IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 46/2001
HOLDEN AT KABWE

(CIVIL JURISDICTION)

B E T W E E N:

GEORGE MPUNDU	APPELLANT
AND	
BARCLAYS BANK	RESPONDENT

Coram: LEWANIKA, DCJ, CHIRWA, MAMBILIMA JJS
On 6th November, 2001 and 5th June 2002.

For the Appellant: A.M. MUSHINGWA of A.M. Mushingwa & Associates
For the Respondent: C. MAGUBWI of Lloyd Siame and Co.

JUDGMENT

LEWANIKA, DCJ delivered the judgment of the court.

When we heard this appeal on 6th November, 2001 we dismissed it and said we would give our reasons later, and we now do so.

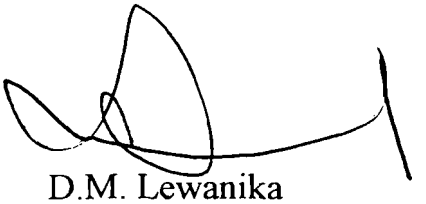
This was an appeal against the decision of a Judge of the High Court who refused an application to restore the action to the active cause list on the ground that it was an abuse of the court process.

No leave to appeal was sought from the Judge in the court below by the Appellant. Section 24 (1) (e) of the Supreme Court of Zambia Act provides as follows:-

S.24 (1) No appeal shall lie.

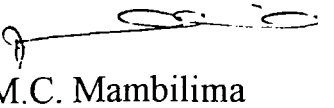
(e) "From an order made in Chambers by a Judge of the High Court or from an interlocutory order or interlocutory judgment made or given by a Judge of the High Court, without the leave of the Judge or, if that has been refused without the leave of a Judge of the court..."

This appeal was improperly before us and it was for this reason that we dismissed it with costs. The costs are to be taxed in default of agreement.



D.M. Lewanika
DEPUTY CHIEF JUSTICE

D.K. Chirwa
SUPREME COURT JUDGE



I.M.C. Mambilima
SUPREME COURT JUDGE

IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 147 OF 2000

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

WILLIAM JACKS AND COMPANY (ZAMBIA) LIMITED APPELLANT

AND

JACKS TECHNICAL SUPPLIES LIMITED RESPONDENT

CORAM: Ngulube, CJ, Chirwa and Chibesakunda, JJS

On 21st March and 17th July, 2002

For appellant - P. Chisi, of Chifumu Banda and Associates

For respondent - Absent (MMW and Company)

J U D G M E N T

Ngulube, CJ, delivered the judgment of the Court.

Cases referred to:

1. **Appollo Enterprises –v- Enock Kavindele, Appeal No. 98 of 1995.**
2. **Zimco –v- Muuka SCZ Judgment No. 1 of 1998.**
3. **Lombe Chibesakunda –v- Rajan Mahtani SCZ Judgment No. 11 of 1998.**
4. **Treseder-Griffin –v- Cooperative Insurance Society (1956) 2 QB 127.**

We proceeded to hear this appeal in the respondent's absence when we were satisfied that they had notice of the hearing. The appeal itself centred around a narrow issue, that is to say, whether it was permissible for the Deputy Registrar who had assessed the amounts to be paid under a judgment in an old transaction sounding in our legal tender to store the value of the Kwacha into dollars and then to reconvert the same at the current ruling rate for the purpose of enforcement. The case record itself was cluttered with numerous applications, rulings and orders before a variety of Judges and Deputy Registrars. The relevant judgment was awarded by Bwalya J on 6th February, 1995; and it was assessed by the learned T. Katanekwa, Deputy Registrar, who assessed and awarded Kwacha amounts which he then agreed to store in dollars after acceding to a submission by the claimant that the erosion of the value of the Kwacha be thus avoided. The learned Deputy Registrar appealed from rendered his ruling on 12th July, 1996. He did not allude to this Court's then existing authority in **APPOLLO ENTERPRISES –v- ENOCK KAVINDELE** (1). However, a subsequent Deputy Registrar who gave leave to appeal cited this as well as our later decisions in **ZIMCO –v- MUUKA** (2) and **LOMBE CHIBESAKUNDA –v- RAJAN MAHTANI** (3).

This Court has infact dealt with attempts to store the value of the Kwacha in a non-foreign exchange transaction into some hard currency which is then reconverted at the ruling rate. This is not allowed. We must point out as we have done in the past in defence of our currency that a Kwacha in Zambia is a Kwacha whatever its international value; it is the constant unit of value by which we have to measure everything; prices of things may go up or down; other currencies may go up and down; but the Kwacha remains the same. We have lifted the foregoing from the KAVINDELE case where we

borrowed from the language of Scrutton L.J. in The BAARN (1933) P. 251 (CA) and Denning L.J. in **TRESEDER-GRIFFIN -v- COOPERATIVE INSURANCE SOCIETY** (4). We have, of course, never suggested that the decline in the internal value of the Kwacha cannot be considered and taken account of in appropriate cases. What is objectionable is an attempt in transactions which were expressed in Kwacha to hedge against the depreciation of the internal value of our currency by notionally storing the same in a foreign currency, at an earlier and more favourable rate of exchange and then reconverting the foreign sum at today's rates. We repeat what we have always maintained: It is unrealistic to look at our currency in that fashion. In the case at hand, there was no foreign exchange transaction; the claims related to conversion of sums of Kwacha had and received to the plaintiff's use as well as stocks of goods for sale. Accordingly, we have no difficulty in reversing the learned Deputy Registrar's order to store in dollars.

The internal devaluation of our money should be taken into account in this case where the events took place in 1987 and the writ was issued in 1988. We are alive that the period concerned covered a time when we even witnessed three figure interest rates. We have also not overlooked that the litigation has dragged on for an inordinately long time when cases generally ought to be brought to judgment and to a conclusion within a more reasonable time span. A five-man bench of this Court in the **CHIBESAKUNDA - v- MAHTANI** case considered a period of up to twenty-four months as reasonable. Again in the same case, considering that the debt had remained unpaid even during the days of dramatic devaluation and high interest rates, we approved as a fair average a rate of simple interest of 100% (one hundred percent) per annum. This is the rate we award

here on the Kwacha amounts awarded by the learned Deputy Registrar Mr. Katanekwa (as he then was) in his assessment.

The appeal succeeds, with costs to be taxed if not agreed.

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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