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

APPEAL NO. 91/2013

B E T W E E N:

LAZAROUS MUNSANJE AND 63 OTHERS	APPELLANTS
and	
ZAMBIAN BREWERIES PLC	1ST RESPONDENT
ZAMBIAN BOTTLERS LTD	2ND RESPONDENT
COPPERBELT BOTTLING COMPANY LTD	3RD RESPONDENT

CORAM: MAMBILIMA, CJ, WOOD, and KAOMA JJS
On 1st and 10th September, 2015

For the Appellants:	Mr. Tresford CHALI, of Messrs H.H. NDHLOVU & Company
For the Respondents:	No appearance

JUDGMENT

MAMBILIMA, CJ , delivered the judgment of the Court.

CASES REFERRED TO:

1. **ANTHONY KHETANI PHIRI VS WORKERS COMPNESATION BOARD (2003) ZR 9**
2. **ZULU AND OTHERS VS STANDARD CHARTERED BANK LIMITED, SCZ, APPEAL NO. 59 OF 1996**
3. **SALOMON VS SALOMON (1987) A.C. 22**
4. **ZAMBIA CONSOLIDATED COPPER MINES AND NDOLA LIME VS EMMANUEL SIKANYIKA AND OTHERS, SCZ JUDGMENT NO. 24 OF 2000**
5. **PETER NGANDWE AND ZAMOX LIMITED AND ZAMBIA PRIVATISING AGENCY, SCZ JUDGMENT NO. 13 OF 1999**

6. **ANDERSON KAMBELA MAZOKA, LT. GENERAL TEMBO, GODFREY KENNETH MIYANDA VS PATRICK MWANAWASA AND THE ATTORNEY-GENERAL (2005) ZR 138 (SC)**
7. **SECRETARY OF STATE FOR EMPLOYMENT VS GLOBE ELASTIC THREAD CO. LTD (1979) 2 ALL ER 1097**
8. **MIKE MUSONDA KABWE VS BP ZAMBIA LIMITED APPEAL No. 115 of 1996**

LEGISLATION REFERRED TO:

1. **THE INDUSTRIAL AND LABOUR RELATIONS ACT, CAP 269 OF THE LAWS OF ZAMBIA**
2. **THE EMPLOYMENT ACT CHAMPTER 268 OF THE LAWS OF ZAMBIA**

WORKS REFERRED TO:

1. **OSBORN's CONCISE LAW DICTIONARY 9TH EDITION.**

This appeal, is from the decision of the Industrial Relations Court, delivered on the 20th day of February 2012 in which the Court below dismissed the various claims by the Appellants pertaining to their separation from the employment of the Respondents. The Appellants had moved the Court below seeking, among others, the following reliefs:-

(i) **An order that the purported transfer of the contracts of employment herein having been a unilateral, non-consensual, coercive and oppressive move on the part of Respondents is null and void;**

(ii) **Alternatively an order that the subsequent termination of employment of the complainants by the deemed resignation by the Respondents is a breach of contract by the employer and warrants the payment of redundancy or other terminal benefits as appropriate;**

(iii) **An order that the Respondents do accordingly compute the benefits payable to each complainant and pays the same in full**

within three months from date of judgment;

(iv) A declaration that the decison by the 1st Respondent to terminate the contracts of employment is wrongful unlawful and is not justified as the workers have not committed any offence under their respective contracts of employment."

The Appellants were unionized employees of the 2nd and 3rd Respondent Companies. They had joined the companies on various dates. On the 25th of February, 2010, they were informed that the 2nd and 3rd Respondent Companies together with other companies, Northern Breweries and Zambian Breweries, would merge into one entity called Zambian Breweries, PLC, by the 1st of April 2010.

It is on record that following this development, those employees who needed further clarification on this move, were encouraged to seek clarification from their line managers and that any matters arising there from would be dealt with by the Unions and managers.

