

## ABEL KAMBIKAMBI AND ZAMBIA RAILWAYS

SUPREME COURT  
NGULUBE, C.J., SAKALA AND MUZYAMBA, JJ.S.  
2ND MARCH AND 1ST APRIL, 1999.  
(S.C.Z. JUDGMENT NO. 6 OF 1999)

### Flynote

Employment Law - Members of the Industrial Relations - When they can be substituted

### Headnote

The appellant was appointed manager before being suspended from work. He was later reverted to the position of Substantive station master where he remained on suspension until his dismissal three months later. He filed a complaint in the Industrial Relations Court against the respondent. During the hearing of his complaint, only the deputy chairman sat through the proceedings while the rest of the members of the court kept changing. In his appeal, the appellant raised this issue.

### Held:

- (i) A member can only be substituted only if he dies or is seriously ill and unable to continue sitting.
- (ii) Although it is the duty of chairmen to write judgments of the court, there is every need for a proper trial that the Chairman or deputy chairman should sit with the same members right through the proceedings to judgment.

For the Appellant: In person.

For the Respondent: M. Nsefu, Legal Counsel.

### Judgment

**MUZYAMBA, J.S.:** delivered the judgment of the court.

This is an appeal against a refusal by the Industrial Relations Court to grant the appellant the various reliefs he sought in his complaint. When we heard the appeal we allowed it with costs and ordered a retrial and said we would give our reasons later. We now do so.

Briefly, the facts of this case were that on 20th May, 1992, the appellant was appointed by the Respondent as Manager, Njanji Commuter Train Services (Lusaka). On 9th February, 1993, he was suspended from duty on various allegations of mismanagement of the operations of the Njanji Commuter Services. On 3rd July, 1993, he was reverted to his substantive post of Station Master Special but remained on suspension and on 3rd September, 1993, he was dismissed. He then filed a complaint in the Industrial Relations court on 4th October, 1993, claiming nullification of his reversion to the post of Station Master Special, confirmation of his appointment as Manager, Njanji Commuter Services and reinstatement in this position and damages for long suspension or other relief the court may deem fit.

The record of appeal shows at page 97 when the matter first came up for hearing on 16th September, 1996, the coram was Lengalenga, Deputy Chairman; M. Chitangala and B.J. Lihonde, members. On the adjourned date on 16th May, 1997, at page 102 the coram was Lengalenga, Lihonde and I. Sibongo. The matter was again adjourned and on 19th December, 1998, at page 154 a new member, Mr. S.D. Mkasanga came in for Lihonde. When it came to judgment at page 5 the coram was Lengalenga, Mkasanga and Chitangale. It will be noted that only the Deputy Chairman sat right through the proceedings but the members kept on changing. In his heads of argument the appellant drew our attention to this serious irregularity.

Rule 72 of the Industrial Relations Court Rules Cap.269 provides as follows:

"72. If at any time between the commencement of the hearing of any matter and its final determination any member of the Court hearing such matter dies or is unable through serious illness to continue to sit as a member of the court, the Chairman may,

if he is of the opinion that a new hearing would result in unwarranted delay or expense or would for any reason prejudice the parties or any of them, appoint another member of the Court to fill the vacancy.”

It is quite clear from this rule that a member can be substituted only if he dies or is seriously ill and unable to continue sitting. In this case the reason given for substituting one of the members was that his contract had expired. This is untenable and we wish to stress here that although it is the duty of Chairmen to write Judgments of the court yet there is every need, for a proper trial that the Chairman or Deputy Chairman should sit with the same members right through the proceedings to judgment and only substitute a member or members as provided for by Rule 72, *supra* and not otherwise. If a member’s contract has expired before the proceedings are concluded permission should be obtained from the relevant authority for the member to continue. Moreover, the fact that a member’s contract has expired would not invalidate the proceedings if such a member continued sitting. It was for this reason that we allowed the appeal, set aside the judgment below and ordered a retrial. Mr. Nsefu did not resist the appeal.

We also awarded the appellant costs limited to disbursements for the preparation of record of appeal and travelling and hotel expenses.

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