IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO. 98/2002

(CIVIL JURISDICTION)

BETWEEN:

CANDU INDUSTRIES LIMITED	**1ST APPELLANT**
RUDOLF GEORGE ANTTON FARBER	**2ND APPELLANT**

AND

STELLA ANNA BAUER	**RESPONDENT**

Coram: Ngulube, CJ, Chirwa and Chibesakunda, JJS
on 15th January 2002 and 28th August 2002

For the Appellants: Ms Wangwor of Messrs. Yangailo and Company
For the Respondent: Mrs Lilian Mushota of Messrs. Mushota and Associates

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JUDGMENT

Chibesakunda, JS, delivered the Judgment in Court

When we heard the appeal on 15th January 2002 we allowed the appeal and directed the High Court to proceed to hearing the application to set aside the default judgment. We said we would give reasons later. We now give our reasons.

Briefly the appeal before us is against the High Court, sitting as a commercial court, refusing to stay the judgment in default pending the hearing of summons to set aside the default judgment. The record which has too many applications for stay and counter application for lifting the stay to the extent that there is total confusion, shows that the Respondent who was the plaintiff before the High Court sued the 1st and 2nd Appellants claiming for damages suffered because of termination of employment; and

1. Special damages occasioned by the wrongful and unlawful breach of contract;
2. General damages arising from the breach of contract;
3. Terminal contractual and statutory benefits, inclusive of long service award;

4. Interest on 1 to 3 above at current Bank Rate; Economic value of 30% shares in the 1st Appellant Company;
5. Dividends since 1994 plus interest thereon at bank rate;
6. Further and other remedies as may be just; and
7. costs.

The Respondent had even in her statement of claim put in particulars of special damages:-

1.	Loss of Salary for six months two weeks from March 22 1996 - September 30, 1996 (The contract period breached at K250 000 00 net per month)	K1 625 000 00
2.	Annual leave pay at K250 000 00 per annum x two years	K 500 000 00
3.	Domestic servants/garden boy and guard allowances	K 900 000 00
4.	Electricity and water allowances unpaid for one year to end of contract	K1,080 000 00
5.	Education allowance for one child at Lusaka International School for two academic terms April 1996 – December 1996	K3 780 000 00
6.	Medical allowances for Respondent and child fixed at US 1400 Dollars for 18 months at convertible rate, currently being K2001 per dollar	K2 801 400 00
7.	Long service entitlement at 30 days leave pay for each completed year of service, commencing period prior to being appointed Managing Director - four years	K1 000 000 00
8.	Use of personal vehicle in lieu of personal to holder company care inclusive of fuel allowances for contract period breached	
9.	Motor vehicle repairs for break – down during use of personal vehicle in lieu of company personal to holder car, per quotation from the dealers	K4 960 461 00
10.	Biannual travel allowances for holiday for Respondent and one child in East/Southern Africa	K4 175 550 00
11.	Five per cent commission on money collected over K5 000 000 00 In each of the following months	

(a) August 1995 ..... K19 691
(b) September 1995 .....K74 486
(c) January 1996 ..... K24 410
(d) February 1998 ..... K17 063

		K 135 650 00
		22 458 061 00
12.	Interest on all above at current bank rate (47%)	10 555 288 67
	TOTAL	K33 013 349 67

On 21st of December 1998 the Respondents' advocates entered a default judgment, which says:

> "*No defence having been served by the defendants herein it is this day adjudged that the Defendants do pay the Plaintiff the sum of K24 458 061 and 47% per annum interest and costs.*"

On 23rd December 1998 Messrs Yangailo and Company on behalf of the Appellants applied for a stay of execution of that judgment - exparte which was granted on 6th January 1999 by the learned Deputy Registrar pending interparte hearing scheduled for 12th January 1999 at 14.30 hours. Also on 28th December 1998 the same learned Advocates for the Appellants filed in summons to set aside the default of judgment supported by an affidavit. They filed further affidavit in support of this application supported by exhibits. This application to set aside the default judgment was not heard up to the time we heard this appeal. It would appear from the record that on the 12th of January 1999 learned Deputy Registrar lifted the stay of execution of the default judgment in default on appearances for the advocates for the Appellants. The Appellants went again before the learned Deputy Registrar seeking a stay of that default order. The learned Deputy Registrar granted another exparte stay of his judgment pending appeal to the High Court.

In the meantime the learned advocates for Respondent filed a defence. In reply the Respondent filed a reply on the 10th of August 1999.

On 22nd February 1999 Imasiku J sitting as an appellate court in Chamber made a conditional order stating that the default judgment was to stay on condition that the Appellants would prosecute the application to set aside that default judgment within 14 days.

On 21st December 1998 and 30th March 2000 the Appellants went before Imasiku J seeking a stay of that order. Imasiku J refused to grant that application. Subsequently, there was a lot of correspondent between parties trying to sort out the matter out of court. There was consent summons and orders for direction to have the matter summarily heard without pleadings. In the course of January 2000 to October 2000 there was an application before His Lordship the Deputy Chief Justice to stay the judgment. The application was granted.

Now the appeal before us is against that order made by Imasiku J, refusing to stay the Application. We have detailed the sequence of events just to show that the handling of the matter before the court was somewhat confused. No wonder the learned trial Judge gave an order which was conditional – rare order. We are surprised however that he made that order. As can be seen from the record the learned Judge had all the documents and the pleadings before him. We find difficulties in understanding why he made that conditional order when he had the defence and the reply. He should have allowed the parties to argue the application to discharge the judgment in default. We did allow the appeal. We confirm the same. We leave the costs in the cause.

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M M S W Ngulube

CHIEF JUSTICE

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D K Chirwa

SUPREME COURT JUDGE

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L P Chibesakunda

SUPREME COURT JUDGE