

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

**2011/HPC/0134**

(Civil Jurisdiction)

IN THE MATTER OF : SECTION 237 OF THE COMPANIES ACT CAP  
388 OF THE LAWS OF ZAMBIA

**B E T W E E N:**

CHANDA MUTONI & 7 OTHERS

**APPLICANTS**

**AND**

BHARTI AIRTEL ZAMBIA HOLDINGS BV  
CELTEL ZAMBIA PLC

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

**RESPONDENT**

**BEFORE HON. MRS. JUSTICE F. M. CHISHIMBA IN CHAMBERS ON  
THE 5<sup>TH</sup> DAY OF AUGUST, 2011**

For the Applicants : Mr. Mudenda & Mr. Mwanabo – Messrs  
Lewis Nathan & Advocates  
For the 1<sup>st</sup> & 2<sup>nd</sup> Respondents : Mr. A. Tembo – Messrs Tembo Ngulube & Co.

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

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CASES REFERRED TO:

1. *Re-Western Manufacturing Reading Limited (1995) 3 ALL ER 733*
2. *Re-Carlton Holdings Limited (1971) ALL ER*
3. *Re-Bugle Press (1960) 3 ALL ER 791*
4. *Customs and Excise Commission Vs Top Ten Promotion Limited 1969*
5. *Tuck & Sons Vs Priester (1887) 19 QBD 629, 638*
6. *Blue metal Industries Limited and Another Vs R W Dilley & Another Consolidated Appeals (1960) 3 ALL ER 437*
7. *Re-Press Caps Limited (1949) 1 ALL ER 1013*
8. *Anderson Mazoka Vs Levy Mwanawasa 2005 ZLR P. 138*
9. *Selvey Vs DPP (1970) AC 304*
10. *Exxon Corpn Vs Exxon Insurance Consultants International Limited (1981) 2 ALL ER 495 at 502*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *Companies Act Cap 388 of the Laws of Zambia*

2. **Rules of the Supreme Court 1999 Edition (White book)**
3. **High Court Rules Cap 27 of the Laws of Zambia**
4. **Securities (Takeover and Mergers) Rules, Statutory Instrument No. 170 of 1993** under the **Securities Act Chapter 354 of the Laws of Zambia**
5. **The Securities Act Chapter 354 of the Laws of Zambia**

The Applicants commenced this action by way of Originating Summons pursuant to **Section 237** of the **Companies Act Chapter 388** of the **Laws of Zambia** and **Order 53 (B) Rule 8 (n)** of the **Rules of the Supreme Court 1999 Edition (White Book)** for an Order declaring that;

1. The Respondent Bharti Airtel Zambia Holdings BV is not entitled to acquire the shares of the Applicants in the second Respondent or any of them;
  - (a) for non compliance with **Section 237 (1) of Companies Act.**
  - (b) on the terms of an offer dated 18<sup>th</sup> of February, 2011 and made by the 1<sup>st</sup> Respondent Bharti Airtel Zambia Holding BV to all the holders of shares in the 2<sup>nd</sup> Respondent;
2. The Respondents Bharti Airtel Zambia Holdings BV and Celtel Zambia Plc do pay the costs of this application.

The application is supported by an Affidavit in Support and Skeleton Arguments dated 9<sup>th</sup> March and 14<sup>th</sup> April, 2011 respectively.

The facts of the Case as disposed by the Applicants are that on the 8<sup>th</sup> of June, 2011 Bharti Airtel International (Netherlands) BV, a Company incorporated in the Netherlands, using it's wholly owned subsidiary the 1<sup>st</sup> Respondent herein acquired

78.9 percent shares in the 2<sup>nd</sup> Respondent, a Company listed on the Lusaka Stock Exchange. The 1<sup>st</sup> Respondent thereafter made a Mandatory offer on the 22<sup>nd</sup> November, 2010, to acquire the shares of all the other shareholders in the 2<sup>nd</sup> Respondent Company pursuant to and in accordance with **Clause 56** of the third schedule of the **Securities (Takeover and Mergers) Rules, Statutory Instrument No. 170 of 1993** under the **Securities Act Chapter 354 of the Laws of Zambia**.

The Applicants are minority fully paid up registered holders of about 139,000,000 ordinary shares of nominal value of K1 each in the capital of the 2<sup>nd</sup> Respondent.

