

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 03/ 2018
HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:



TIME TRUCKING LIMITED

APPELLANT

AND

KELVIN KIPIMPI

RESPONDENT

CORAM: Hamaundu, Kabuka, Chinyama, JJS.

On the 16th July, 2020 and 4th August, 2020.

FOR THE APPELLANT: Mr. L. Mwamba, Messrs. Simeza,
Sangwa & Associates.

FOR THE RESPONDENT: In Person

JUDGMENT

KABUKA, JS, delivered the Judgment of the Court.

Cases referred to:

1. Savenda Management Services Limited v Stanbic Bank Zambia Limited, Selected Judgment No. 10 of 2018.
2. Tom Chilabuka v Mercy Touch International, Appeal No. 171 of 2012.
3. Zambia Revenue Authority v Post Newspapers Limited Appeal No. 36 of 2016.
4. Mhango (Philip) v Dorothy Ngulube and Others (1983) ZR 61 (SC).

Legislation and Other Works referred to:

1. The Employment Act, Cap. 268 ss. 24 (5), 65, 70.
2. The Minimum Wages and Conditions of Employment (S.I. No. 2) (General) Order, 2011.

1.0 Introduction

- 1.1 This appeal by the appellant is directed at a judgment on assessment that was rendered by the Deputy Registrar, on 7th February, 2018.

2.0 Background

- 2.1 According to the record, the background to the appeal is that, the respondent was an employee of the appellant. He was employed as an auto- electrician under an oral contract entered into between the parties on 4th January, 2006 and was stationed at the appellant's Ndola office. The respondent worked at the said station for the next

seven years until 21st October, 2013 when at the appellant's behest, he was given K100.00 transport money and requested to go and work from Lusaka.

2.2 As it turned out, the respondent remained in Lusaka much longer than he had anticipated and whilst working from there, persistently requested to be paid his subsistence and transport allowance which requests were not attended to by the appellant. This resulted in a fractious working relationship between the respondent and his said employer.

2.3 After 274 days or a period of about nine months of working from Lusaka, the respondent, in early July, 2014 fell ill and was allowed to return to his home in Ndola by the appellant from where he was expected to seek medical attention. While he was in Ndola and at the clinic, awaiting to be attended to, a roofing sheet fell on the respondent, in consequence of which he suffered injury. The respondent notified the Depot Manager at Ndola about the accident and only reported back for work

in Lusaka on 24th July, 2014 which was four days beyond the days he was medically declared unfit for work.

2.4 When the appellant's Director asked the respondent to explain his absence for the four days in question, his answer was that he was unwell and still recuperating. Dissatisfied with that response, the Director verbally reprimanded the respondent for absenteeism and further cautioned him against alleged poor behavior exhibited towards his colleagues.

2.5 The respondent was in addition slapped with a written warning and informed that he would forfeit his pay for the four days he had absented himself from work. It is against that backdrop, that on 24th December, 2014 the respondent who was still on suspension, filed a complaint before the Industrial Relations Court (IRC).

3.0 Proceedings before the Industrial Relations Court

3.1 In his said complaint the respondent contended that, he had remained on suspension for several months, without

any steps being taken by the appellant to bring closure to the matter. He was thus seeking a court order: (i) *for payment of his salary for the duration of his suspension;* (ii) *accrued overtime pay;* (iii) *payment for 15 accrued leave days;* (iv) *transport allowance;* (v) *subsistence allowance for 274 days;* (vi) *severance package;* and (viii) *one month's salary in lieu of notice.*

3.2 In its answer to the complaint, the appellant denied that the respondent was entitled to any of the relief he was seeking.

3.3 The record shows, at the trial of the matter, the substance of the respondent's testimony in support of his claims, was as earlier set out at paragraphs 2.1 to 2.5 of this judgment. In rebuttal of the said evidence, the appellant's witnesses testified that the respondent was asked to work from Lusaka on permanent basis. According to them, the respondent did not communicate to management when he returned from Ndola, where he had gone to seek medical attention and he also caused the sick notes given to him,

to be delivered through his colleagues. Those were the reasons that compelled the appellant to call for a disciplinary hearing, following which the respondent was given a warning letter which he refused to accept; and, the appellant placed him on suspension without pay, as a result.

