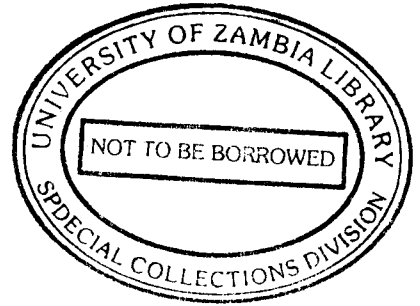


**THE LAW AND THE MINERS' HEALTH AND SAFETY: A  
CRITIQUE**



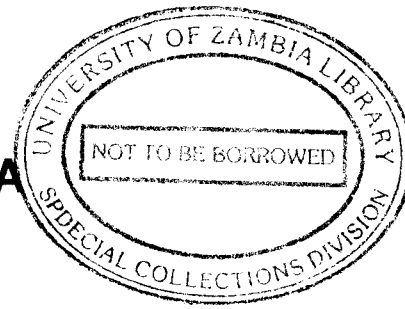
**BY**

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**DECEMBER, 2006**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW**



I recommend that the Directed Research Essay prepared under my Supervision by

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CRITIQUE.**

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(SUPERVISOR)

07/02/2007  
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DATE

**THE LAW AND THE MINERS' HEALTH AND  
SAFETY: A CRITIQUE.**

**BY**

**RODRICK CHISALA MUKUKA.**

A Directed Research Essay submitted to the University of Zambia in partial fulfilment of the requirement for the award of the Degree of Bachelor of Laws.

**(LLB)**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW  
LUSAKA**

**DECEMBER, 2006**

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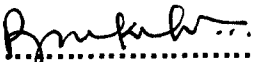
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## DECLARATION

I **RODRICK CHISALA MUKUKA (99015579)** hereby declare that this paper is a product of my own research, while references to other relevant material on the topic have been acknowledged.

I therefore take full responsibility for any errors, omissions and mistakes appearing herein.

Signature:.....

Date:.....*February 07, 2007.*

## **DEDICATION**

Just like any other day, the sun rose from the east on the morning of Friday 05 January, 2007. As the clock kept on ticking, and the sun moving towards its resting place, it suddenly turned out that it was not an ordinary day: 15:30 hours on that day, my wife bids farewell and closed her eyes in death!

I dedicate this study to my dear late wife Regina Mwasulama Onesi Mukuka, who died and passed on to be with the Lord just at the time I was completing this work. I shall forever be indebted to her. She kept the children under very difficult circumstances, at the time I was pursuing my Bachelor of Laws Degree. She supported and encouraged me even at the time I almost gave up, but it is sad that she is gone and will not be able to see the fruits of her labour. Had it not been for her unfailing support and prayer, I could not have achieved what I have accomplished now. May her soul rest in the eternal peace of our Lord Jesus Christ.

To my daughters Patience and Sumi, my son Jessie, I give you this charge: "Hear Counsel, and receive information, that thou mayest be wise in the later end" – Proverbs 19:20. I further charge you that do good to anybody and everybody despite their status in society, if it is within your powers to do so, for gold there is and rubies in abundance, but lips that speak knowledge are a rare jewel.

Last but not the least, to my late mother – Fausta Katete Makalu, who had a heart and commitment send me to school. I am greatly indebted to you, I wish you were here to see these better days.



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To my Lord and my God; for the enduring grace, for he makes all things perfect in his own time.

To Mr. Simon Kulusika, my Supervisor, I shall forever be indebted to you for your guidance, timely and tireless examination of my manuscript. *To you, I say thank you Sir.*

My special thanks go to Mr. William Forrest of Forest, Price and Company, Kitwe for imparting his 38 years of experience as a legal practitioner into certain legal aspects of this research.

I also would like to acknowledge the assistance of mining safety staff, Mr. Kombe of Mopani Copper Mines whose guidance on mine safety was valuable indeed. To you I say, continue your commitment towards safety.

On a somehow personal note, I would also like to thank Ms. B. Matafwali of School of Education, for the encouragement and support I received from her during my stay at UNZA. Had it not been for her, certain things could not have been done. I am greatly indebted to her. To you, I say thank you and wish you well in your PhD studies.

