

SELECTED JUDGMENT NO. 15 OF 2017

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

APPEAL NO. 220/2013

BETWEEN:

LAFARGE CEMENT PLC

APPELLANT

AND

PATRICK MANDONA

RESPONDENT

Coram: Mwanamwambwa, DCJ, Kajimanga and Musonda, JJS
On 12th May, 2016 and 12th April, 2017

For the Appellant: Ms. M. Banda-Mutuna, Mweshi Banda & Associates

For the Respondent: In Person

JUDGMENT

MUSONDA, JS, delivered the Judgment of the Court

Cases referred to:

1. **Zambia Consolidated Copper Mines Ltd. v Matale (1915-1997)**
Z.R. 144, at pages 146-147
2. **Ross v Associated Portland Cement Manufacturers Limited (1964)**
2 All E.R. 452

Legislation referred to:

1. **The Workers' Compensation Act No. 10 of 1999, Sections 6 and 123**
2. **The Workers' Compensation Act, CAP 271 of the Laws of Zambia**

This is an appeal against the whole Judgment of the Industrial Relations Court dated 4th September, 2013 whereby that

Court awarded monetary compensation to the Respondent, then complainant, in the form of a lumpsum equivalent of the Respondent's 24 months' salary computed on the basis of the Respondent's last salary, consequent upon the entry of a consent judgment between the Respondent and the Appellant.

When the court action was initially instituted, the Respondent sought the following:

- (A) To be declared medically discharged;**
- (B) One month's salary in lieu of notice;**
- (C) Repatriation allowance;**
- (D) Medical Board fees refund;**
- (E) Medical compensation;**
- (F) Interest and costs;**
- (G) Underpayment amount.**

The court action as originally conceived and instituted changed course when the parties executed a Consent Order which was dated 14th February, 2012. In terms of that Consent Order, the parties agreed to have the Respondent deemed to have been medically discharged and paid a total sum of K18,163,953.00 which was made up of the following:

- (i) K16,326,453.80 representing medical benefits;**
- (ii) K1,587,500 representing repatriation allowance;**
- (iii) K250,000.00 representing a refund of Medical Board Fees.**

The parties also agreed to have the Respondent withdraw all but the claim numbered 'E' above, that is, the claim for Medical Compensation.

The parties further agreed that, upon the settlement of amounts which had been consensually determined and embodied in the Consent Order in question, the Respondent was to have no further claim against the Appellant other than his claim for medical compensation (that is, the claim numbered 'E' as earlier noted).

The history and background facts surrounding this appeal are of the simplest. The Respondent had been employed by the Appellant on the basis of fixed contracts, the last of which having terminated by effluxion of time on 30th March, 2011.

Over the period of his employment, and, as required of him by the environment in which he worked, the Respondent underwent periodic medical examinations which were known as pneumoconiosis examinations. These examinations were intended to determine the Respondent's fitness to continue working in a mining environment. The medical examinations were being conducted by the Occupational Health and Safety Research

Bureau ("the Health and Safety Bureau") which was also responsible for issuing appropriate certificates.

Between 27th November, 2008 and 31st December, 2009, the Respondent underwent two medical examinations by the Health and Safety Bureau. The results of these examinations were inconclusive and, by reason of such inconclusiveness, further examinations were necessary.

On 30th December, 2010, the Respondent attended what was to be his last medical examination. This examination revealed that the Respondent had a chronic lung disease. This revelation inclined the Health and Safety Bureau against issuing a certificate of fitness in favour of the Respondent. The Health and Safety Bureau also determined that the Respondent was not fit to continue working in a mining environment as a miner. Consequently, the Respondent was issued with a "B5" certificate.

Arising from the pneumoconiosis results by the Health and Safety Bureau, the Respondent was subjected to further examinations by the Medical Board of the Ministry of Health which revealed that the Respondent had been afflicted with a chronic lung disease known in medical terms as 'pneumoconiosis superadded pulmonary tuberculosis.' In consequence, the Medical Board recommended that the Respondent be retired. This recommendation by the Medical Board was made

on 20th April, 2011. However, by the time the Medical Board was making its recommendation, the Respondent's employment contract had determined by effluxion of time.