Before the amalgamation, the new entity requested all the affected employees to sign transfer of contract forms to move to the new entity, Zambian Breweries Plc. The transfer of contract memo detailed what was to follow and it stipulated as follows:-

"**Transfer of Contract**

The Transfer of Contracts will affect those employees under Zambia Bottlers Ltd, Copperbelt Bottling Company Ltd and Northern Breweries (1995) Plc. The steps to the consolidation will be as follows:-

1. **Monday 29th March 2010, final transfer of contract and consent letters will be given to the affected employees to sign in the presence of the labour officer assigned for this purpose. This process will go on until 31st March 2010;**

2. **In the said letters, confirmation will be given that your conditions shall not change and in some instances will improve;**

3. **There will be no loss of service in terms of the number of years served. Each employee's years of service will be deemed to have continued;**

4. **There will be no changes in job titles;**

5. **There will be no changes in reporting lines**

6. **The hours of work remain unchanged**

7. **All other conditions of employment currently being enjoyed by employees remain unchanged**

8. **Employees not willing to consent will be deemed to have resigned of their own accord and will be paid in accordance with the law. The choice to either consent or refuse is purely an individual decision.**

Please be informed that employees with queries should contact the HR department."

Four of the Appellants engaged the 1st Respondent through their lawyer, and in a letter dated the 29th of March 2010, written

on their behalf by Messrs. Nicholas Chanda and Company, the said employees contended, among others that:-

> **"In as much as we appreciate that Zambian Breweries group intends to maintain the affected employees' conditions of service, it is our considered opinion based on settled principles of law in this vein that the set out general conditions of employment in the various letters authored by your good selves to the affected employees are a unilateral variation and an adverse alteration to important terms of the initial contracts of employment."**

The lawyer contended that in the circumstances of this case, the employees who did not consent to the transfer of their contracts to Zambian Breweries Plc, should be deemed to have been declared redundant.

It is on record that the 1st Respondent declined the request from the employees to declare them redundant and explained that going by the stipulations enshrined in the transfer of contract form, there was no need to declare them redundant as they were all going to maintain their positions, and continue reporting to the same management with the same conditions of service. The Respondent made it clear that those employees who would not consent by the 1st of April 2010, would be deemed to have their respective contracts of employment terminated by reason of resignation.

The Appellants refused to sign the transfer documents and on the 6th of April 2010, the 1st Respondent terminated their contracts of employment. The letters of termination indicated that the contracts were terminated by reason of resignation and the affected employees would be paid leave days and pension benefits. The Appellants were aggrieved by this decision of the 1st Respondent and consequently filed a Notice of Complaint in the Industrial Relations Court, pursuant to Section 85(4) of **THE INDUSTRIAL AND LABOUR RELATIONS ACT** claiming the reliefs outlined above.

Upon considering their complaint, the Court below was of the view that the issue to be resolved by the Court was whether the purported transfer of the contracts of employment of the Appellants was unilateral, non-consensual, coercive, oppressive and, therefore, null and void. Upon evaluating the evidence that was before it, the lower Court noted that prior to the consolidation of the companies into one entity, the Appellants were reporting to the same management and that the decision to merge came about mainly to make the operations of business, tax efficient and to ease financial reporting.

The Court looked at the sequence of events up to the date of consolidation and found that the mechanisms of transfer were adequately clarified in the transfer of contract memorandum. The Court was satisfied, from these events, that the amalgamation was purely administrative and that the transfer of the employees' contracts was lateral and did not connote a break in their employment. The Court was of the view that it was within the legal right of the companies concerned to merge and create one management to effectively administer their business and that management was under no obligation, whatsoever, to consult but merely to inform the employees, since their conditions of service would remain unchanged. The Court, at the end of the day, found that there was no merit in the Appellant's claim that the transfer of their contracts of employment was not unilateral, non-consensual or oppressive.

On the contention by the Appellants that they should have been declared redundant rather than being deemed to have resigned, the Court noted that the Appellants refused to sign the consent letters and the transfer of contract forms, because they were under the mistaken belief that their initial contracts were

unilaterally varied and that they were entitled to be paid redundancy packages and other terminal benefits before they could consent to the transfer. The Court was satisfied that the Appellants were declared redundant because the extinction of their former employers was a technical one since they would maintain the same jobs, having been transferred laterally.

To fortify its position, the Court referred to the case of **ANTHONY KHETANI PHIRI V WORKERS' COMPENSATION CONTROL BOARD** which, according to the Court, was on all fours with the case in casu. In that case, we held that:-

> **"The new Board in as far as the former Workers' Compensation Fund Control Board was concerned, was in the same business and the Appellant maintained the same job since he was to be transferred laterally."**

The Court below finally held that the Appellants, having voluntarily refused to sign the transfer letter by the 1st of April 2010, could not fault the 1st Respondent for having deemed them to have resigned from employment; and that consequently, they were not entitled to any packages of redundancy or other terminal benefits. Their case was, consequently, dismissed with costs.