My special thanks also go to the Law faculty staff, the Late Professor Chanda who died on the very day I was putting my wife to rest, for the encouragement and support in pursuit of my course, Mr. Kahn Fogel for assistance in accessing the American Legal System, Ms. Precious Mweemba for your commitment and administrative excellency, Ms. Bester Banda for working under pressure in putting up this manuscript: "You are simply out of this world Bester!" I shall be forever greatly indebted to all these members of staff.

To my family once more, for supporting me, even when you needed me the most at home, you let go of me. To you I say, better days are here.

## **ABSTRACT**

This study is aimed at making an attempt to address the real problem that faces the Mining Industry today - Mine accidents. Apart from the academic obligations that had to be fulfilled in putting up this work together, the writer's passion to address this problem also emanates from his twelve year working experience as a Metallurgist on a subsidiary company of the copper mining industry.

The aim of this research is not to make an assertion that there should never be any accidents at all in the mines, but that they should be effectively reduced by putting in place measures and policies that will curb them. This however, cannot be achieved, unless the Law makers get back to the drawing board. As to whether these policies will effectively reduce accidents to nil, that then would be an ideal situation that both the government, employer and members of the families where these miners come from would be looking forward to see.

In order words, even before the government takes a swipe at the new mine owners; a situation that would give an impression that the government is not to blame, it would be imperative for the government then; in the first place to put up a more comprehensive regulatory framework to deal with promotion of safety and prevention of mine accidents.

Ever since the mines were privatised, no one has ever thought of reviewing the law in light of the new mining developments that have taken place. Mining is inherently dangerous, both to life and to health. Those who wish to extract anything from under the surface of the earth by digging a hole must be prepared to devote some of their resources to safety. Mining is “unnatural” activity giving rise to “unnatural” conditions. But safety measures invariably cost money and the employer must bear the expenditure. However, as a result of this cost component that is associated with safety, a perpetual conflict of interest arises between employer and employee as to the nature and extent of the safety measures that may be considered reasonably practicable and reasonably necessary.

In view of the foregoing, it therefore then, becomes mandatory for any sensible government to put a law in place that will protect its miners.

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# CHAPTER ONE

## 1.0 INTRODUCTION

Mining conditions, whether surface or underground ranks among the most dangerous working conditions in the world today – and Zambia is no exception. This implies that mine workers are the most susceptible to industrial accidents, sadly most often, fatal ones.

The Zambian Mining Industry has recently in the past been rocked with a series of mine accidents. This prompted the then Minister of Labour and Social Services Mutale Nalumango to address the Zambia Federation of Employees (ZFE) to bring this scourge of accidents in this country to an end.<sup>1</sup>

The issue did not only raise concern to government alone, but even to miners themselves who together with their spouses locked out the General Manager for Mopani Copper Mines in 2005 in a bid to pressurise him to address the many accidents that had become the order of the day. Wives feared that sooner or later, they would be widows.

Why then should safety issues be of concern both to the Mining Industry and the government? For obvious reasons- it is a well known fact that the mining industry is the largest formal sector employer next to the government itself, from the time the first mining locations were cited in 1896.<sup>2</sup> To date, the mining industry is still the largest formal sector employer, with an all time low

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<sup>1</sup> The Post, 01 April, 2006, p.2. Speech was read on behalf of Minister by then Vice-President Lupando Mwape. Mutale Nalumango is now the Current Deputy Speaker of the Zambia National Assembly having went through unopposed for the position on 20.10.06.

<sup>2</sup> Mtopa, A. M. Labour Laws of Zambia. (Lusaka, KKF, 1989) pg 151.



of about 35,000 in 2001 to over 48,000 in 2004.<sup>3</sup> Similarly, not only is the mining industry the largest employer, but it is also the economic main drive of the country. In view of the foregoing, it cannot be disputed from both the economic and social point of view that this industry is of great importance to Zambia.

However, the recent mining accidents in this country, some of them fatal ones, have raised new concerns and questions about the safety of the mine employees – especially in the advent of post privatization. Stakeholders from various sections of the society have raised pertinent issues: Can these mines still be safely mined? If they can, what then are some of the factors that could be responsible for these disasters that have claimed so many lives.

