

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

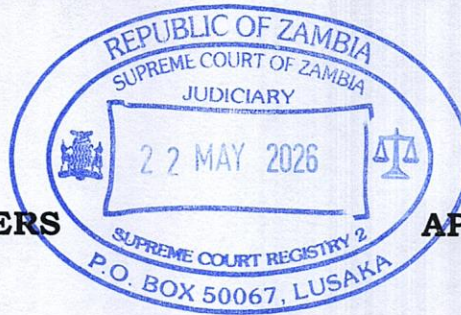
**APPEAL NO. 17/2025**

**BETWEEN:**

**HENRY NYAMBE AND 9 OTHERS**

**AND**

**LUMWANA MINING COMPANY LIMITED**



**APPELLANTS**

**RESPONDENT**

Coram : Musonda DCJ, Mutuna and Chisanga JJS  
On 4<sup>th</sup> November, 2025 and 22<sup>nd</sup> May, 2026 at  
09:00 hours.

*For the Appellant* : *Mr. C. Chungu of Messrs Nsapato and Company*  
*Ms Shamakamba of Messrs Shamakamba and*  
*Associates*

*For the Respondent* : *Mr. S. Chisenga and Ms N. Mwala of Messrs Corpus*  
*Legal Practitioners*

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## **J U D G M E N T**

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**Mutuna JS**, delivered the judgment of the Court.

**Cases referred to:**

- 1) *Chilanga Cement PLC v Kasote Singogo, SCZ No. 13 of 2009*
- 2) *Zesco Limited v Elijah Nyondo (Suing in the capacity as Administrator of the estate of the late Wilson Sinyinza) CAZ/08/263/2017*
- 3) *Kawimbe v Attorney General (1974) ZR. 244*

**Legislation referred to:**

- 1) *Employment Code Act, No. 3 of 2019*

### **Works referred to:**

- 1) Kelvin H. Hawkins, "*Handbook of Industrial Relations Practice*", 1979, Kogan Page, London

### **Introduction**

- 1) As is often the case with matters that are brought before us, counsel for the parties in this appeal went to great length in advancing their respective positions. In so doing, they enlarged the scope of the appeal beyond the dispute which is properly before us arising from the matters which were before the court of first instance and Court of Appeal.
- 2) In our determination of the appeal, we have decided to focus our attention only on those arguments which are relevant to the dispute before us. For this reason, we have found it prudent to identify the sole issue which falls for determination in this appeal which we have extracted from the dispute which is properly deployed before us.
- 3) The issue for determination as we see it is, whether the Court of Appeal erred when it reduced the damages awarded to the appellants from twelve months' salaries to three months' salaries?

When interrogating the issue, we will determine whether, in reducing the damages as aforesaid, the Court of Appeal applied the correct principle of law? Our task also extends to discussing the consequences of an employer's failure to follow laid down procedure before effecting a redundancy.

- 4) This is the dispute in this matter which arises from a decision of the Court of Appeal which set aside an award of damages to the appellants by the High Court of twelve months' salaries for breach of contract by the respondent when it failed to engage the appellants prior to laying them off by way of redundancy.

### **Background**

- 5) The appellants were all employees of the respondent and had all executed individual contracts of employment which governed their employment with the respondent. They were initially employed as junior members of staff then later senior members of staff. Clause 22.8(g) of the respondent's conditions of employment and service for Zambian senior staff employees (the conditions of employment and services) which were effective from 1<sup>st</sup> January, 2013, provided that whenever a redundancy situation arose, the

respondent was required to engage the appellants (or their representatives) in order to agree on steps to be taken before effecting the redundancy and the appropriate redundancy package.

- 6) Sometime in October, 2019, a redundancy situation arose in the respondent's undertaking. As a result of this situation, the respondent wrote to the appellants on 8<sup>th</sup> October, 2019, informing them that they would be laid off and that it would pay all of them a redundancy package of two months' pay for each year served. Later, the respondent terminated the appellants' employment by way of redundancy and paid them a package equivalent to two months' pay for each year served.
- 7) The appellants were unhappy with the respondent's decision and instituted proceedings in the Industrial and Labour Division of the High Court. The gist of their action was a claim for damages for breach of contract by the respondent for failure to follow the laid down procedure prior to declaring them redundant.

