**IN THE SUPREME COURT FOR ZAMBIA** **APPEAL NO. 103/97**

**HOLDEN AT NDOLA**

(CIVIL JURISDICTION)

B E T W E E N:

SILVER MWANZA APPELLANT

-vs-

ZAMBIA CONSOLIDATED COPPER MINES LIMITED RESPONDENT

CORAM: NGULUBE,CJ., MUZYAMBA AND LEWANIKA JJS
on 3rd December, 1997 and 3rd March,1998

For the Appellant: In person

For the Respondent: P.M. Chamutangi, Legal Counsel

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**JUDGMENT**

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Ngulube, CJ., delivered the judgment of the Court.

On 3rd December 1997 when we heard this appeal, we dismissed it but made no order as to costs. We said we would give our reasons later and this we now do. The case before the learned trial judge was summed up rather aptly in the following passage of his judgment--

> ***"I must confess right from the onset that I had found it extremely difficult to trace the cause of action in this claim. First and foremost, the plaintiff does accept the fact that he had been warned and in fact tried for unsatisfactory work performance, he had even been suspended for that. Thereafter, the management had reorganised its structure and scrapped his position and in its place a new position was created which called for the services of a better qualified person than the plaintiff. I wonder therefore what the defendant's***

> ***alternative would have been if it did not think of either retrenching or declaring the plaintiff redundant. However the bitter alternative I can see would have been that of dismissing the plaintiff for failing to do his job. The plaintiff's cry for a demotion in the alternative does confirm the fact that he had been incapable of doing the job for which he was employed. The defendant was therefore right to declare him redundant as a kind way of bidding him farewell. There is completely no merit in this action and I must dismiss it."***

In the argument of the appeal, the appellant (who was the plaintiff at the trial) relied on the terms and conditions applicable in cases of redundancy in the respondent company and submitted that the procedure was not followed in his case. The procedure contended for and which he claimed had been followed in the case of his workmates was that the employer would make an effort to redeploy the affected employees to a different section or even to a different division of the conglomerate. The employer could even offer the employee the option to be demoted by offering him or her a lower position.

Quite obviously, a redeployment or a demotion could only work if other appropriate openings were found or available. The appellant produced examples of circular letters sent to other divisions inviting them to indicate if they could absorb some of the employees on the list. The examples were from a time after his own redundancy and we were invited to assume that in his own case he was not on a similar list. We can make no such assumption. If anything, the presumptions of regularity and continuity would, unless rebutted, require us to presume otherwise. The appellant argued that he should at the very least have been offered the option of accepting a demotion to a lower post. There was no evidence that such a post was available and even if it were, there would have been

nothing wrongful in the employer offering it to any other employee affected by the redundancy and who did not have the appellant's kind of disciplinary record.

There was no merit in the action below and none in the appeal. It was for the foregoing reasons that we dismissed the appeal but spared the appellant the burden of paying the costs.

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M.M.S.W. NGULUBE
**CHIEF JUSTICE**

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W. MUZYAMBA
**SUPREME COURT JUDGE**

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D.M. LEWANIKA
**SUPREME COURT JUDGE**