

IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL NO. 84/2001
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

MULUNGUSHI INVESTMENTS LIMITED
(IN LIQUIDATION)

APPELLANT

AND

RHODAH WENDY KAZHAMA ZUZE

RESPONDENT

Coram: Ngulube, C.J., Sakala and Chitengi JJS.,
5th June and 3rd September, 2002.

For the Appellant: Mr. S.A.G.Twumasi of Kitwe Chambers.
For the Respondent: In Person.

J U D G M E N T

Sakala, JS., delivered the Judgment of the Court.

When we heard this appeal at Ndola, we dismissed the appeal with costs limited to the out of pocket expenses as the Respondent had appeared in person. We indicated then that we shall give our reasons later in a written judgment. We now give those reasons.

The appeal was against a judgment of the Industrial Relations Court entered in favour of the Respondent. The facts of the case are that the Respondent was employed by the Appellant as a Senior Management Secretary from 2nd January, 1987 to 31st March, 1996 when she was declared redundant.

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During her employment, there were also other secretaries seconded from ZCCM to the Appellant Company. The seconded secretaries were on ZCCM Conditions, receiving a higher salary than the Respondent despite the fact that they all had similar qualifications. In 1994 ZCCM terminated the secondment of the secretaries to the Appellant Company and paid them all their terminal benefits. After the termination of the secondment, those secretaries, who were formally employed by ZCCM, were employed by the Appellant company and continued to enjoy the higher salaries based on ZCCM conditions while the Respondent continued on her old salary. According to the Respondent, the issue of the disparity in salaries was brought to the attention of Management but nothing was done. The Appellant company subsequently went into liquidation. The Respondent's redundancy benefits were calculated on the basis of her old salary. The Respondent commenced proceedings in the Industrial Relations Court claiming among others, that the Appellant company should improve her salary and pay her a redundancy package based on the improved salary.

After considering the evidence, the court found that the Appellant company had failed to appraise the Respondent annually in order to enable her to earn an increment or fail to earn it. According to the court, the failure deprived the Respondent an opportunity to improve her earnings. The court held that this failure was wrongful. The court observed that while there was nothing wrong for the Appellant to pay the Respondent according to her conditions of service and to pay the seconded secretaries from ZCCM according to the conditions obtaining at ZCCM at that time, the moment the Appellant employed the secretaries from ZCCM after termination of their secondment, the Appellant was duty bound to ensure that people who were doing the same work received equal pay. The court pointed out that since the Respondent was doing the same work with the former seconded secretaries from ZCCM, the Appellant having decided that ZCCM salaries should continue, the Appellant should have ensured that the Respondent, who had similar qualifications and doing the same jobs, should also have been paid on the basis of ZCCM salaries which were in actual fact new conditions introduced in the Appellant Company. The court pointed out that in the circumstances, the Appellant should have equally raised the Respondent's salary as the earlier reason for the disparity namely; the secondment was no

longer applicable. The court concluded that this having not been done, it was wrong and held that that Respondent's salary should be raised. The Respondent was awarded the difference in salaries and ordered a recalculation of her retrenchment package on the basis of the salary which the other secretaries, with the same qualifications, formerly with ZCCM, were receiving.

The spirited arguments by Mr. Twumasi on behalf of the Appellant were based on one ground of appeal namely that the trial court erred in law and fact to find that the Respondent was doing the same job as the other secretaries when there was no evidence. Although we had difficulties to see the point of law raised by the appeal, Mr. Twumasi contended that the evidence on record showed that each employee had his or her contract with detailed terms of employment. He pointed out that the employees who worked under secondment had conditions which they came with from ZCCM; that after the termination of the secondment, they were offered their own terms of employment. He submitted that the terms of employment depended on various factors which included education, qualification, length of employment and type of work done. Mr. Twumasi contended that

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despite all the employees being called secretaries, it was normal to expect that a secretary of a Managing Director served under different conditions than a secretary of the Human Resources Officer. He submitted that on the facts of this case, there was no evidence to support the decision of the court.

We invited counsel to point out the point of law involved in the appeal. He submitted that the point of law was that in applying the evidence to the facts, the trial court erred in that it applied a condition of service of another person who had no similar conditions of service or who was not in the same place or Division where the Respondent was employed.

In her short submissions, the Respondent, who appeared in person, contended that the salaries were supposed to be standardized and that in the instant case a secretary could work any where in the Division still carrying out the same type of work. She urged the court to dismiss the appeal for lack of merit.

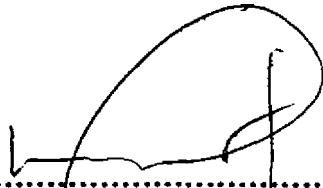
: J6 :

We have carefully considered the judgment of the Industrial Relations Court as well as the evidence on record. We do not agree that this appeal raised a point of law or a point of mixed law and fact. The court found as a fact that seconded secretaries received a higher salary than the Respondent. The disparity continued even after the secondment was terminated following re-engagement of the previously seconded secretaries. The court found no justification for the disparity in salaries after the secondment was terminated. These facts were common cause. We have said in several appeals originating from the Industrial Relations Court that according to Section 97 of the Industrial and Labour Relations Act, an appeal lies to this court against the decision of the Industrial Relations Court only on point of law or any point of mixed law and fact. There were no points of law or points of mixed law and fact raised in this appeal.

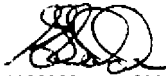
It is for the foregoing reason that we dismissed this appeal with costs limited to out of pocket expenses. We note that the court awarded 6% as interest after judgment. This is not in conformity with the current law and the practice. In terms of Act No. 16 of 1997 we propose to adjust the after

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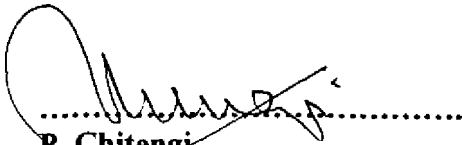
judgment interest. The adjustment is that the amount awarded will carry interest at the current lending rate as determined by the bank of Zambia until payment.



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M.M.S.W. Ngulube,
CHIEF JUSTICE.



.....
E.L. Sakala,
SUPREME COURT JUDGE.



.....
R. Chitengi,
SUPREME COURT JUDGE.