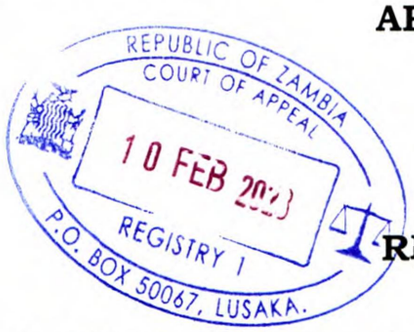
IN THE COURT OF APPEAL OF ZAMBIA **APPEAL No.36/2021**
HOLDEN AT NDOLA
(Civil Jurisdiction)

BETWEEN:

FRUIT AND VEG CITY HOLDINGS (PTY) LIMITED **APPELLANT**

AND



MARTIN SIMUMBA **RESPONDENT**

Coram: Makungu, Ngulube and Banda-Bobo, JJA
On the 17th day of November, 2022 and the 10th day of February, 2023

For the Appellant: Mr. Mwape Chileshe & Mr Andrew Simuyola both of Messrs Eric Silwamba & Jalasi Legal Practitioners.
For the Respondent: Mr. M Lisimba of Messrs Mambwe Siwila & Lisimba Advocates

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JUDGMENT

Makungu, J.A delivered the Judgment of the Court.

Cases referred to:

1. *Zambia Oxygen Limited and Zambia Privitisation Agency v. Paul Chisakula, Francis Phiri Yesani Chimwalla, Rumbani Mwandira and Richard Somanje SCZ Jugdment No. 4 of 2000*
2. *Promart Investment Limited T/A Chas Everit v. African Life Finance Services Zambia Limited and Sturnia Regina Pension Trust Limited SCZ Judgment No.7 of 2013*
3. *Savenda Management Services Limited v. Stanbic Bank Zambia SCZ Selected Judgment No. 10 of 2018*
4. *Amos Chalwe and 9 Others v. Standard Chartered Bank Zambia PLC 2010/HP/169*

5. *Salomon v. A. Salomon & Co. Ltd (1897) AC 22*
6. *Associated Chemicals Limited v. Hill And Delamain Zambia Limited and Ellis and Company (As A Law Firm) (1998) S.J. 7 (S.C.)*
7. *D.P Service Limited v. Municipality of Kabwe (1976) ZR 110*
8. *Attorney-General v. Marcus Kampumba Achiume (1983) Z.R 1*
9. *Rodger Scott Miller v. The Attorney General (1980) Z.R 126*

Other Authorities

1. *Chitty on Contracts, General Principles, Volume 1, 28th Edition, London, Sweet & Maxwell.*
2. *Garner, Bryan A and Henry Campbell Black. Black's Law Dictionary. (2004) 8th Edition. st. Paul MN, Thomson/ West.*
3. *Halsbury's Laws of England, Vol. 8.*

Websites referred to:

1. *www.Investopedia.com. Accessed on 29th December, 2022.*

1.0 INTRODUCTION

1.1 This appeal emanates from the decision of Judge M. Zulu of the High Court dated 10th July, 2020, in favour of the respondent against the appellant for the various monetary claims plus interest and costs to be assessed by the learned Registrar.

2.0 BACKGROUND

2.1 On 12th June, 2012, the plaintiff now respondent commenced this action against the appellant as 1st defendant, Food Lovers

Market Lusaka Limited as 2nd defendant and Food Lovers Market Ndola as 3rd defendant by way of writ of summons with a statement of claim. The reliefs sought were as follows:

1. *A sum of K9, 333, 345, 993. 60 for various claims broken down as shown in paragraphs (a) to (x) of the statement of claim.*
2. *Interest on all amounts found due to the plaintiff at the current commercial bank lending rate.*
3. *Costs.*

3.0 EVIDENCE ADDUCED BY THE PLAINTIFF NOW RESPONDENT

3.1 In his evidence the respondent claimed *inter alia* for a refund of expenses that he incurred as he was setting up a fruit and Veg City shop in Zambia and for payment for the time spent in executing all the activates that culminated into the opening of the appellant's shop at Levy Mall. He also claimed for a refund of rentals paid before the shop was opened and 30% of the tenancy and installation costs. The respondent further claimed for equity in Food Lovers Market Lusaka Limited. He also claimed interest on the amount found due and costs.

