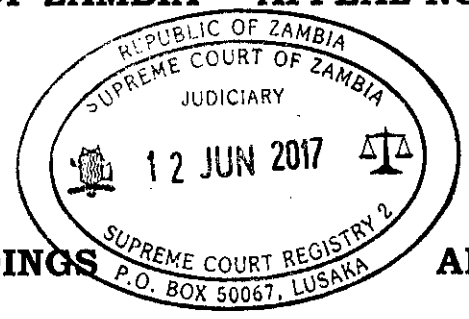
IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 172/2014
HOLDEN AT NDOLA
(CIVIL JURISDICTION)



BETWEEN:

ZCCM INVESTMENTS HOLDINGS **APPELLANT**

AND

CORDWELL SICHIMWI **RESPONDENT**

CORAM: **MAMBILIMA CJ, KAOMA AND MUTUNA JJS; on 6th June, 2017 and 12th June, 2017**

For the Appellant : **No appearance**
For the Respondent : **Mr. G. NYIRONGO of Nyirongo and Company**

JUDGMENT

MAMBILIMA, CJ delivered the Judgment of the Court.

CASES REFERRED TO:

1. **MUGFORD V MIDLAND BANK PLC [1997] ICR 399**
2. **ZAMBIA CONSOLIDATED COPPER MINES V JAMES MATALE (1995-1997) ZR 144**
3. **WILLIAM MASAUSO ZULU V AVONDALE HOUSING PROJECT (1982) ZR 172**
4. **ZCCM V JACKSON MUNYIKA SIAME AND 33 OTHERS (2004) ZR 193**
5. **VOKES LIMITED V BEAR [1974] ICR 1 NICR**
6. **KITWE CITY COUNCIL V WILLIAM NG'UNI (2005) ZR 57**

LEGISLATION REFERRED TO:

i. **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997 AS READ WITH EMPLOYMENT ACT, CHAPTER 268 OF THE LAWS OF ZAMBIA SECTION 26B**
ii. **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1989 SECTION 15C REPEALED**

WORKS REFERRED TO:

a) **HALSBURY LAWS OF ENGLAND, 4TH EDITION VOL. 44(1) paragraph 287**

This is an appeal against the Judgment of the Industrial Relations Court (IRC) delivered on 5th March, 2014, ordering the Appellant to pay the Respondent terminal benefits from the time he was declared redundant to the date he would have reached normal retirement because he was unfairly dismissed.

Facts leading to this litigation are substantially not in dispute. The Respondent was a senior member of staff in the Appellant. He held the position of Senior Sectional Ventilation Officer (SSVO)-underground at Nchanga Division when he was declared redundant. According to the notice of redundancy, his contract of employment was terminated ***"following a decision by the Company to rationalise senior staff structures and manning levels due to contraction, cessation of some operations, and technical changes."*** The Respondent was informed that his last working day was 15th December, 1993 and that he would be paid and was subsequently paid three months' salary in lieu of notice, redundancy compensation as provided for under the conditions of employment and service, as well as his terminal benefits.

On 19th April, 1999, the Respondent brought an action against the Appellant in the IRC, alleging unfair dismissal. According to the Respondent's testimony, he discovered one year and ten months after his redundancy, that he was the only one in the position of SSVO who was declared redundant. That those who were serving in the same position in other divisions were merely downgraded to the position of Sectional Ventilation Officer.

He also learnt through former workmates that contrary to his letter of redundancy, his position was never abolished. That in fact soon after he left employment, an employee named Peter MOONGA, who was a grade below him, was performing the function of SSVO-underground. That when Mr. MOONGA retired in 2000, a Mr. Jeffrey KAMANA took over the position and that when Mr. KAMANA retired in 2004 he was replaced by a Mr. Romanos MWANSA. To support his evidence, the Respondent relied on an internal memorandum dated 20th October, 1995, which was sneaked out of the Appellant Company, and was authored by Mr. MOONGA in his capacity as SSVO-underground.

The second or alternative allegation was that the Appellant never engaged the Respondent on the possibilities of a substitute

position prior to the redundancy, in accordance with his conditions of employment and service. That all that was required of the 108 senior members of staff who were handed down redundancy letters on 15th December, 1993 was to make comments on the contents of the letters. The Respondent told the Court below that he elected not to make any comment because he had assumed that the redundancies affected all ZCCM Divisions. He complained that after discovering that not all of them were affected he wrote to the Appellant Company to be reinstated at a lower grade but his request went unanswered.