On the 18<sup>th</sup> of February, 2011, the Respondent issued a notice for compulsory acquisition of ordinary shares in the 2<sup>nd</sup> Respondent held by the minority shareholders. The Applicants refused to accept the Mandatory offer made pursuant to **Section 237 (2)** of the **Companies Act Cap 388**. The terms of the Mandatory offer and the Acquisition Notice was at a consideration of K710.00 cash per share. According to the Applicants **Clause 58 (1)** of the 3<sup>rd</sup> schedule to the **Securities (Takeover and Mergers) Rules of the Securities Act Cap 354 (Statutory Instrument number 170 of 1993)** hereinafter referred to as the (Takeover and Mergers Rules), the offers should have been at a value of not less than the highest price paid by the 1<sup>st</sup> Respondent or Bharti Airtel International (Netherlands) BV for the shares or voting rights in the 2<sup>nd</sup> Respondent Company within six (6) months.

It is stated that the Respondents have provided inadequate information and not availed the Applicants the price at which Bharti Airtel International purchased the shares in the 2<sup>nd</sup> Respondent Company making it difficult for them to make an informed decision.

The Applicants state *inter alia* that the Acquisition Notice stated that having acquired more than ninety percent shares in the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent was desirous of acquiring their shares under **Section 237 (2)** unless an application was made to this Court, the 1<sup>st</sup> Respondent would be entitled and bound to acquire the Applicants' shares on the stipulated terms.

The Affidavit further discloses that the Mandatory offer made by the Respondent under the **Securities (Takeover and Mergers) Rules** is Mandatory to anyone acquiring more than thirty five percent shares in a Public Company. Further the said Mandatory offer does not require the 1<sup>st</sup> Respondent or any person acting in concert with it such as Bharti Airtel International (Netherlands) to give the holders of shares in the 2<sup>nd</sup> Respondent an option to acquire shares in the 1<sup>st</sup> Respondent whereas under **Section 237 (1) of the Companies Act Cap 388** there is such a requirement.

It is further stated that the 1<sup>st</sup> Respondent herein did not offer to the Applicants a Statutory option to acquire shares in the 2<sup>nd</sup> Respondent Company as required by **Section 237 (1) (b)** of the **Companies Act Cap 388**. The said failure to comply with **Section**

**237 (1)** by the 1<sup>st</sup> Respondent renders the subsequent Acquisition Notice impotent and invalid due to non compliance.

The terms of the offer by the Respondent are not fair and the Applicants are opposed to the compulsory acquisition of their shares on grounds of non compliance and in the alternative the terms of the offer by the Respondent ought to be varied by adjusting the value for each share upwards.

The 1<sup>st</sup> Respondent opposed the application and relied upon the Affidavit in Opposition filed herein on the 10<sup>th</sup> of May, 2011, the List of Authorities and Skeleton Arguments.

The 1<sup>st</sup> Respondent deposed that the Mandatory offers exhibited as "CM1" in the Applicants' Affidavit in Support was made to all minority Shareholders existing as at 22<sup>nd</sup> November, 2010 as per page 14 of the said exhibit.

It is stated that the terms of the offer contained unambiguous terms giving the minority shareholders the option to sell or not to sell in clear terms as per **Clause 3.1** of Annex 4 of the offer documents.

**Clause 7.1, 7.3** and **3.1** complied with **Section 237 (1) (b)** of the **Companies Act Cap 388** as the minority Shareholders were allowed at their option to accept a payment of cash as consideration for the acquisition of their respective shares.

The Respondent acknowledged that at the date of the Mandatory offer on 22<sup>nd</sup> November, 2010, the 1<sup>st</sup> Respondent's shareholding was only 78.9 percent shares and after

acceptance of the Mandatory offer by the other minority shareholders shares rose up further by 18.6 per cent.

The Mandatory offer was fair and above the Lusaka Stock Exchange selling price of K673.00 per share.

It is stated that contrary to the Applicants' claim that inadequate information has been provided, none of the Applicants requested for the information upon receipt of the Mandatory Offer. Bharti International it is deposed purchased Zain Africa BV which is a group of Companies running fourteen operations across Africa hence it was not possible to particularize the price of Zain Zambia.

It is stated that **Section 237 (1) (b)** gives the Transferee Company the option of either giving the holders shares in itself or payment of cash. **Section 237 (1) (b) (i)** is not a Statutory option to be given to the holders but an option which the transferee Company has to choose for inclusion or non-inclusion in its Mandatory offer and the 1<sup>st</sup> Respondent wanted to offer a cash payment. Compliance of **Section 237 (1)** of the **Companies Act** can be deduced from the approval of both the Mandatory Officer and Acquisition Notice by the Regulator, Securities and Exchange Commission.

