

CENTRAL AFRICA BATTERIES
vs
JOHN MHANGU

SUPREME COURT OF ZIMBABWE
MALABA DCJ, ZIYAMBI JA & CHEDA JA
HARARE, MARCH 15, 2011

D Ochieng, for the appellant
Respondent in person

MALABA DCJ: The unanimous view of the court is that the appeal is allowed.

The reasons are as follows. It is common cause that the respondent was unlawfully suspended from employment on 5 January 1998. On 9 September 2002 he took up employment elsewhere thus repudiating his contract of employment with the appellant. It is common cause that during the period of suspension he would have been entitled to payment of Z\$692 118.00.

The court *a quo* granted the respondent \$21 141.58 calculated on the basis of US\$208.76 per month being what was earned by the appellant's employees in the grade in 2009 some 12 years after his unlawful suspension. There was no basis for the formula adopted by the court.

The appellant through its legal practitioner submitted that the amount payable to the respondent could be converted into another currency such as the United States dollars

at the rate prevailing on 9 September 2002. We believe that would meet the justice of the case. This is therefore not a case where the question whether or not the amount owed by the employer to the employee has to be quantified in foreign currency or converted into foreign currency which would have to be determined by the Labour Court. The issue has been resolved by the concession made by the respondent.

If this was not a case in which the appellant has accepted that each party bear its own costs we would have marked our disapproval of the intemperate language used in the respondent's heads of argument by an order of costs against him.

The appeal succeeds. The order of the court *a quo* is set aside and substituted with the following:

- “1. The appellant is to pay the respondent Z\$692 118.00 to be converted to United States Dollars at a rate to be agreed between the parties failing which any party may make an application to the court *a quo* for determination of the applicable rate of exchange.
2. Each party to pay its own costs.”

ZIYAMBI JA: I agree

CHEDA JA: I agree

Coghlan & Welsh, appellant's legal practitioners