IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL NO. 8 OF 1997

HOLDEN AT LUSAKA

(Civil Jurisdiction)

JOACHIM GABRIEL CEPHAS BANDA & OTHERS APPELLANTS

AND

BANK OF ZAMBIA RESPONDENT

Coram: Sakala, Chaila and Muzyamba JJS.
14th, 15th October and 12th December, 1997.

For the Appellants Mr. E.B. Mwansa of E.B. Mwansa of E.B. Chambers with Mrs. M. Zulu of Messrs. Mushipe and Associates.

For the Respondent, Mr. C. Ngenda of Christopher Russell Cook and Company.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

Case referred to:

1. Miyanda V The Attorney-General (No.1) (1985) ZR185)

This is an appeal against a judgment of the Industrial Relations Court dismissing the appellant's claims:

(1) for a declaration that the purported redundancy was null and void;
(2) For an order of reinstatement with full benefits from the date of the redundancy to the date of reinstatement and;
(3) for interest at current Bank rate from the date of the redundancy to the date of reinstatement.

The appellants, numbering over 161, were employed by the Bank of Zambia in various capacities. They were declared redundant on different dates but between 17th May and 31st October 1991.

The historical background leading to the redundancies is that, sometime in 1989 the Board of the Bank of Zambia adopted a report submitted by a consultancy funded by

the Swedish International Development Agency, which had carried out a study of the Management and organisational structure of the Bank. Upon adoption of the Report, an interim plan of operation for the implementation of that Report was drawn up for the period 1st May to 31st December, 1989. In order to spearhead and ensure the smooth and expeditious implementation of the restructuring programme, various committees were created. In the course of the implementation of the programme, meetings were held attended by some members of the Union and the Works Council at which the Restructuring programme was among the topics for discussion. Circular letters and bulletins on the Restructuring programme were also circulated to the staff.

On 30th March,1990, a meeting was held attended by some members of the Management and the members of the Works Council and the Union. According to the minutes that meeting was convened "to brief the Union and the Works Council on the current restructuring programmes."

On 4th April 1990 a meeting was held at State House chaired by the then former President and attended by the Bank of Zambia Management, the Works Council and the Bank of Zambia Union Branch. At this meeting the then President called for a total re-organisation among the Bank of Zambia Management in 1990 as it was a year of action.

On 15th April, 1990, the Governor of the Bank issued a Management Brief No. 1 to all members of staff on the subject of the Bank of Zambia Restructuring Programme. The Governor explained that the bulletin was the first in the series of information dissemination whose objective was to keep members of staff well informed on the restructuring programme of the Bank as recommended by the Swedish Management Consultancy.

On 25th January, 1991, a Staff Circular Letter was issued to all members of staff by the Governor on the subject of Bank of Zambia Restructuring Programme in which, among other things, the Governor informed the members of staff that for those that would be laid off a liberal redundancy package had been worked out and also assured all the members of staff that laying off employees would be the last resort. On 6th February, 1991, the Governor issued a Staff Circular to all members of staff advising them of the appointments following the reorganisation and restructuring exercise that was being undertaken by the Bank.

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In April, 1991, a Staff Bulletin No. 4 on the restructuring programme was issued by the Governor to all members of staff advising them of the acting appointments as part of the restructuring exercise and also informing them that a Redundancy Review Committee had been constituted to hear complaints and grievances from members of staff affected by the programme.

We take note that according to the minutes of the meeting of the full Works Council held on 13th July, and 18th September, 1990, the councillors present were informed that "the redundancy policy for Management was already in place but that of the eligible employees was not there as the issue was a negotiable factor."

We also take note that by a Minute dated 26th February, 1991, the Works Council, Ndola, wrote the Bank Secretary informing him that they had not been consulted on the redundancy exercise and that in terms of the law, the exercise was null and void. We further take note that by a Minute dated 8th March, 1991, the joint Works Council wrote the Bank Secretary giving consent to the redundancy exercise but on certain conditions. We shall revert to these two minutes later in this judgment.