3.4 The appellant's witness confirmed that the respondent was paid a monthly, overtime allowance of K680.00 irrespective of whether or not he worked overtime and that this payment was reflected on the respondent's pay slips. The witness also confirmed that no subsistence and transport allowance was paid to the respondent during the period of 274 days that he worked in Lusaka. According to the witness, this was so, as there had been no agreement in the respondent's oral contract of employment regarding entitlement to such payment.

3.5 In determining the matter on the evidence adduced, as earlier outlined at paragraphs 2.6 to 2.8 above, the IRC noted that it was inconceivable for an employee to be

placed on suspension, without a salary, for such a lengthy period of close to two years, as at the time of hearing the matter. In that regard, the IRC also considered that constructive dismissal occurs where an employee is induced to leave employment by any conduct of the employer which is unreasonable and makes the working environment hostile, uncomfortable or unbearable. On the evidence of indefinite suspension deployed before it, the finding of the IRC was that, the respondent was constructively dismissed.

- 3.6 The respondent was accordingly granted all, but two of his claims itemized at paragraph 2.5. One of the claims not granted was for overtime. The court found overtime was paid monthly, when it had actually been earned and at a uniform fixed rate. The other allowance not granted was for transport. Transport allowance was disallowed on the basis of the appellant's unchallenged evidence, that the respondent was at the material time provided with transport to and from work. Unhappy with those findings,

the appellant appealed the IRC judgment to the Court of Appeal.

4.0 Determination of appeal by the Court of Appeal

- 4.1 The appellant in its said appeal faulted the findings of the IRC, that: (i) the respondent was constructively dismissed and as such, entitled to orders for payment of a severance package and a months' salary in lieu of notice; (ii) the respondent was entitled to be paid his subsistence allowance because he was not transferred to Lusaka; (iii) the respondent was further entitled to be paid his salary whilst on suspension.
- 4.2 Upon hearing arguments and submissions on those contentions, the Court of Appeal found constructive dismissal had not been proved. The court took the view that, as the respondent had remained on suspension, he was still an employee of the appellant.
- 4.3 The Court of Appeal also found, in the absence of evidence, documentary or otherwise, to support the

appellant's claim that the respondent had been transferred to Lusaka, the respondent was entitled to payment of subsistence allowance. The appellant's argument that the subsistence allowance was payable at the rate of K100.00 per month was rejected. The Court of Appeal reasoned that, the said rate was unrealistic to cover living expenses for the given period. Accordingly, the appellant was ordered to pay the respondent subsistence allowance for the 274 days worked out of station. The Court of Appeal further directed that, calculation of the applicable rate, be determined by the Deputy Registrar.

- 4.5 On the question of whether the respondent was entitled to payment whilst on suspension, the Court of Appeal agreed with the appellant that such a payment when the respondent had not done any work, would amount to unjust enrichment on his part. That position notwithstanding, the Court of Appeal went on to observe that, the respondent had been unfairly treated by the

appellant. This was on account of his lengthy suspension without pay, that the court found was unjustified. It was on that basis and considering that the matter was one that had been referred to the IRC for determination by a Labour Officer pursuant to **section 65**, that the Court of Appeal found it appropriate to invoke the provisions of **section 70 of the Employment Act, Cap. 268**, which allows the court to terminate a contract of employment, on a matter that is so referred.

- 4.6 Accordingly, the Court of Appeal terminated the contract of employment and ordered payment of damages to the respondent of '36 months' basic pay plus allowances due.'

5.0 Deputy Registrar's Judgment on assessment

- 5.1 Pursuant to the order of the Court of Appeal granting the respondent subsistence allowance for 274 days and the directive that the applicable rate be determined by the Deputy Registrar, on assessment, the respondent proceeded to apply for assessment. Upon hearing the

parties on the application, the learned Deputy Registrar interrogated the respondent's evidence that he was entitled to subsistence allowance at the rate of K500.00 per night. He similarly considered the appellant's contention that the rate of subsistence allowance was actually K100.00 per month; and, that for the 9 months he worked in Lusaka, the respondent was only owed a total of K900.00.

