IN THE HIGH COURT FOR ZAMBIA **2018/HPA/039**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

B E T W E E N:

UNIVERSAL MINING AND CHEMICAL **APPELLANT**

AND

GILBERT MUTHIYA AND 36 OTHERS **RESPONDENT**

Before the Hon. Justice Mr. M.D. Bowa the 30th day of June 2020

For the Appellant Mr. J Zimba with Mr. M Mpemba of Makebi Zulu and Company:
For the Respondent: Mr. Mwenya of Lukona Chambers

JUDGMENT

Cases referred to:

1. *Rv East Berkshire Health Authority ex parte Walsh (1984) 3 ALL ER 425*
2. *Bangne Keyer Ulimann SA v Sikandia (UK) Insurance Co Ltd and other and related actions.* [1987] 2 ALL ER 923
3. *Tai Hing Cotton Mill Ltd v Liu Ching Hing Bank Ltd (1985) 2 ALL ER 947*
4. *Rairee Engineering Co Ltd v Baker (1972) ZR 156*
5. *Chembo and others v the People* (1982) ZR 20 SC
6. *Newston Stulaida and others v Food Corp Products Limited (SCZ) judgment No. 9 of 2002*
7. *Minister of Home Affairs Attorney General v Lee Habasonda* (2007) ZR 2017
8. *Zambia Telecommunications Company Ltd vs. Mulwanda & another 2012 ZR Vol 1 404 (SC).*
9. *Hotel and Tourism Training Institution Trust vs. Happy Chibesa Appeal* 58/200/

9. *Hotel and Tourism Training Institution Trust vs. Happy Chibesa Appeal* 58/200/

10. *Mususu Kalenga Building limited vs. Richmans Money Lenders Enterprises (1999) ZR 27 (SC)*

11. *Barclays Bank Zambia Plc. vs. Zambia Union of Financial Institutions and Allied Workers (2007) ZR*

12. *Crossland Mutinta and Another vs. Donovan Chipunda (selected judgment No. 53 of 2018)*

13. *Shreeji Investments Limited vs. Zambia National Commercial Bank Plc. Appeal No. 143 of 2009 .*

14. *Finance Bank vs. Muzeya & 4 Others appeal No 115 of 2017*

15. *Colgate Palmolive (Z) Inc. vs. Shemu* SCZ Appeal No11 of 2005

16. *Rosemary Ngoma and 10 others vs. ZCCM* SCZ Appeal No 7 *of 2000* and

17. *Zesco vs. Mabika Mutale* SCZ Appeal No 227/2013,

18. *William Masauso Zulu v Avondale Housing Project (1982) ZR 172*

19. *Khalid Mohamed vs. Attorney General (1982) ZR 49*

20. *Jennipher Nawa vs. Standard Chartered Bank Zambia Plc.SCZ Judgment no 1 of 2011*

Other materials

Mwenda W S, Employment Law in Zambia cases and materials (Lusaka, University of Zambia Press 2004)

Legislation

1. *The Employment (Amendment) Act 2015*

2. *The Employment Code Act NO 3 of 2019*

Subsidiary legislation

1. *Statutory Instrument no 1 of 2011 The Minimum wages and Conditions of Employment(Shop Workers) Order 2011*
2. *Statutory Instrument No 2 of 2011. The Minimum wages and Conditions of Employment (General) Order, 2011.*
3. *Statutory Instrument No 70 of 2018. The Minimum Wages and Conditions of Employment(Shop Workers) (Amendment Order), 2018*
4. *The Minimum Wages and Conditions of Employment(General) (Amendment) Order, 2018*

This is the Appellant's appeal against the decision of the Subordinate court sitting at Kafue. The background to the appeal is that the matter was commenced by way of writ of summons on the 15th of June 2018 with by a statement of claim filed into court on the 11th of July 2018. By their statement of claim, the Plaintiffs now Respondents in this appeal, averred that they were employed by the Defendant (the Appellant) in various positions and paid a daily wage at K33 in comparison to permanent employees in the same position doing the same work.