3.2 The respondent further testified that sometime in May, 2010, he sent an email to the appellant's Business Development Manager, Graham Livenberg expressing interest in bringing a Fruit and Veg City/Food Lovers Market Franchise to Zambia. After discussions, it was agreed that the contract and business were to be performed in Zambia.

3.3 The respondent was tasked to come up with R8,000,000.00 unencumbered as an indicative budget; a business plan for opening about 12 to 14 stores in Zambia. The respondent informed the appellant that he was going to experience difficulties in raising the money. The appellant proposed to bring in a partner who would bring in 70 % of the funds so that the respondent would provide 30% of the funds in the Food Lovers Market Lusaka, to which he agreed.

3.4 The appellant through its agent Frans Van Der Koff introduced the respondent to Chris Linder and Aidan Oosthuysen who ran Pick 'n' Pay Stores in Pretoria, as partners. The appellant through Van der Koff requested the respondent to create a special purpose vehicle called Ilanzi Management Services Limited for purposes of establishing Fruit and Veg/Food Lovers Market in Zambia. After negotiations, the respondent identified

a store site at Levy Junction Mall in Lusaka and Z-Mart in Ndola. The appellant gave the respondent a go ahead to secure retail space and commence preparations for the shop. The appellant sent Vernon Castle to begin the preparation of the Lusaka shop.

3.5 The respondent further averred that the appellant's representative named Norman Michael Coppin nominated him to be the tenant in terms of the Lease Agreement concluded between the National Pensions Scheme Authority (NAPSA) and Fruit and Veg City Holdings on 17th May, 2011. The nomination was later revoked verbally without any justification.

3.6 The respondent further averred that the appellant instructed him to incorporate Ilanzi Management Services Limited which was to hold the Master Franchise for Fruit and Veg City/Food lovers Market in Zambia. That he incurred costs in preparing the tax compliance documentation and for the accommodation of the Project Manager at Protea Hotel and Chita lodge. That the respondent also engaged contractors to work on the Lusaka site and paid for some materials used and by the time the 2nd defendant was brought on board, the substantial ground work had already been done such as floor preparations, plumbing

works, ceiling painting, floor polishing and office lay out. That after doing all the ground work at the Lusaka shop, the appellant decided to terminate the contract between the parties on grounds that he (the respondent) had an outstanding loan with a financial institution in Zambia.

3.7 That as a result of the said termination he suffered loss and damage. He contended that the reason for terminating the contract was not detrimental to finalizing the Franchise in his favour. That the appellant wrongly converted his equity and interest in Food Lovers Market Lusaka Limited hence the reliefs sought.

4.0 EVIDENCE ADDUCED BY THE DEFENDANT NOW APPELLANT

4.1 The appellants' evidence was that it entered into negotiations with the respondent on the understanding that he would secure funds either from banks or from his personal resources in order to set up Fruit and Veg City in Zambia. They averred that the respondent failed to secure the required finances due to his questionable credit record.

4.2 The appellants conceded that they allowed the respondent to secure retail space and commence preparations for the shop because at the time, the respondent was in effective partnership with other parties including Chris Linder, who eventually withdrew. That they were not privy to the plaintiff's partnership with any other persons.

4.3 The appellants further conceded that it had negotiations with the respondent over the Master Franchise agreement but the said negotiations were never concluded. The appellant stated that it negotiated and concluded a Master Franchise agreement with the 2nd defendant.

