APPEAL NO. 23 OF 2000

IN THE SUPREME COURT OF ZAMBIA

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

ZAMBIA PRIVATATION AGENCY Appellants

and

SURIAH MUNAMWAZE MAANZA Respondent

Coram: Sakala, Chaila and Chirwa, JJs on 17th May 2001 and 13th September 2002

For the Appellant: Mr. C. Chonta, Ellis & Co.
For the Respondent: Mr. A. J. Shonga, Shamwana & Co.

JUDGMENT

Chirwa, JS, delivered the judgment of the Court: -

Cases referred to:

(1) Mobil Oil Zambia Limited V Ramesh M. Patel [1988-1989] Z.R. 12
(2) National Airport Corporation Limited V Reggie Ephraim Zimba and Savior Konie, SCZ Judgment No. 34 of 200
(3) Dunlop Pneumatic Tyre Company Limited V New Garage and Motor Company Limited [1915] A.C. 79

This appeal was heard before the demise of our learned brother Justice Chaila and the delay in delivering the same is regretted.

The matter below was tried on agreed facts and the Court was asked to determine the effect of the letter dated 18th April 1995 addressed to the respondent by the appellant in which the respondent's contract was terminated. The issue as put to the lower Court was:

"Whether the letter of 18th April 1995 bound the defendant (appellant) to pay the plaintiff (respondent) the full unserved part of the Contract or whether the plaintiff is entitled to any further benefits after having been paid the sum of K9,725,842.96 as per defendant's letter of 31st May 1995 aforesaid and in which the plaintiff was granted inter alia six months salary in advance and one month ex-gratia payment".

The learned trial judge considered the letter terminating the respondent's contract with the appellant of 18th April 1995 which stated that "your contract of employment will be deemed as having matured and you will be paid all your terminal benefits equivalent to the period served" and also the letter written to the respondent after the appellant's Board met and reads:

"(i) In regard to the Agency's letter dated 18th April 1995 please be informed that the Board has not approved the text in full except for certain aspects of it.

(ii) In the main, the Board has not approved the use of the word 'deemed' to connote or indicate harmonious completion of contract with the Agency. The Board has however, approved the termination of your contract as set out in the Employment Contract signed with the Agency".

The learned trial Judge was of the view that the letter by the Board of 31st May 1995 was written after the Board meeting after the letter of 18th April, 1995 in which the respondent's contract was "deemed as having matured" meaning that the respondent was deemed to have served the contract period earning a salary and other benefits and the terminal benefits at the end of contract. She held that the appellants could not be allowed to play with people's fate in that manner and the appellants were ordered to pay for the full contract i.e. for the unserved part of the contract as well less the ex-gratia payments unless these were governed by the contract.

The appellant appealed against the finding of the learned trial Judge that the letter of 18th April 1995 had the effect that the

respondent was to be paid the remunerations for the un served period of the contract plus the terminal benefits provided under the contract, less the ex-gratia payments made, unless these were provided for in the contract. The memorandum of appeal contained five (5) grounds of appeal but at the hearing of the appeal on application to the Court, the third ground of appeal in the memorandum of appeal was abandoned and the memorandum of appeal was amended by adding an addition ground of appeal. The memorandum of appeal as filed reads: -

"(1) The Judge erred in not finding that the defendant could terminate the plaintiff's contract by notice.

(2) That the Judge erred in holding that the defendants are liable to pay for the full un served contract.

(3) That the Judge erred in holding that the defendants were bound by the decision of the Chief Executive by his letter of April 18th 1995 when the plaintiff was an employee of the defendant institution and ought to have known the extent of the powers of the Chief Executive.

(4) The Judge below erred in holding that the appellants were estopped when the respondent clearly did not rely on any representation (if any) made by the appellant and the principle of estopped does not apply in any event.

(5) The Judge erred in awarding costs in the Court below to the respondent.

The amended memorandum of appeal deleted ground 3 and added ground 6 which reads: -

(6) The Court erred in interpreting the phrase "Your contract Employment will be deemed as having matured and you will be paid your terminal benefits equivalent to the period served", meant that the respondent was entitled to the balance of the remuneration representing the unserved part of the contract.

