

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**APPEAL NO. 126/2011  
SCZ/8/179/2011**



BETWEEN:

**MOPANI COPPER MINES PLC**

**APPELLANT**

**AND**

**ANDREW MULENGA AGENCIES LIMITED**

**RESPONDENT**

**CORAM: Phiri, Musonda and Hamaundu, JJS.**

**On 4<sup>th</sup> December, 2012 and 3<sup>rd</sup> November, 2017.**

For the appellant : Legal counsel (In-house)

For the respondent : Mr C. M. Mukonka, Messrs Carlisto Mukonka  
Legal practitioners

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## **JUDGMENT**

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**HAMAUNDU, JS, delivered the Judgment of the Court.**

Cases referred to:

**Zulu v Avondale Housing Project Limited [1982] ZR 172**

Works referred to:

**Chitty on Contracts, 29<sup>th</sup> edition**

When we heard this appeal, we sat with Mr Justice Phillip Musonda. Mr Justice Musonda has since resigned. Therefore, this judgment is by majority.

This appeal is against the Judgment of the High Court by which the respondent's claim for breach of contract was upheld and a sum of US\$163,900 was awarded.

It is not in dispute that the respondent was one of the contractors that was invited by the appellant to participate in the mining and excavation of slag from slag dumps at its Mufulira Mine. According to the initial agreement each contractor was to excavate and sell slag to the appellant. The contractors were to excavate the slag for either 3 months or up to a maximum of 150 tonnes of sorted slag, whichever came earlier. The appellant was to buy the sorted slag as follows:

- (i) for slag that would be assessed to have a copper content of 30% and above, the appellant would purchase it at US\$90 per tonne**
- (ii) for slag that would be assessed to have a copper content of between 20% and 29%, the appellant would purchase it at US\$50 per tonne.**

The appellant stipulated that it would not pay for any slag that would be assessed to have a content of 20% or less, although it

