

IN THE SUPREME COURT OF ZAMBIA APPEAL No. 18^b/2006
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN

ZAMBIA RAILWAYS LIMITED

APPELLANT

AND

ROGERS B. MUSONDA AND OTHERS

RESPONDENT

Coram: Chirwa, Chibesakunda and Mushabati JJ

6th March, 2007 and 20th December, 2007

For the Appellant: V. K. Mwewa of Messrs V K Mwewa &
Company.

For the Respondent: D. K. Mulenga of Messrs Derrick
Mulenga and Company

JUDGMENT

Chibesakunda JS, delivered the Judgment of Court.

Legislation referred to:

- 1. Rule 22 of the Industrial and Labour Relations Act
(Arbitration and Mediation Procedure) Rules of 2002.**
- 2. Rule 27 of the Industrial Relations Court (Arbitration and
Mediation Procedure) of 2002.**

In this appeal, the Appellants were taken to the Industrial Relations Court by their former employees, now the Respondents, claiming:

- "1. That the Respondent pays housing allowance outstanding;
That the Respondent grants full pension to those who have
reached 55/50 years;**
- 1. That the Respondent computes the packages at the expiry
of notice period;**

2. That the court grants any other relief deemed just and
3. That the Respondent pays interest on all the outstanding retrenchment packages at the Bank lending rate with effect from retirement dates."

The Industrial Relations Court referred this matter to mediation. The parties entered into a Partial Mediation Settlement on the 22nd of July, 2003 pursuant to **Rule 22 of the Industrial Relations Labour Act**(1). This partial mediation settlement is the subject of this appeal. So far as it relates to this appeal, it is couched as follows:-

- "1. The Complainants shall be refunded the upkeep allowance at 50% for the period March 1995 to November 1995 immediately from Headquarters at Kabwe by cheque;
2. The other aspect of upkeep allowance up to the time of payment of repatriation allowance shall go to trial;
3. The Complainants who qualify for 100% repatriation allowance shall lodge individual claims to the Manager Human Resources immediately and the claims to be considered immediately;
4. The Complainant shall be refunded the three months pay in lieu of notice immediately'
5. the Complainants, who have not been paid Housing Allowance shall lodge in individual claims immediately through the manager Human Resource with copies to Finance manager;
6. The Complainant who qualify for pension shall lodge in individual claims immediately to the Insurance and

Pensions Manager with copies to human Resources Manager ;and

7. The issue of the service period, long service awards, pension as regards the employee contributions, factor 4 and interest shall go trial.

This partial agreement was registered, and the Respondents wrote to the Appellant demanding payment of their entitlement under various heads. The schedule for individual claims of pension was forwarded to the Appellants. The Respondents thereafter, sought leave to issue Writ of fifa. They even tried to obtain order for leave to issue contempt of court proceedings against the Appellant. This did not materialize. So they then applied for leave to issue a writ of fifa. This application was granted and they filed this writ on about September 2006. It is the granting of this leave that the Appellants are challenging. The Appellant has now appealed to this court raising one ground of appeal. According to it, the lower court erred in law and fact by granting leave to the Respondents to issue this writ of fifa to execute this partial mediation statement, over which the Respondents required further clarification on the eligibility of the Respondents' payments of Pension funds.

At the hearing of this appeal, Counsel for the Appellant relied on his heads of arguments filed in court. But he highlighted some points. The Appellant's argument is that, as the partial mediation was made pursuant to Rule 22 of the

Industrial and Labour Relations Act (Arbitration and Mediation Procedure) Rules of 2002.(1), which provides that:

- "22 (1) Where the mediation ends in a settlement, the parties and the mediator shall sign the mediation settlement documents set out in form 4 of the First Schedule.
- (2) The Medication Settlement referred to in sub-rule (1) shall be registered and sealed by the Court.
- (3) A Medication Settlement sealed and registered by the Court shall have force and effect of a Judgment, order or any decision of the Court or Judge and shall be enforced in the like manner.
- (4) Every Mediator shall at the close of medication return to the Judge the record of proceedings and shall submit the Mediators Report as set out in Form 5 of the First Schedule",

in accordance with **Rule 27 of the Industrial Relations Court(2)**, no appeal shall lie against that mediation settlement. Therefore, it was pointed out that although a writ of fifa was issued for the recovery of the sum of K446,208,510.18, there was no such agreement showing that, that amount was owing in favour of the settlement, nor was there any record of such an agreement by the two parties during mediation for the Appellant to pay this sum. It was further explained that on record, the order made was

for the Respondent to individually establish whether they were eligible to be paid any settlement of pension. So on record the Respondents were yet to establish their material claims. It was further argued that only 5 Respondents qualified for pension.

The Respondents counter argued that, although they accepted that in accordance with **Rule 27(2)**, no appeal lies against a mediation settlement, nevertheless, this appeal, as they understood it, lies against the lower court's granting leave to the Respondents to issue a Writ of Fieri Facias.

In augmenting their written argument, Mr Mulenga, for the Respondents, pointed out that the Appellant had failed to give reasons for its failure to pay the Respondents partial mediation settlement sum. However, he conceded that the lower court erred in granting leave to issue a writ of fifa for the unquantified sum. Therefore, he accepted the argument that the appeal should be allowed subject to the court giving directives as to how to execute the partial mediation settlement.

We have looked at these issues, and the submissions of both Counsel. We agree with the Appellant that the lower court erred in granting leave to issue a fifa because, as rightly pointed out, no appeal lies against a mediation settlement and secondly a mediation agreement was not an

end in itself. There was no agreement on the specific amount to award to each of the Respondents. The Respondents were still to establish their claim individually before they could be paid their entitlements. Mr. Mulenga has prayed that this court gives directives as to how to execute this partial mediation settlement. The partial mediation settlement itself has provided the way of execution. As clearly stated, what remains, is for the Respondents to present the evidence of their claims individually before the Manager Human Resources and to establish these individual claims. We see that at page 200 of the record, there is an affidavit in support of summons for leave to commence contempt of court proceedings. In this application, there is an attempt to establish these claims. Sufficient evidence ought to go before the Manager, Human Resource to establish individually the Respondents' entitlements. We therefore uphold the appeal and order that the matter goes before the learned Manager, Human Resource for the Respondents to establish their entitlements. We make no order on costs.


D.K. Chirwa
SUPREME COURT JUDGE


L.P. Chibesakunda
SUPREME COURT JUDGE


C. S. Mushabati
SUPREME COURT JUDGE