It is within the ambit of the above concerns, that this study will attempt to highlight some of those factors and examine them in light of the current prevailing law. In other words, the cardinal question to be answered at the end of this work, is whether the law, in its current form, has or can adequately address the current trend of high accident rates in the Zambian Copper Mining Industry.

## **1.1 THE COPPER INDUSTRY AND ITS IMPORTANCE TO THE WORLD AND THE ZAMBIAN ECONOMY**

Copper is one of the oldest metals known to man. It is a beautiful metal pleasantly coloured and easy to work into the most intricate designs. Its most

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<sup>3</sup> State House Website: [www.statehouse.gov.zm](http://www.statehouse.gov.zm)

important property, though, is its high electrical conductivity making it essential to modern civilization.<sup>4</sup> Because of its superior conductivity to all other metals except silver, it has been widely employed in the industrial sphere world wide, mostly being in the electrical and telecommunications fields, general engineering such as water turbines, power stations, heat exchangers, chemical plants, machines tools, etc.<sup>5</sup> In other words, copper and its allied metals has been at the cornerstone of the massive industrialization that has and is still taking place in the world today and without any doubts, the world is in dire need of this metal.

In as far as the Zambian economy is concerned, the mining industry has been the mainstay of the economy since the 1920s. At independence in 1964, Zambia inherited a strong mining based economy with copper industry accounting for 90% of Gross Domestic Product (GDP) and over 98% of all export earnings.<sup>6</sup>

The dominance of the copper mining industry has a profound effect on the Zambian economy; enabling government to finance its annual budgets through taxes on mineral revenue. In fact and very often, every economical decision by government is based on the performance of the copper industry.

The Copper Mining Industry remains to be a significant valuable source of foreign exchange earnings to this country. As late as August 2006, Copper

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<sup>4</sup> Cunningham, S. The Copper Mining Industry in Zambia. (New York, Praeger Publishers 1981). Pg.12.

<sup>5</sup> Ibid.

<sup>6</sup> Office of the President, National Commission for Development Planning, Lusaka, Republic of Zambia, First National Development Plan, 1966-1970.

exports accounted for 71.5% of Zambia's total export earnings with concentrates and other base metals such as Cobalt accounting for 10.4% bringing the total of mineral exports to 81.9%; with the major world consumers being Switzerland, South Africa, United Kingdom, India, Japan, U.S.A, France and China.<sup>7</sup>

Similarly, the total value of exports in July 2006 was K820.0 billion compared to K1,032.5 billion in August 2006, with refined copper being the major contributor to the earnings.<sup>8</sup>

In view of foregoing, it is an undisputed fact that copper is an essential metal for industrialization both in Zambia and the world; while the copper mining industry still continues to be the mainstay of the Zambian economy.

## **1.2 GENERAL OVERVIEW OF THE EMPLOYERS' COMMON LAW LIABILITY FOR SAFETY**

Like most other countries tied to England, Zambia is recognised as a common law jurisdiction. This description is supported by the history of the country as well as by the current statutory guidelines and judicial declarations. The common law enables the customs of the past to be carried over from past into the legal rules of the present. In no other major legal system is there such emphasis on the opinions of the courts themselves as the major source of law.<sup>9</sup>

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<sup>7</sup> September 2006 Bulletin, volume 42, Central Statistical Office. pg.6

<sup>8</sup> Ibid.

<sup>9</sup> Muna N. Law in Zambia, (Lusaka, East African Publishing House Ltd, 1954) pg. 1.

### 1.2.1 The Common Law Statutory Guidelines In Zambia

Generally, most or all of the existing laws of the colonies were carried over beyond independence and as a result, the old reception statutes are still on the books in many independent African Countries and Zambia is no exception.<sup>10</sup>

By section 27(2) of the ***Northern Rhodesia Orders-in-Council, 1924-1960***, the Common Law and Principles of equity in England on 17<sup>th</sup> August 1911 were to apply to Zambia alongside English Statutes. The position to date is that English Law is extended to the Republic by two statutes namely the ***English Law (Extent of Application) Act***,<sup>11</sup> Cap 11 of the Laws of Zambia and the ***British Acts (Extension) Act*** Cap 10 of the Laws of Zambia.