The matter came up for hearing on the 27<sup>th</sup> of May, 2011. Both Counsel made submissions and relied on their submissions. Counsel for the Applicant Mr. Mudenda and Mr. Mwanabo submitted that **Section 237 Subsection 1 a to e** sets out the pre-

conditions to be fulfilled by the Transferee Company. It is contended that paragraph (b) (i) and (ii) contemplates two types of offers. The allotment of shares in the Transferee Company as the main overriding consideration and under (ii) cash consideration at the option of the holders.

The main gist of the Applicants' submission is that the option to acquire shares in the 1<sup>st</sup> Respondent's Company which is a pre-condition for compulsory acquisition under Section 237 was not one of the terms of the offer. Therefore the 1<sup>st</sup> Respondent cannot take advantage of **Section 237** to compulsorily acquire shares of the Minority and as such the compulsory notice for acquisition under **Section 237** was made in violation of the Section and is invalid.

It is submitted that the terms of the mandatory offer was for a cash price of K710 per share and no other alternative consideration was made.

The Cases of **Re-western Manufacturing (Reading Limited (1955) 3 ALL ER 733<sup>(1)</sup>** and **Re Carlton Holdings Limited (1971) ALLER<sup>(2)</sup>** was cited in support of their submissions.

It is further contended that the price offered for the shares is unreasonable, unrealistic and unfair. The terms of **Clause of 58 (1)** of the 3<sup>rd</sup> Schedule to the Securities (Takeovers and Mergers) Rules (**Statutory Instrument No. 170 of 1993**), stipulates that the offer be at a value of not less than the highest price paid by the 1<sup>st</sup> Respondent for shares in the 2<sup>nd</sup> Respondent within the preceding six (6) months.

It is argued that the inability to provide the information requested for as regards the price has made it difficult for the Applicants' to make an informed decision.

The Case of *Re-Bugle Press (1960) 3 ALL ER 791* <sup>(3)</sup> was referred to where a compulsory acquisition was upset by the Court due to failure to comply with the law and for being unfair to the Applicant.

Counsel for the 1<sup>st</sup> Respondent on the other hand Mr. Tembo submitted that **Section 237 (1) (b) (ii)** as currently couched has a printing error as it repeats the option contained in **Section 237 (1) (b) (i)** and is a contradiction as it expresses an option on the part of the Holders. Further that the Law has a Lacuna which requires this Court's interpretation. It is contended that the Court has power to form an opinion and interpret **Section 237 (1) (b) (i) and (ii)** and give its effect with regard being had to the tenor and substance of the Section.

The Court was referred to the Privy Council's interpretation of **Section 185 (5) (a) of the Australian Act 1961** in regard to the intention of the Legislature.

It is contended that the Legislature intended that the transferee company should have an option of either allotting shares in the Company or indeed a payment of cash. Interpreting otherwise would take away the option in subsection (b) by transferring the option to the holders with the transferee Company having no option but to offer an allotment of shares.



The Case of ***Customs and Excise Commission Vs Top Ten Promotion Limited 1969*** <sup>(4)</sup> was cited in reference to the construing of the definition of words within the ordinary meaning of the words used by Parliament. The Case of ***Tuck & Sons Vs Priester (1887) 19 QBD 629, 638*** <sup>(5)</sup> was cited relating to the principle that any ambiguity in a Penal Statute should be resolved in favour of the defence.

**Section 4 (4)** of the Interpretation and **General Provisions Act** was referred to in support of their submission.

It is submitted that **Section 237 (4)** provide the Orders which this Court can make upon application by Shareholders of either that the shares may not be compulsorily acquired or to vary the terms of the offer.

It is submitted that the claims as stated in the Originating Summons do not disclose grounds upon which the Court should interfere. Further that the Regulator, Securities and Exchange Commission on 18<sup>th</sup> February confirmed that it had authorised the Mandatory offer.

It is argued that the offer in issue is distinguishable from the Case of ***Re-Carlton Holdings Limited Weston Vs Prian Investment Limited (1971) 2 ALL ER*** <sup>(2)</sup> for the reason that the 1<sup>st</sup> Respondent did not intend to exercise the option under **Section 237 (1) (b) (i)** but the option in **Section 237 (1) (b) (ii)**.

Further that the offer of shares in the transferee Company is not a pre-condition to be satisfied by the transferee Company in a takeover bid, but merely an option which a transferee Company must choose from.