Dissatisfied with this decision of the Court, the Appellants have now appealed to this Court, advancing four grounds of appeal, namely, that:-

1. **The learned Judge misdirected herself in law and in fact when she ignored to apply the provisions of Section 35 of the EMPLOYMENT ACT CAP 268 of the Laws of Zambia;**

2. **The learned Judge erred both in law and in fact when she held that the transfer of contracts of employment was not unilateral, non-consensual, coercive and oppressive, in the absence of a labour officer's testimony;**

3. **That the learned trial Judge misdirected herself in law and in fact when she failed to appreciate that an administrative decision to merge the companies did not need employment contracts to be transferred nor employees to consent.**

4. **That the learned trial Judge erred in law and in fact when she held that the case in casu is on all fours with the case of ANTHONY KHETANI PHIRI VS WORKERS COMPENSATION CONTROL BOARD 2003 ZR 9."**

The learned Counsel for the Appellant has filed written heads of argument in support of the four grounds of appeal, which he augmented with oral arguments. He argued the first and third grounds of appeal together.

According to Counsel, the question as to whether the transfer of the Appellants' contracts of employment was unilateral, non-consensual, coercive and oppressive could not have been determined by the trial Court before answering the question, as to whether the circumstances of the present case necessitated a

transfer of contracts according to the law. He submitted that the danger of proceeding on the trial Court's premise would be that if a transfer did not arise according to the law, then the deemed resignation and subsequent termination of employment would be unlawful and wrongful. Counsel further argued that if the lower Court proceeded on the assumption that a transfer of contracts existed, the Court should have considered the evidence that the new contracts were varied to the detriment of the Appellants without their consent.

To support his contention, the learned Counsel for the Appellant referred us to the transfer of contract of employment letter that was sent to the employees. He argued that this letter proposed a new detrimental contract and not a transfer of the existing contract. He cited the first paragraph of the letter written to the 1st Appellant which stated:-

> **"I have pleasure in confirming your transfer from Zambia Bottlers Limited to Zambian Breweries Plc with effect from 1st April 2010. Consequent with your transfer, the following sets out your general conditions of employment."**

Counsel submitted that the letter of transfer also contained a provision on medical examination, which was not in the original contract. The said provision stated:-

"Confirmation of your appointment is subject to your undergoing a satisfactory medical examination by a company approved medical practitioner. You may also be required to undergo further medical checks from time to time."

According to Counsel, this clause attempted to place confirmed employees on probation in that their retention was conditional upon passing the medical examination. Counsel contended that this provision went against the conditions in the old contracts of employment. That as a result, the employees believed that what now governed their employment with the 1st Respondent was the transfer of contract form and not the collective agreement or any other contract of employment.

Counsel further submitted that a meeting that was held between the Union and Management was not conclusive. The Union was supposed to go back and consult their members, but before they could report back, Management issued the consolidation communication giving a road map of the process.

On the finding by the Court below that the amalgamation of the companies in this case was purely administrative, it was Counsel's submission that an administrative decision does not need the consent of the employees or to have their contracts transferred. He submitted that this was not a proper case for the transfer of

contracts as envisaged by the law in that the employer had not changed and the exercise was administrative, as rightly held by the Court.

To support his submissions, Counsel cited Section 35 (1) of the **EMPLOYMENT ACT** which states as follows:-

> **"Rights arising under any written contract of service shall not be transferred from one employer to another unless the employee bound by such consents to the transfer and the particulars thereof are endorsed upon the contract by a proper officer."**

Arising from this provision, Counsel submitted that the law was clear on transfer of contracts from employer to employer. There should be two employers for Section 35 of **THE EMPLOYENT ACT** to be invoked. He submitted that this situation arose in the case of **ZULU AND OTHERS VS STANDARD CHARTERED BANK LIMITED[2].** That in that case, Finance Bank Zambia Limited, a different entity, took over employees of Standard Chartered Bank Plc in branches that Standard Chartered Bank had closed. That Finance Bank was a totally new employer and the Supreme Court correctly decided that the change in the contracts of service must be with the consent of the affected employees.