The Respondent presented two grounds in his Notice of Complaint. The ground which is relevant to this appeal stated that-

> **"The Complainant's position of Senior (Sectional) Ventilation Officer has not been abolished and further or in the alternative the Complainant was not offered alternative position as required by the conditions of service."**

Among the reliefs sought was a declaration that his termination was null and void, payment of salary and allowance arrears from date of termination up to date of judgment, interest at the rate of 49 per cent on all moneys found due and costs.

The Appellant filed an answer in response to the Respondent's Notice of Complaint on 13th October, 2004. One, John LUNGU, deposed in the affidavit supporting the answer that the Respondent's position as SSVO was abolished during restructuring and down-sizing of operations in 1993, and that there was no contractual obligation on the part of the Appellant to find him alternative employment.

According to Mr. LUNGU, the number of workers in the Respondent's department was actually reduced from nine to six during restructuring in 1993 and that further restructuring of the Appellant's operations in 1995 resulted in the creation of two lower positions of Sectional Ventilation Officer, which positions were given to Mr. MOONGA and a Mr. F. MANGALA. The Appellant exhibited two organisational charts to demonstrate the structure in the affected department before and after reorganisation in 1993.

From the record, it would appear that the Appellant did not call any witness because the Appellant had difficulty locating its witness, therefore, the Court directed that the matter should proceed on Mr. LUNGU's affidavit evidence. In addition to this, the Appellant filed written submissions on which they relied.

The IRC considered both the oral and documentary evidence and submissions before it. In deciding the issues for determination, the Court had recourse to Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i] as read with the **EMPLOYMENT ACT** Chapter 268 of the Laws of Zambia which contains detailed provisions on termination by redundancy under oral contracts of service. The said Section provides inter alia-

> **"(1) The contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to-**
> **(a) the employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged; or**
> **(b) the business ceasing or reducing the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable going concern.**
> **(2) Whenever an employer intends to terminate a contract of employment for reasons of redundancy, the employer shall-**
> **(a) provide notice of not less than thirty days to the representative of the employee on the impending redundancies and inform the representative on the number of employees to be affected and the period within which the termination is intended to be carried out;**
> **(b) afford the representatives of the employees an opportunity for consultations on-**
> **(i) the measures to be taken to minimize the terminations and the adverse effects on the employees;**
> **(ii) the measures to be taken to mitigate the adverse effects on the employees concerned including finding alternative employment for the affected employees;**
> **(c) not less than sixty days prior to effecting the termination, notify the proper officer of the impending terminations by reason of redundancy and submit to that officer information on-**
> **(i) the reasons for the termination by redundancy;**
> **(ii) the number of categories of employees likely to be affected;**
> **(iii) the period within which the redundancies are to be effected; and**

(iv) the nature of the redundancy package."

The Court below interpreted the above provisions as outlining three ways in which redundancies could be handled, namely consideration of alternatives, consultation, and proper selection procedures. On the question of consultation, the Court relied extensively on the English case of **MUGFORD V MIDLAND BANK PLC**[1] where, among others, it was held that:-

1. **If there is no consultation with the trade union or individuals when redundancies are contemplated, a dismissal will normally be unfair unless a reasonable employer would have concluded the consultation to be an utterly futile exercise.**

2. **Consultation with the trade union does not of itself release the employer from an obligation to consult individuals concerned.**

3. **It will be a question of fact and degree for the Court to consider whether such consultation as had taken place was so inadequate as to render a dismissal unfair. (The lack of consultation by itself does not automatically lead to a finding of unfairness)**

4. **If a dismissal is unfair because of failure to consult, the Court must consider whether consultation would have made any difference or whether the employee would have had a chance of being retained in his employment.**

In terms of proper selection procedures, the IRC noted that unfair selection for redundancy can amount to unfair dismissal.

On the evidence, the Court found that the Respondent's redundancy was done in line with Section 26B (1) (b) of the

EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997[i] which states-

> **"(1) The Contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to-**
> **(b) the business ceasing or reducing the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable going concern.**

The Court however found that there was no evidence to show that the Respondent was given an opportunity for consultation or that any measures were taken to minimise the termination by redundancy and the adverse effects on the Respondent. That there was nothing to satisfy the Court that there was any consideration of alternative employment and that it was unclear how the decision to select those to be declared redundant was made; what information was taken into account; or, upon what criteria the information the Appellant had was assessed.