### **Matter before the High Court**

- 8)** By the notice of complaint filed in the High Court, the appellants sought an order that the respondent's decision to declare them redundant was illegal, unlawful, unfair and in breach of their conditions of service. They also sought an order deeming them to have gone on early retirement or retirement and that as such retirees, their terminal benefits should be recomputed in accordance with the conditions of service on early retirement. Lastly, they sought an order for damages for unlawful, illegal and unfair termination of employment and for discrimination and costs.
- 9)** The grounds upon which the claims were made were as follows:
- 9.1)** The decision to declare the appellants redundant and replace them with other employees was illegal, unlawful, unfair and in breach of their conditions of service;
  - 9.2)** The decision by the respondent to continue paying some appellants who were declared redundant their monthly

salaries amounted to discrimination and unfair practice;  
and,

- 9.3)** The decision to declare the appellants redundant entitles them to an award of damages because it is unlawful, illegal and unfair.

Along with setting out the foregoing grounds, the appellants also claimed costs and interest on the damages claimed.

- 10)** In its answer, the respondent denied the appellants' claim in its entirety. It contended that it complied with the provisions of the law when it initiated and effected the redundancies.

#### **Decision by the Learned High Court Judge**

- 11)** The Learned High Court Judge heard the matter and found as a fact that at the time of being declared redundant, all the appellants were senior staff employees. He then went on to determine whether the respondent's conditions of employment and service were applicable to the appellants.

**12)** After considering the preface to these conditions of employment and service, the Judge concluded that they were what governed the employment relationship between the appellants and the respondent. Next, the Judge considered the two competing positions of the parties regarding the applicable conditions in the redundancy. The respondent's position was that it was those conditions which were in force at the time the appellants were recruited i.e. the ones contained in the employment letters. The appellants' position was that it was clause 22.8(g) of the conditions of employment and service alluded to in the preceding paragraph. He concluded that since the letters of employment applied when the appellants were junior members of staff, the clause on redundancy in those letters ceased to be applicable to them when they became senior members of staff.

**13)** The Judge accordingly, held that clauses 22.8 (a) and (b) in the conditions of employment and service were what were applicable to the appellants' redundancy. He then proceeded to explain that the clause provided that whenever a redundancy situation arose, the respondent was required to inform the affected employees and

engage them to justify the decision to declare them redundant and explain how the process would be undertaken. According to the Judge, this was in line with our decision in the case of ***Chilanga Cement PLC v Kasote Singogo***<sup>1</sup>. In that case, we said that since redundancies are planned activities, the affected employees need to be prepared for the loss of their jobs and reasonable measures need to be taken by the employer such as giving notice to the affected employees and consulting them on how the process would be undertaken.

- 14) The Learned High Court Judge also referred to the provisions of **section 55(2)** of the **Employment Code Act (ECA)** which provides that prior to terminating an employee's employment by way of redundancy, the employer should afford the employee an opportunity to consult to minimise the adverse effect of the redundancy measure on the employee.
- 15) After making the foregoing consideration, the Judge held that the notice given by the respondent to the appellants revealed that there was no consultation by the parties prior to declaring the appellants redundant in accordance with clauses 22.8(a) and (b)

of the conditions of employment and service. He further held that the respondent breached clause 22.8(g) which required it to engage the appellants or their representatives and agree on the appropriate package to be paid to them. Instead, the respondent unilaterally decided to pay the respondents two months' pay for each completed year of service and notified them as such by the letter dated 8<sup>th</sup> October, 2018.