On 23rd May, 2011, the Appellant lodged a claim with the Workers' Compensation Fund Control Board seeking to have the Respondent medically compensated. However, the Workers' Compensation Fund Control Board declined to compensate the Respondent on the basis that the certification on the medical examination which had been conducted on the Respondent on 30th December, 2010 carried a classification which was known as "B5" and which was "non-compensable" because it had not revealed the presence of tuberculosis and pneumoconiosis.

As we noted earlier in this Judgment, the Respondent did institute the court action in the Court below which was subsequently escalated to this Court. In that court action, the Respondent was seeking a variety of reliefs most of which were subsequently consensually resolved via a Consent Order. The only relief which survived that Consent Order was the Respondent's search for medical compensation. Accordingly, it was the Respondent's search for medical compensation which became the subject of trial in the Court below.

In his affidavit in support of his complaint, the Respondent contended in the Court below that at the time when he was employed by the Appellant, that is,

on 4th April, 2005, he had been medically certified free from both tuberculosis (TB) and pneumoconiosis. He further contended that when he was presented before an examiner at the Health and Safety Bureau in accordance with the provisions contained in Sections 35 1(a) and 35.2(a) of the Workers' Compensation Act No. 10 of 1999 after working for the Appellant for three years, the examiner discovered that the Respondent had a suspected lung disease. Following this discovery, the examiner notified the Appellant to take the Respondent to a hospital for further investigations and treatment in compliance with the applicable Mining Regulations. According to the prescribed procedure, the Appellant was required to write back to the examiner in question who was to be advised within 14 days about the hospital findings as well as any measures that the hospital would have taken.

According to the Respondent, the Appellant failed to furnish the examiner at the Health and Safety Bureau with a Report within 14 days and only did so after 750 days. This failure, according to the Respondent, resulted in the examiner issuing the B5 non-compensable Report on 5th January, 2011.

The Respondent further contended that the issuance of the B5 non-compensable Report was attributable to the Appellant's failure to observe a variety of legal prescriptions and requirements and that it was these transgressions or lapses on the part of the Appellant which had culminated in the refusal by the

Workers' Compensation Fund Control Board to medically compensate the Respondent.

On the basis of the above narrative, the Respondent submitted before the trial Court that he had suffered loss and damage, primarily in the form of a life pension from the Workers' Compensation Fund Control Board, for which he urged the Court below to order the Appellant to pay the Respondent full medical compensation, together with interest and costs.

For its part, the Appellant strenuously resisted the Respondent's search for medical compensation against it. In taking this position, the Appellant contended that the refusal by the Workers' Compensation Fund Control Board to compensate the Respondent was not founded on the alleged 'lapses' or breaches on the part of the Appellant but, rather, was founded on the basis that the Respondent had been afflicted with a chronic lung disease. According to the Appellant, the diagnosis which we momentarily highlighted above was not done by the Appellant but by the Health and Safety Bureau, adding that the Appellant could not be made to medically compensate the Respondent merely because of the variance which had arisen between the outcome of the diagnosis which the Health and Safety Bureau had undertaken and what the diagnosis by the Ndola Central Hospital Medical Board had yielded.

According to the Appellant, following the refusal by the Workers' Compensation Fund Control Board to medically compensate the Respondent, he should have appealed to the Workers' Compensation Tribunal if he was aggrieved by the decision of the Workers' Compensation Fund Control Board in accordance with Part X1 of the Workers' Compensation Act instead of directing his grievance to the Appellant.

For the avoidance of doubt, Part X1 of the Workers' Compensation Act Number 10 of 1999 establishes the Workers' Compensation Tribunal whose functions are stated in Section 123 as follows:

- “(a) To hear any appeal made to it under this Act;**
- (b) To perform such other functions as are assigned to it under this Act; and**
- (c) Generally, to deal with all matters necessary or incidental to the performance of its functions under this Act.”**

In its judgment, the trial Court did not consider that the Appellant had been guilty of any wrong-doing or any breach of a legal duty in relation to the Respondent. At any rate, the Court below took the view that even if the Appellant had been guilty of any wrong-doing of whatever kind, such wrong-doing could not have been legitimately tied to the refusal by the Workers' Compensation Fund Control Board to compensate the Respondent ostensibly because the Respondent's chronic lung ailment was non-compensable.