The evidence on record which seems not to have been rejected by the court is that the implementation date of the entire redundancy exercise commenced on the 31st of January 1991. It was common cause that the respondents were declared redundant between 17th May and 19th October 1991. Upon being declared redundant, the appellants, under two different causes of action, namely 1991/HP/1919 and 1992/HP/2110, commenced actions in the High Court against the respondent Bank. It was common cause that both actions were discontinued in the High Court on 6th October 1994. On 26th October 1995, they filed a complaint in the Industrial Relations Court on the ground that they had been declared redundant

without following the right procedure and completely in disregard of the views of the Works Council before the implementation of that redundancy exercise contrary to Section 108(1) (e) of the Industrial Relations Act No. 36 of 1990, the law then applicable to them at the time of the implementation of the redundancy exercise by the respondent Bank.

At the hearing before the Industrial Relations Court, the appellants called three witnesses. The first witness, Joachim Gabriel Cephas Banda, told the court that he was Head of the Archives Division with the respondent Bank before he was declared redundant on 21st June, 1991. According to him, the Works Council did not approve the redundancy exercise which involved about 200 employees. He explained that he felt that there was a dispute in the manner the redundancy exercise was implemented because the laws applicable to a redundancy exercise at the time, required that before the implementation of the exercise, Management had to consult the Works Council for its approval. He testified that there was no approval sought from the Works Council before implementing the redundancy. In cross examination the witness explained that he was not a member of the Works Council but that he was an eligible employee. He insisted that he had ample documentary evidence to show that the Works Council did not approve the redundancy exercise.

The second witness for the complainant, Nasilele Masilisho, testified that he was the Secretary of the Works Council in Ndola. He served twice at the Council. During the second term he was retrenched. He testified that there

was no time in the course of the restructuring programme when the Bank of the Union approached the Works Council. He explained that, as Secretary of the Works Council in Ndola, he should have known had Management approached the Works Council on the redundancy. The witness further explained that had the Bank approached them, the Works Council in Ndola and Lusaka would have come together as a joint Works Council. According to the witness, on 26th February 1991, the Bank Secretary Mr. Mupunda and Mr. Mpangala addressed the workers at Ndola informing them that the redundancy exercise had been concluded between the Management and the Union. He explained that as Works Council at Ndola they objected on the ground that they were not consulted. They wrote the Bank Secretary on the same date on the subject of redundancy informing the respondent that as far as they were concerned the redundancy exercise was null and void because they had not been consulted. According to him the package negotiated and implemented without the Works Council was wrong because it should first have been tabled at a Works Council meeting before implemention. The witness conceded that he received the package but that he was still aggrieved. He explained under cross-examination that his complaint was that the Works Council was not consulted as required by the Industrial Relations Act of 1990.

The third witness on behalf of the complainants, Bill Mazila Mutemwa, who was then employed by the respondent as Deputy Director of Personnel and Administration, told the court that he was declared redundant together with a number of others. He explained that the negotiations for the redundancy started in 1990. He was also a member of the Works Council. He explained that initially he was involved in the redundancy package negotiations but later he was removed from the team. He explained that the redundancy agreement was signed in January 1991 followed by its implementation. According to this witness the package was not accepted by those who were affected. The witness explained that as far as he could recollect there was no time when the package was referred to the Works Council.

The respondent called two witnesses. The first witness, Mr. Mwamba Chokolo, testified that he was the Assistant Director, Bank of Zambia, Ndola. His responsibilities were the implementation of the Bank's policies, industrial relations, salary administration and welfare matters. He explained that the Bank of Zambia had accepted a report from the Swedish consultancy to re-structure the Bank. The witness explained that one of the consequences of the restructuring was the disappearance of certain jobs. The key players in the restructuring were the Management, the Union and the Works Council who held various meetings. The witness explained that at a meeting called on 30th March 1990, attended by the Works Council and the Union, the restructuring of the Bank was considered. He also testified that a Redundancy Committee was formed to consider appeals that would arise out of the redundancies. The witness further testified that apart from the meetings held with the President, the rest of the meetings were held between the Works Council and the Union, intended to agree on the redundancy package and the restructuring of the Bank. In cross-examination the witness admitted that he was a member of the Works Council. According to him the Works Council was consulted in relation to the redundancy and when the Ndola Works Council objected, a joint Works Council meeting was held. In re-examination the witness was shown for the first time a minute dated 8th March 1991. Counsel for the complainants raised an objection to this witness being shown the document, but the objection was overruled.