4.4 According to the appellants, the contract with the respondent was terminated because he failed to raise the equity contribution as per agreement. They tried to get a loan from Barclays Bank Zambia but the bank informed them that it would not lend any money to a project that the respondent was involved in as his other companies' accounts were under care. The appellants ultimately denied all the respondent's claims.

5.0 DECISION OF THE LOWER COURT

5.1 The learned trial Judge after analyzing the evidence, found that the parties were engaged in negotiations for the purposes of signing a Master Franchise Agreement which was going to facilitate the opening of the Food Lovers Franchise Stores in Zambia.

5.2 The Judge further found that, the appellant had given the respondent two conditions that needed to be met for them to sign a Master Franchise Agreement and implement the project. The first condition was that, the respondent needed to identify possible sites for store locations in Zambia and find two immediate sites in Lusaka and Ndola. He also needed to come up with a business plan for the opening of 12 to 14 shops to be situated in Kitwe, Chingola, Solwezi, Ndola and Lusaka. The second, was to raise a sum of R8,000,000.00 unencumbered, either from the banks or from his personal resources.

5.3 The Judge noted that the respondent met the first condition as he had identified Levy Mall in Lusaka and Z-Mart Mall in Ndola, which the appellant approved and requested him to secure retail space.

5.4 The appellant further instructed the respondent to create a special purpose vehicle for establishing the franchise shops in Zambia. He consequently incorporated Ilanzi Management Services Limited, a company in which the respondent was the majority shareholder. However, as he had difficulties in raising the R8,000,000.00, the appellant introduced him to Chris Lander and other potential partners. He then told the respondent to dilute his shareholding in Ilanzi to allow the potential joint partners to hold 70% shares so that he would remain with 30% shares. The potential joint venture partners later withdrew from the partnership.

5.5 The Judge further found that the respondent commenced preparations for shop No. 48 at Levy Mall in Lusaka and the appellant signed a lease agreement with NAPSA in which the appellant was granted beneficial occupation of the same. The lease provided a substitution of the tenant within a 60 day period from the date of the lease.

5.6 The Judge further found that the appellant nominated Ilanzi to be tenant, but later revoked the nomination. The appellant then entered into a Master Franchise Agreement with the 2nd

defendant, which was granted beneficial occupation of shop no. 48 Levy Mall.

5.7 The Judge further found that the appellant withdrew from the negotiations with the respondent before the Master Franchise Agreement could be signed as the respondent could not raise the equity contribution and that Barclays could not lend money to a project in which the respondent was involved in.

5.8 The learned trial Judge rejected the appellants' argument that because the Master Franchise Agreement was not signed, and no contract existed, the respondent did the preparatory works and incurred expenses at his own risk. The judge held that the respondent did those preparatory works and incurred expenses at the request of the appellant.

5.9 The Judge further held that the said works were not done gratis and that the appellant obtained a benefit from the works done by the respondent. This is because after terminating the relationship with the respondent, the appellant entered into a Master Franchise Agreement with Food lovers Market Lusaka who was given beneficial occupation of the shop no.48 at Levy Mall.

5.10 The Judge also found that the respondent was entitled to expenses incurred for the Project Managers air travel and stay in Zambia. The judge further accepted the evidence, that after the appellant signed the lease agreement with NAPSA and Ilanzi was granted beneficial occupation of shop no. 48 Levy, Mall, the respondent paid 30% of the rentals which were payable to NAPSA.

5.11 The Judge dismissed the appellant's argument that the respondent was not entitled to the claims sought because it was dealing with Ilanzi which was not party to the proceedings. The judge took the view that the appellant could not escape liability using Ilanzi's separate legal personality, considering that company was incorporated by the respondent at the request of the appellant.

5.12 The Judge further found that the respondent was entitled to recover his claims on a quantum meruit basis.

5.13 The respondent's claims against the 2nd and 3rd defendants were dismissed.

5.14 The Judge found that the respondent had proved its case on a balance of probabilities although the claim under paragraph 23

(i) (d) for expenses for preparing the Shop at Levy junction – K191,990,000.00 could not be sustained as it was too general.