- 16) The Judge went on to hold that the payment of two months' pay for each year served was the barest minimum the respondent was required to pay the appellants in accordance with **section 55(3)(a)** of the **ECA**. He took the view that the respondent was obliged to negotiate better conditions than those prescribed under **section 55(3)(a)** of the **ECA**. Hence, the need for prior consultation before terminating the appellants' employment.
- 17) The Judge concluded that the respondent's actions amount to a breach of the conditions of employment and service. He accordingly awarded each of the appellants twelve months' salaries as damages for the respondent's failure to comply with the agreed procedure and concluded that the termination of the

appellants' employment was wrongful, unfair and unlawful. In arriving at this decision, he considered the evidence led which revealed that some employees who had proceeded on voluntary separation prior to the appellants being declared redundant and those allowed to go on early retirement had been paid a separation package of three months' pay for each completed year of service. He, therefore, concluded that an opportunity to negotiate the redundancy package was lost as a consequence of the respondent's failure to comply with clauses 22.8 (a)(b) and (g) of the conditions of employment and service in effecting the redundancies.

### **Appeal to the Court of Appeal**

**18)** The respondent was unhappy with the decision of the Learned High Court Judge and appealed to the Court of Appeal. It advanced three grounds of appeal which attacked the findings by the Learned High Court Judge and the award of twelve months' salaries to each of the appellants as damages. There was no cross appeal by the appellants.

- 19) After hearing the parties, the Court of Appeal upheld the decision of the Learned High Court Judge. It agreed with his interpretation of clauses 22.8(b) and (g) and **section 55 (2)(b)** of the **ECA**. The Court also agreed with the decision by the Learned High Court Judge to award damages and set out the justification for the award. It, however, considered the award of twelve months salaries as excessive, after considering a number of factors referred to later in this judgment, and reduced it to three months' salaries for each year served.
- 20) In arriving at its decision, the Court of Appeal considered the evidence led in the High Court and held that prior to 2013, the conditions of employment and service which were applicable to the appellants were those effected on 1<sup>st</sup> January, 2010. These conditions, according to the court, provided for a redundancy package of two months basic pay for each year served.
- 21) The court went on to hold that the 2010 conditions were superseded by the conditions of employment and service in 2013 which provided for redundancy under clause 22.8(b) and (g). This clause, according to the court, while providing for the process to

be effected in a redundancy, did not provide for the redundancy package to be paid on effecting a redundancy. It went on to state that a scrutiny of the appellants' contracts of employment contained in their letters of employment revealed that clause 17 thereof provided for a redundancy payment of two months pay for every year completed. Here, we must clarify that what the court referred to as clause 17 was actually clause 16.

- 22) The court concluded that based on the provisions of **section 55(3)(a)** of the **ECA**, which are mandatory, the barest minimum an employee was entitled to on being declared redundant is two months pay for every completed year. Further, the contract of employment and service required the respondent to enter into discussions with the appellants before effecting the redundancy. It accordingly upheld the appeal to the extent stated in paragraph 19 hereof.

#### **Appeal to this Court and Arguments by the Parties**

- 23) The appellants launched their appeal with four grounds of appeal. The grounds of appeal not only attack the reduction by the Court of Appeal of the award of damages but also the manner in which

their employment was terminated. They, in this regard, challenged the holding by the Court of Appeal that the termination was procedurally unfair and urged us to hold that it was substantially unfair.

**24)** Through counsel, the appellant's sought, what they termed, enhanced and additional damages because of the manner in which the respondent terminated the appellants' employment. They argued that an award of damages in the range of thirty-six to forty-two months salaries would be appropriate. These arguments question the award by the Learned High Court Judge and are inappropriate at this stage of the matter because the appellants did not appeal against the decision of the Learned High Court Judge.

**25)** The grounds of appeal also seek an order for payment of salaries to the appellants until the damages are paid in full. They urged us to order the respondent to place them back on the payroll. We have been prompted to highlight this and other claims in the preceding paragraph because not only were these claims not in the original claim made before the High Court, but the appellants

were happy with the decision of the Learned High Court Judge which awarded them the twelve months salaries. This award was the only issue before the Court of Appeal and there was no dispute raised by the appellants as to the adequacy of the award and the package paid to them on separation based on the contention that the termination of their employment was substantially unfair.

