IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 67 /2013**

HOLDEN AT NDOLA

(CIVIL JURISDICTION)

BETWEEN:

ZCCM INVESTMENT HOLDINGS PLC **APPELLANT**

AND

INNOCENT KATUYA AND 400 OTHERS **RESPONDENT**

CORAM: Chibesakunda, Ag. CJ, Wood, JS and Lisimba, Ag.JS.

On 3rd June, 2014 and 24th July, 2014.

For the Appellant: **Mr. J. Kaite, Assisted by Ms. Ndovi, Messrs John Kaite Legal Practitioners.**

For the Respondents: **Mr. T. Ngulube, Messrs F.B. Nanguzyambo and Associates.**

JUDGMENT

Wood, JS, delivered the Judgment of the Court.

CASE REFERRED TO:

1. **City Express Service Limited v Southern Cross Motors Limited (2006) Z.R. 263.**
2. **Admark Limited v Zambia Revenue Authority (2006) Z.R. 43.**

LEGISLATION REFERRED TO:

1. **Rules of the Supreme Court, 1999 Edition.**

2. Employment Act, Cap 268 of the Laws of Zambia.

3. Limitation of Actions Act of 1939.

4. Law Reform (Limitation of Actions) Act, Cap 72.

OTHER MATERIALS REFERRED TO:

Halsbury's Laws of England, 4th Edition, Volume 28.

This is an appeal against the ruling of the High Court dismissing a preliminary issue raised by the appellant that the respondent's claim was time barred.

Briefly the facts giving rise to this appeal were that the respondents commenced an action against the appellant on 4th March, 2011 claiming various orders ranging from disclosure of the details relating to their terminal benefits, production of evidence of payment of terminal benefits and exemplary and aggravated damages for the manner in which the appellant handled the issue of the respondents' terminal benefits.

On 8th August, 2012, the appellant filed a notice to raise a preliminary issue on the ground that the respondents' cause of action was statute barred in terms of the Limitation of Actions Act of 1939 and the Law Reform (Limitation of Actions) Act, Cap 72 of

the Laws of Zambia as the alleged cause of action arose in 1994 when the respondents were declared redundant. When the matter came up in chambers, the learned trial Judge was persuaded by the respondents' argument that even though the matter was technically time barred under the Limitation of Actions Act of 1939, there was an acknowledgement of the debt at a meeting held with the then Deputy Minister of Mines and Minerals Development on 21st October, 2005 which meant that time started to run from 21st October, 2005 and not from June 1994 when the respondents were declared redundant.

The appellant was not satisfied with the ruling of the court below and filed in two grounds of appeal. The first ground of appeal was that the court below erred in law and in fact when it held that the action that was commenced by the respondents in the court below under cause number 2011/HB/33 was not statute barred though the contracts that were the subject of the claim terminated in 1994. The second ground of appeal was that the court below erred in law and in fact when it held that the respondents' cause of action accrued on 21st October, 2005 when the respondents held a

meeting with the then Deputy Minister of Mines. The appellant opted to argue the two grounds of appeal as one.

We have considered the ruling appealed against and the arguments advanced on behalf of the appellant and the respondents. The minutes of the meeting of 21st October, 2005 are at pages 148 to 151 of the record of appeal. The meeting tackled the search for the final end of month pay slips which the respondents were demanding. Two sets of pay slips belonging to Mr. S. Lungu and Ms. Inonge Pamela Kazabu were produced and it was found that both these employees were issued with two pay slips. The meeting also considered the redundancy agreement which was the basis for calculating terminal benefits of the employees who had been terminated from employment in June 1994. In conclusion, the meeting decided as follows:

> **"ZCCM-IH management should sit with the leaders of the ex-miners and compare the pay slips of the leaders with the redundancy agreement to see if there were any funds remaining unpaid to the leaders. For this purpose, the two sides should go into the calculations of the terminal benefits together."**

In paragraph 880 of Halsbury's Laws of England, 4th Edition, Volume 28, the following is stated on acknowledgement:

"Every acknowledgement must be in writing and signed by the person making the acknowledgment or by his agent. It must be made to the person or to an agent of the person whose title or claim is to be acknowledged. A person is not an agent for the purpose of making an acknowledgement unless he is duly authorized to make it."

We have not found anywhere in the minutes of the meeting of 21st October, 2005 an acknowledgement of the debt by the appellant to deprive it of the benefit of the statutory defence under the Limitation of Actions Act of 1939. Even the most liberal interpretation of the conclusion in the minutes does not help the respondents because it creates doubt when it uses the words *"to see if there were any funds remaining."* These words cannot amount to an acknowledgement of debt as stated in the case of **City Express Service Limited v Southern Cross Motors Limited**[1]. The minutes of the meeting at pages 148–151 of the record of appeal do not therefore qualify as an acknowledgement in order to make time to run from 21st October, 2005. We agree with the appellant that the learned trial Judge misdirected herself when she accepted that the cause of action accrued on 21st October, 2005 when the meeting with the Deputy Minister of Mines was held. We therefore find that the learned trial Judge fell into error when she held that the action that was commenced under cause number 2011/HB/33 was not

statute barred even though the contracts that were the subject matter of the claim were terminated in June, 1994.

We are not persuaded by the respondents' argument that the appellant waived its rights when it took fresh steps in the action including filing its defence and bundles of documents. Quite apart from the fact that the appellant's defence relies on the Limitation of Actions Act of 1939, Order 14A Rule 1 of the Rules of the Supreme Court Rules, 1999, allows a party at any stage to raise a preliminary issue to finally determine a matter on a point of law. It reads as follows:

> **(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:**
>
> **(a) Such question is suitable for determination without a full trial of the action, and**
>
> **(b) Such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein."**

In the case of **Admark Limited v Zambia Revenue Authority**[2], we held that:

> **"A party may at the trial raise a point of law, even though it was not pleaded in his defence."**

There is no point in our view, to try a matter that is bound to fail on a point of law when an appropriate application has been made to terminate proceedings on a point of law.

The respondents' argument that there was no valid explanation as to why the appellant had to look for the final pay slips to calculate the dues payable to the respondents does not change the position that the appellant was entitled to raise a statutory defence that the matter was time barred. The appellant did not admit liability when it promised to look for the respondents' final pay slips.

With regard to the letters from the appellant to some of the respondents on the final settlement of the house purchase price, our view is that these letters do not assist the respondents in this appeal as they were written as far back as 1998. Even if we take these letters into account, the respondents' cause of action will still be out of time. The appeal is not about whether or not the appellants settled the respondents' redundancy benefits in full, but that the respondents commenced their action out of time.

We have also considered the argument raised in connection with Section 26B of the Employment Act, Cap 268 of the Laws of

Zambia, which requires an employer to continue paying the wages of an employee who has been declared redundant until final settlement. This argument has no merit as the appellant has not admitted that it owes the respondents any money from their redundancy pay. Therefore, the issue of the continued accrual of wages cannot arise at this stage.

We accordingly allow both grounds of appeal as the preliminary issue raised by the appellant has merit. The parties shall bear their respective costs.

.....

L.P. Chibeskunda
ACTING CHIEF JUSTICE

.....

A.M.Wood
SUPREME COURT JUDGE

.....

M. Lisimba
ACTING SUPREME COURT JUDGE