5.15 The claim for 30% equity in Food Lovers Market Lusaka Limited could also not be sustained due to insufficient evidence.

5.16 Similarly the claim for 30% of the tenancy installation costs was rejected because the plaintiff was not party to the lease agreement to which this claim relates.

5.17 The Judge held that the claims that were recoverable were only those that the respondent incurred in respect of the following: consultancy fees for the work done in setting up Fruit and Veg City in Zambia; preparation of the business plan, identification of shop no. 48 Levy Mall in Lusaka, equipment hire, plumbing, labour, transportation of materials to the site, fuel for the equipment hired from Costal Plant Hire, rentals paid by the respondent in respect of shop no.48 Levy Mall, air travel for negotiations, charge for engaging and negotiating with Mint Advisory Services, payment to Mint Advisory Services for recruitment of staff, phone bills, accommodation for the Project Manager at Chita Lodge and Protea Hotel, transport for the Project Manager, car hire for the Project Manager,

accommodation for Chris Lender's Assistant; airport pickups and driving the appellant's officials who came to Zambia around; branding of the motor vehicles; legal fees for the incorporation of Ilanzi Mangement Services Limited and advertising on the plaintiff's vehicles.

5.18 In light of the above, the matter was referred to the learned Registrar for assessment of the amounts due to the respondent. Interest was awarded at the short term bank deposit rate from date of writ to date of judgment and thereafter, at the current bank lending rate as determined by the Bank of Zambia until full payment. Costs were also awarded to the respondent.

6.0 GROUNDS OF APPEAL

1. ***The learned trial judge erred in law and fact at page J53 of the judgment by holding that the respondent stood to benefit from the preparatory works of the aborted Master Franchise Agreement when the same was to be executed for and on behalf of Ilanzi Limited which was not a party to the proceedings in the court below.***

2. ***The learned trial judge misdirected himself at law by awarding damages in the realm of restitution on the basis of the equitable principle of Quantum Meruit when the original claim was founded on an alleged agreement without any specific pleading of the said equitable relief;***

3. ***The learned trial judge erred in law and fact by awarding the respondent a claim for consultancy fees contrary to the respondent's own evidence at page J17 of the judgment where he confirmed that he was not retained as a consultant; and***

4. ***The trial judge erred in law and fact by establishing liability in a trial where the respondent failed to discharge the burden of proof and made findings of facts not supported by any evidence thereby rendering assessment of damages irregular.***

7.0 APPELLANTS HEADS OF ARGUMENT

7.1 During the hearing of the appeal, the appellant relied on the heads of argument filed on 26th February, 2021. In support of ground 1, it was accordingly submitted that the respondent was

not a party to the aborted Master Franchise Agreement at the time of negotiations between the appellant and Ilanzi Management Services Limited (Ilanzi). That the respondent is a shareholder in Ilanzi and cannot sue on behalf of Ilanzi, which is a legal person with capacity to sue and be sued.

7.2 That it is clear from the record that there hasn't been any novation/agreement signed by the appellant and Ilanzi to vary/ or substitute parties to the aborted negotiations for the execution of the Master Franchise Agreement and add the respondent as a party to same. Counsel argued that the correct parties to the Master Franchise Agreement were the appellant and Ilanzi which is not party to these proceedings, therefore the trial judge erred in holding that the respondent was entitled to claim for the purported expenses. In furtherance, we were referred to **Chitty on Contracts , General Principles volume 1, 28th edition (1999) paragraph 19.001 on page 959** which elucidates the principle of privity of contracts as set out hereunder:

> ***"Under the common law doctrine of privity to contract, the general rule is that contracts cannot be***

enforced either by or against third parties. The second limb is the rule (under which a contract cannot impose liability except to a party to it) is generally regarded as just and sensible."