The trial Court further observed that the nature of the work which the Respondent had been involved in was such that he could have been inhaling dust particles which could have resulted in the lung disease which had afflicted him. On the basis of this reasoning, the trial Court could not understand why the Workers' Compensation Fund Control Board had refused to compensate the Respondent.

Having expressed surprise over the refusal by the Workers' Compensation Fund Control Board to compensate the Respondent in the circumstances which had been laid bare before the Court below, the trial Court then went on to cite Section 6 of the Workers' Compensation Act and interpreted the same as entitling an employee to bring an action against an employer for negligence, breach of statutory duty or other wrongful act or omission and seek damages. The Court then went on to observe that there was a probability that the Respondent had contracted the chronic lung disease which had afflicted him in the course of his employment by the Appellant and that, consequently, he was entitled to compensation by his employer, notwithstanding that the Workers' Compensation Fund Control Board had declined to compensate him. According to the trial Court, having the employer compensate its employee in the circumstances revealed by this matter would redress the mischief which would otherwise arise

where an employee who contracts a disease in the course of his employment is not compensated at all.

The trial Court accordingly proceeded to award the Respondent monetary compensation in the form of a lumpsum equivalent of the Respondent's 24 months' salary based on his last drawn salary together with interest at the then prevailing average bank lending rate with effect from 9th September, 2011 to the 14th March, 2012.

The Appellant has now appealed to this Court on the basis of the four grounds which were set out in the Memorandum of Appeal and which were couched in the following terms:

- "1. The Learned Honourable Court in the Court below erred in law and in fact when it ordered the Appellant to compensate the Respondent notwithstanding the fact that the Appellant had not breached its obligations towards the Respondent and the fact that it was not the obligation of the Appellant to compensate the Respondent, if at all, but the obligation of the Workers Compensation Fund Control Board.**
- 2. The Learned Honourable Court below erred in law and fact when it held that the Respondent was entitled to compensation merely on the basis that the Respondent had rendered a service to the Appellant and had lost a life pension from the Workers' Compensation Fund Control Board.**
- 3. The Learned Honourable Court below erred in law and fact when it invoked Section 6 of the Workers' Compensation Act when it did not apply to the case at hand."**

Counsel for the Appellant filed Heads of Argument to buttress the above grounds of appeal.

In relation to the first ground of appeal, Counsel for the Appellant accepted the trial Court's findings of fact, including the finding that on 30th December, 2010, the Respondent was diagnosed with a chronic lung disease in consequence of which he was issued with a 'B5' certificate which signified that he was not fit to work as a miner.

The Appellant's Counsel further observed that the trial Court was spot on when it established that no connection existed between the Appellant's omissions, or 'lapses' such as its failure to subject the Respondent to further medical examinations, and the Workers' Compensation Fund Control Board's refusal to medically compensate the Respondent. Accordingly, it was the Appellant's Counsel's contention that, having regard to the Respondent's finding pointing to the absence of any wrong-doing on the part of the Appellant, it was erroneous for the trial Court to have ordered the Appellant to compensate the Respondent.

The Appellant's Counsel further complained that it was distinctly odd that the trial Court could have pronounced the Appellant free from any wrong-doing in relation to the Appellant while, in the same breath, ordering the Appellant to compensate the Respondent and, along the way, expressing surprise that the appropriate body to avail such compensation had refused to do so.

Counsel for the Appellant also complained that the trial Court's apparent anxiety to do substantial justice in relation to the Respondent had exposed the trial

Court to the error of inflicting injustice on the Appellant which was also equally entitled to the same justice which the Respondent was seeking in the Court below.

In relation to the second ground of appeal, Counsel for the Appellant repeated the gist of the arguments which she had canvassed under the first ground of appeal and added that there was nothing in the Workers' Compensation Act No. 10 of 1999 which entitled the Workers' Compensation Fund Control Board to decline to compensate the Respondent given that the Appellant had insured the Respondent and had been meeting its obligations to the Board in connection with that insurance. Counsel also complained that the Court below should not have ordered the Appellant to compensate the Respondent merely because the latter had been an employee of the former.