Counsel submitted that in this case, there was no need to transfer the contracts of employment as envisaged by Section 35(1)

of **THE EMPLOYMENT ACT** because the employers did not change. According to him, what changed when Zambian Breweries Plc bought the 2nd and 3rd Respondent companies was shareholding only and not the employers, and that this did not require a transfer of contract of employment. Counsel cited the case of **SALOMON VS SALOMON**[3] and submitted that the law had long recognised the separateness of corporate entities from those behind it, owning and directing its affair. Counsel further submitted that this Court has had occasion to pronounce itself on this principle in the case of **ZAMBIA CONSOLIDATED COPPER MINES AND NDOLA LIME VS EMMANUEL SIKANYIKA AND OTHERS**[4] when it held that:-

> **"change of ownership of shares cannot result in the corporate entity becoming a new employer; it will still be the same employer and will be found by the contracts of employment"**

According to Counsel, this decision applies with equal force to the case at hand He went on to state that the new management of the Respondent wanted to consolidate the companies to ease financial reporting: that this did not change the employer and therefore Section 35 of **THE EMPLOYMENT ACT** did not apply.

The learned Counsel for the Appellants further submitted that this Court had occasion to deal with the case of **PETER NG'ANDWE AND ZAMOX LIMITED AND ZAMBIA PRIVATIZING AGENCY**[5] which was almost on all fours with the case in casu. He stated that in that case, the new owners of the company (ZAMOX) had insisted that those employees who did not consent to the new contracts would be deemed to have resigned and the Court stated, in reference to the new owners, that: ***"this is a wrong interpretation of the law."***

It was Counsel's submission that it was wrong for the Respondent to have invoked Section 35 of **THE EMPLOYMENT ACT** and the trial Court erred by failing to pronounce itself on this important piece of legislation.

In the second ground of appeal, the Appellants argue that the lower Court erred in law and in fact, when it held that the transfer of contracts of employment was not unilateral, non consensual, coercive and oppressive in the absence of a labour officer's testimony. In arguing this ground, Counsel first referred us to Section 25(2) of **THE EMPLOYMENT ACT** which provides as follows:-

> **"Before endorsing any particulars of transfer on any written contract of service, the proper officer shall satisfy himself that the employee has fully understood the nature of the transaction and has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as a result of misinterpretation or mistake."**

Counsel's submission on this point, in the main, is that the Respondents should have called the Commissioner of Labour to produce his letter of approval of the consolidation and transfer of contract. This argument appears to be in response to the Respondent's statement that an officer from the Ministry of Labour was present when the employees signed the letters of transfer. Counsel submitted that CW2 and CW 3, who were based at Lusaka and Ndola respectively, both told the Court that there were no labour officers present while RW 2 admitted that she did not see any letter from the Ministry of Labour, approving the consolidation. According to Counsel, to resolve this conflicting evidence, a labour officer should have been called. He submitted that in view of this contradictory evidence, the trial court should not have held that the transfers were consensual, non coercive and not oppressive.

In the fourth ground of appeal, it was argued that the learned trial judge erred in law and in fact, when she held that the case in casu is on all fours with the case of **ANTHONY KHETANI PHIRI VS**

WORKERS COMPENSATION CONTROL BOARD[1] cited above. Counsel argued that the **ANTHONY KHETANI PHIRI** case involved two statutory bodies; the Workers Compensation Board and the Pneumoconiosis Compensation Board. Both bodies were established by two separate Acts of Parliament which were repealed by Act No. 10 of 1999. This new Act merged the functions of the two bodies and transferred all former employees of the two defunct bodies to the new Workers Compensation Fund Control Board. The Appellant, in that case, claimed for a separation package in form of a redundancy package as provided in his conditions of service. This Court upheld the decision of the High Court dismissing his claim. It held that:-

> **"The sequences of events show that the Respondent did not declare the Appellant to be redundant or retrenched. The new Board is, in as far as the former Workers Compensation Fund Control Board was concerned, in the same business and the Appellant maintained the same job since he was transferred laterally."**

Counsel argued that in the present case, the 1st Respondent was not a statutory body and the purported transfer of the Appellants' contracts was not by an Act of Parliament.

The Respondent did not appear at the hearing of appeal, but in response to the Appellant's grounds of appeal, written heads of

arguments were filed through Messrs Tembo, Ngulube & Associates. In the said grounds, they also argued the first and second grounds of appeal together. On the first ground of appeal, that the Court below erred by ignoring to apply the provisions of Section 35 of **THE EMPLOYMENT ACT,** the Respondent argued the Appellants did not plead this issue in the Court below and therefore, could not bring it up at this stage. Counsel submitted that the law relating to pleadings was very clear. He cited among others, the case of **ANDERSON KAMBELA MAZOKA, LT GENERAL CHRISTON TEMBO, GODFREY KENNETH MIYANDA VS PATRICK MWANAWASA AND THE ATTORNEY-GENERAL**[6] where this Court held that:-

> **"The function of pleadings is to give notice of the case which has to be met and to define the issue on which the Court will have to adjudicate in order to determine the matter in dispute between the parties. Once the pleadings have been closed, the parties are bound by their pleadings and the Court has to take them as such."**

Counsel contended, consequently, that the lower Court was on firm ground when it ignored to apply the provisions of Section 35 of **THE EMPLOYMENT ACT** in determining whether the circumstances surrounding this case necessitated the transfer of the Appellants' contracts of employment as the issue was not pleaded.

On the issue of the amalgamation of the companies in this case, Counsel submitted that these companies combined to form one entity, Zambian Breweries Plc and all of the companies that merged retained a shared interest in it. For this submission Counsel relied on the definition of ***'merger'*** found in **OSBORN's CONCISE LAW DICTIONARY**[1] which states that:-

> **"A merger occurs when two or more companies combine to form a single company and the companies involved retain a shared interest in that new corporation."**

Counsel submitted that this definition is illustrative of what exactly occurred in this case. Zambia Bottlers, Copperbelt Bottling Company Limited, Northern Breweries and Zambia Breweries all combined to form Zambian Breweries Plc. They all retained a shared interest in it. That having established the existence of a merger, two employers existed thereby satisfying the provisions of Section 35(1) of **THE EMPLOYMENT ACT**. There was either Zambia Bottlers, Copperbelt Bottling Company Limited Northern Breweries, or Zambia Breweries on one hand, and, Zambian Breweries Plc on the other. That although the four (4) companies that merged to form Zambian Breweries Plc were operating as a group, legally these companies maintained their respective separate

legal separate status before the merger. To illustrate his point, Counsel pointed out that even the trade union, NUCIAW signed the same recognition agreement with the four distinct companies. Counsel further argued that at the time of the merger, Zambian Breweries Plc did not buy shares in Copperbelt Bottling Company Ltd, Northern Breweries and Zambia Bottlers as alleged by the Respondents, but rather, that all the four entities merged into one. According to Counsel, this was a proper case for the transfer of the Appellants' contracts of employment. He submitted that the invoking of the provisions of Section 35 by the Respondent was correct and that consequently, the employers were under an obligation to consult their employees, even though the merging of the companies was an administrative issue.

In response to the second ground of appeal, the Respondents submitted that the Court below did not misdirect itself in law and fact, when it held that the transfer of contracts of employment in this case was not unilateral, non-consensual, coercive and not oppressive. Counsel submitted that there was a representative from the Ministry of Labour when the transfer letters were being signed by the affected employees, and further that RW 2 in her

testimony, informed the Court that all the documents that were signed on the transfer of employment contracts were co-signed by a labour officer. Counsel submitted that from the evidence of the witnesses, the presence of labour officers at the time that the transfer letters were being signed cannot be doubted because the mention of their presence comes from the employees who actually signed the transfer letters in the presence of the labour officers. According to Counsel, those who did not sign the transfer letters were less likely to have encountered the labour officers.

With respect to the fourth and last ground of appeal, the Respondents argued that the trial Judge did not err in law and in fact when she held that the case in casu is on all fours with the case of **ANTHONY KETHANI PHIRI VS WORKERS COMPENSATION CONTROL BOARD**[1]**.** Counsel submitted that the merging of the two Boards in the case of **ANTHONY KHETANI PHIRI** was the same as the merging of the four companies in this case; irrespective of the fact that there was no law that expressly stated that a transfer be made. According to Counsel, the provisions of Section 35 of **THE EMPLOYMENT ACT** necessitated the transfer.

