IN THE SUPREME COURT OF ZAMBIA SCZ JUDGMENT NO. 1 OF 2006

HOLDEN AT NDOLA APPEAL NO. 103 OF 2003

(Civil Jurisdiction)

B E T W E E N:

ZAMBIA CONSOLIDATED COPPER MINES LIMITED APPELLANT

AND

ELVIS KATYAMBA AND 46 OTHERS RESPONDENTS

CORAM: **CHIRWA, CHIBESAKUNDA AND SILOMBA, JJS.**

On 2nd March, 2004 and 31st January, 2006.

For the Appellant: Mr. P.M. Chamutangi, In House Counsel

For the Respondents: Mr. M. Chitabo, Chitabo Chiinga and Associates.

J U D G M E N T

SILOMBA, JS, delivered the judgment of the court.

Cases referred to:-

1. **KCM -Vs- Kanswata, Appeal No. 91 of 2002.**
2. **University of Zambia Council -Vs- Calder (1998) ZR.**

This is an appeal against the ruling of the Industrial Relations Court (IRC) dated the 7th of January, 2002 in which the trial court, sitting as an appellate court, upheld the decision of the Honourable Deputy Chairman of the IRC allowing the respondents to file their complaint out of time.

(2)

The undisputed evidence is that the respondents, appearing at pages 26-28 of the record and numbered as 56, 64, 58 and 121 were respectively terminated on medical grounds on the 12th of June, 5th of August, 21st of August and 20th of July, 1998. The rest of the respondents had their employment with the appellant terminated in February, 1999 by way of redundancy. On the 22nd of July, 1999 the respondents filed summons for extension of time in which to lodge their complaint or complaints. The issue that arose, and which the appellant asserted in the court below, was that the complaint was statute barred and could not, therefore, be lodged out of time; that the respondents had not shown cause why they delayed in bringing the complaint to court within the stipulated time under the law. The appellant also asserted that a letter written by the respondents after 30 days was not good enough and did not comply with the proviso to Section 85 (3) of the Industrial and Labour Relations Act.

From the record, it would appear the respondents did not argue before the full bench of the IRC but the arguments they relied on and which they submitted before the Hon. Deputy Chairman were that the Industrial and Labour Relations Act did not stipulate a time frame when an application for an extension of time was to be filed after the initial thirty days had expired; that what amounted to administrative channels had not been defined and as far as the respondents were concerned the steps they took to have the dispute amicably settled amounted to administrative steps.

(3)

The full bench of the IRC duly considered the submissions before it and those that the respondents made before the Honourable Deputy Chairman. The trial court found that there was correspondence between the respondents and the appellant to resolve the matter administratively. In the circumstances of the case, the trial court was of the view that there was need for flexibility since theirs was a court of substantial justice; that it would not be in the interest of justice to deny the respondents the chance to pursue their claim simply because "administrative channel" was not defined by the Act and to that extent the full bench of the IRC proceeded to dismiss the appeal of the appellant against the decision of the Hon. Deputy Chairman in which he allowed the respondents to file the complaint out of time.

There are two grounds of appeal and these are as follows:-

1. **The court below erred in law and in fact in basing its decision on flexibility based on the fact that it is a court of substantial justice; and**

2. **The court below erred in law and in fact in its failure to consider whether engaging in "the exhausting of administrative channels" in terms of Section 85 (3) of the Industrial and Labour Relations Act includes letters written 30 days after the cause of action arose.**

Mr. Chamutangi, counsel for the appellant, argued the two grounds as one and relied on his heads of argument. Mr. Chamutangi submitted that the respondents numbered 56, 64, 68 and 121, as per the record of appeal, left employment on different dates but between June and August, 1998 while the rest of the respondents were terminated in February, 1999. On the 23rd of April, 1999 all the respondents wrote the appellant making certain claims and on the 22nd of July, 1999 they applied to file the complaint out of time.

(4)

Counsel submitted that the application to extend time was made pursuant to Section 85 (3) of the Industrial and Labour Relations Act. According to counsel, the section barred the IRC from hearing a complaint unless it was filed within 30 days from the date the complaint arose, subject only to the proviso to extend the time within which to file the complaint if the delay to file the complaint within the statutory period was due to the complainant seeking or pursuing administrative channels.