The Appellant's Counsel concluded her arguments around ground two by maintaining that the absence of any wrong-doing on the part of the Appellant coupled with the apparent absence of a justification entitling the Workers' Compensation Fund Control Board to decline to compensate the Respondent should have inclined the Respondent to appeal to the Workers' Compensation Tribunal against the Workers' Compensation Fund Control Board's refusal to compensate him instead of seeking to have the Appellant redress his grievance.

In relation to the third and last ground of appeal, Counsel for the Appellant argued that it was an error for the trial Court to have invoked Section 6 of the

Workers' Compensation Act No. 10 of 1999 as having formed the basis for having the Respondent compensated by the Appellant as his former employer on account of the contraction of a disease in the course of his employment by the latter. In this regard, Counsel pointed to the trial Court's exoneration of the Appellant as having disentitled the Court below from ordering the Appellant to compensate the Respondent in the absence of the Appellant having been guilty of some legally recognized wrong in relation to the Respondent.

Counsel for the Appellant accordingly urged us to allow the appeal with costs.

The Respondent, who is acting in person, contested the appeal by filing his 'Heads of (sic.) Response'. Unfortunately, quite aside from the Respondent's Heads of Response having been styled as such, the substance thereof represented an incoherent and incomprehensible narrative without any apparent or logical bearing upon the Appellant's Heads of Argument.

Given the indecipherable state of what purportedly represented the Respondent's Heads in Response, we have been unable to make head or tail of what the real or actual contention of the Respondent was relative to each of the Appellant's distinct Heads of Argument. Be that as it may, we have approached the Respondent's arguments as representing a wholesale refutation of the Appellant's arguments.

At the hearing of the appeal, Ms. Banda-Mutuna, learned Counsel for the Appellant confirmed that she was relying on the written Heads of Argument as filed on 22nd November, 2013 and briefly augmented the same by submitting that, having regard to the purpose of the Workers' Compensation Act, the Court below clearly erred as it had no legal basis for reaching the conclusion which it did. Counsel accordingly reiterated the Appellant's invitation to have us allow the appeal.

For his part, the Respondent also confirmed having filed his Heads in Response on 19th April, 2016 which he augmented with oral arguments. The gist of the Respondent's oral arguments was that the Appellant had breached the law with regard to the manner in which it had observed the requirements of the pneumoconiosis legislation in relation to him.

Significantly, the Respondent contended that the Appellant had breached the condition on which the Workers' Compensation Fund Board could have medically compensated him and that, consequently, the Appellant was liable to compensate him as the trial Court had held.

We have given anxious consideration to the arguments and submissions which were deployed before us by or on behalf of the two parties to the appeal in relation to the judgment of the Court below which is now being assailed.

The first ground of appeal attacks the judgment of the Court below on the basis that the same ordered the Appellant to compensate the Respondent notwithstanding the trial Court's own finding that the Appellant had not committed any legal wrong relative to the Respondent or breached any legal duty which the Appellant had owed the Respondent.

The Appellant also complained in the first ground of appeal that it was a patent misdirection for the trial Court to have inflicted the obligation to compensate the Respondent on it (the Appellant) when the circumstances surrounding this matter suggested that the obligation rested on the Workers' Compensation Fund Control Board.

We have considered the Appellant's first ground of appeal and the arguments which were canvassed in respect thereof in relation to the judgment now under attack.

The narrow issue which had confronted the Court below was whether or not in the circumstances which had arisen the Respondent was, firstly, entitled to the compensation he was seeking in the light of the medical condition which had afflicted him and, secondly, whether or not the Appellant was liable to avail such compensation following the refusal by the Workers' Compensation Fund Control Board to do so.

It can scarcely be doubted that given the nature of its business, the Appellant was alive to the exposure of its employees to diseases such as had afflicted the Respondent and the necessity of taking measures such as those contemplated under the Workers' Compensation Act No. 10 of 1999 for the purpose of insuring the health and safety of the employees.

