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

Appeal No. 48/1999

BETWEEN:

**CHILUBA MWAPE**

**APPELLANT**

**AND**

**ZAMBIA AIRWAYS Ltd**  
**(In Liquidation)**

**RESPONDENT**

**Coram: Chirwa, Chitengi and Mushabati JJS**  
**21<sup>st</sup> February 2008 and 2<sup>nd</sup> July 2009**

For the Appellant : N/P

For the Respondent : Mr E. Mwitwa, Messrs Sharpe Howard &  
Mwenye

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**RULING**

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**Chirwa, JS., delivered the Ruling of the court.**

**Case referred to:**

**The Attorney General Vs Marcus Kampamba Achiume**  
**(1983) Z.R 1**

We regret for the delay in delivering this ruling and this is due to the fact that the record was misplaced.

When we heard this application, Mushabati, JS, sat on the panel but he has since retired. This ruling, therefore, is by majority.

This is an application under **Rule 78 of the Rules of the Supreme Court, Cap. 25** in which the appellant/applicant is seeking this court to correct its Judgment of 30<sup>th</sup> August 2005. The grounds on which the application is made is that the court in its Judgment referred to the grounds of appeal which had been withdrawn and fresh grounds of appeal substituted; and that the Judgment lacked of law.

At the hearing of this application, the applicant CHILUBA MWAPE, was not present but he had filed detailed heads of argument. The respondent also filed detailed heads of argument and Counsel for the respondent applied that the matter be determined on the written heads of argument and this was granted and this ruling therefore is based on the written heads of argument.

From the detailed heads of argument, it is conceded by the respondent that reference to the original grounds of appeal was wrong but that the Judgment covered the new grounds of appeal that were supported by the written heads of argument.

We would allow this application that reference to original grounds of appeal was a misdirection and the Judgment is corrected accordingly by deleting that portion that refers to original grounds of appeal. But the Judgment also covered the new grounds of appeal which were also supported by written heads of argument. It is not correct for the appellant to say that there were no written heads of argument. There were written heads of argument and the appellant relied on them. Further, we did discuss whether there were good grounds of appeal and whether the appellant was afforded a hearing and after due consideration of the same, we came to the conclusion that the termination of the employment of the applicant was lawful. These were the findings of fact that the lower court came to and there cannot be any appeal against the findings of facts by the Industrial Relations Court unless conditions under which we can interfere with findings of fact by a trial court, as stated in THE

ATTORNEY GENERAL Vs MARCUS KAMPAMBA ACHIUME, exist.

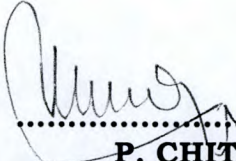
None of the conditions is present in this case.

It follows that the correction of the Judgment as indicated above cannot alter our verdict of dismissing the appeal. The appeal was against the findings of fact that found that the appellant was given an opportunity to be heard on the allegations against him. As we said in our Judgment, although the suspension letter contained more allegations, the charge on which the disciplinary proceedings were founded contained substantially the same allegations as those in the suspension letter. To the extent that our Judgment is corrected by deletion of reference to the original grounds of appeal only, the rest of the Judgment stands; the appellant was lawfully dismissed.

We make no order as to costs.



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**D.K. CHIRWA**  
**SUPREME COURT JUDGE**

  
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**P. CHITENGI**  
**SUPREME COURT JUDGE**

.....  
**C.S. MUSHABATI**  
**SUPREME COURT JUDGE**