Counsel pointed out that employees in the **PHIRI** case were not even given a chance to consent but this Court stated:

> **"The sequence of events show that the Respondent did not declare the Appellant to be redundant or retrenched. The new Board is in as far as the former Workers Compensation Fund Control Board was concerned was the same business and the Appellant maintained the same job since he was to be transferred laterally."**

The Court further stated:-

> **""A transfer ' does not connote a break in employment. The use of the word 'transfer' persuades us to agree that employment in this case was continous."**

Counsel also cited the case of **SECRETARY OF STATE FOR EMPLOYMENT VS GLOBE ELASTIC THREAD CO. LTD**[7] where it was held that:

> **"A person's employment during any period should be presumed to have been continuous unless the contrary was proved."**

Counsel submitted that the case in casu is on all fours with the case of **ANTHONY KHETANI PHIRI**[1] because there was no break in employment. He referred to the evidence of CW 2 who conceded that the employees whose contracts were transferred were going to continue to operate from the same area and reporting to the same managers after signing the transfer letters. Counsel submitted that the transfer of contract document, as well as evidence adduced by the witnesses in the Court below, clearly showed that the facts in

the case of **ANTHONY KHETANI PHIRI**[1] are similar to the facts in this case.

We have considered the evidence that was before the Court below, the testimony of witnesses, the heads of arguments, and the submissions of the parties.

Counsel on both sides have argued the first and second grounds of appeal together. In our view, however, the two seem to raise different issues and as such we will deal with them separately.

In the first ground of appeal, the Appellants have taken issue with the Court below, for ignoring to apply the provisions of Section 35 of **THE EMPLOYMENT ACT**. From the submissions of the Appellant, the argument being advanced is that Section 35 of **THE EMPLOYMENT ACT** did not apply to this case because there was merely a change of ownership of shares which did not bring about a new employer. Against this position, it would appear that the first ground of appeal is not properly formulated. In our view, it is a contradiction to complain that the Court ignored the provisions of Section 35 of **THE EMPLOYMENT ACT** and then argue that this law did not apply to the situation in this case. It would appear that the proper thrust of the first ground of appeal should have been

that the Court below should have pronounced itself on the applicability of Section 35 of **THE EMPLOYMENT ACT** to this case. The position of the Respondent is that the application of Section 35 of the Act was not pleaded.

We have noted that indeed, the Appellants, in their Notice of Complaint and the other accompanying pleadings did not allege that the Respondent did not comply with Section 35 of **THE EMPLOYMENT ACT.** The application of Section 35 of the Act was indirectly brought in through the evidence of CW 2 when he testified that the Principal Labour Officer was not there to explain the consolidation process to them. The Respondents' witnesses on the other hand, told the Court that an officer from the Ministry of Labour was present when the employees signed the transfer documents and that the said officer even co-signed.

In our view, failure to plead compliance with Section 35 of the Act means that the Court was not invited to delve into this issue. Be that as it may, the action taken by the 1st Respondent in the amalgamation process shows clearly that they were applying the provisions of Section 35 of **THE EMPLOYMENT ACT.** Paragraph (1) of this Section requires that a written contract of employment

should not be transferred to another employer without the consent of the employee and ***'the particulars thereof'*** should ***"be endorsed upon the contract by a proper officer."*** The conduct of the Respondent during the consolidation process shows that it was cognisant of the provisions of Section 35 **THE EMPLOYMENT ACT.** As the lower Court observed, the sequence of events on record shows that the Appellants were notified of the impending consolidation by 25th February 2010 and the mechanisms of the transfers were adequately clarified. There was evidence before the Court that an officer from the Ministry of Labour was present when the employees signed the transfer documents.

Much as the Court did not specifically refer to Section 35 of **THE EMPLOYMENT ACT**, it did not impugn the process adopted by the Respondent. The spirit of the law was complied with. In our view, silence by the Court on the applicability of Section 35 of **THE EMPLOYMENT ACT** is a non issue. We find no merit in the ground of appeal.