The Court felt that with the absence of consultation and the lack of a transparent selection procedure and consideration of alternative ways in dealing with the redundancy, the Respondent may have had a point in concluding that termination was not by reason of redundancy and that it was a sham.

Relying on, among others, the case of **ZAMBIA CONSOLIDATED COPPER MINES V JAMES MATALE**[2], the Court invoked its power to delve behind the real reason given for termination and held, based on the internal memorandum, that the Appellant had not shown that the real reason for termination was redundancy.

At the end of the day, the Court ordered the Appellant to pay the Respondent his dues from 15th December, 1993 the date when he was declared redundant, to the time he would have been due for normal retirement, with interest at the Bank of Zambia short term lending rate from 15th December, 1993 to the date of the action and costs.

Dissatisfied with this Judgment, the Appellant has appealed to this Court. On 2nd May, 2014, he filed a memorandum of appeal containing five grounds of appeal, namely-

1. **That the Court below erred in law and in fact when it took note of provisions of section 26B of the Employment (Amendment) Act No. 15 of 1997 relating to redundancy as well as the undisputed evidence on record that at the time the Respondent herein was made redundant, the Appellant was undergoing restructuring and rationalising process it went on to find that the Respondent should be paid his dues with interest from 15th December, 1993 to the date he would have been due for his retirement.**

2. **That the Court below erred in law and in fact when though it took note of the provisions of Section 26B of the Employment**

(Amendment) Act No. 15 of 1997 relating to redundancy, it found that the Respondent's employment was unfairly terminated despite undisputed evidence on the record that at the time that the Respondent was made redundant, not only were the staff levels in the department reduced from nine to six but also the position that he held prior to being made redundant was also abolished.

3. **That the Court below erred in law and in fact when despite taking note of the provisions of Section 26B of the Employment (Amendment) Act No. 15 of 1997 relating to redundancy and the fact that at the time the Respondent was made redundant the Appellant was undergoing restructuring it disregarded evidence of the fact that two junior positions were created following the abolishing of the Respondent's position and that Peter MOONGA (whose position as Senior Sectional Ventilation Officer was unsubstantiated) held one of these junior positions hence the redundancy was justified.**

4. **That the Court below erred in law and in fact when despite applying its mind to the case of MUGFORD V MIDLAND BANK PLC, it held that there had been insufficient information provided to establish what had been taken into account to make the Respondent redundant based on the purported lack of consultation with the Respondent despite the fact that by the Respondent's own admission, he had been asked to comment on the decision to make him redundant and he declined to do so of his own volition.**

5. **That the Court below erred in law and in fact when it made a finding in favour of the Respondent based on the fact that the Appellant had failed to take steps to secure alternative employment for the Respondent before declaring him redundant despite the fact that the evidence on record did not suggest a contractual obligation on the part of the Appellant to do so and further it was not a guarantee that such alternative employment would have been found had steps been taken to that effect.**

At the hearing of the appeal, Counsel for the Appellant was not in attendance. But we noted that he filed his heads of argument on behalf of the Appellant on 27th October, 2014 in which all the five grounds of appeal were argued together.

We observed also that the Appellant had filed an amended memorandum of appeal on 6th July, 2016 with two new grounds of appeal but no leave was obtained to amend the grounds of appeal. As this was done in disregard to Rule 58 (3) of the **SUPREME COURT RULES,** Chapter 25 of the Laws of Zambia, we will, accordingly, disregard the amended memorandum of appeal for being incompetent before us, and proceed on the basis of the earlier grounds of appeal.

The Appellant's argument in the main was that the Court below fell in error when it premised its Judgment on a law that was enacted in 1997 to find the Appellant liable for non-compliance in terminating the Respondent's employment by way of redundancy in 1993.

That Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i] which the Court relied on had not been enacted at the time that the Respondent was declared redundant. According to Counsel for the Appellant, the applicable law, though repealed, was Section 15C of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1989**[ii] which dealt with redundancy payment. This Section provided that-

"2. For purposes of this section, an employee's contract of service shall be deemed to be terminated by reason of redundancy if the termination is wholly or partly due to-

a. The fact that the employer has ceased to or intends to cease on the business for purposes of which the employee was employed...

b. The fact that the requirement of that business for employees to carry out work of a particular kind in the place where he was so employed has ceased or diminished or expected to cease or diminish."

