

HOLDEN AT LUSAKA.

ZESCO LIMITED

VS.

NEW LONDE MOTEL LIMITED

CORAM: Bweupe DCJ., Sakala and Chaila

On 29th February, 1996 and 3rd April, 1997.

For the Appellant : Mr. G. M. Lungu of Legal Counsel.

For the Respondent: Mr. K. C. Simbao of Mulungushi Chambers.

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JUDGMENT

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Bweupe DCJ., delivered the judgment of the court.

This is an appeal by the Appellant, ZESCO Limited; against a decision of the High Court Judge allowing the Respondents claim that the Respondent is the owner of the Transformer.

The facts of this case, as appearing on the record of the court below, are simply these: PW1 deposed that the Respondent was a liability company engaged in hotel business. The Appellants are a public corporation charged with supplying electricity to the nation. In 1989 the Respondent built a hotel in Matero called **New Londe Motel**. The Respondent requested the Appellant to supply the electricity to the building but the Appellants were not in a position to supply the electricity as requested as the main supply line to Matero was overloaded and there was no place for the Appellants to expand the Matero Capacity.

The Appellants then asked the Respondents to build their own substation and pay for the transformer if electricity was to be supplied to them. The Respondent built the said substation and paid the full cost of the transformer. They were supplied with the electricity and given keys to the said sub-station. PW1 said the Appellant have now taken over the said sub-station from which they are now supplying many consumers in Matero. The Appellants have not paid any money to the Respondents for the taking over of the Respondents Transformer. PW1 said that he and Mr. Ngoma each paid K14,767.00 for one transformer which was the full cost for the two buildings. He said they funded the erection of the Sub-station. The Material was for K11,200.00 and connection fees were K1650.00. He concluded that the K14,767.00 paid each by him and Mr. Ngoma was for the total purchase value of the transformer.

The Appellant denied the Respondent's claim. They said that a Mr. Ngoma built the Sub-station and that what the Respondents paid for was capital contribution to enable them to have electricity, and that it was not for the purchase of the trans-former and for the exclusive use by the Respondent. They also concluded that the Respondents were not entitled to compensation or replacement value.

We have carefully considered the facts, the evidence on record, the judgment of the court, the arguments by both counsel and authorities cited and we have come to conclusion that there is only one question to answer namely: "Who is the legal owner of the Transformer?"

The case for the Respondent as pleaded was for:-

- (a) a declaration that the Plaintiff being the owner of the transformer and the building structure enclosing the same is entitled to determine who uses his transfer and benefit from the same revenue accrued from the same
- (b) The return of the keys to the plaintiff to premises where the transformer is fixed which were collected by the Defendants without justification;
- (c) payment to the plaintiff of all benefits obtained by the Defendants from the other consumers illegally connected to the plaintiffs transformer without permission or consent from the time they started using the same to the date of judgment plus interest 17% per annum;
- (d) an injunction to restrain ZESCO to and any other users of this transformer from continuously using the same with immediate effect until the matter is settled;
- (e) costs.

Hence as it can be seen the case for the Respondent as pleaded was for (a) a declaration and (b) compensation.

The oral and documentary evidence established that the parties have agreed that the Respondent will construct the sub-station and that appellants will reduce the amount of fees to paid for the supply. According to the evidence of the Appellants transformers and all other properties through which electricity is supplied belong to them.

The case for the Respondent as pleaded was for a declaration that having built the sub-station and paid in full for the transformer, the transformer belongs to them and the replacement value at the current market value.

We have carefully considered the evidence and the judgment of the court below. We are satisfied on the evidence that whilst the construction of the sub-station was done by the Respondent or the request by the appellant, there was no agreement that the transformer supplied by the appellant will belong to the respondents. According to section 5 (a) (v) the power of regulating of Zambia Electricity Supply Cap 813 the supply of electricity and the construction of machinery and apparatus is vested in Zesco. The section reads:-

" 5 (a) (v). conditions for the supply of electricity generally and for the construction alteration of works, plant, machinery, apparatus, appliances and equipment for the transmission, distribution, connection, installation and use of electricity supplied by it"

Shall be vested in ZESCO.

In terms of the above quoted section Respondents can not own a transformer.

For the foregoing reasons the appeal is allowed with costs to follow the event and to be taxed in event of disagreement.

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**B. K. BWEUPE**  
**DEPUTY CHIEF JUSTICE**

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**E. L. SAKALA**  
**SUPREME COURT JUDGE**