It was contended that the Plaintiffs had engaged the Defendant on several occasions to either put them on permanent employment or improve their conditions of service citing the dangerous work they were doing and need for proper work safety measures as some of the reasons for their demand. It was averred that only one of their colleagues was given a contract to the exclusion of others.

It was averred further that the Defendant then advised the Plaintiffs to resign before they could sign new contracts. Acting on this advice, the Plaintiffs tendered in their resignation letters on 3rd May 2018 with a view of being engaged on permanent basis and to sign new contracts and conditions of service. However that on 11th May

2018 the Defendant instead of offering the Plaintiffs new jobs, informed them that there was no work for them and paid them leave days for the 5 years worked.

It was the Plaintiff's averment that they are entitled to terminal benefits under general and minimum wage conditions of service but the Defendant refused to pay arguing that the calculations provided were wrong. Further that the Plaintiffs were not entitled to gratuity or terminal benefits as this was not provided for in their terms and conditions of service. The Plaintiffs averred that by reason of the above, they suffered loss and damage and claimed the following:

i. Damages for breach of contracts made between the Plaintiffs and the Defendants on different dates.
ii. Payment of gratuity.
iii. Payment of 2 months per year served salaries.
iv. Any other relief that the court may deem fit.
v. Costs.

The Defendant filed a defence denying that the Plaintiffs were entitled to any of the claims sought.

After considering the evidence at trial, the court dismissed the claim for breach of contract for want of evidence. The court then turned to

address the question of whether the 37 Plaintiffs were casual workers or permanent workers. The court found that even though initially employed as casual workers, at the time they resigned the Plaintiffs status as casual workers came to an end and were deemed to be employees on fixed term contracts.

The trial court found for the Plaintiffs and ordered:

1. That the Defendant Company pay all the 37 Plaintiffs gratuity to be calculated with effect from the time that their status changed from casual employees to an employees on a fixed term contract.
2. That the Defendant Company pay the employees who had served a period exceeding 5 years a 2 months per year salary.
3. That the Defendant Company pays the 37 Plaintiffs the costs for the action.

Dissatisfied with the decision of the court, the Defendant proceeded to file an appeal advancing the following grounds of appeal.

1. *That the trial Magistrate misdirected herself in law and in fact when she held that the 37 Plaintiffs be paid gratuity to be*

calculated with effect from the time that their status changed from casual employee to an employee on a fixed term contract.

2. *That the trial Magistrate misdirected herself when she only considered the evidence of one out of 37 Plaintiffs when the circumstances were different.*
3. *That the judgment by the trial Magistrate does not set out a clear rationale setting out how the court arrived at its decision.*

In its heads of arguments filed into court on 24th April 2019, the Defendant pointed out as a well-established principle of the law that the employer employee relationship is one that is purely contractual in nature and the two parties have to agree on the terms that will govern that relationship whether orally or in writing. I was referred to the case of ***Rv East Berkshire Health Authority ex parte Walsh***[1] in support of this preposition.

Further reference was made to the case of ***Bangne Keyer Ulimann SA v Sikandia (UK) Insurance Co Ltd and other and related actions.***[2] in which the court making reference to observations by justice Scarman in the case of ***Tai Hing Cotton Mill Ltd v Liu Ching Hing Bank Ltd***[3] stated:

"....But it is certainly, I think as much contractual as tortious. Since in modern times, the relationship between master and servant, between employer and employee is inherently one of contract, it seems to me entirely correct to attribute the duties which arise from that relationship to implied contract..."

I was also referred to the case of ***Rairee Engineering Co Ltd v Baker***[4] wherein Doyle CJ made the following observation.

"The law is well settled that if where there is an ordinary contractual relationship of master and servant the master terminates the contract the servant cannot obtain an order of certiorari. If the master rightfully ends the contract there can be no complaint. If the master wrongfully ends the contract then the servant can pursue a claim for damages."