7.3 Counsel also cited a number of authorities including the cases of **Zambia Oxygen Limited and Zambia Privitisation Agency v. Paul Chisakula, Francis Phiri Yesani Chimwalla, Rumbani Mwandira and Richard Somanje**[1] on the principle that only a person who is a party to a contract can sue on it and that rights under a contract cannot be conferred on a stranger to a contract.

7.4 In ground 2, the argument was that the claim for quantum meruit was not pleaded in the initial statement of claim. That it is trite law that for a claim for quantum meruit to arise, there must have been either a contract/agreement or a quasi-contract between the parties. That in *casu*, there was no formal and binding contract between the parties.

7.5 Counsel further submitted that a perusal of the amended pleadings dated 8th August, 2013 shows that there was no claim for quantum meruit and as such, the respondent is not entitled

to such a relief. On this basis, the lower court misdirected itself in awarding the respondent what was not pleaded.

7.6 Counsel referred us to **Black's Law Dictionary** where quantum meruit is defined as:

> ***"The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship."***

7.8 It was submitted that for quantum meruit to exist, there must be (i) proof of services rendered by a person towards another and (ii) a contract or a quasi-contractual relationship between the disputing parties. That in this case, there was no formal contractual relationship. The trial judge erred in law in finding that the respondent is entitled to recover under the claim of quantum meruit on the basis that the respondent incurred expenses associated with incorporation and the preparation of tax compliance documents. The case of **Promart Investment Limited T/A Chas Everit v. African Life Finance Services Zambia Limited and Sturnia Regina Pension Trust Limited**[2] was cited in support of the submission that to qualify for a claim

for quantum meruit there must be a quasi-contract and also there must have been a request by the appellant for the respondent to commence works.

7.9 Counsel further submitted that the respondent had incorporated a special purpose vehicle in the names of Ilanzi and had been acting on its behalf. It was legally wrong for the Judge to ignore this fact and to proceed to hold in favour of the respondent as that company was not a party to the action.

7.10 Counsel contended that the appellant did not request the respondent to commence the preparatory works as the same were done on expectation that the Master Franchise Agreement would be executed.

7.11 Counsel argued further that should this court be persuaded to entertain the scope of an award on account of quantum meruit, the basis of such an award will be met with practical challenges of asserting the actual quantum given the fact that, the respondent is not a member of any body that offers consultancy services. That since the respondent conceded that he was not employed as a consultant, it would be oppressive to impose a rate of his services that is speculative.

7.12 Counsel further argued that the statement of claim did not state the claim of quantum meruit but a claim for liquidated damages. Therefore, it is unjustifiable for the trial judge to have abandoned the original claims and substituted them with a claim of his choice.

7.13 On grounds 3 and 4, it was submitted that the respondent admitted at page 576 paragraph 7 of the record of appeal, that he was not a consultant. Notwithstanding this fact, the trial Judge proceeded to award the respondent the claim for consultancy fees for 600 days for the work done in setting up Fruit and Veg City in Zambia at K2,446,080,000.00. Counsel contended that this award was perverse as it was not supported by the evidence on record and it should be set aside. Citing the case of **Savenda Management Services Limited v. Stanbic Bank Zambia,**[3] counsel pointed out that the Supreme Court had guided that the role of the court is not to engage in investigating the case if alternative remedies and reliefs are available from the pleadings and evidence deployed before it, as opposed to suggesting from a vacuum, fresh remedies or reliefs that the trial Judge deems fits.

7.14 Counsel contended that in the absence of any documents to support the respondent's claims herein, the appeal should be sustained. The case of **Amos Chalwe and 9 Others v. Standard Chartered Bank Zambia PLC**[4] was cited in support of this submission.