- 5.2 According to the record of appeal, the respondent in his application further requested the court to order that K2, 500.00 constituted his basic salary plus allowances per month, that should be used for purposes of calculating the 36 months' damages awarded to him. Learned counsel for the appellant in his oral response to that suggestion, implored the Deputy Registrar to disregard payment of the 36 months' basic salary plus allowances in damages raised by the respondent, as a non-issue in the assessment proceedings. In support of the submission, learned counsel relied on the record of

proceedings which confirmed that, the Court of Appeal had not referred to assessment, the 36 months' basic salary plus allowances' awarded to the respondent in damages.

- 5.3 In agreeing with that submission by counsel, the learned Deputy Registrar noted that, the scope of the assessment referred to him by the Court of Appeal was indeed limited to the award relating to subsistence allowance; and, that he would therefore, not consider other awards already dealt with by that court. The respondent's claim for leave pay and interest together with that of 36 months' basic pay plus allowances due, were dismissed for those reasons. In passing, the court also observed that the award of 36 months' basic pay plus allowances in any event, could be easily deduced from the respondent's pay slips and as such, did not require any assessment, at all.
- 5.4 Having defined the parameters of the assessment as limited to determining the rate of subsistence allowance and what was due and payable to the respondent on that

claim, the learned Deputy Registrar observed that neither party had produced any documentary or other evidence to support their respective positions. The Deputy Registrar further noted that, subsistence allowance was money given to an employee to cover expenses for food, transport and accommodation for the period that such employee worked away from their usual station. On the facts of the case, the Deputy Registrar did not accept the K100.00 per month canvassed by the appellant as the applicable rate. He reasoned that the said amount was clearly insufficient for one to live off for that period of time.

- 5.5 The Deputy Registrar relied on **section 24 (5) of the Employment Act**, that allows a court to receive the averments of an employee as evidence of the terms and conditions of an oral contract where the employer fails to produce a record of the same. In that regard, his finding was that, the respondent's evidence of K500.00 per day

was more plausible than the K100.00 canvassed by the appellant.

- 5.6 Taking into account unchallenged evidence that the appellant used to provide food as well as transport to and from work, the Deputy Registrar reduced the K500.00 to K250.00 per day, an amount he considered would be sufficient in the circumstances. Employing that daily rate of K250.00 x 274 days the respondent had worked from Lusaka, the Deputy Registrar awarded the respondent subsistence allowance in the sum of K68, 500.00.

6.0 Grounds of Appeal to this Court and Arguments

- 6.1 Aggrieved with the judgment of the Deputy Registrar on assessment, the appellant has now come to this Court on appeal, advancing two grounds, faulting the Deputy Registrar as having erred in law and fact:

1. **when he held that the Court of Appeal judgment awarding 36 months' basic pay plus allowances did not require any assessment; and**
2. **when he awarded the respondent K250.00 per day as subsistence allowance despite having found that the respondent was provided with transport.**

- 6.2 In written arguments filed in support of its appeal, the appellant in ground one, bemoaned alleged failure by the Deputy Registrar to assess the 36 months' basic pay plus allowances that was awarded to the respondent in damages by the Court of Appeal. The appellant relied on our decision in **Savenda Management Services v Stanbic Bank Zambia Limited**¹ where we held that unliquidated damages are unspecified and should therefore be assessed or fixed by a court.
- 6.3 The argument was to the effect that, although the parties reserve the right to agree on the quantum of damages where the formula is provided by the court, should they fail to do so, then the only option is to proceed to assessment in order to have the quantum determined by the court.
- 6.4 According to counsel, the aspect of overtime allowance could not have been included in the award for damages made by the Court of Appeal; and, it is this lack of consensus between the parties on quantum, that made

assessment of the amount due, imperative. Our decision in the case of **Tom Chilabuka v Mercy Touch Mission International²** was cited in support of the submission that, in order to be entitled to overtime pay, an employee must perform his work outside the scheduled hours and such work must be approved by his employer.

- 6.5 On ground two of the appeal, counsel for the appellant contended that, the Deputy Registrar erred in awarding subsistence allowance at the rate of K250.00 per day when there was evidence that the respondent was provided with food and transport. The Oxford Dictionary was referred to as defining the word *subsistence* to mean '*a state of having just enough money or food to stay alive*' and the submission in that regard, was that, such an allowance is given to an employee to meet bare necessities.
- 6.6 The **Savenda Management Services¹** case was again cited to support the argument that, a judgment must show some level of judicial reasoning and not merely

adopt the parties' submissions as the court's own without adding any substance to it. The submission was that the Deputy Registrar did not make a reasoned decision but merely adopted the respondent's evidence that he was entitled to K500.00 per day. Counsel went on to argue that, the learned Deputy Registrar discounted the appellant's evidence that the respondent was entitled to K100.00 per month, on the basis that it was unreasonable. That he also ignored the appellant's evidence that it had provided the respondent with meals and transport to and from work.

