

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

APPEAL NO. 192 OF 2006

(Civil Jurisdiction)

BETWEEN:

EDWARD MWAPE - APPELLANT

And

MOPANI COPPER MINES PLC - RESPONDENTS

Coram: Chirwa, Chibesakunda and Mushabati JJS.

On 6th March, 2007 and 5th June, 2007.

For the Appellant: I.C.T. Chali of I.C.T. Chali and Company.

For the Respondent: C. Tafeni – Legal Counsel.

JUDGMENT

Mushabati, JS., delivered the judgment of the Court.

This is an appeal against the judgment of the Industrial Relations Court dismissing the appellant's claims against the respondent.

The appellant claimed that the respondent had wrongfully or neglected to deploy him in accordance with the letter of offer written to him on 24th February, 2000. He was therefore, seeking for an order that he be deployed by the respondent into its services and that he be paid salary arrears and interest from March, 2000. In the alternative he pleaded for damages for breach of contract.

In these proceedings we shall continue to refer to the appellant as the complainant and the respondent as the respondent as this is what they were in the court below.

The undisputed evidence on record is that the complainant originally worked for the Zambia Consolidated Copper Mines Ltd (ZCCM Ltd) from 1969 until the year 2000. In the year 2000 on 24th February, to be specific, he was written to informing him of his transfer to the respondent company because his former employers were under privatization. The respondent also wrote him on the same day offering him employment from the date on which it was to take over ownership of the assets of ZCCM Ltd. Not long after he had received these letters the complainant was written yet another letter on 31st March, 2000 informing him of his transfer to the Operations Centre of the ZCCM Ltd and in another letter written on the same day he was laid off with effect from 1st April, 2000 from Operations Centre. His former employers wrote him another letter dated 30th May, 2000 informing him of having been declared redundant with effect from 31st May, 2000 and that his package was to be worked in accordance with the 1997 redundancy agreement.

In reviewing this evidence the court below concluded that the complainant had no valid claim against the respondent as it lacked merit and it was dismissed hence the appeal before us now.

The complainant filed two grounds of appeal which were as follows:-

- 1. The court below erred in both fact and law when it found that the appellant had remained an employee of ZCCM Limited even after 1st April, 2000.*

2. *The court below failed to consider the legal implications of the respondent's letter of offer of employment dated 24th February, 2000 which was accepted by the appellant on 4th March, 2000 and approved by the Senior Labour Officer on 4th March, 2000, namely that the said letter constituted a binding contract of employment between the respondent and the appellant as from 1st April, 2000.*

In addition to the above grounds of appeal the complainant filed in written heads of argument upon which he entirely relied.

The counsel for the respondent also filed in written heads of argument on which he too relied.

The complainant's grounds of appeal were argued as one. The argument was basically on the ground that the complainant had been written to offering him a new job with the respondent company and that he accepted the offer and as such he was deemed to have been an employee of the respondent company. ZCCM Ltd and Mopani Copper Mines PLC were two different entities of which the ZCCM Ltd could not therefore, terminate the complainant's services with the respondent. The complainant was instead supposed to have been deemed to have taken up his position with the respondent on the date the assets, that belonged to ZCCM Ltd, were taken over by the respondent. He was never informed the date of the take over. Neither was his contract with the respondent company terminated and so it remained in force. His engagement date, though not communicated to him, was 1st April, 2000. This being the case the ZCCM Ltd had no authority to transfer him to its Operations Centre.

In response to the above it was argued on behalf of the respondent that the complainant's appeal on the 1st ground was in fact against findings of fact which raised no finding of law so as to entitle him to an appeal. It was further argued that in fact the complainant was by letter dated 31st March, 2000 transferred to the Operations Centre because he had been identified as being excess to the new company's (MCM's) labour requirements. The bottom line of correspondence to the complainant was that he, in the final analysis, remained in the employment of ZCCM Ltd which later terminated his services.

In considering the evidence and arguments advanced in this appeal we are satisfied that apart from the outlined undisputed facts in the evidence above, we are satisfied that though the appellant was written to, informing him of his transfer to the respondent company, he never physically worked for it. The appellant was transferred to the Operations Centre within the ZCCM Ltd before he took up his new assignment with the respondent.

The complainant said, in his evidence, that he did not know the date he was to start working for the respondent company.

The bone of contention, as we see it in this case, is whether the complainant ever became an employee of the respondent company after he was written to.

The respondent's letter of 24th February, 2000 to the complainant, at page 73 of the record of appeal, has the following clause in the first paragraph: **YOUR EMPLOYMENT WITH MCM SHALL COMMENCE FROM THE DATE ON WHICH MCM TAKES OWNERSHIP OF THE ASSETS.**

According to the evidence of R.W.1 Tubanje Silungwe the assets of ZCCM Ltd were taken over on 1st April, 2000. So in principle the complainant's appointment ought to have been effected on 1st April, 2000.

In the interim the evidence shows that before 1st April, 2000 he was transferred to Operations Centre and later declared redundant. There is no evidence that he objected to this transfer. His acceptance of the said transfer to Operations Centre had an effect that he still remained an employee of ZCCM Ltd. He never crossed over to the respondent company. The court below found this as fact.

The issue was however, not one of fact only but it had a legal aspect in it. The legal aspect was on what effect the letters written to him, offering him employment with the respondent company, had. Did they create any legal binding relationship between the complainant and the respondent? His acceptance of the offer, on the face of it, shows that a valid contract was entered into. However, in this case the contract was conditional. It was subject to the fulfillment of one condition, the taking over of the assets by the respondent. The contract had yet to become binding. The complainant, before the condition precedent to his new contract was fulfilled, was transferred to Operations Centre and he himself accepted the transfer because he was retired or declared redundant from there. His acceptance of the transfer to Operations Centre of ZCCM Ltd voided his conditional contract with the respondent company because by his own conduct, as already alluded to above, he retained his "status quo" as an employee of ZCCM Ltd.

We do not therefore, agree with his counsel's argument that it was ZCCM Ltd which terminated his contract with the respondent. The

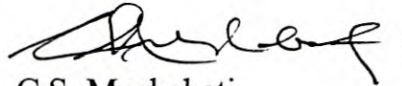
We have no doubt that the court below was on firm ground when it dismissed the complainant's claims as they lacked merit. We are therefore dismissing his appeal. Each party shall bear its own costs.



D.K. Chirwa
SUPREME COURT JUDGE



L.P. Chibesakunda
SUPREME COURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE