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IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO 52 OF 2017

BETWEEN:

ZAMBIA TELECOMMUNICATIONS COMPANY LTD

APPELLANT

AND

IREEN C. SIMATE, PERINE C. ZULU AND 54 OTHERS

RESPONDENT

Coram: C.K Makungu, J.Z. Mulongoti, D.L.Y. Sichinga, J.J.A

On the 9th of November, 2017.

For the Appellant: Mr. M. Chiteba of Mulenga Mundashi Kasonde
Legal Practitioners

For the Respondent: Mr. N. Okware of Okware and Associates

JUDGMENT

C.K. Makungu, JA, delivered the Judgment of the Court

Cases referred to:

1. *Maamba Collieries v. Douglas Siakalonga and Others Appeal*
No. 51A/200A/2004
2. *Ford v. Beech* (1848) 11 QB 854
3. *John Paul Mwila Kasengele & 4 others v Zambia National*
Commercial Bank SCZ Judgment No.11 of 2000
4. *James Mankwa Zulu & 3 Others v. Chilanga Cement SCZ/*
Appeal No. 12 of 2004 (unreported)
5. *Zambia Telecommunications Ltd v Felix Musonda & 29 Others*
SCZ Appeal No. 51 of 2014
6. *Nzowa v. Able Construction Limited* (2004) ZR 159

7. *The Attorney General v. Moyo* (2007) Z.R. 267.
8. *Wickman Machine Tools Scales Limited v. L. Schuler A.G*
(1973) 2 ALL ER 39
9. *Indo Zambia Bank v. Mushaukwa Muhanga* SCZ Judgment No.
26 of 2009

Other authorities referred to:

1. *Black's Law Dictionary* by Bryan A. Garner (2014) 10th ed.
West Publishing Ltd, United States of America

This is an appeal against the Judgment of the High Court made on 25th November, 2016. The plaintiffs' (now respondents) are former employees of the Defendant (now appellant) who retired after

attaining the age of 55 on various dates ranging from 2005 to 2007.

The Plaintiffs were categorized in two groups, i.e. represented and non-represented. They were paid their retirement benefits in accordance with the Collective Agreement and Conditions of Service. However, the plaintiff's alleged that they were underpaid and sued their former employer, seeking the following:

- a. **A declaration that 3 Months pay provided for by clause 10 (iv) of the Collective Agreement and Conditions of Service means 3 Months basic salary and allowances.**
- b. **An Order directing the Defendant to recalculate the plaintiff's benefits to include basic salary and allowances.**
- c. **A declaration that they are entitled to housing allowance from the dates of retirement until their benefits are paid in full.**

- d. An Order directing the Defendant to pay the plaintiffs housing allowances until their benefits are paid in full.
- e. K1, 094, 677, 552. 41 being underpayment of their retirement benefits.
- f. K272, 059, 325. 35 accrued housing allowance from retirement to July, 2010.
- g. Interest on the above from the date of retirement of each plaintiff till full payment.
- h. Costs of and occasioned by this action.

There was no trial before the lower Court, however, the parties executed a Statement of Agreed Facts and filed written submissions which the Judge took into account in arriving at his decision. We shall only quote the clauses of the said Statement of Agreed Facts that are relevant to this appeal as follows:

- "4. Under clause 10(a)(iv) of the Collective Agreement and Conditions of Service, the unionized employees were upon retirement entitled to retirement benefits accruing under the pensions scheme plus payment of three months' pay for each completed year of service and pro-rata for any uncompleted year served.
- 5. Under clause 10(g)(i) of the Collective Agreement and Conditions of Service a unionized employee who retired would be entitled to housing allowance until all their benefits accruing were paid in full, unless these were part of NAPSA.

6. Under clause 10(g)(ii), the Company would pay two months' salary as repatriation expenses where;
 - a. An employee retired from Zamtel Services.
10. When calculating the plaintiffs retirement packages, wrongly described as gratuity the defendant used their basic salary.
11. As relates to repatriation, the defendant in calculating the repatriation due to the unionized plaintiff used basic salary.
12. Clause 1 (b) of the Collective Agreement and Conditions of Service defined BASIC SALARY to mean salary excluding allowances. However, it did not define pay or salary.
13. As regards the non-represented plaintiffs, their Terms and Conditions of Service in clause 8.1 (a) thereof provided for long service gratuity to those who left employment under normal retirement.
17. Under clause 9 (a) (iii), on retirement, the benefits would be in accordance with the company's Pension Scheme
18. Under Clause 9 (a) (iv) it is provided that in addition to the retirement benefits accruing from the Pension Scheme, an employee retiring from service would be entitled to payment of three months' pay for each completed year of service and pro-rata for any uncompleted year served.

20. Under clause 9 (f) (i) (b), the company would pay two (2) months' salary as repatriation expenses where an employee retired from employment.
21. Under clause 9 (f) (ii), an employee who retired would continue to receive housing allowance until his/her benefits were paid in full.
22. Under part 1 of the Terms and Conditions of Service for Non-Represented Staff, clause 1 (b) Basic Salary was defined as annual remuneration that an employee received as salary according to salary scales, such salary excluded allowances.
23. The said Terms and Conditions of Service did not define monthly pay or monthly salary.
24. Prior to retirement, the non-represented employees received notices of retirement indicating that they would be paid the following:
 - i. *Gratuity payment of 3 months' pay for each completed year of service and pro-rata where the year was incomplete.*
 - ii. *Cash in lieu of leave days.*
 - iii. *Repatriation allowance of 2 months' salary.*
 - iv. *Pension refund.*
26. When paying the Non-Represented plaintiffs their repatriation benefits, the defendant computed the same using basic salary."

The parties set out the following questions for the determination of the court:

1. Whether the words **pay** or **salary** in the Collective Agreement applicable to unionized staff and the Terms and Conditions of Service for non-represented staff means basic salary and allowances?
2. Whether in calculating the unionized plaintiffs' retirement benefits, the defendant ought to have merged salary and allowances.
3. Whether the unionized plaintiffs are entitled to three months' pay computed using basic salary and allowances for each year served and pro-rata for uncompleted year served as provided for in the Collective Agreement and Conditions of Service less what they were paid and wrongly termed as long service gratuity.
4. Whether the unionized plaintiffs are entitled to re-calculation of their repatriation expenses based on basic salary and allowances.
5. Whether the non-represented plaintiffs are entitled to any additional benefits over and above those paid to them on retirement, the same to be calculated on basic salary and allowances.
6. Whether the non-represented plaintiffs are entitled to re-computation of their repatriation expenses based on salary and allowances.

7. *Whether the plaintiffs' retirement benefits have been paid in full.*
8. *If the answer to (7) is in the negative, whether the plaintiffs are entitled to housing allowance as prescribed under clause 10(g)(i) of the Collective Agreement and clause 9(f)(ii) in the Terms and Conditions of Service for Non-represented plaintiffs until they are paid in full.*
9. *Whether the plaintiffs are entitled to interest on amounts found due to them.*
10. *Whether the plaintiffs are entitled to costs.*

The lower court found that the literal interpretation of the term 'basic pay' under clause 1b of both conditions of service for non-represented staff and conditions of service for unionised staff, basic salary is an employee's salary excluding allowances. That had the defendant intended to compute the retirement benefits and repatriation using the basic salary, it would have made it abundantly clear as it did in other instances. Therefore, the meaning of 'pay' where there is no qualifier that it should be computed on the basis of basic salary, means that the pay includes allowances provided for on the plaintiffs' pay slips. It was also the lower court's finding and holding that the retirement benefits owed to unionized plaintiffs should have been calculated using the basic salary and allowances. Further that, the defendant should have calculated the retirement benefits and repatriation expenses of both categories of employees on the basis of salaries plus allowances. That although there could have been poor drafting,

the allowances payable under clauses 8 and 9 of the terms and conditions of service for non-represented employees are different and should be treated as such. In addition, clause 8 provides for long service gratuity while clause 9(a)(iv) provides that upon retirement an employee is entitled to 3 months' pay for each completed year of service. Since all the plaintiffs were not paid their retirement benefits in full, they should be paid housing allowance until their other benefits are fully settled.

This appeal is based on three grounds framed as follows:

1. *The learned trial judge erred in law and in fact when he held that the term 'pay' in the collective agreement as well as the terms and conditions for non-represented staff meant that the retirement benefits of the respondents were to be calculated on the basis of salary and allowances, in the absence of an express provision to that effect in both agreements;*
2. *The learned trial judge erred in law and in fact when he held that the provisions of clauses 8 and 9 of the terms and conditions for non-represented staff should not be read together even though they both dealt with retirement benefits; and*
3. *The learned trial judge erred in law and in fact when he held that the benefits provided for under clause 8 were different from those provided for under clause 9 with the effect that the respondents are entitled to a double payment of their retirement benefits which amounts to unjust enrichment.*

The appellant's and the respondent's Heads of Argument were filed on 26th May, 2017 and 19th July, 2017 respectively. At the hearing of the appeal, both parties relied entirely on the Heads of Argument.

In the Heads of Argument, the appellant's advocate argued the three grounds together upon identifying the key issue for consideration as:

"Whether the word 'pay' or 'salary' in the collective agreement applicable to unionised staff and in the terms and conditions of service for non-represented staff means basic salary and allowances."

Referring to part of the lower court's findings on page 27 of the judgment to the effect that:

".... had the defendant intended to compute the retirement benefits and repatriation using basic salary, they would have made it abundantly clear as they have in the other instances. I therefore find that the meaning of pay where there is no qualifier that it should be computed on the basic salary means that the pay includes the allowances provided for on the plaintiff's pay slip"

Counsel submitted that the reasoning of the court does not support any principle of contractual interpretation set by law. He stated that the converse is also possible and as such, if the defendant had intended that the meaning of pay was to include basic monthly salary and allowances, it would have expressed itself clearly. That there being no qualifier, "pay" cannot be interpreted as basic salary plus allowances.

He further stated that the trial judge's findings are against legal principles set out in a plethora of cases most notably that of **Maamba Collieries v. Douglas Siakalonga and others** ⁽¹⁾ wherein the Supreme Court stated that:

"...not all benefits enjoyed by an employee during his period of service must be integrated in the basic salary before computing that employee's terminal benefits except where the conditions of service state so."

In light of the foregoing, he contended that the reasoning of the court below offers no solution to the issues between the parties but raises more confusion and ambiguity.

In the same heads of argument, it was submitted further that the learned trial judge misapplied the principle in **Ford v. Beech** ⁽²⁾. The appellants understanding of the law in **Ford v. Beech** ⁽²⁾ is that where clauses in a contract are unclear and ambiguous, then the

Court interpreting such provisions can rely on other clauses of the agreement to best effect the intention of the parties to be collected from the whole agreement. Applying this understanding to the issue before this court, it was submitted that the lower court having found the contractual provisions to be ambiguous, should have considered other clauses so as to best effect the intentions of the parties. It was further submitted that clause 9 of the conditions of service for non-represented staff clearly states that in addition to the retirement benefits accruing from the pension scheme, an employee is entitled to 3 months' pay for each completed year of service. Although the terms and conditions for non-represented staff fall short of addressing what is meant by 'pay', in light of **Ford v. Beech** ⁽²⁾ the appellant contends that the other clause to be relied on in the terms and conditions for non-represented staff is in fact Clause 8. Counsel, Chiteba, stated that the same phraseology is used in Clauses 8.3 and 9 in setting out how "pay" will be made with regard to long service gratuity. His view therefore was that where the conditions of service state that an employee will be entitled to three months' pay for each completed year of service, the same should be calculated on the last drawn monthly basic salary. Therefore, the pay envisaged under clause 9 has the same meaning as that applied in clause 8.4.

Counsel for the appellant cited the case of **John Paul Mwila Kasengele and Others v. Zambia National Commercial Bank** ⁽³⁾ which was relied upon by the respondents in the court below. He pointed out that in that case, the Supreme Court had ordered that

allowances be incorporated in the monthly salary for the purpose of calculating employee's severance benefits. He distinguished the facts of that case from the case before us, saying that in that case the government and ZIMCO had decided at the 87th ZIMCO board meeting sometime in March, 2005 that salaries and perks be merged in order to produce better retirement or retrenchment packages for existing staff who were likely to be affected by the looming job losses associated with privatisation. In the present case, there was no such an agreement between the parties. He asserted that the **Kasengele case** did not introduce a general proposition that there must always be a merger of basic salary and allowances when effecting severance payments. Each matter should be considered on its own merits.

In conclusion, Mr. Chiteba submitted that the appeal should succeed on all the three grounds. He reiterated the submissions made in the court below to the effect that it cannot be inferred from the conditions of service of non-represented staff that it was the intention of the parties that on retirement, the respondents be paid 12 months' salary for each year served and thus ordering that the plaintiffs be paid additional amounts on the basis of clause 9(a)(iv) would amount to unjust enrichment. He prayed that the judgment be set aside with costs to the appellant both in the court below and in this court.