Section 2 of Cap 11 provides as follows:-

***“Subject to the provisions of the Constitution of Zambia and to any other written law:-***

- (a) the common law, and***
- (b) the doctrines of equity, and***
- (c) the statutes which were in force in England on 17<sup>th</sup> August 1911 (being the commerce of the Northern Rhodesia Order in Council 1911) and***
- (d) any statutes of later date than that mentioned in paragraph (c) in force in England, or which here after shall be applied thereto by any Act or otherwise shall be in force in the Republic.***

Similarly, the second statute that extends British Acts to Zambia, Cap 10 of the Laws of Zambia provides in section 2 as follows:

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<sup>10</sup> Section 4 of the Zambia Independence Order, 1964 which provides that “the existing laws.... should continue in force.”

<sup>11</sup> The English Law (Extent of Application) Act’s object is to declare the extent to which the Law of England applies to Zambia. It is by this law that the Common Law of England and the doctrine of equity apply to Zambia.

***“The Acts of Parliament of the United Kingdom set forth in the schedule shall be deemed to be full force and effect within Zambia.”***

In view of the above statutory guidelines, it is evident that the common law is valid law in Zambia.

### **1.2.2 Employer’s Common Law Liability for Safety**

Although a distinction may be made between statutory and common law, these two types of laws with respect to safety at work; may overlap and yet, they have quite separate and distinct set of obligations. The obligations of the common law are much wider than those imposed by statutory law (For example the Factories Act, the Mines and Minerals Act etc which will be dealt within greater detail at a later stage in this work). The common law covers all types and places of work and not just those places or industries that may be selected as dangerous by Parliament.<sup>12</sup> Despite having statutory law in force, most claims for damages turn partly or wholly on common law rights as we will be able to see later on.

At common law, the employer is under a duty to set up a safe system of work on premises under his control from which he/she carries out his/her business in order to safeguard his/her employees from any unnecessary risks that may arise from the conduct of that business. The duty the judges have devised and imposed on employers is a version of that which in broad terms we owe to each other, to try and guard against causing injury<sup>13</sup>.

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<sup>12</sup> Whincup M.H. Industrial Law (London, Heinemann 1968) pg.32.

<sup>13</sup> Ibid

The short and fundamental rule is that any employer must take reasonable care not to subject his employees to unnecessary risk – the principle as enunciated in the case of *Donoghue v. Stevenson*.<sup>14</sup> If the employer fails to take reasonable care, the resulting claim for damages by the injured employee is based on the tort or civil wrong of negligence, or possibly on the employer's breach of the contract of employment.

Occasionally, the employer may also be prosecuted by the state, if the negligence is particularly blameworthy and grave in its consequences. In other words, the duty upon the employer is non-delegable, so that the employer will remain liable for injury caused by breach of the duty even if he purported to leave the matter in question to others. (e.g. to competent contractors).<sup>15</sup>

The personal nature of the duty further means that it is owed to each employee individually and not to the workforce as a whole. Therefore, in determining the practicability of any precautions which could or should have been provided by the employer, the court will look at the individual circumstances of the injured employee, and what it was reasonable to expect of the employer in his case; which may differ from the average or usual case.

The case law involving employer's common law liability is bulk and is not within the ambit of this study to entirely explore it. However, the leading authority on mine safety is the decision of the House of Lords in the Case of

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<sup>14</sup> (1932) AC. Lord Atkin enunciated the Neighbour Principle...you must take reasonable care to avoid acts or omissions which you can reasonably foresee are likely to injure you neighbour...

<sup>15</sup> Smith J,T and Wood J. *Industrial Law* (London, Butterworths, 1989) pg.570.