The second witness for the respondent, Fredrick Mpangala, now employed with Zamcargo, testified that in 1990 he was seconded to the Bank of Zambia, initially under the title of Deputy General Manager (Personnel) later changed to Director, Personnel. He explained that his duties involved the development of Personnel Procedures and Co-ordination of the implementation and the maintainance of the sound relation at the Bank. He participated as one of the main people in the implementation of the restructuring programme at the Bank. He explained that in the year 1990 a restructuring programme was in various stages of implementation. The programme embraced the review of the bank's operations

with the view of maximising the efficiency of the Bank. The restructuring programme eventually culminated in negotiations for a redundancy package. He explained that several officials were involved in the restructuring programme. Among them were those from the office of the Governor, from the Union and from the Works Council as well as Project Leader Vision Consultant and to some extent Party Committees at place of work. The participation was at two levels namely, through meetings chaired either by himself or the Governor or through selected groups. The witness told the court that there was a Works Council at Ndola which was subordinate to the Works Council at Lusaka. He explained that the Chairman, the Secretary and the Treasurer were all based in Lusaka. The witness further explained that when it came to negotiations for the redundancy, it was a matter between the Union and Management as per the recognition agreement. He explained that the redundancy negotiations were successfully concluded. He, however, stated that he was surprised to see correspondence at that particular time, after eight months of regular dialogue with the Works Council, from Ndola claiming that they were not consulted and that the redundancy package was null and void. He explained that upon receipt of the minute from the Works Council, Ndola, he called for the executive of the Works Council in Lusaka who had also received copies of the note from Ndola Works Council. He asked them if they knew something or whether they had prior dialogue with the Ndola Works Council on the note from them. According to this witness they equally expressed surprise. They told him that, that was an internal matter which they would resolve with their colleagues in Ndola and communicate to Management at a later stage. The witness explained that the Works Council Lusaka later reverted to him. They gave him a letter from their colleagues addressed to the Chairman referring to the earlier memorandum with Management. This was the letter dated 8th March 1991 in which the joint Works Council was informing Management that they had consented to the redundancy exercise. In cross-examination the witness explained that the Works Council from Ndola and Lusaka formed a quoram which they called a joint Works Council. The witness explained in cross-examination that the negotiations for the redundancy

exercise were concluded without going to the Works Council. According to the witness, the members of the Works Council were only given copies of the duly concluded redundancy package. Under further cross-examination the witness explained that the redundancy package which was negotiated applied to the Unionised employees. The package had to be submitted to the Bank's Board for approval for it to apply to management employees. The witness further explained in cross examination that when the negotiations were concluded Management did not go back to the Works Council for them to approve the provisions of the redundancy package. When re-examined the witness explained that for approving of the redundancy exercise, one had to consult the Works Council and the Union.

The court reviewed the documentary and oral evidence as well as the affidavit evidence by the respondent. The court observed that for the complaint to succeed, the complanants had to prove on a balance of probabilities that the redundancy policy as implemented by the Management affecting the complainants was not approved by the Works Council in terms of Section 108(I)(e) of the Industrial Relations Act, No. 36 of 1990.