Counsel contended that Section 15C did not require an employer to make consultations with an employee or his or her representative or to fulfil any other requirement for that matter, save to make the requisite payment upon redundancy. That in this respect, even the case of **MUGFORD V MIDLANDS BANK PLC**[1] on which the IRC placed much reliance in its Judgment was merely persuasive authority and was not binding on the Court in the same way as a statute.

Counsel argued that despite not being obliged to consult, the Appellant gave the Respondent an opportunity to react to the termination but on his own admission in Court, he elected to remain silent. This was in addition to the Court's finding that there was indeed restructuring in the Respondent's department and that there was no contractual obligation on the part of the employer to procure alternative employment for the Respondent.

In conclusion, Counsel for the Appellant submitted that since the law on which the Court below premised its Judgment was wrong, the finding of unfair dismissal too was wrong having been based on the purported failure by the Appellant to comply with Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i]. Counsel urged us to find that the Respondent had failed to discharge his evidentiary burden to demonstrate that he was unfairly dismissed. For this proposition, he relied on the case of **WILLIAM MASAUSO ZULU V AVONDALE HOUSING PROJECT LIMITED**[3] where we held that a plaintiff who has failed to prove his case cannot be entitled to Judgment, whatever may be said of the opponent's case.

Counsel for the Respondent filed heads of argument in response to the Appellant's arguments on 27th February, 2015, on which he relied. In the arguments, Counsel conceded that the IRC erred at law by applying Section 26B of the **EMPLOYMENT AMENDMENT ACT NO. 15 OF 1997**[i] in retrospect, to a redundancy that occurred in 1993. He, however, maintained that the Court was on firm ground on the other aspects of the ***ratio decidendi*** on which it anchored its findings.

The specific findings of the Court which Counsel for the Respondent agreed with related to the fact that there were no measures taken to minimise the termination by redundancy and the adverse effects on the Respondent. Further, that the memorandum signed by Mr MOONGA, exactly a year and ten months after the Respondent had been declared redundant, suggested that the position of SSVO was still subsisting. Also that there was no evidence to show that the Appellant had exercised their duties and obligations in their rationalising of senior staff structures and manning levels as indicated in the redundancy letter.

In Counsel's view, the question for determination was not whether or not the IRC properly imported provisions of Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i] into the Respondent's 1993 redundancy, but whether the Appellant properly, procedurally and lawfully declared the Respondent redundant.

To support this argument, Counsel referred us to the portion in the Notice of Redundancy which stated that -

"Following the Company decision to rationalise the senior staff structures and manning levels thereof, due to contraction, cessation of some operations and technical changes, we regret to advise you that you have been declared redundant."

Counsel submitted that when this letter of redundancy was contrasted with Mr. John LUNGU's affidavit in support of the Appellant's answer, and Mr. MOONGA's memorandum drawn on 20th October, 1995, there was a contradiction. Our attention was drawn specifically to paragraphs 7 and 8 of the affidavit where Mr. LUNGU averred that-

"7. In 1995, there was further re-organisation of the Respondent Company which led to the establishment in the Ventilation Department of two lower jobs of Sectional Ventilation Officers which jobs were given to P. MOONGA and F. MANGALA.

8. The Complainant was a Senior Sectional Ventilation Officer while the two jobs which were created in 1995 were for Sectional Ventilation Officers."

Counsel argued that there was a sharp contrast between this deposition and the 1995 memorandum where Mr. MOONGA was referring to himself as SSVO, the position that the Respondent held in 1993, at the time that he was declared redundant. In his view, the memorandum could only mean that the position of SSVO was neither scrapped nor restructured, and that it was still subsisting. More so that Mr. MOONGA copied the memorandum to among

others, the Sectional Ventilation Officer Upper Level, a position held by a person in a lower rank.

Counsel for the Respondent submitted that the organisational charts exhibited by Mr. LUNGU were not official documents of the Appellant Company and could not be relied on as they were not produced on Zambia Consolidated Copper Mines official headed paper.

In submission, Counsel urged us to find that the Respondent's redundancy was not properly done and that the awards made by the Court below were fair in the circumstances of the case.