***Wilsons and Clyde Coal Co. Ltd v. English***<sup>16</sup>, in which the court had this to say:

***“...the provision of a safe system of working in a mine is an obligation of the owner who if he appoints an agent to perform it, remains vicariously responsible for the agent’s negligence...”***

Though it may appear that there is in theory only general duty of reasonable care, the tendency had been to treat that duty in practice as imposing upon the employer the obligation to use reasonable care to provide the following:

### **1.2.2.1 Safe and Adequate Plant and Equipment**

It is the employer’s duty to provide machinery and equipment for his employees so that they can carry out their work safely without unnecessary risk of being injured.

In the case of ***Lovell v. Blundells and T. Albert Crompton Co. Ltd***,<sup>17</sup> in the court held that:

***“...the defendants were liable in damages for injuries sustained since they were in breach of their common law duty to provide proper planks and appliances requested for the task at hand....”***

### **1.2.2.2 Safe Premises and/or Place of Work**

The employer must take reasonable care to ensure that his own working premises are safe for employees to use in the normal and usual way. In the case of ***Thomas v. Bristol Aeroplane Company Ltd***,<sup>18</sup> it was held that the employers did not have to produce a squad of men on standby duty in case it was necessary to put down sand or gravel as soon as any

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<sup>16</sup> (1938) AC 57.

<sup>17</sup> (1944) 2 All ER 53.

<sup>18</sup> (1954) 1 W.L.R. 694

surface became slippery since that would impose a higher standard of care than was required by either statute or the common law.

### **1.2.2.3 Competent and Safe Fellow Employees**

The employer is under a duty to engage persons who will carefully discharge their contractual duties without creating dangers or risks to fellow employees. In the case of *Hudson v. Ridge Manufacturing Co. Ltd*,<sup>19</sup> it was held that the employers were liable to plaintiff in damages for breach of their duty at common law to provide competent workmen.

### **1.2.2.4 Safe System of Work, in All the Circumstances**

Where there is a risk of injury to employees, any currently available safety devices should be provided and used. In the case of *General Cleaning Contractors v. Christmas*,<sup>20</sup> Lord Reid had the following to say:

***“...where a practice of ignoring an obvious danger has grown up, it is not reasonable to expect an individual workman to take the initiative in devising and using precautions... it is the duty of the employer to consider the situation...to instruct his men what they must do and to supply any implements that may be required...”***

## **1.3 POSSIBLE DEFENCES AVAILABLE TO AN EMPLOYER**

Where it is acknowledged that an employer is responsible for his employees safety, there are however three substantive defences that a defendant employer may advance to deny liability.

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<sup>19</sup> (1957)2 All ER 229.

<sup>20</sup> (1953) AC 180.



### **1.3.1 Contributory Negligence**

Before the **Law Reform (Contributory Negligence) Act 1945**, Contributory Negligence by the Plaintiff used to be a complete defence. Though this Act provides sound law in as far as the English Courts uses it to reduce damages to such extent as the court thinks just and equitable, having regard to the Plaintiff's share in the responsibility for the damage; it however does not apply to Zambia. The proper law in Zambia today is the **Law Reform (Miscellaneous) Provisions Act**<sup>21</sup> with section 10(1) of the same Act providing as follows:

***"Where any person suffers damage as the result of partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but damages recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the respect for the damage".***

### **1.3.2 Limitation of Action**

The rule in actions for personal injury or death is that the action must be commenced within three years of the date of the accident. In the event that the plaintiff does not do so, he will be statute barred, unless he/she persuades the Court that he/she has extenuating circumstances to bring such an action out of time.

The law pertaining to limitation of actions in Zambia today is governed by the **Law Reform (Limitation of Actions) Act**.<sup>22</sup>

Section 3(2) of Cap 72 provides that":

***"In its application to the Republic, the Limitation Act, 1939 of the UK is hereby amended as follows:***

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<sup>21</sup> Cap 74 of the Laws of Zambia.

<sup>22</sup> Cap 72 of the Laws of Zambia. This Act has amended the British Limitation Act of 1934.