- 6.7 In the event, the net result of the award on assessment, according to counsel, was to give the respondent a subsistence allowance of K5, 000.00 for a 20 day, business month which was four times his basic salary. He urged us to find that the Deputy Registrar was swayed by sympathy for the respondent and abandoned legal reasoning in preference for a moral judgment. Our decision in **ZRA v Post Newspapers Limited**³ was relied

upon where we cautioned courts not to be swayed by sympathy but that they must stick to established legal principles to ensure consistency, certainty and fairness in the dispensation of justice.

6.8 The respondent filed his own heads of argument, the gist of which on ground one of the appeal was that, there was no need for assessment of the basic pay and allowances payable to him, as these amounts were evident from his pay slips that are on record. According to these pay slips, the basic pay and fixed monthly allowances the respondent was entitled to were consistent throughout the material period. It was submitted that, those were the reasons the Court of Appeal did not refer that aspect of the award for assessment.

6.9 In response to ground two, the respondent argued that, subsistence allowance is calculated on a 'nightly basis' and that providing for lunch and transport could not take care of breakfast, supper and other incidentals. In that regard, his submission was that, the Deputy Registrar

rightly accepted his evidence that he was entitled to a subsistence allowance of K500.00 per night. Having accepted that amount, according to the respondent, the Deputy Registrar misdirected himself when he deducted K250.00 for meals and transport allegedly provided to him by the appellant, in the absence of any evidence placed before him, to that effect.

7.0 Consideration of the matter and decision of this Court

- 7.1 We have considered the heads of argument and submissions from learned counsel for the appellant and those of the respondent in person, together with the cases cited and the applicable statutory provisions.
- 7.2 Starting with ground one of the appeal, suffice to state that we have failed to appreciate the import of this ground. We say so, as according to the evidence on record at J9 and J10 of the Court of Appeal judgment which appear at pages 78 to 79 of the record, the only directive to the Deputy Registrar the Court of Appeal

made in its judgment of 7th July, 2017 was couched in the following terms:

*“The trial court found that there was no documentary proof that the respondent was transferred to Lusaka and was thus on terra firma when it accepted the respondent’s testimony that he was entitled to subsistence allowance. **The court however omitted providing the rate at which subsistence allowance should be paid..... we order that calculation of the rate be referred to the Deputy Registrar.**”* (bold facing and underlining for emphasis supplied)

- 7.3 A reading of the above quote leaves no doubt, at all, that the only aspect of the award referred to assessment was determination of the daily rate of the subsistence allowance. Our perusal of the record has disclosed no other order that was made by the Court of Appeal directing assessment of the 36 months’ basic pay and allowances awarded as damages. Ground one that faults the Deputy Registrar for having declined to assess the award relating to damages fails for that reason.
- 7.4 Even if we were inclined to delve into the merits of ground one, the words actually used by the Court of

Appeal itself when making that award read as follows:

*"According to a letter dated 8th December, 2014, the Labour Officer did refer this matter to court and as such we will invoke the provision of section 70 above. This Court has the power to terminate the contract and award damages. Looking at the circumstances, we believe the period of suspension coupled with the fact that the respondent has not been receiving any income for 2 years, was unwarranted. **We accordingly terminate this contract of employment forthwith and award the respondent damages in the sum of 36 months' basic pay plus allowances due.**"*
(boldfacing and underlining for emphasis only)

7.5 In our view the words used as underscored by underlining, do not call for any debate, at all. The court awarded the respondent payment of his 'basic pay' with 'allowances due' in plural. That the respondent was only entitled to two allowances (housing and overtime) is evident from each of the respondent's 19 pay slips spanning the period January, 2013 to July, 2014 appearing at pages 124- 133 of the record of appeal. Accordingly, we do not appreciate the appellant's basis for arguing that the overtime allowance was not captured in the award made by the Court of Appeal. Nor, do we appreciate their arguments faulting the Learned Deputy

Registrar's observations in that regard when he said:

*"Regarding the claim for damages, the Court of Appeal assessed the same at 36 months' basic pay plus allowances and did not refer the same for assessment. **The (respondent's) pay statements are clear regarding his basic pay and allowances** and I believe the same need no further assessment."* (boldfacing for emphasis only)

7.6 As guided in **Philip Mhango v Dorothy Ngulube**⁴, a past decision of this Court, regarding assessment of damages:

"...the onus of proving a special loss lies on the claimant who must do so with evidence which makes it possible for the court to determine the value of the loss with a fair amount of certainty."