After setting out the provisions of Section 108(I)(e) of that Act, the court observed that from the evidence adduced, the complainants' witnesses appeared not to be decided on what they were complaining against, whether the redundancy policy or the redundancy package. According to the Industrial Relations Court, this observation was made because most of the complainants complained that the redundancy package was not approved by the full joint Works Council since the Ndola branch was not consulted. The court found that if the only argument for the complainants was that the redundancy package had no approval of the Ndola Branch of the Works Council then the complaint failed on the basis that a minute dated 26th February, 1991 from Ndola Branch of the Works Council to the Bank Secretary, expressing disapproval on the ground that they were not consulted over the redundancies by Management, was later overruled by a subsequent minute dated 8th March, 1991 in which

the full joint Works Council gave their approval to the redundancy exercise and the redundancy package. The court held that in these circumstances the complainants were estopped from stating that the redundancy policy and the redundancy package had no approval from the full joint Works Council. The complaint was accordingly dismissed. Before finally dismissing the whole complaint, the court made several obiter dicta remarks;that had the complainants complained of the redundancy package being inadequate, it would have been a different issue; that the complaint was lodged on 4th November, 1993, and the applicable law was the Industrial and Labour Relations Act, No. 27 of 1993, which had repealed the role of the Works Council; that had the complaint been lodged before the coming into effect of the 1993 Act, the present complaint would have been covered; that even if the complaint was accepted under Section 85 (4) of the 1993 Act, the failure to present documents to support their claim rendered the complaint meaningless and that it was erroneous for members of the Management to be included in the action as their package was not part of the package negotiated by the Union and the Management.

For the sake of putting the record straight we shoot down the obiter dicta remarks as follows:

Indeed, the complaint was not the inadequancy of the package but that the whole exercise had no effect in law as per the then existing legal provisions and at the time of the lodging of the complaint, it was common cause that the applicable law had no provision for any redundancy exercise to have the approval of the Works Council, but the issue, as we see it, was one of the status of the accrued rights under the repealed law. In addition it was common cause that the complaint was lodged in the Industrial Relations Court after the coming into effect of the 1993 Act, but the evidence was that the matter, earlier properly commenced in the High Court, was discontinued in order to bring it in the Industrial Relations Court and the Court properly accepted it under Section 85(4) of the new Act, the court having ruled that under that section there is no time limit.

Whether it was erroneous to include members of Management in the action was neither here nor there because the evidence was that members of Management were also affected by the same redundancy exercise negotiated by the Union. The obiter dicta remarks were therefore a contradiction in terms. These remarks, as we have already said, were obiter dicta and we take note that they did not form part of the arguments in the appeal before us. We have, however, deliberately set them out here simply to show that the decision of the court in this matter, as will be shown later in this judgment, must have been affected by extraneous and irrelevant considerations hence, in our view, the court failed to do substantial justice which it was called upon to do. Once the court accepted, properly so, to entertain the complaint, it was obliged to do substantial justice to the real issue before it. But with all the due respect, the court missed the real issues for determination. Whether, if those issues had been correctly identified, the court would have arrived at the same conclusion is a matter for us now to decide. For now we make no further comments on the obiter dicta remarks by the Industrial Relations Court.

Counsel for the appellants filed written heads of argument based on ninteen grounds of appeal. But on account of the view we took of the appeal both learned counsel were invited and agreed to address the court on two questions, considered to form the gist of the ninteen grounds, namely; whether the Redundancy exercise, Policy and or package was approved by the joint Works Council and whether the repeal of the 1990 Industrial Relations Act by the 1993 Industrial and Labour Relations Act affected the complainants rights accrued under the 1990 Act.

Mrs. Zulu addressing the court on the first question pointed out that in terms of Section 108(1)(e) of Act No. 36 of 1990, the redundancy of eligible employees was of no effect without the approval of such redundancy by the Council. Mrs. Zulu submitted that under the law prevailing in 1990, the issue was the redundancy itself and not the

distinction between the package and the policy, since the law creating the distinction had been repealed.