Thus, it is quite apparent from the record that at all material times, the Appellant was a registered employer and contributor in relation to the Workers' Compensation Fund created under the Workers' Compensation Act. Not surprisingly, when the issue of the Respondent's health challenge arose, the Appellant took steps to have the Respondent avail himself of the compensation which is available under the Workers Compensation Act. Unfortunately (for the Respondent), the Workers Compensation Fund Control Board could not allow the Respondent to access that compensation because the results of the Respondent's medical examination of 30th December, 2010, which had accompanied the claim for compensation which the appellant had lodged with the Workers' Compensation Fund Control Board on behalf of the Respondent on 23rd May, 2011 indicated that his condition fell in the B5 category which was non-compensable because it did not indicate the presence of tuberculosis and pneumoconiosis.

We have noted both from the judgment under appeal and the record relating to the proceedings in the court below that, at its sitting of 8th March, 2011, at Ndola Central Hospital, the Medical Board of the Ministry of Health determined that the Respondent had been afflicted with a chronic lung disease which, in medical terms, was described as pneumoconiosis superadded pulmonary tuberculosis. This determination prompted the Medical Board to recommend the retirement of the Respondent on medical grounds on 8th August, 2011. However, by the time the Medical Board was conveying its recommendation, the Respondent's employment contract had terminated by effluxion of time, that is, on 30th March, 2011.

We pause here to observe that, in its judgment, the trial court noted that it could not ***"...understand how the Workers Compensation Fund Control Board could (have refused) to compensate the (Respondent)" given the nature of the job which the Respondent had been involved in,*** namely, quarrying and his exposure to the dust particles whose inhalation could have caused his chronic lung disease.

It is also worthy of note that, at no point in its judgment did the court below find that any connection existed between the Appellant or its conduct or lapses and the refusal by the Workers' Compensation Fund Control Board to compensate the Respondent.

However, in spite of the trial court's finding that no nexus or connection existed between any lapses on the part of the Appellant and the refusal by the Workers Compensation Fund Control Board to compensate the Respondent, that Court stood prepared to reason as follows:

"We have ...noted that under Section 6 of the Act, an employee can bring an action in respect of the negligence, breach of statutory duty or other wrongful act or omission of the employer and a court may award damages. We have stated the probability that the (Respondent) contracted the chronic lung disease (pneumoconiosis superadded, pulmonary TB) in the course of his employment with the (Appellant). We bear in mind also that the essence of the Workers Compensation Act is to provide some form of insurance to workers who sustain injury or contract disease which may lead or may not lead to incapacity. It is also clear that, under the (said) Act, pneumoconiosis and tuberculosis are compensable proportionately according to the degree of the disease. The (Respondent) had rendered a service to the (Appellant). This cannot be denied.

We are of the view, in this case, that the complainant having contracted a disease in the course of employment, is entitled to compensation by his employer, the refusal by the Workers' Compensation Fund Control Board notwithstanding. This will avoid the mischief which arises in a situation where an employee who contracts a disease in the course of his employment is not compensated at all." (at pp J7 - J8 of the judgment)

It is evident from the above passage which we have drawn from the judgment being appealed against that Section 6 of the Workers' Compensation Act constituted the basis of the decision which that court arrived at.

Given that this Section had ultimately resolved the fate of the complaint in the court below, we propose to reproduce this provision as we now do:

"6 (1) Where any injury is caused or disease contracted by a worker by the negligence, breach of statutory duty or other wrongful act or omission of the employer or of any person for whose act or default the employer is responsible, nothing in this Act shall limit or in any way affect any civil liability of the employer independently of this Act.

(2) Any damages awarded to a worker in an action at common law or under any laws in respect of any negligence, breach of statutory duty, wrongful act or omission, under subsection (1), shall be reduced by the value, as decided by the court, of any compensation which has been paid or is payable to (sic) the Fund under this Act in respect of injury sustained or disease contracted by the worker."