7.15 It was further submitted that the respondent's failure to produce before court any documentation and or precise calculations to indicate the expenses that were allegedly incurred as a result of preparatory works done at the Levy Shop demonstrates that there was no cogent evidence to prove the claims. The respondent failed to adduce evidence on how he came up with figures for the claim for advertising and branding the vehicles or whether he obtained the rates from professionals in the world of advertising and marketing. That to place reliance on this kind of evidence as the trial Judge did, amounted to accepting speculations of a witness. Counsel contended that all the claims for refund of costs and expenses purported to have been incurred by the respondent are not justified.

7.16 Counsel emphasized that the respondent needed to adduce documentary evidence to show what he paid on behalf of the

appellant. That it was a gross misdirection by the Judge to refer the claims to assessment when the respondent had failed to prove his claims. Counsel urged us to uphold the appeal and grant the appellant costs.

8.0 RESPONDENT'S HEADS OF ARGUMENT EXPUNGED

8.1 The respondent's heads of argument were expunged from the record as they were filed out of time without leave of court. Therefore, we shall determine this appeal based on the record and the appellant's submissions.

9.0 OUR DECISION

9.1 We have considered the record of appeal, the judgment appealed against and the submissions made by counsel for the appellant. We shall tackle the first and second grounds of appeal together as they are intertwined. Ground one essentially challenges the respondent's *locus st*andi in this matter and ground two challenges the award granted to the respondent on quantum meruit basis.

9.2 It is settled law that a company of limited liability is a legal entity separate from its directors and shareholders; the company has capacity to sue and be sued in its name; See the cases of

Salomon v. A. Salomon & Co. Ltd[5] and **Associated Chemicals Limited v. Hill and Delamain Zambia Limited and Ellis and Company (As A Law Firm)**[6]

9.3 The facts on record show that, the appellant requested the respondent to incorporate a company to be used as a special purpose vehicle to be given the master licence to sign a franchise agreement. On this basis, Ilanzi Management Services Limited (Ilanzi) was incorporated

9.4 Before, the incorporation of Ilanzi, the respondent had already began some preparatory works such as finding location of the shop at Levy Mall which led to the appellant signing a lease agreement with NAPSA and Liberty Properties Limited. After that, the appellant informed the respondent that it had up until 10th July, 2010 to nominate an official tenant. The appellant ended up nominating Ilanzi as tenant, which nomination was later revoked.

9.5 The intentions of the parties that can be deduced from the evidence on record is that after incorporation, Ilanzi Limited would hold the Master Franchise and benefit from it, but this did not happen as the agreement was aborted. The appellant

then entered into a Master Franchise Agreement with Food Lovers Market Lusaka Limited, which was granted beneficial occupation of shop No. 48 at Levy Mall.

9.6 We uphold the lower courts findings that there was no "final contract" (Traditional Contract) between the appellant and respondent or between the appellant and Ilanzi. We also take note that Ilanzi was not and still is not a party to the proceedings. However, looking at the definition of quantum meruit in **Black's Law Dictionary** which is quoted at J17 hereof: "the reasonable value of services; ***damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship"*** (Emphasis added), and taking into account the holding in the **Promart Investments Limited T/A Chas Everit** case *supra*, we hold that a quasi contract did exist between the parties to this appeal. ***A quasi contract is another name for a contract imputed in law, which acts as a remedy for a dispute between two parties that do not have a contract. A quasi contract is a legal obligation – not a traditional contract – which is decided by a Judge for one party to***

compensate the other.(see www.Investopedia.com)[1] accessed on 29th December, 2022.

9.7 The evidence on record shows that the respondent did some preparatory works such as finding a location for the shop at Levy Mall and incorporating Ilanzi at the request of the appellant. We take the view that, since the Master Franchise Agreement was not formalized with Ilanzi, the respondent personally stands to benefit from the work he had done before its incorporation as the appellant benefited from his efforts. Therefore, we cannot fault the trial Judge for some of the awards made on quantum meruit. Suffice to state that the respondent cannot claim for the works done by Ilanzi for the appellant, as Ilanzi is a legal person at law with the capacity to sue and be sued in its own right (see **Salomon v. A. Salomon & Co Ltd**[5] *supra*). Under the circumstances, it is inconsequential that ILanzi, is not a party to the proceedings.

