

IN THE COURT OF APPEAL OF ZAMBIA

Appeal No. 264 of 2021

HOLDEN AT KABWE

(CIVIL JURISDICTION)

BETWEEN:

MAAMBA COLLIERIES LIMITED

AND

MAYFORD CHIKOYA



APPELLANT

RESPONDENT

CORAM: CHASHI, MUZENGA AND PATEL, JJA

On 13th October and 2nd November 2023

For the Appellant:

Mr. J.C.Kalokoni

Messrs. Kalokoni & Co

For the Respondent:

Mr. A.S. Koswe

Messrs. Milimo Chooka & Associates

JUDGMENT

Patel, JA, delivered the Judgment of the Court

Cases referred to:

1. James Mankwa Zulu & Others vs Chilanga Cement PLC -SCZ 12 of 2004.
2. Zambia Breweries PLC v Lameck Sakala (2012) 2 ZR P.460.
3. John Mugala and Kenneth Kabenga v The Attorney General (1988-99) ZR P.171.
4. Hakainde Hichilema and 5 others v The Government of the Republic of Zambia -SCZ Appeal No. 28 of 2017.
5. Nitrogen Chemicals of Zambia v Lazarous Bwalya -SCZ Appeal No. 38 of 2011.
6. Anderson Mwale and 2 others v Zambia Open University 2021/CCZ/001.
7. B.P Zambia Plc v Expendito Chipasha and 235 others (Appeal 189 of 2016) [2018] ZMSC 366.
8. Zulu v Avondale Housing Project Limited (1982) Z.R.
9. Kwacha Pension Trust Fund v Ali Nesr -2021/HPC/0492;
10. Danait Transport Limited v Zambezi Portland Cement Limited - 2020/HPC/0629,
11. Bruno Musunga v Road Contractors Company -SCZ Appeal No. 103 of 2018.
12. Kasote Singogo vs Lafarge Zambia Plc -SCZ Appeal No. 33 of 2012
13. Yonah Shimonde, Freight and Liners v Meridien Biao Bank Limited (1999) ZR 47
14. Bank of Zambia v Caroline Anderson and Andrew W. Anderson (1993/94) ZR 47
15. Barclays Bank Zambia Plc v Patricia Leah Chatta Chipepa- SJZ No. 16 of 2017
16. Charles Kajimanga v Richard Bornface Chiluba and Another¹⁶ –CAZ 43 of 2018
17. Re: Kashitu -SCZ Judgment No. 27 of 1982

Legislation referred to:

1. The High Court Act and Rules, Chapter 27 of the Laws of Zambia.
2. The Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia
3. The Judgments Act, Chapter 81 of the Laws of Zambia

1.0 INTRODUCTION

- 1.1 This is an appeal against the Judgment on Assessment, from the Registrar of the Industrial Relations Division, **Hon Joshua Banda** (as he then was), delivered on 6th August 2021, from an action filed in 2017 in which the Respondent sought damages for wrongful and/or unfair termination.
- 1.2 In the substantive action commenced by the complainant, Mayford Chikoya, it was ordered by a Judgment of **Hon. E.L Musona** of 28th June 2019 that the complainant be paid 6 month's salary as damages for unfair termination. The amount was to attract interest at the short-term bank deposit rate from the date of Notice of Complaint to the date of Judgment and thereafter at the current lending rate as determined by the Bank of Zambia. The matter was referred to the Honorable Registrar for assessment.

2.0 BACKGROUND

- 2.1 For the purposes of this section, we shall refer to the parties as they were in the court below. This matter was commenced by Mr. Mayford Chikoya (the Complainant) against Maamba Collieries Limited (the Respondent) by

- way of Notice of Complaint accompanied by Affidavit in Support dated 6th December 2017, seeking reliefs which are not in contention for the purposes of this appeal.
- 2.2 As noted, Judgment was delivered by Honourable Mr. Justice E.L Musona on 28 June 2019, wherein it was ordered that the Complainant be paid 6 months' salary as damages for unfair termination with interest as per the Judgment. The Complainant having succeeded in his claim was further awarded costs to be taxed in default of agreement. These were settled by consent order.
- 2.3 On 27th September 2019, the Complainant made an application for assessment pursuant to the Judgment of the Court and relied on his supporting Affidavit, wherein he averred that the Parties had failed to reach an agreement. It was also deposed that following the delivery of the Judgment, the Respondent had deposited a sum of **K168,000** into the High Court which the Complainant did not accept, as the amount deposited was an underpayment.
- 2.4 The Respondent's, (now Appellant's), opposing affidavit and skeleton arguments filed on 15 July 2021 are noted from the Record of Appeal.
- 2.5 The matter thereafter proceeded to the Learned Registrar (hereinafter referred to as "**the Registrar**") for assessment of damages, which is the subject of this appeal.