It can scarcely be doubted that the decision of the trial court not only to invoke Section 6 of the Workers' Compensation Act but to anchor the outcome of the litigation before that court on that statutory provision raises a number of pertinent and truly troubling issues and questions:

- (a) Was the complaint, which was instituted in the court below and subsequently escalated to this court founded on negligence or a breach of a statutory duty or some other wrongful act or omission on the part of the Appellant as Section 6 clearly envisages?
- (b) Was such negligence or breach of statutory duty or other wrongful act or omission asserted, let alone, proven in the court below?
- (c) Did the trial court possess the requisite jurisdiction to invoke, let alone, pronounce relief founded on this Section 6?

We propose to address the questions which have been posed above in the same order in which they have been presented.

In regard to the first question, while we acknowledge the point we made in the **Zambia Consolidated Copper Mines Ltd v Matale**¹ case, that:

(“...The expansive extent”) of the general jurisdiction conferred on the Industrial Relations Court under Section 85 accords “sufficient jurisdiction” to that court to litigate “...certain genuine complaints ... such as wrongful, unjust or unfair dismissal...” free from “technicalities or rules”,

we did not suggest, thereby, that the scope of that court’s jurisdiction is the same as that of the High Court of Zambia

(Footnote: Following the amendment of the Constitution of Zambia Act and the establishment of the Industrial Relations Court as a division of the High Court, this position might well change).

Based on the manner in which the Respondent, who has been representing himself, had deployed and prosecuted his complaint before the trial court, one can easily deduce or infer - to varying degrees - allegations around negligence, breach of statutory duty and even wrongful acts or omissions from the totality of the allegations which the complaint had laid before that court. However, in our considered view, deduction or inference still fell short of deliberate, positive or distinct assertions. Indeed, the trial court did not make or suggest findings of fact pointing to any of the tortious wrongs suggested above. On the contrary, the trial court found nothing which the Appellant had done which could have been *"...tied to the refusal by the Board to compensate the (Respondent for) the chronic lung disease ..."* which had afflicted him.

In the English case of **Ross v Associated Portland Cement Manufacturers Limited**², Lord Reid formulated a basic "liability test" in the context of a breach of a statutory duty, in the following terms:

"...it is now well established that a breach of a statutory duty does not give rise to civil liability unless there is a proved causal connection between the breach and the plaintiff's injury (at p. 455)"

In the context of the matter at hand, the trial court had unequivocally absolved the Appellant from any breach or wrongdoing which could have worked against having the Respondent recover his medical compensation from the Workers' Compensation Fund Control Board.

The final question we posed related to the trial court's jurisdictional competence to invoke and pronounce binding relief founded on Section 6 of the Workers' Compensation Act.

We have examined this provision (Section 6), its subject matter as well as the general scheme of the Workers' Compensation Act No. 10 of 1999 and its predecessor, namely, the Workers' Compensation Act, CAP 271 of the Laws of Zambia. It seems to us that, in both these Statutes, the court which is/was clothed with relevant jurisdiction for any grievance founded on the provision in question is/was the High Court of Zambia.

Having regard to the preceding discussion around the trial court's decision not only to invoke Section 6 of the Workers' Compensation Act but to anchor the outcome of the complaint which had been prosecuted before it on that statutory provision, we have no difficulty in coming to the conclusion that the court

below erred when it ordered the appellant to avail monetary compensation to the respondent. Accordingly, we uphold the first ground of appeal.

Given that our discussion around the first ground of appeal encompassed ground three in its entirety, we are inclined to allow the third ground as well.

With regard to the second and final ground of appeal, it was the appellant's contention under this ground that the court below erred in law and in fact when it took the position that the Respondent was entitled to receive medical compensation from the Appellant merely on the basis that the Respondent had rendered a service to the Appellant and had 'lost' a life pension from the Workers' Compensation Fund Control Board.

We must immediately observe that, although this ground made reference to the respondent having lost a life pension from the Workers' Fund Control Board, the arguments which were canvassed by counsel around this ground pointed to the Respondent's loss of 'medical compensation' from the Workers' Compensation Fund Control Board. In point of fact, even the trial

of this matter in the court below was, by the parties' consent, to revolve around the claim for medical compensation.