**....in the case of action for damages for negligence, nuisance or breach of duty...where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person:**

**(a) the preceding provisions of this section shall have effect as if for the words "six years" there were substituted the words "three years" and**

**(b) this section shall not apply unless the plaintiff proves that the person under disability was not, at the time when the right of action accrued to him, in the custody of a parent".**

### **1.3.3 Volenti non fit injuria**

The rationale of the above maxim is that he who volunteers or brings himself to injury must not be compensated. However, practically, volenti will rarely ever succeed at Common Law in an industrial injury even though it is theoretically available.<sup>23</sup> In other words, the courts are reluctant to believe that an employee can freely consent to undertake responsibility for any accidents that may happen while using potentially dangerous machinery or tools. An employee anxious for work cannot dictate the terms of his employment to the employer.

In the case of ***Baker v. James Brothers and Sons***,<sup>24</sup> it was held that although Baker was aware of the defect in the starting gear, he had never undertaken or consented to take upon himself the risk arising from continuing using the car. He was entitled to recover damages for personal injuries attributable to the employer's negligent conduct.

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<sup>23</sup> Supra note 15, pg 571.

<sup>24</sup> (1921) 2 KB 674.

## **1.4 CONCLUSION**

In conclusion, it is evident that although there is specific statutory law (to be dealt with in detail later in this work) in Zambia to deal with mine accidents, the common law obligations still forms a large part of the law and it cannot be ignored. The statutory law 'sandwiched' with the common law obligations will be examined in detail and evaluated and determine whether in its current form, the law is adequate enough to rise up to the challenge of mine accidents in Zambia.

## CHAPTER TWO

### **2.0 A SYNOPSIS OF THE ZAMBIAN MINING INDUSTRY**

The history of mining in Zambia is largely to a major extent the history of copper production; though over the years, other minerals such as cobalt, zinc, lead and coal have also been mined. Zambia is one of the richest metallogenic areas of the world and it is now over 100 years since the first mining locations were cited in 1896 in the then North-Western Rhodesia. From about the 18<sup>th</sup> century, the inhabitants of Zambia and Katanga exported smelted copper in the form of bangles or crosses to ports on both the Atlantic and Indian coasts of Africa. Africans used iron for their tools, but copper was particularly important for ornaments and as a means of exchange.<sup>25</sup> In other words, copper as a metal received its economic recognition as early as the 18<sup>th</sup> century.

From the globe perspective and as far as mining history is concerned, no one knows exactly when man first began to burrow deep into the ground in search of copper, but underground mining has been reported to have flourished in Northern Europe in medieval time.<sup>26</sup> In Zambia however, the development of the mining industry is largely associated with the incorporation and coming of the British South African Company (BSA) in the territory at about 1889. During the period 1890 to 1923, the company operated both as a commercial company and as a government of the territory and only relinquished its

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<sup>25</sup> Ndulo, M. Mining Rights in Zambia (Lusaka, KKF, 1989) pg. 3.

<sup>26</sup> Prain, R. Copper – The Anatomy of an Industry (London, Mining Journal Books, 1975) pg 11.

governmental role in 1923 and continued as a commercial company trading in mineral rights until 1964.<sup>27</sup>

Therefore, Zambia was one of the richest African countries at independence, but is currently one of the world's most indebted. That is beyond dispute, but the reasons for this decline are not.

## **2.1 THE HISTORICAL BACKGROUND OF MINING AND SAFETY LEGISLATION IN ZAMBIA**

The historical background of mining is one surrounded with controversy, especially in as far as concession and mining rights were obtained by the white settlers from the local chiefs. In fact, some prominent scholars in Zambia have termed such kind of acquisition of mining rights as a mere fraud.<sup>28</sup> However, despite all the controversy, the British South African Company defied all odds and burrowed deep in the Zambian soils in search of minerals.

On the other hand, it is not known exactly when the first safety legislation in relation to mining was enacted in the colonial era. However, like most other former British colonies and protectorates, Zambia has laws fashioned after its masters. By far, the most important source is however, the legislation concerning mining enacted in Zambia both by the colonial government in the early 1900's and more recently by the post-independence parliament. The

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<sup>27</sup> Ushemokunze, CM. "The Legal Frame work of Copper production in Zambia" Zambia Law Journal volume 6, 1974, pg.75.

<sup>28</sup> Prof. M. Ndulo in his PhD thesis has severely attacked the manner in which mining concessions and rights were obtained from the local chiefs. He has asserted that in some cases, some concessions refer to chiefs who did not even exist, he calls this as pure fraud, pg 147.