- 26)** In articulating their arguments, counsel for the appellants have gone to great length in analysing a number of our decisions on award of damages in employment matters. Leading the onslaught, Mr. C. Chungu, on numerous occasions, also referred us to a textbook on labour law authored by himself and Mwenda J, (now deceased) arguing that it represents the current law on best practices in awarding damages in employment matters.
- 27)** Mr. C. Chungu also referred to a number of decisions of lower courts which have quoted passages from this textbook with approval. While we applaud counsel's industry, we would like to remind him that authors of textbooks, such as the one under reference, defer to decisions of the court and not the other way round. Where there is established precedent by the courts, this

and indeed, all other courts in Zambia are only bound by such precedent and not books authored by Mr. C. Chungu or any other author for that matter. This is quite apart from the fact that Mr. Chungu's very recent books are very far from attaining the lofty status of being 'established' or 'authoritative' books.

- 28) In the earlier part of this judgment, we have defined the issue in dispute and we will only focus on the arguments by counsel which address this issue. To recap, the issue is, whether the Court of Appeal erred when it reduced the damages awarded to the appellants from twelve months salaries to three months salaries?
- 29) The only ground of appeal advanced by the appellants which, in a roundabout way, addresses the issue before us is ground 4. It states as follows:

***“The court below erred in law and fact when it held that the common law normal measures of damages continues to apply and thereafter reduced the award of damages to three (3) months salary despite several aggravating factors justifying a higher and enhanced award.”***

In advancing the arguments in support of this ground of appeal, counsel for the appellants argued that since an employer is prohibited from terminating an employee's employment without cause, the old notion of awarding damages linked to the notice period, where the termination was held unlawful, is no longer applicable.

- 30)** According to counsel, this approach was only workable before the law compelling an employer to give reasons before terminating an employee's contract of employment was enacted. The view taken by counsel was that the failure by the respondent to engage the appellants before terminating their employment by way of redundancy entitles them to enhanced and additional damages which are exemplary and thus, punitive in nature. Counsel listed a number of our decisions and his works which we have not referred to for reasons we have explained earlier and will restate later in this judgment.
- 31)** At the hearing, we engaged Mr. C. Chungu and his responses to some of the questions we asked him were as follow:

- 31.1)** The appellants' prayer in the appeal is for the following: the award of three months salaries as damages handed down by the Court of Appeal to be set aside, and the initial award by the Learned High Court Judge of twelve months salaries to be re-instated; the award should not be of twelve months basic salary but rather twelve months pay in accordance with **Section 55(3)(a)** of the **ECA**; and, while the payments are pending, the appellants should be paid their salaries i.e. placed back on the payroll.
- 31.2)** The appellants did not appeal against the judgment of the Learned High Court Judge neither did they cross-appeal.
- 31.3)** The appeal by the respondent to the Court of Appeal challenged the award of twelve months salaries only and did not question the redundancy package paid neither did the appellants cross appeal for the payment of salaries to them pending payment of the redundancy package in full; and,

- 31.4)** The decision of the Court of Appeal focused solely on the award of twelve months salaries to the appellants by the High Court.
- 32)** The arguments advanced by counsel for the respondent, in so far as they were relevant to the issue before us, were as follows:
- 32.1)** Ground 3 of the appeal raises an issue which was not raised in the Court of Appeal and trial court. We must dismiss the ground of appeal for this reason in accordance with the decision in the case of **ZESCO Limited v Elijah Nyondo (suing in the capacity as Administrator of the estate of the late Wilson Sinyinza)**; and
- 32.2)** The claim that the appellants be placed back on the payroll is untenable because the appellants were paid all their dues prior to their last day of service. The testimony of one of the appellants' witnesses in the High Court confirmed this fact which appears at page 257 of the record of appeal.