9.8 We are further fortified by the learned authors of **Halsbury's Laws of England, Vol. 8 paragraph 390** who state that:

> ***"If services are rendered and accepted in pursuance of an agreement which is unenforceable,***

remuneration is payable on the basis of a quantum meruit."

9.9 Moreover, the equitable remedy of quantum meruit, can be granted though not pleaded. In the case of **D.P Service Limited v. Municipality of Kabwe,**[7] it was held that:

"Although the words quantum meruit have not been used in the pleadings, this in no way debars a party from being entitled to judgment for such a claim.

9.10 Grounds 3 and 4 will be dealt with together as they are related: The starting point is the respondent's own evidence at page 576 paragraph 7 of the record of appeal as follows:

"I was never engaged by the 1st defendant to be a consultant. I was justifying my hours in this project for 2 years. I was not told by the defendants that I was going to be refunded for any money."

9.11 In light of the said evidence, we hold that the trial Judge erred in awarding the respondent consultancy fees in the sum of K 2, 446, 080, 000. 00 as the same was based on a misapprehension of facts. The findings of the lower court relating to consultancy

are hereby set aside following the case **Attorney-General v. Marcus Kampumba Achiume.**[8]

9.12 The Order for assessment of the respondent's dues is upheld as the law as to when assessment should be made states that "A Judge can refer a matter for assessment where there is little or no evidence of quantum before the Judge." See the case of **Rodger Scott Miller v. The Attorney General.**[9] As there was little evidence of quantum before the trial Judge, the Judge was on firm ground to refer the matter to the Registrar for assessment.

9.13 For the avoidance of doubt, we uphold the claims for the preparatory works done by the respondent which include; preparation of business plan, expenses associated with incorporation of Ilanzi, identification of shop no.48 at Levy Mall in Lusaka, and rentals paid towards the said shop, personal money advanced towards the following; civil works at the shop for equipment hire, plumbing, labour, transportation of materials to site, fuel for the equipment hired from Coastal Plant Hire, personal expenses incurred towards the following: air travel for negotiations, charge for engaging and negotiating with

Mint Advisory Services, payment to Mint Advisory Services for recruitment of staff, phone bills, accommodation for the Project Manager at Chita Lodge and Protea Hotel, transportation for the Project Manager, car hire for the Project Manager, accommodation for Chris Linders Assistant, Airport pickups and driving the 1st defendant's officials who came to Zambia, branding of motor vehicles and advertising.

9.14 We further refer the matter to the Registrar for assessment and that the amounts due to the respondent should carry interest at the short term bank deposit rate from the date of the writ to date of judgment and thereafter at the current bank lending rate as determined by the Bank of Zambia until full payment.

10.0 CONCLUSION

10. 1 In summary, a party can withdraw from negotiations prior to conclusion of a contract without incurring any liability. However, where a party who withdraws from negotiations prior to the conclusion of a contract has derived benefit from the other party with whom quasi contract was made, an obligation to pay that party for the

reasonable value of the benefit derived therein arises. (*quantum meruit).*

10.2 In *casu*, although there was no final contract signed between the parties, the respondent did preparatory works which led him to incur expenses in anticipation of the Master Franchise Agreement. A quasi-contractual relationship existed between the parties and thus the respondent is entitled to his claims as stated above.

10.3 Grounds 1, 2 and 4 fail while ground 3 succeeds. However, this is not substantial win as the appellant still owes the respondent the monies to be assessed. For this reason, we award costs to the respondent to be taxed in default of agreement.

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C.K. MAKUNGU
COURT OF APPEAL JUDGE

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P.C.M. NGULUBE
COURT OF APPEAL JUDGE

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AM BANDA-BOBO
COURT OF APPEAL JUDGE