Reference was also made to the learned author of **Employment Law in Zambia cases and materials (Lusaka, University of Zambia Press 2004)** in which she observed at page 41 that:

"An employer has the right to summarily dismiss an employee who has misconducted himself or is guilty of fragrant breach of contract of employment."

The Defendant thus submits that the relationship between master and servant or employer and employee is one that is contractual in

nature and that the basic rules of contract apply to the relationship.

It was the Defendant's submission that there was no agreement whatsoever or at all between the Defendant Company and the Plaintiffs on gratuity whether oral or in writing. However that the trial magistrate went ahead to read in terms of the agreement or engagement between the Defendant and the Plaintiffs which are not supported by any evidence on record. That the sentiments expressed by the Plaintiffs only witness were mere expressions of what he believed to be and not what was actually agreed upon between the parties.

It was submitted further that the invocation of section **24 (5) of the Employment Act Cap 268** by the learned trial Magistrate was erroneous as there was no justification for its application granted the absence of any dispute on the terms of the oral contract that subsisted between the parties. Further that the issue of gratuity never arose at any point nor was it asserted by the Plaintiffs as part of the terms of engagement. It was submitted further that there was

no finding of fact by the learned Magistrate about the Plaintiffs entitlement to gratuity.

In support of ground 2 the Defendant submitted that it was a misdirection on the part of the court to have considered the evidence of one of the Plaintiffs and used it as the basis of arriving at its decision. That the one and only witness for the Plaintiffs was a party with an interest to serve and therefore the evidence given by him ought to have been supported by some other evidence as it was suspect. I was invited to consider the case of ***Chembo and others v the People***[5] in which the court held that:

"There are circumstances when the evidence of one suspect witness could be corroborated by the evidence of another suspect witness provided of course that not only is the suspicion for different reasons but the one supplying corroboration on both of them must be what one might call for lack of better expression, an innocent suspected witness."

It was further argued that the trial court should not have made a general award based on the evidence of one witness as the Plaintiffs were not in the Defendant's view, similarly circumstanced in light of the fact that the Respondents were a mixture and hybrid. That the court must have considered the circumstances of each and

every Plaintiff before it could make an award. I was referred to the case of ***Newston Stulaida and others v Food Corp Products Limited***[6] in which the court refused to make a general pronouncement on Plaintiffs that were not similarly circumstanced.

Therefore that the Plaintiffs not being similarly circumstanced at least in so far as their duration of service was concerned or generally, required the trial court to analyse the circumstances of each and every Plaintiff before passing her judgment. I was urged to uphold the ground of appeal accordingly.

In the third ground of appeal it was argued that the trial court did not set out a clear rationale forming the basis upon which the court arrived at its decision. It was submitted as a settled principle of the law that the trial court must make findings of fact upon which it will apply the law in order to arrive at a sound well thought out and extensively reasoned judgment. That this translates into the necessity for a trial court in its judgment to be able to demonstrate its reasoning and or rationale for its final decision. It was argued that this proposition finds judicial expression in the case of ***Minister of Home Affairs Attorney General v Lee***

Habasonda[7] and complimented by principles set out in the case of ***Zambia Telecommunications Company Ltd vs. Mulwanda & Another***[8]

The Plaintiffs filed in heads of argument dated 08th May 2019. In response to ground one of the Appeal, the Plaintiffs argued that the court below was on firm ground when it found that they were casual employees at the time they were working for the Defendant in light of the evidence that they were not employed on permanent basis and were receiving a daily wage of K33.

Further that in justifying the finding of fact on the Plaintiffs contracts having graduated from daily to fixed term contracts, the court below relied on the fact that the Plaintiffs had worked beyond one year. In addition that the Defendant did not dispute the testimony given by PW1 to the effect that the Plaintiffs had worked for the Company in excess of 6 months to periods of five years continuously in some cases.

