

IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 117/ 2015**
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)



BETWEEN:

ZAMBIA POSTAL SERVICES CORPORATION

APPELLANT

AND

SAXON MULAMBYA AND 50 OTHERS

RESPONDENT

CORAM : Mambilima, CJ, Hamaundu and Chinyama, JJS
On 20th July, 2017 and 31st May, 2018

For the appellant : Mr J.L. Kabuka, Messrs J. Kabuka & Co

For the respondents : Mr O. Sitimela, Messrs Fraser &
Associates

JUDGMENT

Hamaundu, JS, delivered the Judgment of the court.

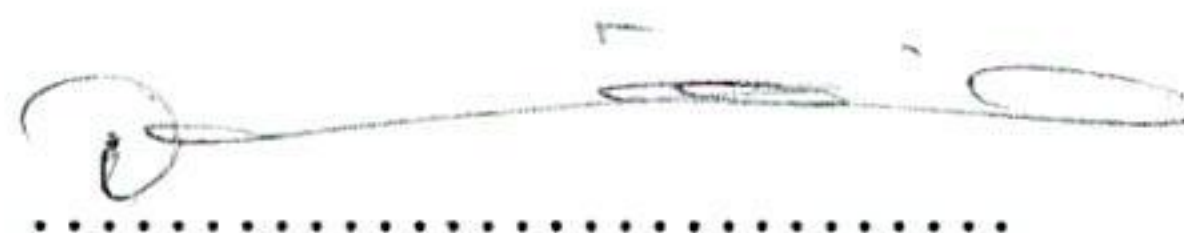
This is a motion by the respondents for leave to adduce new or further evidence at the hearing of the appeal that is due to be heard soon. According to the respondents, the evidence that they seek to adduce is that which shows that two of them, named Gertrude Daka Zyambo and Agness Mumpisa Chola, were not among the appellant's former employees who opted out of this litigation and settled their

claim ex-curia. The respondents aver that this motion has been necessitated by the fact that, in the judgment on assessment, which is the subject of the appeal, the learned Deputy Registrar made a finding of fact that the two respondents were among the former employees that settled their claim outside court. The respondents aver that they have cross-appealed against that finding. The respondents have exhibited two letters from the group leaders of the former employees who opted for ex curia settlement. The letters state that the names of the two respondents had been included on the list by mistake. The respondents contend that during the proceedings in the court below, this evidence was not before court. The respondents rely on the provisions of **Section 25** of the **Supreme Court Act, Chapter 25** of the **Laws of Zambia** for this motion.

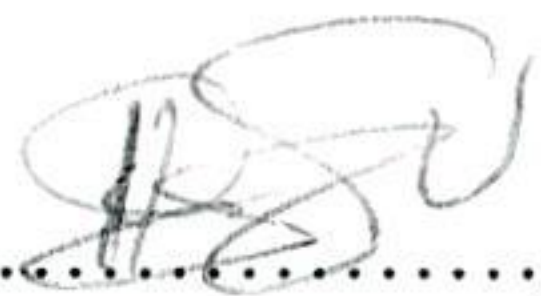
At the hearing the only objection advanced by the appellant was that the motion is incompetent because the two respondents are not parties to the action. Reacting to that submission, counsel for the respondents argued that the two respondents had not even been aware that they were on the list of the former employees who had opted for ex curia settlement until after the judgment on assessment was delivered.

The judgment on assessment sets out a list of ten plaintiffs whom the Deputy Registrar found to have been paid according to the ex curia settlement. The list included the two respondents. The only reason that the Deputy Registrar could have referred to them as "*plaintiffs*" is because they were parties to the action. Therefore, this motion is not incompetent.

Coming to the merits of the motion, we think that, in so far as it includes the two respondents on the list of those employees who had settled ex curia, the judgment of the Deputy Registrar is detrimental to the two respondents. It is, therefore, in the interest of justice that they are allowed to adduce evidence which proves that they were included on the list by mistake. We order that the respondents file a supplementary record of appeal which will contain the two letters from the group leaders.



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I.C. Mambilima
CHIEF JUSTICE



.....
E. M. Hamaundu
SUPREME COURT JUDGE



.....
J. Chinyama
SUPREME COURT JUDGE