## **Our decision**

- 33)** We have set out the sole issue for determination in this matter at paragraph 3 of this judgment. Mr. C. Chungu, in an effort to address the issue, submitted at the hearing that appellate courts rarely interfere with awards of damages made by trial courts. That they will only interfere with such awards where they are absurd, ridiculous, or too high or low. He was not able to remember the case law to this effect.
- 34)** As early as 1971, in the case of *Kawimbe v Attorney General*<sup>3</sup>, our predecessor court laid down the principles on how appellate courts should treat appeals that challenge a trial court's award of damages. The principles are as follows:
- 34.1)** An appellate court should not interfere with the findings of a trial court as to the amount of damages merely because the appellate court is of the view that if it had tried the case in the first instance, it would have given a lesser sum; and,

**30.1)** Before an appellate court interferes with the findings of a trial court as to the amount of damages, it must be shown that the trial court has applied a wrong principle or has misapprehended the facts, or that the award was so high or so low as to be utterly unreasonable, or was an entirely erroneous estimate of the damage.

**35)** In arriving at the decision to reduce the damages awarded to the appellants by the High Court, the Court of Appeal made the following considerations:

**35.1)** The manner in which the respondent declared the appellants redundant, i.e. without consulting them;

**35.2)** The breach of provisions of employment law and right to be treated fairly in accordance with laid down procedure arising from the respondent's conduct set out in paragraph 35.1;

**35.3)** The emotional and financial impact the sudden decision by the respondent to declare the appellants redundant had on them; and,

- 35.4)** The loss of opportunity to explore alternative solutions such as redeployment of the appellants in other departments of the respondent arising from the failure by the respondent to consult the appellants prior to effecting the redundancies.

The foregoing considerations reveal that in reducing the award of damages, the Court of Appeal did not tie the three months salaries award to the notice period as contended by the appellants. Mr. C. Chungu's arguments to that effect are, therefore, not acceptable. The Court of Appeal focused on the breaches committed by the respondent and the effect they had on the appellants.

- 36)** In determining whether the conclusion reached by the Court of Appeal satisfies the test in the *Kawimbe*<sup>3</sup> case, we have asked ourselves the following questions:

- 36.1)** Did the respondent's failure to consult the appellants prior to effecting the redundancies taint the whole process of the redundancy? Here, we have borne in mind the fact that while the appellants complained about the

failure to consult, they did not complain about the redundancy package paid to them; and,

- 36.2)** Was the default by the respondent i.e. failure to consult, deserving of the penalty meted out by the High Court Judge of twelve months salaries for every year served? That is to say, did the trial court apply the correct principle in awarding the damages?

In posing the last question, we are alive to the following factors:

- 36.2.1)** The **ECA**, while trying to align itself to international standards on employment conditions prescribed by the International Labour Organization was enacted on the assumption that the employer in Zambia had a higher bargaining power than the employee and could treat the employee as the employer's whims and caprices dictated. Yet, the powers of the employer were severely curtailed with the enactment of **Act number 15 of 1997**, the **Employment (Amendment) Act 1997**, which took away the employer's right to terminate a contract of

employment based on conduct or performance without affording the employee an opportunity to be heard by introducing **section 26A** in the repealed **Employment Act**. Subsequently, by way of the **Employment (Amendment) Act number 15 of 2015**, which further amended the advantageous position, the employer's bargaining power was further curtailed by amendment to **section 36** which barred an employer from terminating the services of an employee based on conduct, without giving valid reasons. Another important piece of legislation is **The Minimum Wages And Conditions of Employment Act, Cap 276** which prescribed the minimum wage levels and minimum conditions of employment.

**36.2.2)** These pieces of legislation addressed the two major concerns employees in Zambia had, namely, security of tenure of employment and the need to be paid a living wage.

**36.2.3)** The cases referred to us by counsel for the appellant in which we enhanced the award of damages relate to the damages that were awarded as compensation for the termination of employment. They were, thus, an award of the package an employee should have walked away with to compensate him for the service he provided to the erring employer. The award which this appeal deals with is compensation for failure by the respondent to perform a condition precedent to declaring the appellants redundant.

**36.2.4)** The reasoning by the Learned High Court Judge which we have set out at paragraph 17 of this judgment shows that the Judge was persuaded to award twelve months' salaries as damages on account of the fact that there was a lost opportunity for the parties to negotiate a better package for the appellants notwithstanding that the **ECA** prescribes a minimum package of two months salaries for every completed year.