Reference was made to **section 28 A (Employment) Act No 15 of 2015** which provides that:

"Where a causal employee continues to be employed after the expiration of six months, the employee shall cease to be a causal employee and the contract of service of that employee shall continue but shall be deemed to be a short term contract having effect from the day following the expiration of the initial six months."

Further that **section 28B, employment (Amendment) Act No 15 of 2015** provides that:

"Where an employee who is engaged on a short term contract continues to be employed after the expiration of the short term contract, the short term contract shall be deemed to be a fixed term contract."

I was further referred to **section 2 of the Employment (Amendment) Act No 15 of 2015** which provides that:

"Fixed term contract" means a contract of service for

(a) A period exceeding twelve months, renewable for a further term, subject to section twenty eight C or

(b) The performance of a specific task or project to be undertaken over a specified period of time, and whose termination is fixed in advance by both parties."

It was submitted that by conduct of the parties the six months contract became a short term contract and later graduated into a fixed term contract based on the testimony of the witness.

The Plaintiffs agreed with the trial court that as no written contract was produced the only inference that could be drawn was that there was an oral contract of employment subsisting and that the onus was on the Defendant to produce a record of such contract. Reliance was placed on **section 24(1) (3) and (5) of the Employment** Act in support of this argument. Particular emphasis was placed on section **24 (5)** which reads:

"24 (5) ***Where any dispute arises as to the terms and conditions of oral contract other than a contract for the employment of a casual employee and the employer fails to produce a record of such a contract made in accordance with the provisions of this section, the statement of the employee as to the nature and the terms and conditions shall be receivable as evidence of such terms and conditions unless the employer satisfies the court to the contrary."***

It was therefore submitted that since the Defendant denied that there was a provision for payment of gratuity in the contract, the Company as custodian of employment records on the strength of

section 24 of the Employment Act should have produced a copy of the contract in the court below to support its position. Therefore that the only inference that can be drawn is that there was a provision for payment of gratuity. Consequentially the court did not err in ordering the payment of gratuity. Further that the cross examination of DW1 led to an admission that there was a signed contract which was not produced before the court.

In response to arguments advanced in ground 2 it was argued that the record of appeal at page 29 to 31 contains the statement of claim filed into court which reveals that all the Plaintiffs were similarly circumstanced except for the number of months served in employment with the Defendant. Further that it will be noted at page 36 to 40 of the record of appeal, that PW1 told the court that he had obtained consent to testify on behalf of the rest of the Plaintiffs.

It was submitted that there is no law which stops litigants similarly circumstanced to only call one witness. That this was typical in class actions which is no different from the case in casu. Further that the conduct of the Defendant and manner of termination of the

Plaintiffs employment raised a legitimate expectation on their part to be paid terminal benefits. Reliance was placed in the Supreme Court decision of ***Hotel and Tourism Training Institution Trust vs. Happy Chibesa***[9] wherein the Supreme Court at P. J3 stated the following:

"At law if an employer raised legitimate expectation to any employee by the employers conduct that employer is estopped from refusing to extend the same treatment to that employee on the similar circumstances."

It was submitted further that although the Defendant has alluded to the fact that the Plaintiffs were not similarly circumstanced, the Company had not disclosed to the court which circumstances were not common to all the Plaintiffs. Therefore that the case relied on by the Defendant of *Sivlanda & others vs. Foodcorp Products* (supra) was inapplicable to the presented matter.

Further that this issue in fact never arose in the court below as the Appellant did not object to only one witness testifying on behalf of the other Plaintiffs. I was referred to the case of ***Mususu Kalenga Building limited vs. Richmans Money Lenders Enterprises*** [10] in which the Supreme Court held:

"We have said before and wish to retaliate here that where an issue was not raised in the court below it is not competent for any party to raise it in this court."

