions of service; and that the sequence of events shows that the appellant had no knowledge of the change to and the existence of the Zamtel conditions of service.

It was further argued that the letter by the Minister of Finance was addressed to the Director-General ZIMCO and copied to the President; that the letter was communicating a shareholder resolution that affected and enhanced the appellant's conditions of

service which resolution was not a contractual entitlement per se to be subjected to the Statute of Limitation as a shareholder resolution remains in force until reversed or varied by another resolution.

It was also submitted that looking at the addressees of the letter, it is unfair and unjust to expect the appellant to be in possession of the letter circulated at such high level as he was a mere employee of one of the subsidiaries of ZIMCO and could not be expected to have access to the said letter.

We have considered the grounds of appeal, the judgment appealed against and the arguments by the parties. The questions to decide in this case are: when did the cause of action arise? If the period from the time the cause of action arose to the time the matter commenced exceeds the limitation period, is this matter falling within the exception in section 26 (b) of the Limitation Act?

It was common ground in the court below that ZIMCO split PTC in 1994 out of which were born two new corporate entities called Zampost and Zamtel. According to DW1, ZICTA was also created from the unbundling of PTC although this latter institution is a creation of statute under the Telecommunications Act No.13 of

1994, Cap 469 of the Laws of Zambia, which was alluded to by State Counsel Nchito in his heads of argument.

The appellant testified that he was taken on by Zamtel and that Zamtel had its own conditions of service. He also testified that in 1995, the Minister of Finance issued a directive on behalf of the Government which was the sole beneficial shareholder in ZIMCO that basic salary for non-represented staff should be merged with allowances when calculating terminal benefits. One year later, he was retired under medical grounds at the position of Principal Engineer which was in grade Z9/8.

Although the appellant testified that he believed that he retired under the ZIMCO conditions of service, his evidence clearly shows that he was aware of when the respondent company was created and that it came up with its own conditions of service before he retired on 30th June 1996 and was paid his benefits. In fact, he believed that he was paid in full.

The appellant conceded that as a general rule, a matter is statute barred unless commenced within 6 years of the cause of

action accruing but he argued that the action fell within the exception under section 26 (b) of the Limitation Act.

There are two sides to the appellant's argument. The first is that the respondent intentionally concealed the Ministerial letter from him and the fact that he was entitled to allowances for purposes of calculating his terminal benefits. The second is that the respondent concealed the Zamtel conditions from him. He became aware of the Ministerial letter in 2010 after the **Mendai**[1] case and he only became aware of the Zamtel conditions of service after the respondent disclosed that fact in its defence in 2012.

We shall begin with the Minister's letter. It was the appellant's contention that the Minister's letter is binding on the respondent as the right to incorporation of allowances through the shareholder directive became an additional condition of service which cannot be taken away by the respondent through the Zamtel conditions of service without the appellant's consent; and that there was no new company incorporated as there was only a name change. To buttress this argument, counsel relied on the **Mendai**[1] case.

Conversely, it was argued by the respondent that it did not implement the letter because it was no longer a member of ZIMCO and that it had its own conditions of service at the time the appellant retired in 1996. It was further argued that this evidence was not controverted by the appellant in cross-examination.

The question we ask is whether the Ministerial directive was applicable to the appellant in view of the unchallenged evidence by the respondent that it was not part of ZIMCO. Firstly, contrary to the assertion by Mr. Mando that the **Mendai**[1] case was decided on the merits and that it was never set aside, the proceedings of 12th April, 2012 relating to the respondent's application to dismiss the action for being statute barred, at pages 207 and 209 of the record of appeal, show that the judgment in issue was a default judgment which was subsequently set aside by the trial Judge in that matter. A search on the record of that case has confirmed that an application to set aside the judgment was made by the respondent and was granted by the trial Judge.

And in response to the submission by Ms. Kateka, who appeared on behalf of the respondent in the court below that the

judgment was a default judgment and that it had been set aside, Mr. Mando, who appeared for the appellant, could only respond that they were not relying on that case and that what they were saying was that it was at that point when judgment in the **Mendai**[1] case came out that the appellant came to know of the existence of the letter from the Minister of Finance and that he was underpaid.