In the alternative, it is submitted that although **Section 237 (1) (b) (ii)** is couched in inconsistent terms with **Section 237 (1) (b) (i)** which gives an option by use of the words “either” or “or” the 1<sup>st</sup> Respondent compiled with Clauses 7.1, 7.3 and 3.1 of exhibit “CM1” in the Affidavit in Support of Originating Summons. **Section 237 (1) (b)** is not Mandatory in nature.

It is contended that the Case of **Re-western Manufacturing (Reading Limited)** <sup>(1)</sup> cited by the Applicants does not apply to this Case since there was compliance with **Section 237** and the issue of non-compliance raised after the issuance of Mandatory offer is an afterthought meant to derail the process.

The Case of **Blue Metal Industries Limited and Another Vs R W Dilley and Another Consolidated Appeals (1960) 3 ALL ER 437** <sup>(6)</sup> cited as regards the intent to be placed on **Section 185** which is similar to **Section 237** of the **Companies Act**, particularly where it was stated that;

**“The powers given by Section 185 if used may not only deprive a Shareholder of shares which he had wished to retain but may do so on terms of which he disapproved. If, however, a substantial majority of his fellow Shareholders have been content with the terms of the offer made to them then pursuant to the policy approved by the Legislature his personal wishes may (unless the Court otherwise orders) be overborne”.**

And the Privy Council went on to say -

**“If nine - tenths of the Shareholders approve a plan which involves that they part with their shares to a transferee**

***Company then there may be advantages in providing means whereby the transferee Company can acquire the remaining tenth. The Legislature thought it desirable to give the transferee Company such power ... the significance of the 90 per cent is, on this view, that once a Company has become so nearly a total owner, or parent, of another Company as a Shareholding of 90 per cent would represent, it should not be prevented from converting the other Company into a wholly - owned subsidiary by so small a dissenting minority as ten per cent or less but should be entitled to acquire the holding of that minority”.***

The Court was urged to adopt the holding in the above cited Case as less than 3 per cent of the Holders in Celtel (Z) Plc dissent the takeover and acquisition.

In response to the issue of the value of shares being fair, the Case of ***Re-Press Caps Limited (1949) 1 ALL ER 1013*** <sup>(7)</sup> was cited in support of the submission that stock exchange values of shares at the material time is acceptable as a fair price.

In a nutshell in response to the 1<sup>st</sup> Respondent’s arguments, the Applicants contend that there are two different Statutes being dealt with. The ***Takeovers and Mergers Act*** which deals with Mandatory offers and ***Section 237*** of the ***Companies Act*** dealing with compulsory acquisition which is before this Court. In the former there’s no requirement that the holders of shares be given an option whereas the latter gives the Shareholders an option. It is contended that the option is a requirement and has to be complied with by the transferee Company.

On the issue of interpretation, ambiguity and typographical error contended by the 1<sup>st</sup> Respondent it is submitted that there is no error in the said Section. The Case of ***Anderson Mazoka Vs Levy Mwanawasa 2005 ZLR P. 138*** <sup>(8)</sup> was referred to where it was held that;

***“it’s trite law that the primary rule of interpretation is that words should be given their ordinary grammatical and natural meaning. It is only if there is ambiguity in the natural meaning of the words and the intention cannot be ascertained from the words used by the legislature that recourse can be had to the other principle of interpretation”.***

As regards the fair price of the shares it is contended that acquisition is based on the asset folio of the Company.

It is submitted that the Court should interfere with the offer in issue.

I have seriously considered the application, the Affidavit evidence on record, the case authorities cited and the submissions by the Learned Advocates for the parties. There are a number of issues raised to be resolved in this matter as follows;

- 1. a) *Whether the Section 237 (1) of the Companies Act Chapter 288 was complied with vis-à-vis the meeting of the requirement conditions for compulsory acquisition or in a nutshell whether the transferee Company did offer the Applicants’ Minority Shareholders the ‘Statutory Option’ to acquire shares in itself.***

**b) Whether the said option under Section (1) (b) (i) is given to the transferee Company or the Holders.**

**2 Whether the value being proposed and offered is fair and conforms to the Statutory Provisions.**

It is pertinent to briefly give a background to the facts precipitating the application. The facts of the application is as deposed in the Affidavits and in order to avoid repetition the summary is as follows;

Upon acquisition of 78.9 per cent voting shares in the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent made a Mandatory offer to purchase shares of all other Shareholders in the 2<sup>nd</sup> Respondent Company.