3.0 DECISION OF THE REGISTRAR ON ASSESSMENT

3.1 In his assessment, the Learned Registrar considered the affidavit evidence, and skeleton arguments from both Parties respectively. He noted the following issue:

- i. *Whether the Applicants allowances ought to be included when computing the amount due.*

3.2 The Learned Registrar considered the Complainant's position being that his gross salary was K50,100.00 and that this was inclusive of all allowances he used to get together with the salary. The Respondent countered that the figure that should be used was K28,000.00 as there was no provision in the conditions of service and in the Judgment of the trial court for merging allowances into the basic salary while conceding that it had left out the housing allowance from its calculation.

3.3 The Complainant referred to the decision of the Supreme Court in the case of **James Mankwa Zulu & Others vs Chilanga Cement Plc** ¹ in which the Court stated:

"There is no longer any debate as to the meaning of "salary" as the word salary includes allowances that are paid together with salary on periodical basis by an employer to his employee."

3.4 It was the Learned Registrar's view that based on the above position of the law, the calculation of the 6 months' salary ought to include allowances paid to the Complainant, together with the salary on periodical basis, as this was neither a calculation of gratuity, nor terminal benefits.

- 3.5 It was his considered view that according to the Judgment of the trial Court, the Complainant was awarded 6 months' salary as damages for unfair termination with interest at short term deposit rate from the date of the Notice of Complaint to the date of Judgment and thereafter at the current lending rate as determined by Bank of Zambia until the date of settlement.
- 3.6 In analysing its assessment, the Learned Registrar noted the following:
- i. That the 1st part of interest according to the Judgment of the Court is at the short -term deposit rate from the date of Notice of Complaint to the date of Judgment. Interest at short term deposit rate according to the monetary committee of the Bank of Zambia as at then was **8.22%**.
 - ii. The 2nd part of interest according to the Judgment of the Court, was calculated at the lending rate of the Bank of Zambia from the date of Judgment until settlement. Interest at the current commercial bank lending rate as determined by the Bank of Zambia's monetary committee was **25.1%**
- 3.7 In assessing the appropriate damages awarded to the Complainant from the Judgment of the Court below, the Registrar held that the total amount of salaries for 6 months according to the pay slip and the contract of employment was the sum of **K253,980.00**.
- 3.8 By way of summary, below is the Registrar's assessment in terms of interest at short term deposit rate from the date of the Notice of Complaint to the date of Judgment at page JA9, *page 18* of the Record of Appeal.

1st PART OF INTEREST

Interest at 8.22% from 06th December 2017 (date of Notice of Complaint) to 28th June 2019 (date of Notice of Judgment).

Total Salaries for 6 months = K253, 980.00

Interest = Principal x Time x Rate

100

Interest = K253,980.00 x 18 months x 8.22

100

Interest = K375, 788.81

The total sum is K253, 980.00 (Principal) + K375, 788.81

(Interest) = K629, 768.81

Therefore, the Judgment sum as at 28th June 2019 (date of Judgment) stood at K629, 768.81.

2nd PART OF INTEREST

Interest at the current commercial bank lending rate as determined by the Bank of Zambia's monetary committee as at now is at 25.1%

Total Judgment Sum as at 28th June 2019 = K629,768.81 less what was paid towards the Judgment sum is:

K629,768.81 – K168, 000

= K461, 768.81

Interest from the date of Judgment to date (August 2021) at 25.1% is;

Interest = $\frac{\text{Principal} \times \text{Time} \times \text{Rate}}{100}$

100

Interest = $\frac{K461,768.81 \times 25 \text{ months} \times 25.1}{100}$

100

Interest = K2, 897, 599.22

Therefore, the total amount is K461, 768.81 (Principal) + K2, 897, 599.22 (Interest)

= K3, 359, 368.03

- 3.9 The Registrar arrived at the conclusion that from the above assessed amounts, the total sum due to the Complainant is Kwacha three million three hundred and fifty-nine thousand, three hundred and sixty-eight and three ngwee (**K 3, 359, 368.03**).