Reliance was also placed on ***Barclays Bank Zambia Plc. vs. Zambia Union of Financial Institutions and Allied Workers*** [11] in further support of the above proposition:

In addition, that the submission on similar circumstances being raised was not a point of law but fact. Therefore, that this argument cannot be sustained as a ground of appeal. Reference was made to the case of ***Crossland Mutinta and Another vs. Donovan Chipunda***[12] as authority in which the Supreme Court guided that a jurisdictional issue can validly be raised as a point of law on appeal which was not the case presently before this court.

It was submitted further that reliance on *Chimbo and others vs. the people* (supra) does not aid the Defendant as the case was distinguishable and inapplicable to the present matter. It was argued in this regard that there is no law that requires that evidence in civil cases must be supported by other evidence to be admitted by the courts. Secondly, that the case referred to set

principles in criminal law requiring corroboration of accomplice evidence. That PW1 did not fall into this category and this was not even raised in the court below. The court was thus urged to find that the Chimbo case is inapplicable to this case and to dismiss this ground of appeal.

As regards ground 3, the Plaintiffs argued that the judgment of the court from page 48 to 57 of the record of appeal shows that the court applied established principles in judgment writing as guided by the Supreme Court in the case of ***Shreeji Investments Limited vs. Zambia National Commercial Bank Plc.***[13]. The Supreme Court emphasized the need for a review of the evidence, to provide a summary of the arguments and submissions if made, to make findings of fact, the reasoning of the court on the facts and application of the law and authorities if any, to the facts.

It was submitted that the court did follow these guidelines and I was pointed to the specific pages of the judgment to illustrate this point. In closing, it was submitted that this ground of appeal lacked merit and should be dismissed.

At the hearing counsel for the Defendant relied on his heads of argument which he augmented with oral submissions. It was submitted that the record would show that there is nowhere where the Plaintiffs witness states that he was testifying for and on behalf of the other Plaintiffs. That he only contended that he had obtained consent to speak on behalf of the other Plaintiffs which amounted to 2 different statements in representative actions. It was argued that it is a requirement that one should state clearly that they will be speaking on behalf of the other person. Reliance was placed on the case of ***Finance Bank vs. Muzeya & 4 Others***[14] a Court of Appeal decision in aid of this proposition.

Further that a careful look at the judgment would reveal that there is nowhere in the judgment where the court finds as a fact that the Plaintiffs were entitled to gratuity. I was invited to take judicial notice of the fact that in the previous legal order gratuity was not a matter of right and ought to be specifically provided for by agreement. Therefore, that the award of gratuity had no legal leg to stand on in this case.

It was submitted that the record would also show that the court picked provisions of the law and never married them to the facts so as to formulate the ratio of the decision and simply proceeded to make orders at page 56 of the record of appeal. That the court made these orders in the "interest of justice" but failed to carefully outline the reason for doing so. In addition that the court also made a finding that the Plaintiffs were casual workers. However that section 24 of the Employment Act that the court placed reliance on is not applicable to this category of employees.

Commenting on the Plaintiffs filed submissions firstly on the contention that the similar circumstances argument was not raised in the court below, Mr. Zimba submitted that this was a legal point that could be raised even on appeal. Secondly as regards the argument relating to the requirement for corroboration only being a principle in criminal matters, counsel Zimba argued that evidence in a civil matter ought to be corroborated where need arises such as the present matter as it goes to assist the court to arrive at a just decision.

On behalf of the Plaintiffs Mr. Mwenya relied on the Plaintiffs heads of arguments filed on 8th of May 2019 together with the list of authorities of even date. In response to the Defendants submission regarding the sole witness testifying on behalf of the others, it was submitted that the record would show that the Plaintiffs were unrepresented. I was invited to take judicial notice that court can give guidance to unrepresented litigants. That in this case there was acknowledgment on the record that PW1 spoke on behalf of the others.