The terms of the offer as per exhibit "CM1" of the Affidavit in Support is for a cash price of ZMK 710 per share. Further that the remaining Shareholders who elect not to accept the Mandatory offer will remain Shareholders in Celtel Zambia subject to the **Companies Act**. The cardinal term under page 16 of the offer was that should the 1<sup>st</sup> Respondent increase its Shareholding to 90 per cent in Celtel Zambia, it may implement **Section 237** of the Companies Act under terms and conditions of the Mandatory letter unless an application is made to Court under **Section 237 of Companies Act**, for an Order to block or alter the terms of the Compulsory buyout of the remaining Minority Shareholders.

A Compulsory Notice of acquisition was sent to all the Minority Shareholders of the 2<sup>nd</sup> Respondent Company which has resulted in this application before Court.

**Section 237** of the **Companies Act** Chapter 388 provides that;

**237 (1)** *“This Section shall apply where a body corporate, whether a Company within the meaning of this Act or not, (in this Section referred to as “the transferee Company”), has made an offer to the Holders of shares in a Company (in this Section referred to as “the transferor Company”) and each of the following conditions is satisfied.*

*(a) the offer by the transferee Company is made to the Holders of the whole of the shares in the transferor Company, other than those already held by the transferee Company or any of its related Companies or by nominees for the transferee Company or any of its related Companies;”*

Further Subsection (b) states that;

*(b) “the consideration for the acquisition or a substantial part thereof is either-*

- i) the allotment of shares in the transferee company;*
- ii) the allotment of shares in the transferee company or, at the option of the Holders, a payment of cash”.*

In considering the issue of whether the Applicants were given requisite statutory option recourse has to be had to **Clauses 7.1** to **7.8** of the offer. The said clauses gives various options under

the offer. **Clause 7.9** of the offer entitled 'General' is key. It states that;

***“The Minority Shareholders may accept the Mandatory offer in respect of all or part of their Celtel Zambia Shareholdings. Minority Shareholders who do not wish to accept the Mandatory offer need take no further action and will be deemed to have declined the Mandatory offer ... should the offeror acquire an aggregate Shareholding in excess of 90 per cent in Celtel Zambia Post the offer, it may implement Section 237”.***

This Clause in my considered view takes away all the options given in the right hand with the left hand. This is because on achieving 90 per cent of the stake or equity in Celtel (Z) Limited, the 1<sup>st</sup> Respondent effectively forces the Minority Shareholders to sell to it.

It is not in dispute that the 1<sup>st</sup> Respondent achieved or obtained over 90 per cent of shares in the 2<sup>nd</sup> Respondent Company, what is in dispute is whether the 1<sup>st</sup> Respondent as a Transferee Company offered the Minority Shareholders the option to acquire shares in itself.

It is contended by the Respondents that the provision in **Section 237 (1) b (ii)** has a printing error, and a contradiction purporting to express an opinion on the parts of the Holders requiring the Court's interpretation.

The starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question, that is it's

proper and must known signification where there is more than one ordinary meaning, the most common or well established meaning is employed.

As for the words the rule is unless there are reasonable objectives, there are to be understood in their proper and must know signification and not so much according to drammar as to the general use per Pufenderf in his book entitled "***of the Law of Nature and Natures 4<sup>th</sup> Edition 1729 P 535***". Viscount Dihhorne L. C. required words to be given "*their ordinary natural meaning*" ***Selvey Vs DPP (1970) AC 304 at 330*** <sup>(9)</sup> and **Graham J.** said "*the words must be treated as having their ordinary English meaning as applied to the subject matter with which they are dealing*".

***Exxon Corpn Vs Exxon Insurance Consultants International Limited (1981) 2 ALL ER 495 at 502*** <sup>(10)</sup>.

I have perused **Section 237 (b) (i)** and **(ii)** where it is stated that the consideration for the acquisition or a part thereof is either;

- (i) The allotment of shares in the Transferee Company; or
- (ii) The allotment of shares in the Transferee Company or at the option of the holders, a payment of cash.

The words 'either' and 'or' are submitted by the 1<sup>st</sup> Respondent to have created ambiguity in **Section 237 (1) b (i)** and **(ii)**.

It is my considered view that the said words construed in their ordinary meaning creates no ambiguity nor inconsistent.

The Section is crystal clear the option given is excercisable by the holders of the shares.



I am of the considered view that there is no error whatsoever with the said provision nor is there any contradiction which requires the Court's interpretation. Even assuming by large that there is an error whether typo or otherwise, the cardinal issue is whether the 1<sup>st</sup> Respondent complied with **subsection (b) (i)** which is the allotment of shares in the transferee Company.