4.0 THE APPEAL

- 4.1 Dissatisfied with the outcome of the assessment, the Appellant filed a Notice of Appeal and Memorandum of Appeal on 8th September 2021 advancing eight (8) grounds of appeal:

- 1. The Learned Registrar erred in Law by assessing damages payable to the Respondent in the absence of the parties contrary to the current Law.*
- 2. The learned Registrar misdirected himself in Law in awarding the Respondent the sum of K253,980.00 as the principal amount representing six (6) months' salaries payable to the Respondent based on the*

misapprehension of the Law enunciated in the James Mankwa vs Chilanga Cement Plc - SCZ No. 12 of 2004.

- 3. The Learned Registrar missed the mark at law by neglecting and/or ignoring the applicable conditions of service, the Appellant's evidence on record and the Judgment of the Trial Court in assessing the damages, thus coming up with a wrong Judgment on Assessment in totality.*
- 4. The Learned Registrar misdirected himself in Law by allowing the Respondent to add at Assessment stage new claims which were not specifically pleaded in the Originating process.*
- 5. The Lower Assessing Court erred at Law by awarding interest on the alleged principal sum of K253,980.00 instead of awarding interest on the difference between the principal sum already paid to the Respondent through his Advocates Messrs Lewis Nathan Advocates and what the Court found to be the alleged correct principal amount payable herein.*
- 6. The Learned Registrar erred at Law by awarding the Respondent the sum of K2,897.599.22 as the post-Judgment interest payable based on the wrong principal amount and contrary to the legal principle that interest does not accrue on the principal sum already paid to the Respondent as that would amount to an unjust enrichment.*
- 7. The Lower Court erred in Law by failing to address the issue of Tax on Assessment.*

8. *The Lower Court erred in Law by relying on unofficial interest rates and by awarding the Respondent the colossal sum of K3,359,368.03 as the six (6) months' salaries payable to the Respondent as damages which is based on wrong premises and contrary to the applicable conditions of service and the Law.*

5.0 APPELLANT'S ARGUMENTS IN SUPPORT OF THE APPEAL

- 5.1 We have duly considered and appreciated the Appellant's Heads of Argument filed on 2nd November 2021 which will not be recast here save for emphasis as necessary.
- 5.2 In support of ground 1, it is the Appellant's submission that learned Registrar misdirected himself in law by assessing the damages payable to the Respondent in the absence of the Parties contrary to the current law. The Appellant placed reliance on the decision of the Supreme Court in the case of **Zambia Breweries PLC v Lameck Sakala**², in support of the principle that

"Assessment of damages is also regarded as a trial."

It was the Appellant's argument that, being a trial, the Registrar should not have proceeded *ex-parte*, in the assessment. The Appellant further contended that having issued a notice of hearing for 27 May 2022, and without any application for abridgement of time by either party to the case, or a fresh date of hearing from Court, they were taken aback to receive the judgment on assessment from the Registrar.

5.3 On this point, the Appellant further submitted that the assessment, being a trial, the Registrar was obligated to follow the directions given by the Supreme Court in the **Lameck Sakala**² case cited above, that the Registrar must:

- 1) *Review the evidence presented;*
- 2) *Make a summary of the parties' arguments and submissions;*
- 3) *Make findings of facts as to what the Respondent's salary was;*
- 4) *Show the reasoning on the facts;*
- 5) *Apply the law and authorities to the facts.*

5.4 The Appellant also relied on the cases of **John Mugala and Kenneth Kabenga v The Attorney General**³ and **Hakainde Hichilema and 5 others v The Government of the Republic of Zambia**⁴, authorities that affirmed the position that it is undesirable for a trial judge to volunteer a ruling especially without affording the parties an opportunity to address him. It was the Appellant's argument that the Registrar did not conduct a Trial at all and completely disregarded the Notice of Hearing issued. It was further argued that by proceeding *ex-parte*, the Registrar purported to prove the case on behalf of the Respondent and denied the Appellant an opportunity to be heard.