The second ground of appeal attacks the findings of the Court below that the transfer of contracts of employment in this case was not unilateral, non-consensual, coercive or oppressive in the

absence of a labour officer's testimony. The Court arrived at this conclusion after finding that the Respondent Companies had explained to the Appellants and other affected employees how the merger was going to be done and the reasons for merging into one entity. The Court was of the view that it was within the law for the four companies to decide to merge so as to effectively administer their business, and that they were under no obligation to consult their employees but merely to inform them since their conditions of service would remain unchanged. There is also a consolidation memorandum, a copy of which appears on page 76 of the record of Appeal which shows that management gave all the necessary information to its employees to enable them make an informed decisions on the proposed changes.

We have examined the evidence and the documents on record and followed the sequence of events in this case. We agree with the lower Court that management of the four companies had taken it upon themselves to explain to the employees what was going to happen during the consolidation process and how they would make their intentions known.

We have come to the conclusion, from the evidence and documents on records, that there was nothing unilateral, non-consensual, coercive or oppressive in the way the transfer of contracts was done. On 25th February 2010, employees were informed that the four companies in issue, would merge to form one entity, Zambian Breweries Plc. Those who needed clarifications were referred to their respective HR Managers. The memo containing the consolidation communication was sent to the employees on 26th March 2010. In its clause 1, it stated:-

> "1. **Monday 29th March 2010, final transfer of contract and consent letter will be given to the affected employees to sign in the presence of the labour officer assigned for this purpose This process will go on until 31st March, 2010."**

There is evidence from the Respondent's witnesses that indeed an officer from the Ministry of Labour was present when the employees signed the transfer letters There is evidence that even the Union was engaged. The position of the company was clearly stated. At the conclusion of one such meeting, "***the Union offered to go back to their members and convey the message that for those who did not wish to consent would be separated by way of termination and not redundancy.***" The complaint the Appellants had was that before the Union could get back to

Management, Management implemented its measures. All these measures clearly show that a lot went into the disseminating of information on the consolidation process. The Respondent clearly explained the fate of those who would not sign the transfer letters. The choice was left to employees to jump on the band wagon or opt out. We cannot therefore fault the Court below for having found that the consolidation process was not coercive, oppressive or unilateral. It was consensual. The second ground of appeal also fails.

Coming to the third ground of appeal, the Appellants argued that the Court below failed to appreciate that an administrative decision to merge the companies did not need employment contracts to be transferred nor for employees to consent. The Appellants' argument on this point is that the Court should have addressed its mind as to whether the need to transfer the contracts arose. The learned Counsel for the Appellants spiritedly argued that if the need to transfer the contracts according to law did not arise, then the deemed resignation and subsequent termination of the Appellants' employment was wrongful and unlawful.

Counsel further argued that, if we assume that it was necessary to transfer the contracts of employment, then the Court should have considered the evidence that the new contracts of employment varied the existing conditions of service to the detriment of the Appellants, without their consent, in which case they should have been declared redundant. The Respondents' short response to this point was that this was a merger of four companies which brought in a new entity, thereby necessitating the transfer of existing contracts to the new employer.

We have considered the arguments advanced by both parties on this point and the various authorities to which we have been referred. It is evident that prior to the consolidation, there were four different companies, each with its own legal personality. It is these companies which entered into the contracts of employment with the Appellants. It is also evident that upon consolidation, all these companies ceased to exist. In short, they were extinguished. A new company came on the scene, now called Zambian Breweries Plc, with a distinct legal personality, although it had swallowed the other companies.

One of the cases referred to us is that of **ZULU VS STANDARD CHARTERED BANK PLC[2].** There was, in that case, a clear move of employees from Standard Chartered Bank Plc to Finance Bank (Zambia) Limited. In the case in casu, the 2nd and 3rd Respondent who employed te Appellants ceased to exist. The new entity, who is the 1st Respondent now sought to take over the Appellants' contracts with the two Respondents. The Appellants therefore were moving from their extinguished former employers to the new entity, with whom they had no contract of employment. In our considered view, such a move had to be done with the consent of the employees because Zambian Breweries Plc was now their new employer. We cannot, therefore, fault the trial Court for having proceeded on the premise that there was need to transfer the contracts.

On the alternative argument that if we find that the need to transfer the contracts arose, then we must consider that the new contracts introduced new conditions which were to the detriment of the Appellants, thus, creating a situation for them to be declared redundant. We have been referred to the case of **PETER NG'ANDWE AND ZAMOX LIMITED AND ZAMBIA PRIVATISATION AGENCY[4].** In that case, we held that if an employer varies a basic