In essence therefore the memorandum of appeal still had five grounds of appeal by deletion of ground 3 and adding the 6th one.

Counsel for the appellant, Mr. Chonta prepared detailed written heads of argument with authorities and Mr. Shonga also filed detailed written heads of argument and both counsel relied on their written heads of argument.

As we stated earlier in our judgment, the case proceeded at the trial on the basis of agreed facts and agreed question to be determined by the Court. We have already quoted in full the agreed question that was left for the determination of the Court and in our view the first and 4th ground of appeal are irrelevant to the question posed for determination by the court. Ground 2 would stand or fall on the interpretation of the question posed so that only ground 6 is relevant to the appeal as far as it affects the interpretation of the letter dated 18th April 1995.

It is common cause in this appeal that the relationship between the parties was that of master and servant on contract of employment. It was never an issue whether the appellant could terminate the contract or not but only to give meaning to the words of the letter to the respondent dated 18th April, 1995. The full sentence in the letter is as follows: -

> "Your contract of employment will be deemed as having matured and you will be paid all your terminal benefits equivalent to the period served."

The interpretation of this sentence will determine what is due to the respondent. The learned trial Judge read the sentence to mean that the respondent was taken to have served the full term of contract earning all the salary and other perks provided under the contract plus what was due at the end of contract. She took the word "deem" to mean that the respondent will be taken to have earned all what was due under the contract including the unserved part of the contract as well less the ex-gratia payments unless these were governed by contract.

The word "deemed" taking it in the ordinary meaning is very simple. It means that the contract was believed or considered to have matured. The contract had to be treated as having matured. There can be no doubt about it. What is at stake is the effect of considering the contract having matured? Does it mean that the respondent is to be paid the remuneration for the unserved period of the contract as the learned trial Judge held? The question is that of quantum or measure of compensation the contract having been considered to have matured. There is nothing on record to suggest other than that the relationship between the parties was that of master/servant governmed by contract. Copy of contract of employment is at pages 40-42. The letter of offer of contract is at pages 38-39 of the contract. The letter specifically states that although the contract was for a standard three-year period this could be terminated by either party under certain conditions and Clause 4 of the contract provides for the period of notice to terminate the contract and the consequences of failing to follow the same. Either party may give three months notice or the appellant pays one-month salary in lieu of notice or the respondent forfeits one-month salary in lieu of notice. The deeming of the contract having come to maturity was a breach of contract attracting damages. To this end this Court's decisions in the cases of MOBIL OIL ZAMBIA LIMITED V RAMESH M. PATEL (1) NATIONAL AIRPORT CORPORATION LIMITED V REGGIE EPHRARM ZIMBA and SAVIOR KONIE (2), are very pertinent to the present case. The contract under which the respondent was employed provided for notice of termination of employment and amount of damages in default. We would adopt what we stated in the NATIONAL AIRPORT CORPORATION LIMITED case (2) following the rules propounded in the case of DUNLOP PNEUMATIC TYRE COMPANY LIMITED V NEW GARAGE AND MOTOR COMPANY LIMTED (3) that to award the respondent money or salary for unserved term of contract would be an extravagant and unconscionable measure of

damages for a breach of contract which provided for a notice to terminate. There is no magic in the word "deemed" but it merely terminated the contract and the measure of damages is the notice period under the contract. Looking at what the respondent has been paid as the result of the contract having been deemed to have matured; we are of the opinion that the respondent has been adequately compensated for the breach of contract. The deeming did not entitle the respondent any remuneration for any period unserved under the contract. This appeal is therefore allowed. Bearing in mind that the parties genuinely wanted to save costs at the time by agreeing on the disputed fact, each party will bear its own costs here and in the Court below. The sum of money paid into Court by the appellants on obtaining stay of execution of judgment should be paid back to them.

E.L. SAKALA
SUPREME COURT JUDGE

D.K. CHIRWA
SUPREME COURT JUDGE