5.5 The Appellant in support of its arguments in grounds 2, 3 and 7, has placed reliance on the case of **Nitrogen Chemicals of Zambia v Lazarous Bwalya**⁵, in which the Supreme Court guided that Assessments cannot be done contrary to the applicable conditions of service. It was their submission that there was no finding of fact to determine the Respondent's salary and on which to base the assessment. They have also argued that no

determination was made on the tax payable to the Revenue Authority on the amount found due. It was thus argued that the Registrar fell into grave error by not taking into account the tax component as the Respondent is not a retiree, placing reliance on the case of **Anderson Mwale and 2 others v Zambia Open University**⁶. It was also their submission that the Respondent was paid the sum of K168, 000 as the damages due, less tax, which was paid through his Advocates, Messrs. Milimo Chooka Advocates, which figure was confirmed by the Respondent's affidavit in support of Summons for assessment.

5.6 In support of *grounds 4 and 5*, it was the Appellant's submission that the Lower Court erred in law by awarding interest on the alleged Principal sum of K253,980.00 instead of awarding interest on the difference between the principal sum already paid to the Respondent through his Advocates Messrs. Lewis Nathan Advocates, and what the Court found to be the correct Principal amount payable herein and for failing to address the tax issue on the damages payable to the Respondent.

5.7 The Appellant relied on the case of **BP Zambia PLC and Expendito Chipasha and 253 others**,⁷ where the Supreme Court guided on the essence of interest, as follows:

"Our understanding of the Law on the award of the interest is that it is designed to compensate a Plaintiff for the period he has been kept out of the use of his money by a Defendant. The assumption is that the Defendant has been using that money or at least is reasonably expected to have been doing so and deriving some benefit out of it while denying the Plaintiff the use of that money."

5.8 With reference to ground 5, the Appellant submitted that the Supreme Court answered this question in the afore cited case addressing the same as follows:

"It follows that once the money has been paid to the plaintiff there can be no basis for requiring the Defendant to pay interest on that money from the date it is paid to the plaintiff."

The Appellant has also referred to the same case where the Court held:

"It is trite law that once money is paid into Court, it stops attracting interest. It follows that in the event that the money paid into Court is less than the amount that is subsequently found by the Court to be due, the Defendant would only be liable to pay interest on the difference, being the amount the Defendant had continued keeping away from the Plaintiff."

6.0 RESPONDENT'S HEADS OF ARGUMENT

6.1 The Respondent filed its Heads of Argument on 20th November 2021. These too, have been duly considered, and will not be recast save for emphasis where appropriate. It goes without saying that the Respondent sought to justify and uphold the figures on assessment.

7.0 THE HEARING

7.1 At the hearing of the appeal, Counsel Kalokoni attempted to correct the amount that had been paid to the Respondent and with leave of Court, he relied on a document as proof of payment from Indo Zambia Bank Limited dated 6 August 2019 in the sum of K160,232.50 being the monies paid to the clients Account of Messrs Lewis Nathan Advocates, presumably the

erstwhile Advocates of the Complainant in the Court below. We will accept that the sum of money paid was **K160,232.50** on **6 August 2019**. This will become relevant later in our Judgment.

- 7.2 It was the Appellant's argument, that the gravamen of the appeal was with the figures as assessed and that Counsel, placing reliance on the **Expendito Chipasha**⁷ decision, had attempted to enter a Consent Order with its counterpart, who remained resistant to the proposal. Counsel further submitted that in not deducting the amount paid, before the learned Registrar commenced the assessment and application of interest, the Registrar fell into grave error leading to the colossal amount awarded at assessment.
- 7.3 Counsel for the Appellant was at pains to support his grounds of appeal as couched in *paragraph 4* above. He was referred to pages 143 to 145 of the Record of Appeal and to the Order of the Learned Registrar to the Parties to submit their calculations in the form of submissions to assist the Court to arrive at its assessment. He conceded that the proceedings on the material day, did amount to a 'hearing' and that the Appellant failed to file the submissions as ordered. He insisted however that the grounds of appeal notwithstanding, the Registrar erred in his assessment, by not deducting the monies paid and without being able to show the Court where or how the error took place.
- 7.4 Counsel for the Respondent, apart from placing reliance on the heads of argument, maintained that the Registrar correctly rendered the Judgment on Assessment and invited the Court to uphold it.