**36.2.5)** The Court of Appeal while acknowledging that there was breach by the appellant arising from the unilateral manner in which it conducted the redundancies, did not appear concerned about the lost opportunity to negotiate a better package for the appellants in view of the facts which revealed a payment by the respondent of better packages to those retired early and those who went on voluntary separation; and,

**36.2.6)** The fact that in England and Wales the statutes regulating redundancy impose a financial penalty on employers who fail to consult employees or their union prior to effecting a redundancy. We explain this further later in this judgment.

**37)** After the consideration highly in the preceding paragraph, we have no difficulty in holding that the respondent's failure to consult the appellants prior to declaring them redundant did not taint the whole process of the redundancy. Although there was indeed an opportunity lost to negotiate a better package, the appellants were still paid terminal benefits that were within the

law, albeit, the minimum recommended. Further, the need for the parties to negotiate was negated by the fact that the appellants were happy with the package awarded and only complained about the procedure adopted in effecting the redundancies.

38) In addition, and for the same reasons stated in the preceding paragraph, the default by the respondent was not deserving of the penalty of damages of twelve months salaries which we hold to unreasonably excessive in light of the separation package paid to the appellants. This is not to say that we do not agree with the decision by the Learned High Court Judge to impose a monetary penalty for the respondent's default. The requirement to negotiate prior to effecting the redundancies was not only a contractual one but also statutory, therefore, the Learned High Court Judge was on firm ground when he ordered the payment of salaries as compensation for the default.

39) In the United Kingdom, statute regulated redundancies also require an employer to consult an employee or union representative prior to effecting a redundancy. In his **Handbook of Industrial Relations Practice**, **Kevin Hawkins** stated,

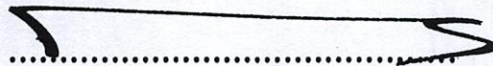
among other things, that before an employer declares an employee redundant, he is obliged as part of the general test of fairness to consult or at least warn the employee in advance unless this is not practicable. He goes on to say that the test recommended by the Employee Appeals Tribunal when faced with such an issue is that a tribunal must ask itself whether a failure to consult would have made any difference to the final outcome.

- 40) We endorse the foregoing which is in line with our law and was the consideration which the Learned High Court Judge made. The penalty for failure to consult in the United Kingdom attracts financial cost against the employer. This takes the form of the employer withholding the redundancy and continue paying the wages for a specified period depending of the number of employees affected.
- 41) Having established that the Judge was on firm ground when he awarded damages, we revisit the issue before us. In view of the consideration the court made which are at paragraph 35 and our holding at paragraphs 37 and 38 of this judgment, we are of the

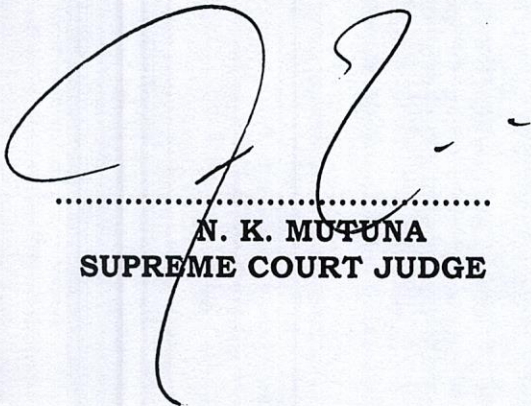
firm view that it did not depart from the principle in the *Kawimbe*<sup>3</sup> case.

**Conclusion**

42) Our inescapable conclusion is that the appeal lacks merit. All four grounds of appeal fail, and we accordingly dismiss the appeal. The parties shall bear their respective costs in view of the division of the High Court from which this appeal emanates.



M. MUSONDA, SC  
DEPUTY CHIEF JUSTICE



N. K. MUTUNA  
SUPREME COURT JUDGE



F. M. CHISANGA  
SUPREME COURT JUDGE