Responding to the argument that section 24 of the Employment Act was inapplicable to the Plaintiffs, Mr. Mwenya argued that section 2 of The Employment Amendment Act no15 of 2015 inserted a new provision on fixed term contracts. He argued that by that amendment section 24 of Cap 268 applies to the Plaintiffs. Counsel reiterated the position submitted in the filed arguments on behalf of the Plaintiffs regarding the issue of similar circumstances, and his position on the professed requirement of corroboration in this case. He urged the court to dismiss the appeal with costs.

Mr. Zimba in reply submitted that section 2 of Act 15 of 2015 which introduced fixed term contracts had a qualification. That it was not in dispute that the Plaintiffs were on a 6 months renewable contract. Therefore that this provision was clearly not applicable to the circumstances surrounding the Plaintiffs. He prayed that the appeal be allowed accordingly.

I have carefully considered the written and oral arguments presented before me. 3 grounds of appeal were advanced in this appeal. In my view the appeal succeeds or fails on one central issue. Notably, a consideration of whether the Plaintiffs were entitled to the gratuity awarded by the court below.

The Defendant argue that the trial court misdirected herself in fact when she held that the 37 Plaintiffs should be paid the gratuity which was to be calculated with effect from the date that their status changed from casual employees to employees on a fixed term contract. In arriving at its decision, I note that the trial court firstly found as a fact that the Plaintiffs were casual employees and were in the Defendant's employ in periods in excess of a year . That therefore in terms of sections 28 A and 28 B of the Employment(

Amendment) Act of 2015 they were deemed to be serving initially short term contracts after 6 months that graduated to fixed term contracts after a year.

Secondly, the court reasoned that by virtue of section 24 (5) of the Act, the Defendant as employer was under an obligation to produce a record of the contract of employment and having failed to do so, the Plaintiffs representation on the contents of the agreement must be receivable as evidence of such terms and conditions. The court thus concluded that the oral contract had provision for the gratuity which it then ordered to be payable from the dates the Plaintiffs status changed to employees serving on fixed term contracts.

From the outset I accept as trite that the relationship between master and servant or employer employee is founded on the Law of contract. The Supreme Court in the case of ***Colgate Palmolive (Z) Inc. vs. Shemu***[15] underscored the importance of freedom of contract when it commented-

"Parties shall have the utmost liberty in contracting and their contracts when entered freely and voluntarily shall be enforced by the courts of justice."

In ***Rosemary Ngoma and 10 others vs. ZCCM*** [16] and ***Zesco vs. Mabika Mutale***[17], the Supreme Court went further to state that employer and employee relationships are bound by whatever terms and conditions they themselves set in the contract of employment. It follows that to be awarded gratuity, there must have been evidence of the existence of an agreement to that effect between the parties.

The court as I have stated above, made a finding of fact that there was such an agreement in light of the Defendant's apparent inability to produce a record of the employment as per section 24(5)of the Act. I am mindful that as an appellate court I may not easily disturb the trial court's findings of fact. This is made explicit in the case of ***William Masauso Zulu v Avondale Housing Project***[18] wherein the Supreme Court held:

"Before the court can reverse findings of fact by a trial Judge, we would have to be satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which on a proper view of the evidence, no trial court acting correctly could reasonably make."

I have carefully looked at the evidence given by PW1 in the court below. Nowhere in his evidence does he assert that the parties agreed to payment of gratuity. In fact what can be discerned from his evidence is that the Plaintiffs felt they were entitled to the gratuity and the two month per year served pay. He said the following in examination in chief on page 38 of the record of appeal.

"We want two months per year salaries because we do not know that we were casual workers we follow the labour laws which states that they have removed casualization. What we know is that the law states that after 6 months one must be made a permanent employee or his contract should be extended beyond the 6 months"

Under the pain of cross examination on page 49 of the record, he went on to state that:

"What we know is that we are permanent workers and that we were entitled to the two months per year pay. When someone signs a 6 months or one year contract, they are entitled to gratuity."