8. DECISION OF THIS COURT

- 8.1 We have carefully considered the grounds of appeal reproduced in *paragraph 4* above, the impugned Judgment on assessment and the arguments of Counsel respectively.
- 8.2 In addressing our minds to *ground 1*, on the alleged lack of a hearing, we have noted from the Record of Appeal at *page 21*, that the Respondents' Summons for Assessment was returnable on 4 December 2019 for an application for assessment which was filed with its supporting affidavit on 27 September 2019. We also note that the Appellant filed its opposing affidavit and skeleton arguments on 15 July 2021.
- 8.3 Having considered the arguments and authorities from the Parties, we find ourselves in agreement with the Respondent's submissions. It is clear on record that the Appellant had an opportunity to be heard. We have perused the Record and note the exhibits referred at *pages 14 and 20* of the Supplementary Record which was proof of service of the hearing schedule for 4 December 2019 was served on the Appellant. We also note *pages 143 to 145* of the Record of Appeal, being the proceedings before Honorable F.C. Nsokolo on 4 December 2019. We take note that the Appellant attempted to seek an adjournment, which request was denied. It is trite that a Court will exercise its discretion in matters of an adjournment and in this instance, the Court in declining the application, did order the Parties to file submissions and its calculations on the interest, from the date of filing to the date of judgment, and to the date of payment, by or before 31 January 2020 for the Court to deliver its Judgment on Assessment.

8.4 The question we ask ourselves is whether this constituted a 'hearing?'.

We also note that the Appellant did not raise any objection and ought to have used that opportunity to address the Court in arriving at a determination in the conduct of the assessment in complying with the Court's order to submit its calculations on the interest awarded by 31 January 2020. This, it chose not to do. Counsel equally conceded at the hearing of the appeal, that ground 1 was certainly doomed to fail, there having been a hearing and the Appellant failed to file its submissions to assist both in the calculation of interest and or to counter the pay slip tendered by the Respondent.

From the Record, it would appear that Hon Nsokolo having retired, the matter was dealt with by Hon. J. Banda, who delivered the Judgment on Assessment following on from the hearing of 4 December 2019.

As to the two notices of hearing that appear to have been issued, and on which the Appellant appears to place reliance on, we accept the reasoning that this was a clerical error as no other explanation, makes sense. In the circumstances and noting the Appellant's affidavit in opposition to summons for assessment and its skeleton arguments filed on 15 July 2021 were considered by the Registrar, we are of the considered opinion that the Appellant was 'heard'.

We also find that the Learned Registrar did comply with the **Lameck Sakala**² case and this is evident from the detailed analysis, culminating in the now impugned Judgment on Assessment. The Appellant's reliance on the decisions in the cases referred to, of the Court having advanced a Ruling on

its own volition, cannot be further from the truth. We dismiss ground 1 of the appeal.

8.5 We now turn to address the arguments advanced in respect of the remaining grounds of appeal, which collectively bring into question the sums of money awarded as damages, the calculation of interest and the issue of payment of money to Messrs Lewis Nathan Advocates. We have noted a bizarre and almost cavalier approach taken by the Appellant, which attitude was also noted by the trial Judge on pages J12 and J13 (*pages 49/50*) and J17 and J18 (*pages 54/55*) of the Record of Appeal. The same attitude continued during the Assessment, which has been noted above. It is clear and we agree with the Respondent that the Appellant did not properly present evidence before the court for the Registrar to take into consideration when rendering the Judgment on Assessment. The Respondent has placed reliance on the case of **Zulu v Avondale Housing Project Limited**⁸ in which the Supreme Court emphasized the fundamental importance of parties clearly identifying issues that arise in litigation to enable each party to respond to the points made by the other.

8.6 We have looked at the Appellant's Answer dated 7 March 2018, the supporting Affidavit and its opposing affidavit and skeleton arguments, opposing the assessment, both dated 15 July 2021. The Appellant has conspicuously not submitted any evidence and or legal argument to counter the finding on the monthly salary of the Respondent, its conditions of service, applicable rate of interest, tax component nor its proposed computation of the judgment debt with interest as awarded. It simply did

not file the additional submissions or calculations, as directed by the Registrar.

