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IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

Appeal No. 219/2004

BETWEEN:

PANAYIOTIS NEOCLEOUS	1ST APPELLANT
ALEX NEOCLEOUS	2ND APPELLANT
DRILL MASTER LIMITED	3RD APPELLANT
H-TWO O LIMITED	4TH APPELLANT

AND

MARIOS SOLOMOU	1ST RESPONDENT
DRILL BUSINESS DIAZ LIMITED	2ND RESPONDENT

Coram: Chirwa, Silomba, JJS and Kabalata, AJS
25th July 2007 and 1st October 2008

For the Appellants: Mr W.M. Kabimba of Messrs Kabimba & Co.
For the Respondents: Mr C. Chuula of Messrs Chuula & Co.

RULING

Chirwa, JS, delivered the Ruling of the court.

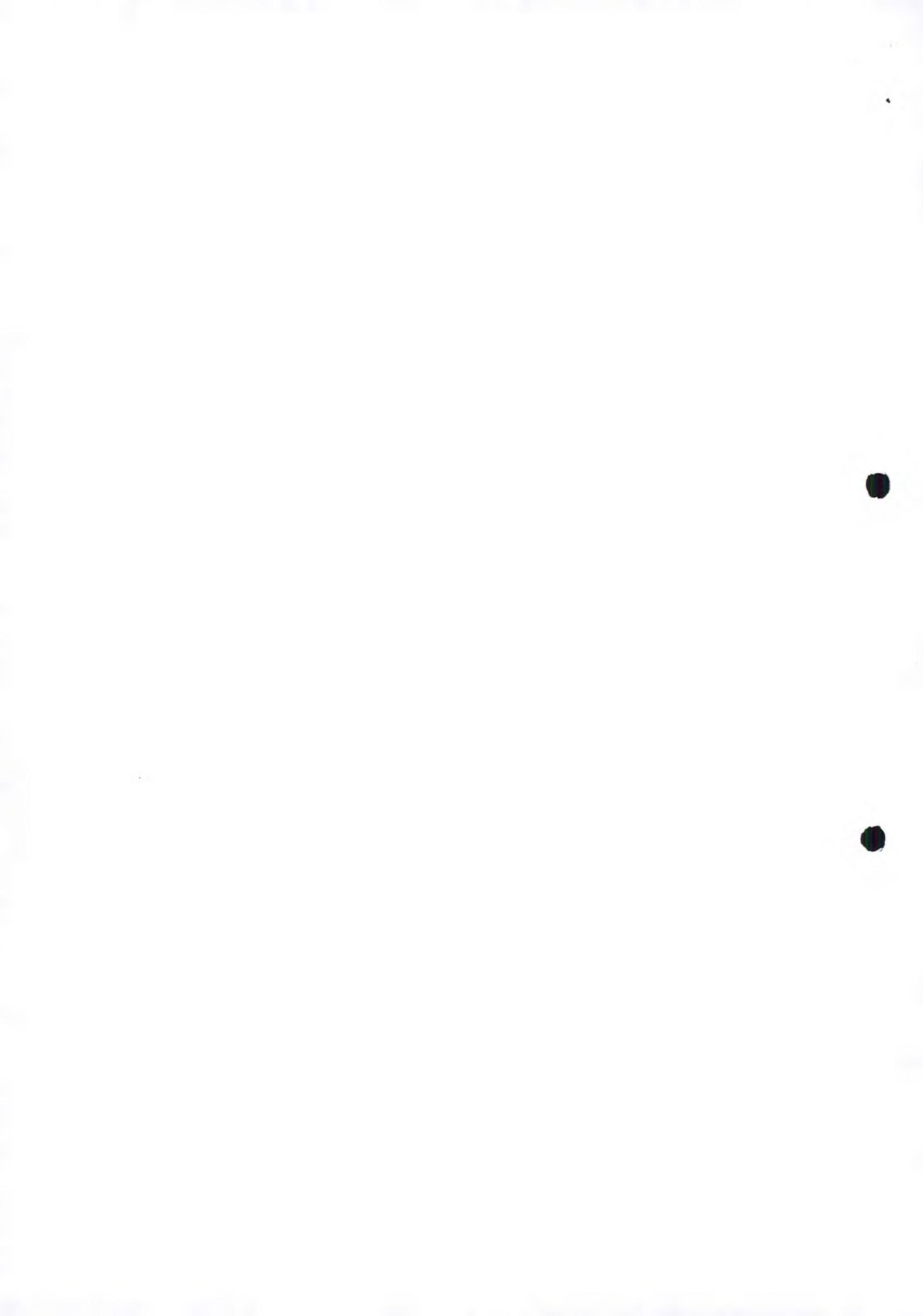
Cases referred to:

- 1. Adam & Harvey Ltd Vs International Maritime Supplies
Company Ltd (1967) 1 All E.R. 533**
- 2. Chibote Ltd, Mazembe Tractor Company Ltd, Minestone
Zambia Ltd, Minestone Estates Ltd Vs Meridien BIAO
Bank (Z) Ltd (in liquidation) (2003) Z.R. 76**

This is a motion under **Rule 78 of the Supreme Court Rules Cap 25** in which the court is being asked to correct some accidental slips in its judgment of 29th March 2007. The alleged accidental slips are:-

1. The purchase price of drilling rig and truck to read US\$26,000 instead of US\$24,000.
2. To remove the damages for removal of the rotary head which the appellant did not raise or canvass as a ground of appeal before the court.

Both parties filed heads of argument with authorities on which they relied on when arguing the motion. On the first accidental slip, it was argued that the evidence in the court below as to the cost of the drilling rig and truck was very clear and this was that they cost US\$16,000 and US\$10,000 respectively making a total US\$26,000 and not US\$24,000. We do not think that this is a point that we need to go even in details of the arguments advanced. It is a fact that in our judgment we accepted at J3 that the learned trial Judge



accepted that the drilling rig and truck cost US\$16,000 and US\$10,000 respectively totaling US\$26,000. It was an arithmetical error by coming to US\$24,000. We correct this accidental slip. The judgment should read that the cost of the rig and truck is US\$26,000 and this is the amount to carry interest as ordered by the court below.

