IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 160 OF 2001

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

ZAMBIA TELECOMMUNICATIONS COMPANY LIMITED APPELLANT

AND

MUYAWA LIUWA RESPONDENT

CORAM: Ngulube, CJ, Chirwa and Chibesakunda, JJS

On 21st March and 17th July, 2002

For appellant - P. Kasonde, In house Counsel

For respondent - In Person

J U D G M E N T

Ngulube, CJ, delivered the judgment of Court.

This case concerned a dispute over the award of interest. The facts were that there was a road traffic accident on 18th October, 1994, involving the respondent's minibus and a vehicle belonging to the appellant whose driver was at fault. The respondent claimed certain sums totalling more than K10 million for costs of repair and loss of business but following negotiations the parties settled the claim at K10 million which was paid on 16th March, 1999. The sum of K6.5 million was taken to represent the cost of repair while K3.5 million represented the loss of business. While the appellant

considered that the payment was in full and final settlement which closed the case, the respondent insisted that his claim for interest on the loss of business had never been abandoned and never been resolved. The respondent launched proceedings in the Subordinate Court which after a trial accepted and found that the claim for interest was not part of the compromise reached. The learned Magistrate awarded interest on the original figure of K8.7 million for loss of use which had been claimed prior to the compromise, thus disregarding the settlement reached. We agree with the learned appellate High Court Judge that it was wrong for the Subordinate Court to resurrect the earlier figure, in disregard of the settlement. We affirm that, as a matter of sound public policy, Courts should as much as possible uphold the sanctity of settlements and compromises reached by parties since, quite obviously, it is in the interests of the proper administration of justice that parties should be encouraged to settle their disputes amicably and without always waiting for an imposed solution from the Court. In most cases, a party should be estopped from reneging on a genuine compromise and settlement mutually agreed with the opponent. However, as both parties herein pointed out, the learned appellate Judge made an arithmetical error when substracting the cost of repair from the compromise figure of K10 million in order to arrive at the agreed loss of business. We confirm that the correct figure was K3.5 million.

A major ground of appeal was that no interest whatsoever should have been awarded since the K10 million was an all inclusive figure. This submission infact flew in the teeth of the documentary evidence as well as in the teeth of the evidence accepted at the trial below. The correspondence showed that no agreement was struck on the question of interest which the respondent continued to press, until he launched

proceedings specifically for the purpose. The finding by the Magistrate was a finding of fact which was supported by the version of the evidence believed, which in turn found support from the correspondence on record, including that between the appellant and the respondent's insurance consultants called Rosburg Claims Agency.

The next major issue was the period of such interest. Interest is paid for keeping a claimant out of his money. The rate and duration of such interest is generally at the discretion of the Court, a discretion which is exercisable judicially on sound and rational grounds. In this case, the learned Magistrate had awarded 28% on the loss of business figure from the date of accident to the date of judgment, which was 6th December, 2000. The learned appellate Judge varied the period from the date of accident to the date of the writ, which was 9th August, 2000. The respondent has argued that interest be on the whole amount of the settlement calculated, according to his written submissions, right down to September 2001; perhaps down to the present. The appellant on the other hand argued that interest cannot be charged beyond the payment of the principal. This is presumably on the basis that no interest upon interest can be justified in the circumstances.

We agree with the appellant. There can be no justification on principle, in law, and on the facts in charging interest beyond the date when the appellant stopped keeping the respondent out of his money. To this end, the interest on the K3.5 million loss of business at the rate approved below namely 28% can only run from the date of the accident to the date the agreed figure was paid, that is 18th October, 1994 to 16th March, 1999. The sum found is the judgment award which ought to have been given by the

Magistrate and confirmed by the Judge. We do not disturb the post judgment rate awarded.

In sum, the appeal succeeds to the extent indicated herein. Costs follow the event, but since it is an In-house Counsel who took the case, they will be limited as for a litigant in person, that is to say, to recovering the disbursements and out of pocket expenses, without any profit scale costs.

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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