The nuts and bolts of this appeal, by the Appellant, is to challenge the assessment, in the hope of having the matter referred back for assessment, with a view to seeking a favourable outcome. This became obvious at the hearing of the appeal, where Counsel Kalokoni appeared to want to sweep all his grounds of appeal under the carpet, so to speak, and only addressed the Court on the failure of the Registrar to deduct the monies paid before he applied interest. We note that the Appellant did not furnish the court below with any pertinent information to counter the payslip, the basis of the computation of 6 months' salary, the applicable rates of interest prevailing, tax if applicable, on which it now seeks to mount this appeal. It has equally been noted that the Parties, after the hearing of 4 December 2019, were ordered to file their submissions and calculations of interest, both to the date of judgment and thereafter, to guide the Court as it assessed the judgment. This, the Appellant lamentably failed to do.

- 8.7 It is trite that though the award of interest vests in the Court, the same has to be exercised within the provisions of the law. Although the Courts appear to enjoy *carte blanche* discretion to award interest, the discretion is governed by **Order XXXVI rule 8 of the High Court Rules**¹. The rule provides as follows:

“where a judgment or order is for a sum of money, interest shall be paid thereon at the average of the short-term deposit rate per annum prevailing from the date of action or writ as the court or judge may direct to the date of judgment.”

We note the instructive part of the Judgment reads as follows:

"I order that the damages herein are to attract interest at the short-term bank deposit rate from the date of the Notice of Complaint to the date of the Judgment and thereafter at the current lending rate as determined by the Bank of Zambia until date of payment."

8.8 It is without a doubt that the learned Registrar in the Court below, in computing interest, as noted in *paragraph 3.8* above, fell into grave error in applying the wrong formula. There is a plethora of authorities that speak to interest calculated on an annual basis such as **Kwacha Pension Trust Fund v Ali Nesr**⁹ **Danait Transport Limited v Zambezi Portland Cement Limited**,¹⁰ **Bruno Musunga v Road Contractors Company**¹¹. Having scrutinized the Judgment on Assessment, we are taken aback at the final amount exceeding K3 million. We have noted that the Registrar fell into grave error when in proceeding to assess the figures, he appears to have applied interest on a monthly basis, as opposed to an annual basis.

8.9 We must however frown with displeasure, at the convoluted arguments which speak to the muddled grounds of appeal and issues without articulating the patent defect in the computation. We are equally concerned that the Respondent has also purported to justify the calculation assessed, whose quantum has been met with a sense of shock. It is inconceivable that a figure of K253,980.00 being 6 months' salary can accumulate to K3,359,368.00 after assessment, even with the application of interest.

It is trite and the law is settled that damages should not be awarded in a manner that unjustly enriches a party. We have received with a sense of

shock the assessment arrived at, which in most instances, may by far exceed a pension benefit, paid to an employee after a lifetime of service, under the guise of assessing damages based on 6 months' salary and interest.

We take no issue with the substantive Judgment, nor do we take issue with the rates of interest applied, noting as we have, that the Appellant did little or nought to assist towards the assessment. However, it is where the learned Registrar erred by computing interest on a monthly basis, that has snowballed into the figure of K3,359,368.00. This certainly amounts to undue enrichment and frowned upon in our jurisdiction.

8.10 As an appeal from assessment, the only argument we have is in the application of interest and the formula applied. To put matters to rest, we have scrutinised the figures, which are stated at *paragraph 3.8* above. There has been sufficient guidance by the Supreme Court in its decision in the case of **Kasote Singogo v Lafarge Plc**¹² for us to take a holistic view of the assessment. The Supreme Court placed reliance on its decisions in **Yonah Shimonde, Freight and Liners v Meridian Biao Bank Limited**¹³ **Bank of Zambia v Caroline Anderson and Another**¹⁴, **Barclays Bank Zambia Plc v Patricia Leah Chatta Chipepa**¹⁵, section 4 of the **Law Reform (Miscellaneous Provisions) Act**² and the **Judgments Act**³.

The principle enunciated on the computation of salary has also been clarified by the Apex Court in the case of **James Mankwa Zulu v Chilanga Cement Plc.**¹

8.11 In *casu*, the Judgment, the subject of the assessment, reads as follows (page 16/17):

"I find the termination was unfair..., I award the Complainant 6 months' salary as damages for unfair termination. I order that the damages herein awarded are to attract interest at short term bank deposit rate from the date of the Notice of complaint to the date of the Judgment and thereafter at the current lending rate as determined by the Bank of Zambia until date of payment."