My findings as regards the issue of the option of allotment of shares is that the 1<sup>st</sup> Respondent did not as a transferee Company offer the Applicants (the Minority Shareholders) the statutory option required under **subsections 1 (b) (i) (ii)** of **Section 237** of the **Companies Act**. The said requirements are Mandatory requirements under Compulsory acquisition. The purported choice given under the offer relates to the Takeovers and Mergers Rules and does not apply under the Compulsory Acquisition made pursuant to the **Companies Act**.

I agree with the Holding in the **Re-Carlton Holdings Limited** <sup>(2)</sup> where it was stated that as much as a Transferee Company has the right to acquire other shares, the terms must be defined with some strictness.

The second issue for determination is whether the value being proposed under the offer confirms to the statutory provisions. In determining the above recourse is had to **Section 58 (1)** and Section 56 of the 3<sup>rd</sup> Schedule to the Securities (Takeovers and Mergers) Rules (**Statutory Instrument No. 170 of 1993**) **Chapter 354 of the Laws of Zambia**.

**Clause 58 (1)** sets the guidelines on how offers should be treated in terms of value that is;

***“Offers made under Clause fifty six must in respect of each class or equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree within the preceding six months”.***

The Applicants were offered the value price of K710 per share.

It is my considered view that the 1<sup>st</sup> Respondent has not complied with **Section 58 (1)**. The price offered should be not less than the highest price paid by the 1<sup>st</sup> Respondent for the shares acquired within the preceding six months.

It is irrelevant and immaterial that other Shareholders have consented to the terms of the offer or in this case the offer price of K710 per share.

As much as the Court agrees with the 1<sup>st</sup> Respondent's argument that a Transferee Company ought not to be prevented from Compulsory acquisition by a dissenting Minority of 3 per cent Holders in Celtel Zambia Plc, the acquisition should be in accordance with the Law by offering a fair price. In order for the Applicants' to consider whether the price offered is fair, adequate information relating to the price at which the 1<sup>st</sup> Respondent acquired the shares in the 2<sup>nd</sup> Respondent ought to be made available. The argument that Zain (Z) Limited was purchased in a group of 14 Companies

across Africa and therefore it is not possible to particularize the price for Zain (Z) Limited or any other group is misconceived. It is possible to particularize the value of Zain (Z) Limited or to assess it's value separate from the other Companies across Africa.

Having taken into account all the evidence and authorities, I come to the inescapable conclusion that the Applicants have proved their case on a balance of probability.

The Court has power under **Section 237 (4)** to give the following Orders;

**237 (4)** *“At any time within the period beginning when the offer is made and ending three months after subsection (1) is satisfied, the Shareholder may apply to the Court for an Order that -*

*(a) the shares may not be compulsory acquired under this Section; or*

*(b) the terms of the offer applying to the Shareholder in respect of the shares, or of the shares of a particular class, shall be varied as specified by the Court”.*

**237 (5)** *“Where the Court makes an Order that the terms of the offer shall be varied, then, unless the Court orders otherwise, the transferee Company shall give notice of the varied terms to all other holders of shares of the same class and to all former holders of shares of the same class who accepted the original offer, and at any time within two months after receiving the notice-*

**(a) a holder of shares of that class shall be entitled to accept either the original offer or the offer as varied by the Court; and;**

**(b) a former holder of shares of that class who accepted the original offer shall be entitled to require the transferee Company to pay or transfer to him any additional consideration to which he would have been entitled, had his shares been acquired under the offer as varied by the Court”.**

In accordance with the above provisions, I hereby make the following Orders;

- i) The terms of the Compulsory Acquisition Notice in respect of the shares are hereby varied to the extent that a provision be included giving the Applicants' herein the option of allotment of shares in the Transferee Company and or at the option of the Holders a payment of cash.
- ii) The consideration price at which the 1<sup>st</sup> Respondent acquired the shares in the 2<sup>nd</sup> Respondent Company be furnished to the Applicants to enable them to determine whether to exercise the option for a cash consideration.
- iii) The Transferee Company shall give the Notice of the varied terms to the Applicants herein within twenty one (21) days from date hereof.

Costs are awarded to the Applicants to be taxed in default of agreement.

Leave to Appeal granted.

**Delivered on the 5<sup>th</sup> day of August, 2011**

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**F. M. Chishimba  
HIGH COURT JUDGE**