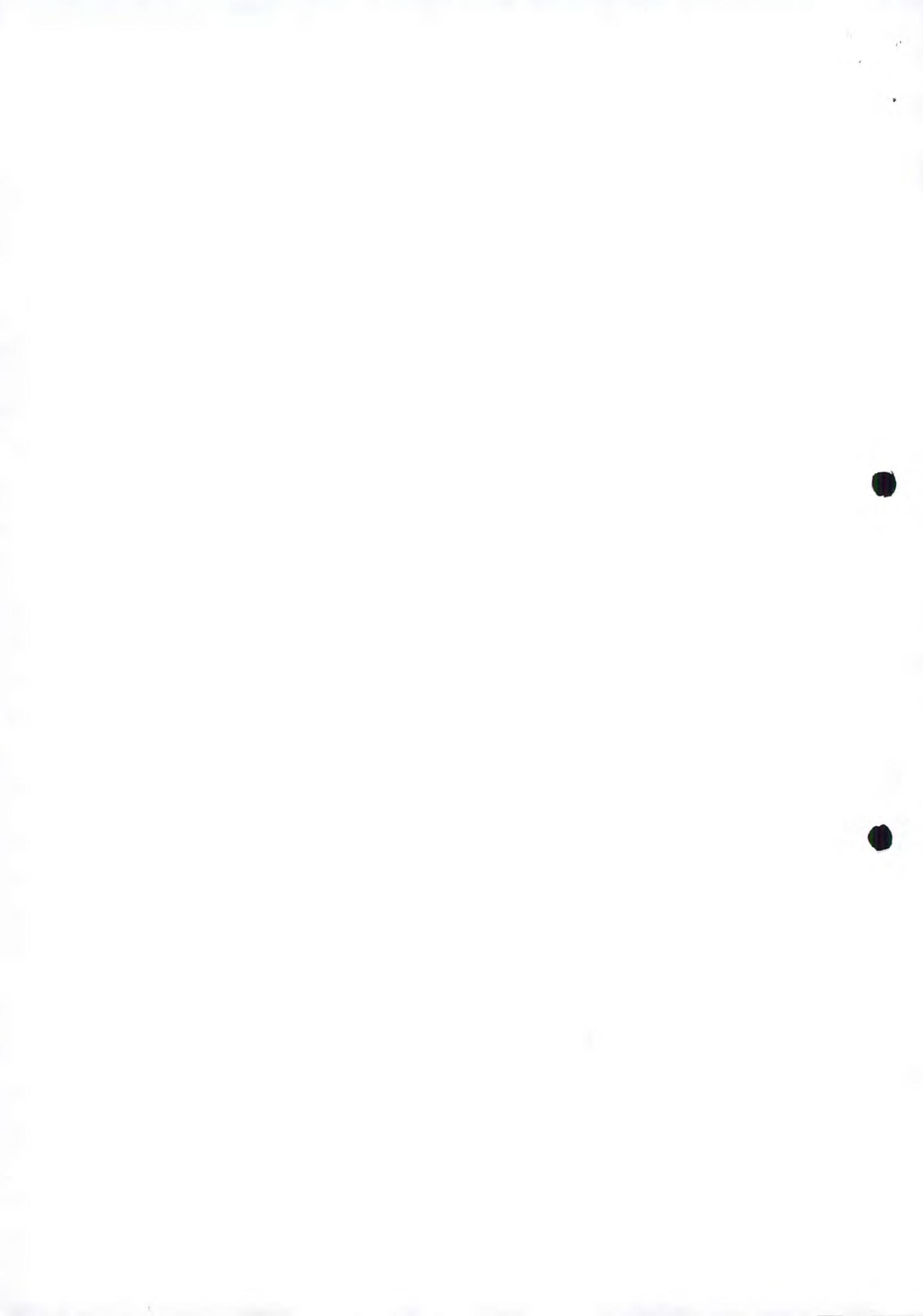
Coming to the alleged second accidental slip of an award for the removal of the rotary head which head of argument was not raised. It was submitted that as the issue of damages for the removal of rotary head was not raised by the appellants in their grounds of appeal, this court made an accidental slip in awarding the damages and the case of ADAM & HARVEY LTD Vs INTERNATIONAL MARITIME SUPPLIES COMPANY LTD(1) was relied upon. It was submitted that it was not the intention of the court to award what was not asked for in the appeal.

In answer to this accidental slip allegation, Counsel for the appellants submitted that this court, under **Section 15(1) of the Supreme Court Act, Cap 25**, had inherent jurisdiction to

consider matters that were the subject of the proceedings and in exercising this power, the court was doing justice and for this, the case of CHIBOTE LTD, MAZEMBE TRACTOR COMPANY LTD, MINESTONE ZAMBIA LTD, MINESTONE ESTATES LTD Vs MERIDIEN BIAO BANK (Z) LTD (In liquidation)(2) was relied upon.

We have considered this alleged accidental slip. It is true that this court, under **Section 15 of the Supreme Court Act**, can vary, amend or give such judgment as the case may require.

In doing any of those acts, this court cannot do without evidence on record to support it. The power was given to the court so as to do justice. The evidence clearly showed that the respondents had no right over the equipment having sold it to the appellants. The non-use of the equipment entails damages. It is on that basis that, although not argued on appeal and in view of the evidence of this particular case, it was necessary to vary the judgment of the lower court so as to



do justice. It was our intention to do justice. There was no accidental slip. This second accidental slip fails and it is dismissed. For this motion only, each party will bear its own costs.



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D.K. CHIRWA
SUPREME COURT JUDGE



.....
S.S. SIOMBA
SUPREME COURT JUDGE



.....
T.A. KABALATA
ACTING SUPREME COURT JUDGE