According to counsel the minute dated 26th February 1991 and the evidence as a whole clearly established that the redundancy exercise was implemented by Management without the approval of the council. Mrs. Zulu invited the Court not to rely on the minute dated 8th March, 1991 purporting to contradict the earlier minute that there was approval by council since the minute of 8th March 1991, was written after the implementation of the redundancy exercise; secondly because there were no minutes of the meeting of the Council to support the purported approval and thirdly because the meeting was attended only by four members of the Council. Mrs. Zulu argued that the complainants' witnesses were never cross-examined on the minute purporting to suggest approval of the Works Council of the redundancy exercise, contending that the minute of 8th March, 1991, conveying the Works Council's approval of the redundancy, was fraudulently obtained.

Mrs. Zulu concluded her submissions by pointing out that the structure of the respondent having greatly changed from the time of the implementation of the purported redundancy exercise, the interest of justice would now demand that the appellants be deemed to have been retrenched from the date of this judgment.

Before addressing the court on the second question Mr. Mwansa first outlined the history of the case. He pointed out that following upon the appellants being declared redundant, the appellants, who had formed themselves into two groups, commenced two causes of actions, Nos. 1991/HP/1919 and 1992/HP/2110 in the High Court in which the appellants were separately claiming that the redundancies be declared null and void. While the actions were pending in the High Court, attempts for settlement out of court were initiated in which the representatives of the respondent intimated that they could only consider an ex-curia settlement if the proceedings in the High Court were discontinued.. According

to counsel the proceedings were discontinued on 6th October, 1994. But after the discontinuation, the parties never agreed on the settlement. Consequently, the appellants commenced the action in the Industrial Relations Court in 1995 after having successfully obtained leave to file a complaint out of time.

On the issue of accrued rights under the 1990 Act, Mr. Mwansa briefly submitted that the repeal of Act No. 36 of 1990 by Act No. 27 of 1993, only affected the rights of the present employees because that Act repealed the requirement of seeking approval of the Works Council before implementing a redundancy exercise, contending that the redundancy complained of was carried out during the time when the 1990 Act was still law.

Mr. Ngenda on behalf of the respondent informed the Court that he was relying on his written heads of argument filed with the court. In his oral arguments Mr. Ngenda submitted that the respondent complied with the 1990 law through consultations and approval. He contended that there was ample evidence on record regarding various meetings between the Management and the Works Council and also numerous consultations with the Works Council preceeding the implementation of the redundancies.

Mr. Ngenda pointed out that assuming that the minute of 26th February 1991 was an objection to the redundancy exercise, that objection was overruled by a subsequent minute dated 8th March 1991.

On the effect of the repealed 1990 Act on the complainants' accrued rights, counsel submitted that the issue was raised in the court below that the complaint was misconceived but that the court ruled against the respondent and that since the main judgment was in favour of the respondent they did not appeal. Counsel submitted that the present action having been based on the repealed law it should not be entertained.

We have examined the evidence on record and the judgment of the Industrial Relations Court. We have also considered the submissions on behalf of the parties. We are satisfied that on the relevant material facts there is no dispute. Before the repeal of Act No. 36 of 1990, the respondent required approval of the Works Council before implementing a redundancy of eligible employees and if not, the exercise had no effect. It is common cause that the appellants were declared redundant. It was also common cause that Act No. 36 of 1990 was repealed by Act No. 27 of 1993, assented on 26th April 1993; abolishing the requirement of approval by the Works Council before implementing a redundancy exercise. There was no dispute that the appellants were declared redundant before the repeal of the Act.

The case for the complainants was that they were declared redundant without the approval of the Works Council. In support of their case they adduced evidence from three witnesses, some of whom were members of the Works Council. In addition they produced a minute from the Ndola Branch of the Works Council protesting that the redundancy exercise had no approval. That minute reads as follows:-(sic)

B.O.Z REGIONAL. 26/02/91 14.15

MINUTE

To : Bank Secretary
From: : Works Council (Ndola)
Subject : Redundancies

In accordance with the Industrial Relations Act 1971 Cap 517 Part VII Section 72, Sub Section 2D which states that the decision by Management on redundancies shall be of no effect unless approved by the Works Council.

In view of the above stated clause the full Council was not consulted in the matter. The Secretary Works Council Lusaka could not represent the entire Council without consultation.