In response to the appellants arguments on ground one, the respondents' advocate Mr. Okware submitted that the trial judge

had carefully analysed the relevant parts of the respondents' conditions of service before finding and holding as he did and he cannot possibly be faulted. He stated that the trial court's decision is supported by the Supreme Court case of **James Mankwa Zulu and 3 others v. Chilanga Cement** ⁽⁴⁾ where Mumba JS (as she then was) held at page 12 of the judgment as follows:

"The word "salary" is used, there is no debate anymore that the salary includes allowances that are paid together with the salary on periodical basis by an employer to his employees."

He further fortified his arguments with the case of **Zambia Telecommunications Ltd v. Felix Musonda and 29 others** ⁽⁵⁾ where the appellant **Zambia Telecommunications Ltd (ZAMTEL)** had appealed against the decision of the High Court that the respondents be paid their long service gratuity based on basic salary and allowances. He pointed out that in that case, the appellant argued that the ZAMTEL conditions of service provided a formula for paying long service gratuity using the last drawn basic salary. The appellant argued that in the **James Mankwa Zulu case** ⁽⁴⁾, the word "salary" was differently interpreted by the employer and the employee because it was neither qualified nor defined in the conditions of service. The Supreme Court at pages 10 and 11 of the said judgment agreed with the appellant that basic salary without allowances was to be used to calculate long service gratuity.

He went on to submit that in *casu*, the issue of long service gratuity is settled. He pointed out that the dispute between the parties relates to payment of benefits where no formula is provided. The retirement benefits for both categories of employees were to be paid based on 3 months "pay" for each completed year of service and pro-rata for uncompleted year served. As for repatriation, the plaintiffs were entitled to 2 months' salary.

He therefore submitted that reading between the lines, the Supreme Court judgment in **Zambia Telecommunications Ltd v. Felix Musonda and 29 others** ⁽⁵⁾ affirms the position that the words "salary" and "pay" used in the conditions of service of the appellants herein means basic salary plus allowances. He therefore urged us to reject the first ground of appeal.

The respondents' advocate argued the second and third grounds of appeal together because in his view they are interrelated. His contention was that clause 8 of the Terms and Conditions of Service for non-represented employees is sub-headed "Long Service Gratuity and clause 9 is sub-headed "Retirement." In official corporate documents, just like in legal documents, headings are aimed at not only showing coherence in the document but also to clarify which matters fall under the same category. Thus in construction of documents, all issues under the same heading are deemed to fall under that heading or category. He said the principle is that in construction of documents, a new paragraph or heading is deemed to have new or totally different ideas or matters and is

understood to be separate from the earlier heading. In this case therefore, long service gratuity is a separate heading with its own sub-headings which are inter-connected. "Retirement" as a heading also stands alone and relates to retirement benefits only. These provisions complement each other. Such documents if contradictory should be interpreted against the drafter, he stated.

He finally submitted that the lower court cannot be faulted for rejecting the appellants' proposition that the two clauses be read together. It follows that the appellants' contention that paying the respondents their retirement benefits would amount to double payment and unjust enrichment has no merit and should be rejected. He prayed that the entire appeal should fail and costs be awarded to the respondents.

We are indebted to both advocates for their submissions. We have considered the record of appeal and shall deal with the first ground of appeal on its own. Since grounds two and three are interconnected we shall determine them together.

In considering ground one, the issue that arises is whether in the absence of express provision in the Conditions of Service for Represented Staff and Terms and Conditions of Service for Non-Represented Staff, the respondents' retirement benefits could be calculated on the basis that 'pay' included salary and allowances as found by the trial judge.

In his judgment, before making findings of fact, the trial judge found it imperative to outline the various clauses of the conditions of service which were in contention. Likewise, it is expedient for us to quote them. They are as follows:

"Collective Agreement and Conditions of Service for unionised employees:

"1(b) 'Basic Salary' means such annual remuneration that an employee receives as salary according to salary scales agreed upon between the Company and the Union. Such salary excludes allowances".

"10(g)(iv) In addition to the retirement benefits accruing from the Pension Scheme, an employee retiring from service shall be entitled to payment of three months' pay for each completed year of service and pro rata for any uncompleted year served".

"10(g)(i) An employee who has been retired shall continue to receive housing allowance until all his/her benefits accruing from the company have been paid in full unless these are part of NAPSA".