We have considered the Judgment of the Court below, the evidence on record and the submissions of Counsel. In this appeal, we intend to deal with the first, second, third and fourth grounds of appeal together as they revolve around the same issue, and the fifth ground of appeal separately.

To begin with, both the Appellant and the Respondent agree that the Court below erred at law when it applied the provisions of Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i] to make a determination as to whether the Respondent's contract was terminated by way of redundancy in 1993.

We agree that the Court below misdirected itself by applying provisions of Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1997**[i] retrospectively to a redundancy that occurred in 1993. In the case of **ZAMBIA CONSOLIDATED COPPER MINES V JACKSON MUNYIKA SIAME AND 33 OTHERS,**[4] we stated that there is always a presumption that legislation is not intended to operate retrospectively but prospectively.

In this appeal, Counsel for the Appellant argued forcefully that the correct provision that applied to the Respondent's redundancy was Section 15C of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1989** and that this law did not impose a requirement on the employer to consult or indeed meet any other requirement, save to make the requisite payment. It was the position of the Appellant that since the law applied by the Court was wrong, the finding that the Respondent was unfairly dismissed was equally wrong.

The Respondent on the other hand argued that the issue in this appeal is not whether the Court wrongly imputed provisions of Section 26B of the **EMPLOYMENT (AMENDMENT) ACT OF 1997**[i]

into the Respondent's redundancy but whether the Appellant acted properly, procedurally and lawfully when declaring the Respondent redundant.

Upon perusal of the record, we find that it was established that there was a restructuring exercise embarked on in the Appellant Company and that some positions were abolished. The organisational chart at pages 34 and 35 of the record of appeal shows that the number of staff in the Respondent's Department was reduced from 9 to 6. The Respondent conceded in his evidence that a total of 108 employees in the company were declared redundant.

In addition, the reasons for termination were clearly outlined in the Respondent's notice of redundancy which stated that-

> **"Following the Company decision to rationalise the Senior Staff structures and manning levels thereof, due to contraction, cessation of some operations and technical changes, we regret to advise you that you have been declared redundant.**
> **Your last working day will therefore be 15 December, 1993.**
> **Accordingly, you will be paid three months' salary in lieu of notice.**
> **You will therefore be entitled to redundancy compensation as provided for under the Conditions of Employment and Service. In addition, you will also be paid your terminal benefits.**
> **Details of the redundancy compensation due to you can be obtained from the staff office..."** (Emphasis ours)

In our view the reason for terminating the Respondent's employment was consonant with Section 15C (2) (b) of the **EMPLOYMENT (AMENDMENT) ACT NO. 15 OF 1989**[ii]. This

Section was not as elaborately worded as the 1997 amendment. It simply stated:-

> **"2. For purposes of this section, an employee's contract of service shall be deemed to be terminated by reason of redundancy if the termination is wholly or partly due to-**
> **a. The fact that the employer has ceased to or intends to cease on the business for purposes of which the employee was employed...**
> **b. The fact that the requirement of that business for employees to carry out work of a particular kind in the place where he was so employed has ceased or diminished or expected to cease or diminish."**

Section 26B of the **EMPLOYMENT (AMENDMENT) ACT NO 15 OF 1997**, on the other hand, provides a more detailed procedure for redundancy. Section 26B subsection 2 in particular states that-

> **(2) Whenever an employer intends to terminate a contract of employment for reasons of redundancy, the employer shall-**
> **(a) provide notice of not less than thirty days to the representative of the employee on the impending redundancies and inform the representative on the number of employees to be affected and the period within which the termination is intended to be carried out;**
> **(b) afford the representatives of the employees an opportunity for consultations on-**
> **(i) the measures to be taken to minimize the terminations and the adverse effects on the employees;**
> **(ii) the measures to be taken to mitigate the adverse effects on the employees concerned including finding alternative employment for the affected employees;**
> **(c) not less than sixty days prior to effecting the termination, notify the proper officer of the impending terminations by reason of redundancy and submit to that officer information on-**
> **(i) the reasons for the termination by redundancy;**
> **(ii) the number of categories of employees likely to be affected;**
> **(iii) the period within which the redundancies are to be effected; and**
> **(iv) the nature of the redundancy package."**