Counsel complained before us that the trial court was wrong in granting an extension of time when an attempt to exhaust administrative channels was made by the respondents after the expiration of 30 days. He submitted that for the trial court to extend time, the complainants should have started exhausting administrative channels within 30 days from the date the complaint arose. As far as he was concerned, the respondents were prompted to write the letter of claim when they realized that the time allowed was up in order to appear to comply with the proviso to Section 85 (3) of the Act. He agreed that the IRC was, by statute, a court of substantial justice but he contended that the justice dispensed by the court ought to be within the law.

In response, Mr. Chitabo, counsel for the respondents, submitted that the argument advanced by the appellant's counsel was dealt with in ***KCM - VS- KANSWATA*** [1]. He said that in that case the court had occasion to consider the law in Section 85 (3) of the Act and in his view the summation of the law at page 5 of the judgment was instructive. He did not elaborate further.

He agreed with the finding of the Hon. Deputy Chairman that the law in Section 85 (3) of the Act did not state the time within which to pursue administrative channels. He stated that his clients wrote the appellant to ask for what was due to them, and that if the claims were resolved the complaint would not have arisen. As far as he was concerned the law did not define administrative channels.

In his reply, Mr. Chamutangi pointed out that his argument was that the letter of claim dated 23rd of April, 1999 would have been proper if it had been written within the 30 days after the cause of action arose. He said that if that were the case, the 30 days would have been suspended. He agreed with the reasoning in *Kanswata case* but contended that the facts in that case were different from the present case.

We have duly considered the arguments before us from both sides. We have also examined the record of appeal and in particular the rulings given by the learned Deputy Registrar, the Hon. Deputy Chaiman and the full bench of the IRC. In considering the grounds of appeal, our attention will be focused on the interpretation of Section 85 (3) of the Industrial and Labour Relations Act because that is essentially the basis of the dispute.

Section 85 (3) is reproduced in full as follows:-

> ***"85 (3): The court shall not consider a complaint or application unless it is presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application.***
>
> ***Provided that, upon application by the complainant or applicant, the court may extend the thirty day period for a further period of three months after the date on which the complainant or applicant has exhausted the administrative channels available to that person."***

(6)

In terms of the law quoted above, it is mandatory for the IRC not to entertain a complaint or application unless such complaint or application is brought before it within thirty days from the date of the event that gave rise to the complaint or application. This means that a party wanting his or her complaint or application determined by the IRC must file his or her complaint with the court within thirty days of the occurrence of the event which gave rise to the complaint or application.

In view of the mandatory nature of the law in Subsection 3 of Section 85 of the Act, the proviso is, from our point of view, seen as a means of facilitating settlement outside court. This means that if the complainant or applicant can show to the court that during the mandatory period of thirty days he or she had engaged in the process of appeal or negotiations for a better retirement or retrenchment package the application for an extension of time within which to lodge the complaint or application can be said to meritorious.

As Mr. Chamutangi submitted, we think that an appeal or negotiations for a better package made within the mandatory period has the potential of suspending the mandatory thirty days so that should the court agree with the complainant or applicant the extension for a further period of three months is, by law, supposed to be from the date the administrative channels have been exhausted.

From our reasoning it can be deduced that even though administrative channels are not defined by law there are instances where a complainant or applicant finds it necessary to engage and exhaust the process of appeal available to him or her in the organization. There are instances also where a complainant or applicant may engage in further negotiations where she or he

(7)

is entirely dissatisfied with a package offered to him or her by the employer either by way of redundancy, retirement or mere termination.

It must be noted that if the negotiations for a better package or an appeal to a higher body for redress cannot be commenced within the mandatory thirty days, it is not possible for the court to extend the time that has already expired as per our reasoning in the case of ***University of Zambia Council -Vs- Calder***. (2)

This is exactly what happened in the present appeal where the respondents made claims with the appellant well after the mandatory period had expired. It would appear to us that the attempts made by the respondents outside the mandatory period of 30 days were intended to circumvent the law.

We have had occasion to visit the case of ***KCM -Vs- Kanswata*** and our perusal of the case clearly shows that the case is distinquishable. In that case, it was successfully shown that upon his dismissal the respondent (Mr. Kanswata) immediately lodged appeals as per the disciplinary and grievance procedure code. By so doing, there was compliance with the law and as we have pointed out in this judgment the mandatory thirty days were suspended and only began to run when there was communication to him of the outcome of the appeals.

(8)

On the basis of our reasoning, we find that there is merit in the appeal and we allow it with costs to the appellant to be taxed in default of agreement.

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D.K. Chirwa,
SUPREME COURT JUDGE.

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L.P. Chibesakunda,
SUPREME COURT JUDGE.

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S. S. Silomba,
SUPREME COURT JUDGE.