"10(g)(ii) The company shall pay two months' salary as repatriation expenses where.....an employee retires from Zamtel services".

With regard to the provisions under the Terms and Conditions of Service for Non-Represented Staff, the clauses in contention were the following:

"8. Long Service Gratuity

8.1 Long Service Gratuity shall be payable in the following circumstances:

a. Normal Retirement

8.3 The level of Long Service Gratuity payment shall be three months' pay for each completed year of service and pro-rata for the incomplete year.

8.4 In computing the Long Service Gratuity the last drawn monthly basic salary shall be the amount to be used.

9(a)(iv) In addition to the retirement benefits accruing from the Pension Scheme, an employee retiring from service shall be entitled to payment of three months' pay for each completed year of service and pro rata for any uncompleted year served.

9(f)(i) The company shall pay two months' salary as repatriation expenses.

b) Where an employee is retired from the Company.

9(f)(ii) An employee who has been retired shall continue to receive housing allowance until all his/her benefits accruing from the company have been paid in full except for pension

and National Scheme Authority which are not administered by the Company”.

Therefore, having perused the above provisions and the authorities relied upon by the trial Judge our views are as follows: The learned trial judge was on firm ground when he found that the term ‘pay’ in the Collective Agreement as well as the Terms and Conditions of Employment for Non-Represented Staff meant “salary and allowances”. The trial Judge looked at the relevant conditions of service in light of certain legal principles of interpretation of contracts. He had also borrowed ideas from the rules of statutory interpretation. We are of the considered view that the judge properly applied the authorities of **Nzowa v. Able Construction limited**,⁽⁶⁾ **The Attorney General v. Moyo**,⁽⁷⁾ **Ford v. Beech**⁽²⁾ and **Wickman Machine Tools Scales Limited v. L. Schuler A.G**⁽⁸⁾ to the facts of the case.

In **Nzowa v. Able Construction Ltd**⁽⁶⁾ it was held *inter alia* that;

“The primary rule of construction of statutes is that the meaning of any enactment is to be found in the natural and ordinary meaning of the words used... where the literal interpretation causes absurdity, the Court can depart from this interpretation.”

In **The Attorney General v. Moyo** ⁽⁷⁾ it was held that a court may depart from the literal meaning of the words if reading those words literally, leads to an absurdity.

In **Ford v. Beech** ⁽⁴⁾ at page 866 Parker B. opined that:

"An agreement ought to receive the construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole agreement and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent."

The learned judge was compelled to interpret the relevant conditions of service in the manner that he did because the words 'pay' and 'salary' were undefined. That being the case, we find the appellant's argument that the judge erred in his interpretation because there was no express provision to that effect in both sets of conditions of service, to be devoid of merit. If the words 'pay' and 'salary' were defined, it would have been otiose to attempt to define them. We must say that apart from considering the principles of interpretation of legal documents, we have looked at the definition of the said words which are relevant to this decision, in **Black's Law Dictionary** ⁽¹⁾ as follows:

"Pay - to give (someone) money for the job that he or she does; to compensate a person for his or her occupation; COMPENSATE"

"Salary - An agreed compensation for services - esp. professional or semi-professional services - usu. Paid at regular intervals on a yearly basis, as distinguished from an hourly basis"

From the above definition, it is apparent that there is a thin line between the two words.

The appellants' understanding of the law laid down in **Ford v. Beech** ⁽⁴⁾ as stated in their Heads of Argument is correct. However, the argument that the trial judge having found the subject contractual provisions unclear should have relied on other clauses of the conditions of service so as to best effect the intentions of the parties is misconceived because the learned judge had in actual fact carefully analysed other provisions of the conditions of service thus; on the meaning of "pay" he looked at clause 8 and determined that it was clear that the non-represented employees were entitled to gratuity computed on the basis of their last drawn basic salary. This he found different from clause 9 providing for retirement benefits and repatriation for non-represented employees which is silent about how the benefits should be computed. He also considered the provisions on redundancy in clause 10 of Terms and

Conditions of Service for Non-Represented Staff. He pointed out that clause 10(a) provides for repatriation to be calculated based on the last drawn basic salary. However, pay is undefined in clause 10(b).

Based on the literal interpretation of these clauses, he opined that there were differences in the way the defendant intended the payments due to employees in various circumstances to be made. He noted that in the clauses he had referred to, where the computation of a particular benefit was to be based on the basic salary, it is clearly stated whereas other clauses do not specify that the calculations should be based on basic pay or pay/salary excluding allowances.