In the view which we have taken, this ground is also bound to succeed on the following grounds:

Firstly, this ground is also linked to the first and third grounds of appeal to the extent that, in pronouncing the relief which the court below had pronounced in favour of the Respondent, it purported to have invoked Section 6 of the Workers' Compensation Act.

Secondly, the issue of having the Respondent access medical compensation in relation to the medical condition which had afflicted him was one which was firmly anchored in the law, namely, the Workers' Compensation Act. This means that, to the extent that the Appellant had discharged its obligations or duty under that law for the benefit of its employees, such as the Respondent, no liability of the nature that the Respondent was seeking to secure against the Appellant could attach against it, particularly in the light of the trial court's own finding and determination clearly absolving the Appellant from any such wrong-doing or breach as would have operated to discount the

Respondent's right to secure the medical compensation in question.

Before we conclude, perhaps, we should make two observations arising from the suggestion by the trial court that the Appellant was liable to medically compensate the Respondent merely because:-

- (a) The respondent had been its employee;**
- (b) The respondent had contracted the chronic disease in question in the course of his employment; and**
- (c) The party, namely, the Workers' Compensation Fund Control Board, which ought to have medically compensated him had declined to do so.**

The basic observation which we feel constrained to make is that the Appellant and the Respondent had been in a legal relationship from which certain rights and duties flowed. In relation to legal duties in particular, a breach of a legal duty owed by one to another would entitle the innocent party to legal relief.

In the context of the matter at hand, the Respondent did not demonstrate that the Appellant had breached some legal duty on which the former was entitled to found a valid and legally recognized claim. Indeed, and as earlier observed, the finding of the court below was that no breach of the kind that would have

served to negative the Respondent's entitlement to benefit from the medical compensation in question from the Workers' Compensation Fund Control Board was committed by the Appellant.

The second basic observation which we propose to make is that, contrary to the impression which the trial court had created, the refusal by the Workers' Compensation Fund Control Board to medically compensate the Respondent did not preclude him from challenging the decision of the Workers' Compensation Fund Control Board by way of an appeal to the Workers' Compensation Tribunal in accordance with the provisions in Part XI of the Workers' Compensation Act.

A final observation which we feel encouraged to make on the basis of the brief research which we undertook for the purpose of this judgment is that, for many jurisdictions, redress for injury arising out of and in the course of a workman's employment takes the form of the statutory remedy which is secured by legislation such as the Workers' Compensation Act and its predecessor statute. In terms of this legislation, certain categories of workmen must have their health and safety insured by their employers.

Indeed, the preamble to the Workers' Compensation Act No. 10 of 1999 announces that this statute had been enacted for the purpose of:-

"[revising] the law relating to the compensation of workers for disabilities suffered or diseases contracted during the course of employment... to provide for the administration of a Fund for the compensation of workers disabled by accident occurring or diseases contracted in the course of employment."

In general, therefore, and barring any allowable exceptions (including those contemplated by Section 6 of the Workers' Compensation Act), an employee who suffers from a disability or contracts a disease and who comes within the contemplation of the Workers' Compensation Act and whose employer had been observing the requirements of this statute in relation to such employee must look to the statutory remedy available under this law unless such an employee can demonstrate the legality and legitimacy of seeking redress against the employer.

In the present case, the respondent failed to demonstrate why compensation had to be sought against the appellant. Indeed, the trial court fell into grave error when it volunteered a remedy which was not warranted by the case which it had been called upon to adjudicate.

In sum, the appeal has succeeded on all the grounds. The monetary compensation which was awarded to the Respondent is hereby set aside.

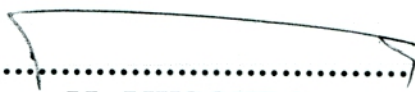
With regard to the issue of costs, we note that the trial court did pronounce these in favour of the Respondent consequent upon the success of this complaint in that court. Although the Appellant has resoundingly succeeded in this court, the circumstances of this matter have inclined us against pronouncing costs against the Respondent, meaning that each party will bear its own costs.



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M.S. MWANAMWAMBWA
DEPUTY CHIEF JUSTICE



.....
C. KAJIMANGA
SUPREME COURT JUDGE



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M. MUSONDA
SUPREME COURT JUDGE