8.12 We also refer to our decision rendered in the case of **Charles Kajimanga v Richard Bornface Chiluba and Another**¹⁶ wherein we considered an award of damages assessed by the District Registrar in relation to mesne profits. We considered the guidance from the Supreme Court rendered in the case of **Re: Kashitu**¹⁷ where the Court stated:

"In dealing with appeals against assessment of damages this court has frequently been guided by the principle that an appellate court should not interfere with the finding of the trial court as to the amount of damages unless it is shown that the trial court has applied a wrong principle or has misapprehended the facts or that the award was so high or so low as to be utterly unreasonable or was an entirely erroneous estimate of the damages."

8.13 The Supreme Court has settled the position that once a judgment is given, the principal and the interest calculated at the average short-term deposit rate, merge to comprise the judgment debt. Thereafter, the judgment debt will attract interest at the current lending rate as determined by the Bank of Zambia. In *casu*, there was sufficient evidence from the payslip of the

complainant and from the conditions of service that the monthly salary of the complainant was the sum of K42,330.00. For 6 months, the principal sum was K253,980.00. We will not interfere with this finding for reasons above. It is clear, that in *casu*, the sum of money paid (K160,232.50) was paid on 6th August 2019, after the date of Judgment, by which time the Respondent had become entitled to interest on the Judgment sum, at the average short-term deposit rate, which together merged to form the Judgment debt.

8.14 The following dates are pertinent in calculating the Judgment debt:

Date of Notice of Complaint:	6 December 2017
Date of Judgment:	28 June 2019
Date of Payment of K160,232.50	6 August 2019
Date of Assessment:	6 August 2021
Tentative date of Judgment:	30 October 2023

In the interest of justice, and finality, we have computed interest to the date of assessment and to the tentative date of the Judgment (on appeal), as attached.

ASSESSMENT -Maamba Coleries Ltd v Mayford Chikoya CAZ Appeal No. 264/2021

6 months salary as per Judgment

**ZMW
253,980.00**

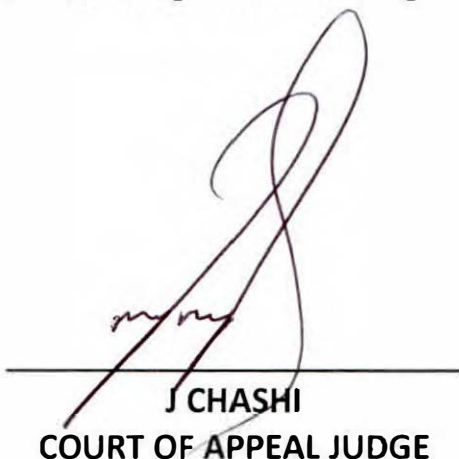
Period	Period Narration	Amount Paid ZMW	Principal Balance	Simple Interest	No. of days	ROI
6 Dec 2017 to 28 Jun 2019	From date of Notice of Complaint to date of Judgment		253,980.00	32,545.48	569	8.22%
28 Jun 2019 to 6 Aug 2019	From date of Judgment to date of part payment		253,980.00	6,811.53	39	25.10%
6 Aug 2019 to 6 Aug 2021	From date of part payment to date of Assessment	160,232.50	93,747.50	47,061.25	730	25.10%
6 Aug 2021 to 30 Oct 2023	From date of Assessment to date of Judgement of Appeal		93,747.50	66,733.32	815	30% (average)
Total Paid -		160,232.50	Interest Due -	153,151.59	2,153	Total Number of Days

Principal Due	93,747.50
Interest Due	153,151.59
Total Due:	246,899.09

9. **Conclusion**

9.1 We have no hesitation in allowing the appeal, not for any of the grounds of appeal advanced by the Appellant, but for the reasons above. Clearly, the Appellant having not advanced any cogent grounds of appeal, and certainly none that we can uphold, we accordingly order that Parties do bear their own costs of the appeal, the costs below having already been settled.

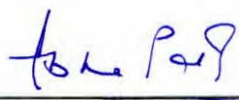
9.2 We also recommend that this Judgment be circulated to the Honourable Registrars, to guide in assessing and calculating damages.



J CHASHI
COURT OF APPEAL JUDGE



K. MUZENGA
COURT OF APPEAL JUDGE



A.N. PATEL, S.C.
COURT OF APPEAL JUDGE