As far as we are concernec we were not consulted. In this regard therefore, we declare the redundancy exercise null and void, until and unless Management avails us time to go through the entire redundancy package.

Yours in industrial harmony,

G. SIVUBWA
CHAIRMAN

M. NASILELE
SECRETARY

C. MWASHA
VICE CHAIRMAN

E. MULENGA(MRS)
VICE SECRETARY.

c.c. The Governor.
Director/Admin. and Personnel (Lusaka)
Deputy General Manager (Ndola)
Chairman Works Council (Lusaka)"

The case for the respondenton the other hand, was that the Works Council had been involved through meetings, consultations, and circular letters and therefore approved the redundancy exercise. In addition it is the case for the respondent that if the Ndola Branch protested, that protest was overruled by the joint Works Council as per minute dated 8th march,1991 which reads:(s)

" MINUTE

To : The Bank Secretary,
From : Joint Works Council
Subject : Redundancies

Reference is made to the minute dated 26th February 1991 regarding the above subject and with regard to the Industrial Relations Act 1971 Cap 517 Part VII Section 72 Sub section 2D.

During the deliberations held in Ndola between Bank of Zambia Lusaka and Regional Office Works Councils, it was discovered that Management went ahead with the redundancy exercise without the prior approval of either the Head Office or the Regional Office Works Councils.

The meeting took strong exception on the above observation. However, after due consideration of the redundancy package and the situation prevailing, the joint Works Council gave consent to the exercise on condition that:-

(a) Representation on the redundancy review committee be increased to four.
(b) Where a person has been declared redundant, he/she should be in accordance with Section 2.2 of the package be notified and ceases to hold office and the benefits given forthwith.
(c) The Works Council in discharging its watchdog role, be availed of the CISB and CIDA reports.

Nothwithstanding the above, the Works Council shall continue to observe and consult Management on the above state issues.

Thanking you in Industrial harmony.

A.J. MWILA
SECRETARY- LUSAKA.

D.K.BISHONGA
CHAIRMAN-LUSAKA.

M. NASILELE
SECRETARY-NDOLA

C. MWASHA
VICE CHAIRMAN-NDOLA."

In dealing with the issue of approval, the Industrial Relations Court stated:

"After careful consideration and examination of the evidence and documents before us, we find that if this is the only argument that the complainants have in support of their complaint then it has to fail because exhibit "JGB1" a minute dated 26th February,1991 from the Ndola branch of the Works Council to the Bank Secretary which expressed their disapproval stating that they were not consulted over the redundancies by management, was later overruled by a subsequent minute dated 8th March, 1991 in which the full Joint Works Council gave their approval to the redundancy exercise and redundancy package, so that we find that the complainants are estopped from stating that the redundancy policy and redundancies package had no approval from the full Joint Works Council. Therefore, the complaint fails to succeed on the ground of non-approval of the Works Council as stated in section 108(1)(e) of the Act of 1990."

Section 108 (1)(e) of the then Act No. 36 of 1990 dealing with approval by councils of certain decisions of Management reads:

"108(1) Once a Council has been established for an undertaking a decision of the Management of an undertaking in respect of:-

(e) the redundancy of eligible employees in the undertaking;

shall be of no effect unless such decision is approved by the Council."

We are satisfied that if we hold that Management had no approval of the Works Council before implementing the redundancy exercise, then it will follow that in terms of the law, then existing, that redundancy had no effect. The first question for determination, therefore, is whether the redundancy exercise was approved by the Works Council before being implemented. As we see it, the question was one of credibility. But the Industrial Relations Court never made any findings on the evidence of the witnesses as presented. Instead the court resolved the whole case on the two minutes by preferring a subsequent minute of 8th March, 1991 contradicting an earlier minute of 26th February.