The evidence on record in the appeal *in casu* shows, that respondent was entitled to payment of a housing allowance and this was not an issue in dispute between the parties. As regards the payment of overtime allowance, the appellant's own witness in his evidence on the issue appearing at pages 153 and 154 lines 22 – 26; 1 - 2 stated as follows:

"In Ndola there was little work and there was no overtime. When he was in Lusaka he was given K680.00 as overtime whether he worked overtime or not. This K680.00 was reflected on his payslip. At the time of his suspension he had 15 leave days due. Respondent will be willing to pay." (underlining for emphasis supplied)

7.7 That testimony most certainly attests to the fact that, the respondent was paid a monthly, overtime allowance capped at K680.00 irrespective of whether or not he worked overtime. It further confirms, that this payment is reflecting on all the 19 monthly pay slips that were produced and appear from page 42-51 of the record of appeal, as:

<i>basic pay-</i>	<i>K1, 310.00</i>
<i>housing allowance-</i>	<i>510.00</i>
<i>overtime-</i>	<i>680.00</i>
TOTAL	K2,500.00

7.8 The above figures render credence to the position that, the damages due to the respondent in the terms awarded by the Court of Appeal, indeed, did not require any assessment as they were readily ascertainable as a matter of 'simple arithmetic' at 36 months' x K2, 500.00 per month.

7.9 We are, in that respect, fortified by learned counsel for the appellant's categorical assertion before the Deputy Registrar, that the only aspect of the award referred by the

Court of Appeal for assessment was subsistence allowance. Learned counsel for the appellant in his oral submissions implored the Deputy Registrar, at page 214 line 37, page 215 lines 1 to 15 of the record of appeal, to disregard payment of the 36 months' damages raised by the respondent in his application for assessment, as a non-issue in the assessment proceedings, when he stated as follows:

*"In casu at page J9 and J10 from a perusal of the entire judgment of the Court of Appeal, **the only order or finding of the court sent to assessment was the calculation of the rate for subsistence allowance. This court is bound to only consider this assessment for subsistence allowance.** It is therefore an academic exercise for this court to begin to consider the other findings that were made by the Court of Appeal." (underlining and boldfacing for emphasis supplied).*

The record of appeal further shows that a host of authorities were deployed before the Deputy Registrar by counsel for the appellant, in support of the said submission.

7.10 On further appeal to this court against the judgment on assessment, counsel for the appellant back-peddled on

his position alluded to at paragraph 7.9 to now argue that, the Deputy Registrar did not deal with the aspect of assessment relating to the award of damages. Granted counsel's contradictory positions as reflected on the record of appeal, his written heads of arguments and oral submissions before this Court, we have no doubt that ground one of the appeal was bound to fail, even if it were to be considered on the merits.

7.11 In any event, if the appellant was aggrieved with the clear formular given by the Court of Appeal, which as we have already established, was *basic salary plus allowances*, giving a total of K2, 500.00 per month, the proper recourse for the appellant would have been to appeal that finding, rather than seek to raise it as an afterthought after assessment, when it was not an issue before the learned Deputy Registrar, as they themselves had argued.

7.12 Coming to ground two, seemingly faulting the Deputy Registrar as having misdirected himself for having

determined that the respondent was entitled to payment of subsistence allowance at the daily rate of K250.00. Suffice to state that, where a matter is grounded on an oral contract of employment and there is conflicting evidence received from the parties on an aspect relating to the terms of such contract, the court hearing the matter is by **section 24 (5) of the Employment Act**, generally, entitled to accept the evidence of an employee over that of the employer. The section reads as follows:

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

7.13 The record of appeal shows, the Learned Deputy Registrar relied on **section 24 (5)** in coming to the K250.00 now being assailed by the appellant in ground two of its appeal. The Deputy Registrar accepted verbal evidence from the respondent that the rate of his

subsistence allowance was K500.00 '*per night*' over that of the appellant claiming it was K100.00 *per month*. In rejecting the K100.00 *per month* proposed by the appellant, the Deputy Registrar reasoned that the said amount was too unrealistic for monthly sustenance.