It is very shocking to us that Mr. Mando now wants to rely on a judgment that was actually set aside and has actually invited us to adopt the reasoning of the Judge in that judgment. This conduct is unbecoming of counsel who is an officer of the court and who is under a duty not to deliberately mislead the Court.

Secondly, the court below found, after a consideration of the evidence before him that the ZIMCO conditions of service could only apply to those companies subsidiary to ZIMCO that did not have their own conditions of service; and that there was no evidence justifying that Zamtel was a subsidiary of ZIMCO.

We have perused the proceedings on the record. Indeed, we find nothing to show that the respondent's evidence that it was not part of ZIMCO at the material time was ever impugned. Since the

appellant alleged that the Ministerial directive applied to him because the respondent was still a subsidiary of ZIMCO, he bore the burden to prove that assertion on a balance of probabilities. Unfortunately he failed to do so.

The **Kasengele**[6] case is clearly distinguishable from the present case. In that case, there was no dispute that the respondent was a subsidiary of ZIMCO and was wholly owned by the government, the Minister of Finance being the sole shareholder. In this case, the court below found as a fact that there was no evidence justifying that Zamtel was a subsidiary of ZIMCO and there is no basis for us to disturb this finding. Consequently, we find that the Ministerial directive was not applicable to the appellant and that the respondent had no duty whatsoever to bring the letter to the appellant's attention or to implement the directive. In any case, this letter was in the public domain.

We turn now to the second limb of the appellant's argument that the respondent concealed the Zamtel conditions from him. The appellant contended that he only became aware of the Zamtel conditions of service after the respondent disclosed that fact in its

defence. This was in 2012. However, paragraph 10 of the amended statement of claim shows that the appellant was aware of the Zamtel conditions of service introduced by the respondent in 1994 and he accepted that he retired under those conditions of service.

Furthermore, as we have already stated, even if the appellant believed that he retired under the ZIMCO conditions of service and he testified that he became aware of his entitlement after the decision in the **Mendai**[1] case, his evidence also shows that he was aware that the respondent was created in 1994 and that it came up with its own conditions of service under which he retired.

Clearly, the appellant has contradicted himself on the question of when he became aware of the Zamtel conditions of service and this should react against him. We do not accept that he was a mere employee who did not know what was happening in the company. He held the position of Principal Engineer grade Z9/8. This was a very senior position.

The appellant referred us to **Halsbury's Laws of England** and the cases of **Kitchen v R.A.F Association & Others**[7] and **Shaw v Shaw**[8] in an attempt to show that it is not necessary, in order to

constitute fraudulent concealment of right of action, that there should be active concealment of the right of action after it has arisen as the fraudulent concealment may arise from the manner in which the act which gives rise to the right of action is performed and that fraud does not necessarily imply moral turpitude.

But as rightly submitted by State Counsel Nchito, the passage from **Halsbury's Laws of England** also indicates that the conduct of the defendant or his agent must be so unconscionable that it would be inequitable to allow him to rely on the limitation period. In this case, the court below accepted the respondent's evidence that upon the appellant's integration into Zamtel in 1994, he was paid allowances which he had not enjoyed under the ZIMCO conditions of service and rejected the appellant's assertion that he only became aware of the Zamtel conditions of service after the **Mendai[1] case**.

The Judge found that the appellant had constructive notice of the Zamtel conditions of service and that there was no evidence to prove that the respondent fraudulently concealed the Zamtel conditions to bring this case within the ambit of section 26 (b) of

the Limitation Act. Again we find no basis for us to disturb these findings of fact by the court below.

The position we take, in agreement with the trial judge, is that the cause of action arose when the respondent paid the appellant his terminal benefits. The appellant sat on his rights until the period within which he should have commenced this action lapsed. He did not demonstrate that the conduct of the respondent was so unconscionable that it would be inequitable to allow it to rely on the limitation period. This action is statute barred. We find no merit in this appeal. It is dismissed with costs to the respondent. For this reason, we shall not consider the other grounds of appeal.

HON. I.C. MAMBILIMA
CHIEF JUSTICE

HON. R.M.C. KAOMA
SUPREME COURT JUDGE

HON. M. MUSONDA
SUPREME COURT JUDGE