Our understanding of section 108 (1)(e) of Act No. 36 of 1990 is that, the Works Council had, as a matter of law, to approve a decision to declare any eligible employee redundant before implementing that decision. In our view the fact that some members of the Works Council participated in the meetings that discussed the redundancy exercise did not amount to approval by the Works Council. Equally, the fact that there were consultations involving Management and the workers did not also amount to approval by the Works Council. Furthermore, Management circular letters were not in themselves any evidence of approval by the Works Council. The respondent, as well as the court, seemed to have relied on the minute dated 8th March 1991 as evidence that the Works Council had approved the redundancy exercise. We have indeed anxiously examined that minute. In our opinion that minute confirms the appellant's case that no approval by the Works Council had been given before the implementation of the whole redundancy exercise. Firstly, the minute in part states:

"...it was discovered that Management went ahead with the redundancy exercise without the prior approval of either Head Office or the Regional Office Works Council."

This part of minute puts it beyond doubt that Management implemented the redundancy exercise without approval of the Council.

Secondly, the joint Works Council, belately in our view, purported to approve the redundancy exercise but on certain conditions. Whether those conditions were met by Management there is no evidence. The approval conveyed by the minute of 8th March if accepted came long after the exercise was already being implemented contrary to the law then existing. We are satisfied that on a proper analysis of the evidence on record, including the two minutes, the redundancy exercise was implemented without the approval of the Works Council. The finding by the Industrial Relations Court that there was approval was therefore a misdirection. We hold and find that there was no approval. This ground of appeal therefore succeeds.

On the issue of accrued rights, we take note that under the then existing law, the appellants could only be lawfully declared redundant, if that redundancy exercise had complied with the law. Since the law relating to approval was only repealed after the redundancies had been implemented, the appellants had, in these circumstances, an accrued or acquired right not to be declared redundant without that decision being approved by the Works Council (See Miyanda Vs The Attorney-General(1). The appellants in the instant appeal are therefore entitled to the declaration sought that their being declared redundant without the Works Council approval as required by the law then existing was null and void. On this ground too, the appeal succeeds.

Mrs. Zulu, properly so, pointed out that in the event of the appeal succeeding and bearing in mind the respondent's changed position, the appellants should be deemed to have been retrenched from the time they were declared redundant to the date of this judgment. We agree that as a result of the restructuring exercise, as shown by the facts on record, the appellants cannot be accommodated back into the Bank and it would be extremely unrealistic to order reinstatement in the circumstances of this case when an alternative and adequate remedy would be available in the form of damages. Having adjudged that the redundancy exercise was unlawful for non compliance with the law, we agree that the appellants should be deemed to have have been retrenched but on the date each one of them was

declared redundant.

Since we have found that the whole redundancy exercise was unlawful and that reinstatement would not be an appropriate remedy, the question that now arises for determination is what should be the measure of compensatory damages to be awarded to each appellant.

In considering this question we have taken into account the fact that the appellants were each paid a package to which each one of them was entitled up to the date of the redundancy exercise.

We have also taken into account the fact that the impending restructuring of the respondent Bank and the likely redundancies, if the the law had been properly followed, was common knowledge to all the employees of the respondent Bank. In addition we take note that some members of the Works Council attended meetings with the Management and the Union at which the redundancy exercise was an agenda item. In wrongful termination of employment cases, the measure of damages where reinstatement is refused is notice period. In the instance case the respondent Bank failed to comply with the law. The unlawful redundancies were carried out over two years before the law of approval by the Council was repealed. The appellants had therefore a duty to mitigate the damage caused by the unlawful redundancy exercise.

On the facts of this case we order compensation to each appellant of twelve months salary with all the benefits to which each one of them was entitled to. The salary and the benefits will be that payable to each appellant on the date each was unlawfully declared redundant. The salary and the benefits will carry interest at the average short term Bank deposit rate from the date of filing the complaint in the Industrial Relations Court to today's date. Thereafter, the appropriate after judgment interest rate will apply up to the date of payment.

The appeal is allowed with costs to be taxed in default of agreement.

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E.L. SAKALA,
SUPREME COURT JUDGE.

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M.S. CHAILA,
SUPREME COURT JUDGE.

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W.M. MUZYAMBA,