

**IN THE SUPREME COURT FOR ZAMBIA**

**HOLDEN AT NDOLA**

*(Civil Jurisdiction)*

**BETWEEN:**

**ZESCO LIMITED**

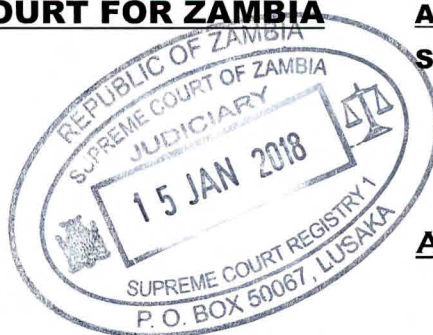
**AND**

**PETER KOSTA MPONGO**

**MONICA MUYATWA NG'AMBI**

**LUCKY KASENGO**

**MUTINTA SHELLY MWIINGA**



**APPEAL NO. 179/2013**

**SCZ/8/229/2013**

**APPELLANT**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**3<sup>RD</sup> RESPONDENT**

**4<sup>TH</sup> RESPONDENT**

**CORAM: Mwanamwambwa D.C.J., Hamaundu and Kabuka, JJS,  
On 7<sup>th</sup> June, 2016 and 12<sup>th</sup> January 2018**

*For the Appellant: Mr. A. Sike, Principal Legal Officer*

*For the Respondents: Mr. V. K. Mwewa, of Messrs. V. K. Mwewa and  
Company*

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**J U D G M E N T**

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**Mwanamwambwa D.C.J., delivered the Judgment of the Court.**

***Cases Referred to:***

1. **ZESCO Limited v Ivor Yambayamba, Lawrence Chisanga, Ruth Mwamutanda and Felix Bwalya, Appeal No. 224 of 2013**
2. **Newton Malwa & 2 Others v Lucky Mulusa & 3 Others SCZ Judgment No. 28 of 2014**

***Work Referred to:***

1. **Atkin's Court Forms, 2<sup>nd</sup> Edition, Vol. 37(1995 Issue), Pages 196**
2. **Rules of the Supreme Court, 1999 Edition. Order 4 Rule 9 (1)**

When this matter came up on 7<sup>th</sup> June 2016, we stayed the proceedings until after the determination of the appeal involving **ZESCO Limited v Ivor Yambayamba and Others**<sup>(1)</sup> which we

had heard earlier. In so doing, we clearly contemplated that the result of the appeal in **ZESCO Limited v Ivor Yambayamba and Others** <sup>(1)</sup>, would as a test case, in effect determine this appeal. We stated that the case of **ZESCO Limited v Ivor Yambayamba and Others** <sup>(1)</sup> and this appeal, have some common questions of fact and law.

Firstly, in both cases the respondents retired from employment at the appellant between the July, 2011 and December 2011, but there was a dispute concerning the payment of their retirement benefits. This arose out of the fact that on 18<sup>th</sup> March 2011, the 2003 conditions of service for non-represented employees were revised and approved by the appellant's Board of Directors with effect from 16<sup>th</sup> March 2011. Despite that the respondents in both cases were retired after the 16<sup>th</sup> of March 2011, the appellant paid their retirement benefits based on the 2003 conditions of service for non-represented employees. This prompted the respondents to sue the appellant in the two cases, claiming that their benefits ought to have been computed based on the 2011 revised conditions of service.

Secondly, the appellant in both cases claimed that the 2011 conditions of service were not wholly approved by the Board of Directors. That what was approved were extracts of the conditions of service which were signed and circulated for implementation. The appellant claimed that the clause on retirement benefits was one of the clauses which had not yet been approved for implementation at the time the respondents in the two cases were retired.

Thirdly, the High Court in both cases upheld the respondents' claims that their benefits should have been paid in accordance with the 2011 revised conditions of service for non-represented employees.

Fourthly, the appellant appealed against the Judgments of the High Court in both cases.

In our earlier Judgment in **ZESCO Limited v Ivor Yambayamba and Others** <sup>(1)</sup> dated 7<sup>th</sup> February 2017, we held, contrary to the appellant's claims, that the 2011 revised conditions of service for non-represented employees were wholly approved by the appellant's Board of Directors on 18<sup>th</sup> March

2011, with effect from 16<sup>th</sup> March 2011. As such, the 2011 revised conditions of service applied to the respondents. We accordingly dismissed the appellant's appeal.

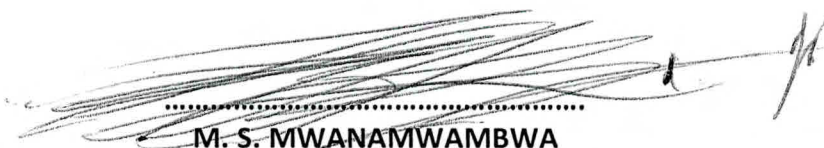
Since we regarded the case of **ZESCO Limited v Ivor Yambayamba and Others**<sup>(1)</sup>, as a test case, we hereby similarly dismiss the present appeal for lack of merit. See:

(a) **Newton Malwa & 2 Others v Lucky Mulusa & 3 Others**<sup>(2)</sup>

(b) **Atkin's Court Forms**, 2<sup>nd</sup> Edition, Vol. 37(1995 Issue), Pages 196;  
and

(c) **Rules of the Supreme Court**, 1999 Edition. Order 4 Rule 9 (1)


We shall in the circumstances award costs to the respondents. These are to be taxed, in default of agreement.



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M. S. MWANAMWAMBWA  
DEPUTY CHIEF JUSTICE



.....  
E.M. HAMAUNDU  
SUPREME COURT JUDGE



.....  
J.K. KABUKA  
SUPREME COURT JUDGE