IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 1 OF 1997

HOLDEN AT NDOLA

(Civil Jurisdiction)

B E T W E E N:

COPPERBELT SHOES LIMITED APPELLANT

AND

S. BALAKRISHNAN RESPONDENT

CORAM: NGULUBE, CJ, MUZYAMBA AND LEWANIKA JJS

On 5th March and 3rd June 1997

For appellant - Mr. Isaac Chali, of Chali, Chama and Company

For respondent - Mr. Peter Mwale, of Peter Mwale and Company

J U D G M E N T

Ngulube, CJ, delivered the judgment of the Court

The appellant employed the respondent as its Managing Director under the terms of a written contract which provided for, among other things, the payment of a salary and allowances partly in Kwacha and partly in American dollars and gratuity in the same currencies. The employment was terminated before the contract had run out. It was the respondent's case that in contemplation of the

termination, he was called to Lusaka where the board held a meeting and the board Chairman informed him of the terminal package which he was being offered. That the package contended for was outside the contract was common cause. The appellant company made part payment and defaulted on the rest of the package. The respondent commenced proceedings based, not on the contract but, on the agreed package to recover the balance of the money and benefits. In the pleadings, the defence was an admission of the existence of the package but with the proviso that it would only be payable if there was a satisfactory audit report.

The learned trial judge heard the evidence and accepted the version advanced by the respondent, who was the plaintiff in the case. The appellant sought to have the termination to be governed by the contract rather than the extra contractual package contended for by the respondent. The learned trial judge considered that, far from insisting on the contract or any other appellant's package, the appellant's must have accepted the respondent's contention and counter proposals as set out in his letters. They would be taken to have accepted the respondent's terms because of their silence in not replying to letters and their reaction in paying sums corresponding to his proposals.

Mr. Chali argued that the learned trial judge erred to accept the letters authored by the respondent as representing the true position when there was a written contract whose terms ought to have been applied. Thus, the respondent should only have received gratuity at the rate of twenty-five per centum on both the local salary and on the inducement allowance, in terms of the relevant clause in the contract. Mr. Chali requested the court to uphold the package which was in accordance with the contract and which was set out in a letter dated 22nd December, 1992, which was also the letter of termination addressed to the

respondent. He submitted that this would have been the correct thing to do instead of awarding the respondent a package he himself drew up for himself.

In response, Mr. Mwale drew attention to the pleadings which contained an admission and to the evidence on record. From such evidence, it was clear that the respondent was relying on a meeting of 23rd December, 1992 and the agreement which emerged. This was after the letter relied upon by Mr. Chali. What happened in fact, namely payment of two instalments of K5 million each (totalling K10 million) and 26,000 U.S. dollars plus the sale of a small car was all outside the contract and outside the package proposed by the appellants in their letter of termination. On the contrary, it was all more consistent with the package contended for by the respondent. In truth, the case was resolved on a straight forward issue of credibility and there are no grounds for us to interfere. The appeal against the finding of liability in favour of the respondent against the appellant is rejected.

There was a submission and ground against the award of interest "at the current bank deposit rate" which did not even specify the period over which it was ordered. Mr. Mwale quite properly conceded this ground of appeal. In terms of the Law Reform (Miscellaneous Provisions) Act there is a discretion to award interest at a reasonable rate. The period should be from the date of issue of the writ to the date of the judgment in the High Court. The rate which we have awarded in other cases arising out of the same period is average short term Bank deposit rate and this we substitute on the Kwacha component of the sums due. As far as the dollar amount is concerned, the pre-trial interest will be 7%. This part of the appeal succeeds.

In sum the appeal is unsuccessful on the major issue and successful on the question of interest. The respondent will have the costs of this appeal, to be taxed if not agreed.

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M.M.S.W. NGULUBE,
CHIEF JUSTICE

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W.M. MUZYAMBA,
SUPREME COURT JUDGE

.....
D.M. LEWANIKA,
SUPREME COURT JUDGE.