Under the common law, to which our jurisdiction submits, redundancy is treated as an act of last resort, when all other options have been considered. Our reading on the subject has shown that under common law, courts have not treated cases where employees are declared redundant lightly, in instances where procedure has not been followed. We had sight of the case of **VOKES LIMITED V BEAR**[5] where the Court had occasion to review Section 1(2) (b) of the 1965 **REDUNDANCY PAYMENT ACT OF ENGLAND**, which was couched in very similar terms to our repealed Section 15C. The said provision stated-

> **"Dismissal shall be taken to be by reason of redundancy if the dismissal is attributable wholly or mainly to-**
>
> **(b) The fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work in the place where he was so employed, have ceased or are diminished, or are expected to cease or dimish."**

In that case, the Court upheld the finding of the Employment Tribunal of unfair dismissal and stated-

> **"That there was no compelling reason why the axe should fall until the employers had done their best to help the employee... if the employer had made all reasonable attempts to place the employee in the group and had failed then the time might have come when it would be reasonable for them to regard the redundancy as a sufficient reason for the dismissal."**

In the case in *casu*, the Court below also relied on the 1997 case of **MUGFORD V MIDLANDS BANK PLC**[1]. Earlier case law shows that issues of consultation, alternative employment consideration and selection processes were crucial to making a determination as to whether the termination by way of redundancy was fair.

However, notwithstanding the position of the common law, in 1993, when the Respondent was declared redundant, there was in place and in force, a statute, namely, the **EMPLOYMENT (AMENDMENT) ACT No. 15 of 1989** which did not impose an obligation on the employer to consult the employee or his/her representative; to give notice; or, take measures to minimise the adverse effects of the termination of employment by way of redundancy. These obligations were incorporated in the law through the amendment of 1997, with the enactment of Section 26B of **THE EMPLOYMENT ACT**. Much as the common law decisions of the time appear to have insisted on issues of consultation, they cannot override our statute which at the time, did not impose such considerations on the employer. We therefore find merit in the first, second, third and fourth grounds of appeal.

Coming to the fifth ground of appeal, Counsel argued that the Court below erred in finding that the Appellant failed to take steps to secure alternative employment for the Respondent before declaring him redundant. The Court below was of the view that there was nothing to stop the Appellant to endeavour to find alternative employment before declaring an employee redundant, more so that the Respondent was willing to accept an offer of an alternative job at a lower grade.

The evidence on record, establishes that 108 employees were declared redundant on 15th December, 1993. They were given an opportunity to react to the redundancy letter. The Respondent in his own words stated that-

> **"All senior staff members were called by (the) Manager Mining to receive confidential letters. The number was 108. I was one of the ones called. We met in the underground Superintendent's office. We were told to open our letters and read them and asked for comments. My letter was the one on page 5. I did not make any comments. I assumed all divisions of ZCCM were affected."**

It was also the Appellant's position that positions in the Respondent's section were reduced from 9 to 6. It would appear that in this whole exercise, the Appellant was downsizing.

The fifth ground of appeal recognises that ***"the evidence on record did not suggest a contractual obligation on the part of***

the Appellant" to find alternative employment for the Respondent and that there was no guarantee that such alternative employment would have been found. Indeed, the Appellant retrenched 108 employees. This was a big number. To argue that alternative employment should have been found for all of them would be to defeat the very purpose of the exercise. The lack of a binding obligation also means that even for a lower number of employees, the Appellant can only endeavour to do its best to find alternative employment, but it is not bound to do so. We therefore find merit in the fifth ground of appeal.

From the foregoing, we find that there is merit in this appeal and it is, accordingly, allowed. Consequently, the order of the Court below that the Respondent be paid his dues from 15th December 1993 to the date he would have been due for his retirement together with interest, falls away. As evidenced by his last pay statement on page 27 of the record, the Respondent was already paid 3 months' salary in lieu of notice, terminal leave pay and redundancy compensation as provided for in his conditions of service. He is not, therefore, entitled to any other payment. In any event, even if the appeal had not succeeded, the Order of the lower

Court was doomed to fail on account of what we stated in the case of **KITWE CITY COUNCIL V WILLIAM NGUNI**[6] that-

> **"It is unlawful to award a salary or pension benefits, for a period not worked for because such an award has not been earned and might be properly termed as unjust enrichment."**

Each party shall bear its own costs.

I.C. Mambilima
CHIEF JUSTICE

R.M.C. Kaoma
SUPREME COURT JUDGE

N.K. Mutuna
SUPREME COURT JUDGE