7.14 The record of appeal further shows, after accepting the respondent's evidence that his subsistence allowance was at the daily rate of K500.00 the Learned Deputy Registrar took into account the appellant's unchallenged evidence, that the respondent was on daily basis provided with food as well as transport to and from work. It is on those considerations that he reduced the amount to K250.00. Ground two of the appeal suggesting that the Deputy Registrar ignored the appellant's evidence finds no support from this evidence that is on record, confirming otherwise and fails for that reason.

7.15 We wish to state that, we have failed to appreciate how the appellant can adamantly argue that the amount of K250.00 is far too excessive as a daily rate, proposing

instead K100.00 or K250.00 *per month*, as the more reasonable amount. To illustrate what he considered as an unconscionable earning, learned counsel argued that '*a subsistence allowance of K5, 000.00 for a 20 day, business month which was four times his basic salary (of K1310.00) was untenable. However, the respondent in his oral arguments in response made at the hearing of the appeal thrashed that assertion with his counter argument that, the rate of substance allowance canvassed by the appellant at K100. 00 or K250.00 per month was totally absurd and untenable as it translates to only K3.33 or K8.33 per day respectively. We are persuaded by the respondent's submission that those rates cannot, even by the most ingenious stretch of imagination, be considered a reasonable daily rate for subsistence allowance.*

- 7.16 If a comparative rate of subsistence allowance were to be considered, as contained in **The Minimum Wages and Conditions of Employment (General) Order, 2011.**

This provision at paragraph 16 of the Schedule states that:

“Where an employee spends a night away from home to attend to the business of the employer, the employer shall pay the employee a subsistence allowance of not less than one hundred and ninety-five thousand Kwacha per night to cover all expenses.”

7.17 The above provision only goes to fortify the position that, the amount put forward by the appellant as a subsistence allowance of K100.00 *per month*, was indeed most unrealistic. We say so as in comparison, the subsistence rate for *minimum wage* employees, as far back as 2006, was K100.00 (rebased) *per night*, not per month. Later, in 2011, as quoted at paragraph 7.16 above, the rate was enhanced to K195.00 (rebased) *per night*. Black’s Law Dictionary, 10th Edition, equates the word subsistence to *necessaries*, defined to include: ‘*whatever food, medicine, clothing, shelter, and personal services that are usually considered reasonably essential for the preservation and enjoyment of life...*’ This definition puts to rest the argument by learned counsel for the appellant that sought to restrict subsistence

allowance as intended to only cater for meals and transport and not accommodation or indeed other incidentals for an employee working out of station attending to the business of the employer.

7.18 We will in conclusion address the issue raised by the respondent in defending the appeal. In his written submissions the respondent while applauding the Deputy Registrar for accepting his evidence that he was entitled to subsistence allowance at the rate of K500.00, was unhappy with its reduction to K250.00. He maintained this position in his oral arguments at the hearing of the appeal, by stating that the appellant did not provide him with breakfast or supper.

7.19 As already acknowledged, at paragraphs 5.4 to 5.7 of this judgment, that finding is supported by the evidence on record and is fortified by the respondent's own submissions in which he acknowledged that the appellant did provide lunch but not breakfast or supper. If the respondent was dissatisfied with the reduction of

subsistence allowance for the reasons given by the learned Deputy Registrar, the proper recourse as correctly agued by learned counsel for the appellant, was for him to challenge the finding through a cross-appeal, to the judgment on assessment. As the respondent did not file a cross-appeal, this challenge is incompetent and untenable.

7.20 The two grounds of appeal having been unsuccessful, this appeal wholly fails and we uphold the judgment of the Deputy Registrar on assessment. The respondent will have his costs of defending this appeal, to be taxed, in default of agreement.

Appeal dismissed.


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E. M. HAMAUNDU
SUPREME COURT JUDGE


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J. K. KABUKA
SUPREME COURT JUDGE


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J. CHINYAMA
SUPREME COURT JUDGE