

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

APPEAL NO. 27/2005

BETWEEN:

MAAMBA COLLIERIES LIMITED

APPELLANT

AND

KAMAYA KAMASONGO & 19 OTHERS

RESPONDENTS

Coram: Sakala, CJ. Chibesakunda and Mushabati JJS.

On 21st September 2006 and 6th June 2007

For the Appellants

Mr J Kalokoni of Messrs Kalokoni and Company

For the Respondent

Mr C L Mundia of C L Mundia and Company

JUDGMENT

Chibesakunda, JS, delivered the Judgment of the Court.

Cases referred to:

1. Duke Bedford vs. Ellis (1901) AC.
2. Mulenga Vs ROCOM Industries, 1978 ZLR page 21.
3. Million Masenke and 62 others vs. Maamba Collieries Limited - SCZ8/11/117/2003.

Legislation referred to:

3. Order 39 Rule 8 of the High Court Rules.

This is an appeal against the decision of the High Court sitting as an Appeal Court from the Deputy Registrar's decision.

The Learned Deputy Registrar in assessing damages of the Respondents had ruled that interests of the judgment debt which was entered as a global sum be effective from various dates of the Respondents retirements. When the matter came before the High Court, the High Court upheld the decision of the Learned Deputy registrar hence this appeal.

The brief history of this appeal case is that the twenty (20) Respondents were former employees of the Appellants. The Appellant had retired the Respondents on medical grounds on various dates. The Respondents then took out a representative's claim against the Appellant. The Respondents amended the Statement of Claim on 22nd October 2004 claiming a total sum of K786,916,458.58 as the total terminal benefits including allowances. The Appellant had admitted before court owing the Respondents the sum of K586,966,000.00. A judgment by admission therefore was entered in that sum of K586,966,000.00 with interest effective from the various dates of retirement. When the matter came before the High Court, the High Court upheld the decision of the Deputy Registrar. The Respondents has now to appealed to this court this judgment.

The only argument advanced by Mr. Kalokoni on behalf of the Appellant was that since the action was a representative action involving twenty (20) former employees as per English case of *Duke Bedford vs. Ellis* (2), this court must hold that there were common interests, common grievance and common reliefs being sought. Therefore according to him, logically there had to be a common starting point for the purpose of computing the retirement packages as well as interests. He submitted that that common date ought to be the date of the Writ. He referred to the

decision of the High Court in the case of *Million Masenke and 75 others vs. Maamba Collieries Limited. (3)*, where the court held that the date of Writ was the proper date of effecting the interest on the judgment debt. He argued that that was good law. He went on to argue that that argument is supported by the fact that although the Respondents were claiming a lump sum K786, 916,458,58, if interests as ordered by the Learned Deputy Registrar and endorsed by the High Court were to be allowed to be effective on the admitted sum of K586, 966,000.00 from various dates of the Respondent retirements date, that would amount to interests being slapped on the judgment debt twenty times. That would amount to compound interest being charged on the judgment debt. That would be wrong in principle. In the alternative he argued that if interests were to be effective from each individual retirement date the global figure of K586,966,000.00 would be broken down to individual Respondents' entitlement. This would be very difficult to administer.

Mr. Mundia's response to this argument is that, the court had discretion in determining the rate of interests and the date that such interest had to be effective. In the given circumstances of this case, the Learned Deputy Registrar's decision to award interests with effect from each corresponding date of retirement was justified. He explained the circumstances, which he argued, justified this approach by the Learned Deputy Registrar. According to him, this approach was justifiable because firstly there were twenty (20) Respondents who are retired on medical grounds and secondly, these Respondents they had not received their entitlements immediately after they retired in 2003. They were only paid in September 2004. He further argued that since the court exercised its

discretion in making that decision, that decision could only be reversed if it was wrong in principle.

The Learned trial Judge relying on *Mulenga Vs ROCOM Industries* (4) held that as the Learned Deputy Registrar's decision was justified based on this discretion and therefore upheld the decision of the Learned Deputy Registrar. He held that the Learned Deputy Registrar exercised his discretion under *Order 36 rule 8 of the High Court*(5) judiciously. As already stated, the Appellant being aggrieved by this decision has appealed to us.

Before us Mr. Kalokoni and Mr. Mundia relied on their written heads of arguments. In their written heads of arguments Mr. Kalokoni raised the same argument he raised before the High Court. The upshot of Mr. Kalokoni's argument is that the Learned Deputy Registrar misdirected himself in law in awarding interest on the ordered lump sum from the date of each Respondents retirement date in a group action. This was contrary to the established principles of law. He once again pointed out that there were commonality grievances, and of reliefs being sought which would be based on commonality of interests against the Respondent. Mr. Mundia also echoed his argument before the High Court that as per *Order 36 rule 8 of the High Court* (5) as amended by *SI.71 of 1997*(6), which says: '*where the judgment or order is for the sum of money, interests rates shall be as per average short term deposit rate per annum prevailing from the date of the court's action or Writ as the court may direct.*' According to him the Learned Deputy Registrar as confirmed by the High Court used his discretion judiciously.

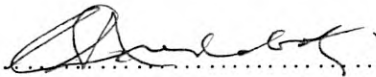
We have seriously considered the argument before us. We hold that since the parties agreed on a global amount, the interest had to be effective from the date of the Writ. We see this as the only option because it could be very difficult to break down the global sum to now calculate interests of each retiree. We therefore find merit in the appeal. We set aside the High Court Order and order that interests at the average short term deposit rate per annum be entered from the date of Writ up to the date of the Deputy Registrar's judgment and thereafter at the recommended Bank of Zambia lending rate up to the date of payment. We make no order on costs.



.....
E. L. Sakala
CHIEF JUSTICE



.....
L. P. Chibesakunda
SUPREME COURT JUDGE



.....
C. S. Mushabati
SUPREME COURT JUDGE