Similarly, under the Collective Agreement applicable to the unionised employees, he considered clause 18 providing for overtime which makes it clear that payment of such an allowance shall be at the basic rate of pay. He also noted that clause 30 provides for calculation of housing allowance at 35% of the employees' basic salary. He therefore, concluded that while there was a possibility that the lack of clarity on the mode of computing the retirement benefits referred to under clause 10(a)(iv) for unionised employees and clause 9(a)(iv) for non-represented employees was due to bad drafting, other provisions have made it abundantly clear as to the basis of computation. He fortified his decision with the case of **Wickman Machine Tools Scales Limited v. L. Schuler A.G** ⁽⁸⁾ where Lord Reid stated that:

"The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result, the more unlikely it is that parties can have intended it and if they do intend it the more necessary it is that they shall make their intention abundantly clear."

The Judge also rightly applied **Indo Zambia Bank v. Mushaukwa Muhanga** ⁽⁹⁾ where the Supreme Court held that:

"Courts should be reluctant to accept that linguistic mistakes have been made unless it can clearly be shown that the parties did not have the intention ascribed to them."

He was therefore on firm ground when he found on page 23 of the judgment that had the defendant intended to compute the retirement benefits and repatriation using the basic salary, it would have made it abundantly clear as it had in other instances. Our view is that the conditions of service reflect both parties' intentions and not just the defendant's intention. The other findings made by the trial judge were also made on the basis of the evidence on record and were not at all perverse for us to interfere with them.

Since it was not in dispute that long service gratuity was to be paid according to the last drawn monthly basic salary as clearly stated

salary including allowances instead of the basic salary. The trial judge had adopted the definition assigned to the word salary by the Supreme Court in the case of **James Mankwa Zulu and others v. Chilanga Cement Plc**⁽⁴⁾. On appeal, the Supreme Court held that it was clear from clause 8.4 of the conditions of service (which was couched the same as in this case), that the monthly basic salary was supposed to be used when computing long service gratuity. The Court also noted that clause 8.3 uses the word "pay" and not "basic salary" and it only provides the level of long service gratuity. Further that the fact that the conditions of service specified how long service gratuity should have been computed showed the intention of the drafters. The Supreme Court therefore disagreed with the finding by the learned trial judge that the word 'salary' includes allowances.

The view we take is that **Zambia Telecommunications Company Limited v. Felix Musonda and Others**⁽⁵⁾ dealt with long service gratuity only. In this case it is non-contentious that long service gratuity was supposed to be based on the last drawn basic salary. The case before us, is similar to the **James Mankwa Zulu and others case** in that the word 'salary' was not defined in the conditions of service. The word 'salary' therefore accordingly means salary plus allowances.

As regards grounds two and three, we are inclined to accept the submissions made by the respondent's advocate. The learned trial judge rightly directed himself when he found that as regards

conditions of service for non-represented staff, the benefits provided for under clause 8 are different from those provided for under clause 9. It is our measured view that clause 8 pertains to long service gratuity only. Clause 9 pertains to benefits on retirement which shall be in accordance with the company's pension scheme and in addition to the retirement benefits accruing from the pension scheme, a retiree shall be entitled to payment of three months' pay for each completed year of service and pro rata for any uncompleted year served. The drafters have made it perfectly clear that the payments to be made under clause 9(iv) are mandatory by using the word shall. The fact that these were to be paid in addition to the retirement benefits accruing from the pension scheme can also be deciphered.

The intentions of the parties must be put into effect no matter the sentiments of the appellant which to us have come as an afterthought. The view we take is that there will be no unjust enrichment on the part of the respondents should their conditions of service be applied as interpreted above. The lower court's findings on clauses 8 and 9 were supported by the evidence and fortified by the case of **Indo Zambia Bank v. Mushaukwa Muhanga**⁽⁹⁾. Therefore, we find no reason to interfere with them.

For the reasons we have given above, we find no merit in the appeal and hereby dismiss it with costs which may be taxed in default of agreement.



Dated the.....9th.....day ofNovember.....2017.

.....*Makungu*.....
C. K. MAKUNGU
COURT OF APPEAL JUDGE

.....*J. Mulongoti*.....
J.Z. MULONGOTI
COURT OF APPEAL JUDGE

.....*D.L.Y. Sichinga*.....
D.L.Y. SICHINGA
COURT OF APPEAL JUDGE