It is clear from the above that the Plaintiffs claim is based on what they believed they were entitled to as opposed to what was actually agreed. No evidence is given on what the rate of the gratuity was or

when it was to be payable. That said I find that there was no basis for the trial court to conclude even in the face of a failure to produce a record of employment by the Defendant, that there was an agreement on gratuity.

I conclude that this is a proper case in which I can reverse the lower court's finding of fact as I do and hold that there was no evidence of an agreement on gratuity. ***Khalid Muhammad vs. Attorney General*** [19] settles the principle on the requirement by a claimant to prove his case. The court stressed that a plaintiff cannot automatically succeed whenever a defence has failed. He must prove his case. The Plaintiffs did not discharge that obligation in this case.

I accept that the parties having served for periods in excess of a year and up to 5 years meant by virtue of section 28 (B) of the Employment (Amendment) Act, they were deemed to have fixed term contracts up to the time of their resignations. The Employment Act made no provision for gratuity for this category of employees. The payment of gratuity thus remained a condition of service subject to contract or agreement.

The New Employment Code Act No. 3 of 2019 of course, changes all that. It prohibits casualization and retains the requirement for employers to keep a record of oral contracts. Importantly under section 54, the payment of gratuity as part of severance pay for contracts of employment of fixed duration at prescribed rates is introduced.

This law however does not aid the Plaintiffs position as it cannot apply retrospectively. The Supreme Court decision of ***Jennipher Nawa vs. Standard Chartered Bank Zambia Plc.***[20] among several others makes abundantly clear that unless expressly stated a law does not operate retrospectively. Also worthy of mention, the payment of gratuity is not supported under any of the statutory instruments issued pursuant to the Minimum wages and Conditions of Employment Act that include SI No 1 and 2 of 2011 and SI 70 and 71 of 2018 affording minimum conditions for the prescribed category of protected workers which in any event the Plaintiffs do not fall under. There being no basis for the payment of the gratuity therefore, the 1st ground of appeal succeeds.

In ground 2 the Defendant contends that the trial court misdirected itself in accepting only the evidence of one out of the 37 Plaintiffs when their circumstances were different. Arguments for and against the Defendant's position that there was need for this witness's evidence to be corroborated were also presented. I find that there was nothing wrong with the manner the trial court proceeded with the matter. Before the trial commenced PW1 informed the court he had obtained authority from the rest of the Plaintiffs to speak on their behalf. All the Plaintiffs were present and confirmed to the court they had given their consent accordingly. The trial court made a record of this and indicated he was satisfied that the requirements of Order 8 rule 3 of the Subordinate Court rules were duly met. This is on page 36 and 37 of the record of appeal.

I further find that the suggestion of the requirement for corroboration in a civil matter is not supported by any authority. The Chimbo case cited by the Defendant refers to the settled principle in criminal law of the need to corroborate accomplice evidence or that of witnesses with a possible interest to serve to

remove the danger of false implication. This requirement is needless to say expected to meet the criminal standard of proof. I was rather bemused with the suggestion of a suspect witness in a civil matter. That is unchartered territory which I am not prepared to accept. I would dismiss this ground of appeal. Granted the position I have taken in the 1st ground of appeal I see no value in commenting on the argument to do with the similarity or otherwise of the Plaintiffs circumstances.

In the last ground of appeal, the Defendant argues that the court did not set out a clear rationale for arriving at its decision. I disagree. It is quite clear for any reader or audience to follow the basis of the court's decision. The court provided the necessary background, presented the evidence of all the witnesses and made its findings of fact having applied what she perceived to be the relevant law in the process. I see no departure from the principles and guidance given by the Supreme Court in the cited cases of *Shreeji Investment Limited v Zambia National Commercial Bank* and *Attorney General vs. Lee Habansonda* (supra)

In sum and for the avoidance of doubt, the appeal in the main succeeds to the extent that I order the Plaintiffs were not entitled to any of the claims pleaded and awarded by the court below.

Costs will follow the event to be taxed in default of agreement.

Dated at Lusaka the 30th day of June 2020.

JUDGE.