***Mining Ordinance, Part XV***, which provided for the Factory Ordinance and the Regulations made under it set up elaborate and extensive safeguards for the prevention of accidents to workers in factories.<sup>29</sup> The definition of a factory then provided for the many places or premises on a mine.

## **2.2 THE MINING INDUSTRY IN ITS HISTORICAL PERSPECTIVE**

Mining in Zambia is extremely varied in production, in organisation and in fortunes as between one mineral and another, between one mining region and another, between one mine and another.<sup>30</sup> However, some general characterization make these mines a unit, for production and eventually for economic realisation.

Zambia's mineral deposits are contained in rocks of great geological age which are hidden almost entirely beneath a thick blanket of soil, laterite and younger rocks.<sup>31</sup> Only rarely do the rocks show through the surface, and very much rarely do they contain sufficient minerals to be classified as ore bodies. The first prospectors relied on finding the outcrops, which, when they contained sufficient copper were mined by the ancients. Nearly all present mines were found by this method. The first venture into scientific prospecting was only in 1925.<sup>32</sup>

### **2.2.1 The B.S.A Company's Legal Title to Mineral Rights**

When rumours of mineral wealth of Central Africa began to trickle South,

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<sup>29</sup> Supra Note 25, pg. 85.

<sup>30</sup> Hall, R. *Zambia* (London, Pall Mall Press, 1965). Pg 269.

<sup>31</sup> Mining Industry Journal, "The Zambian mining Industry: The past 50 years." (1978), pg 66.

<sup>32</sup> Ibid.

Cecil Rhodes, whose name is associated with Northern Rhodesia sent his emissaries north across the Zambezi even before he had thoroughly consolidated Southern Rhodesia. Among Rhodes' prospectors was William Collier.<sup>33</sup>

When the B.S.A. Company took over Northern Rhodesia in 1889, the Copperbelt was sparsely inhabited. When they entered the territory, the British encountered five major tribes namely the Lozis, Tongas, Bembas, Ngonis and Lundas. The rocky infertile soil discouraged productive farming. This infertility, however was compensated for by the rich mineral deposits, particularly copper ore, which had been worked by the local Lamba people since the 17<sup>th</sup> century.<sup>34</sup>

In an effort to retard or stop the Portuguese and Belgium expansion, the British, at the Berlin Conference in 1885, successfully pressed their claim for Central Africa. In 1889, the British government gave Cecil Rhodes a Charter for his B.S.A Company which gave him mineral rights and the authority to make treaties with African rulers giving the company administrative powers.

Cecil Rhodes, who had made a fortune in the South African diamonds did not hesitate to take up the challenge. In others words, in the pre-independence era, all rights to search and mine for mineral in the territory

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<sup>33</sup> Ibid.

<sup>34</sup> Supra Note 26, pg 27, William Collier shot a Roan Antelope near the banks of Luanshya river; the animal fell across a rock, stained green with copper thus providing another picturesque story of discovery and giving a romantic sounding name to a name which was to become world famous-Roan Antelope Mine.

of Zambia were acquired by and vested in the B.S.A Company incorporated in London in 1889.<sup>35</sup>

In fact the 1900 Lewanika Concession as supplemented by the 1909 concession granted the B.S.A Company the right to:-

***“To search for, dig, win and keep diamonds, gold, coal, oil, Copper and all other precious stones, minerals and substances.”***

The Company’s administration North of the Zambezi was divided between two areas namely the North Eastern Rhodesia and North Western Rhodesia territories in which protectorate status was established in 1895 and 1897 respectively. The two parts were later amalgamated into one territory thereafter known as the Northern Rhodesia in 1911.<sup>36</sup>

In North Eastern Rhodesia, the Company’s title to mineral rights derived from treaties entered into with various chiefs which were confirmed by Sir Harry Johnston. The Commissioner used two certificates of claim both dated 25<sup>th</sup> September, 1889 recognising the Company’s minerals claim. Certificate of claim ‘A’ confirmed the sole right to search, prospect, exploit, dig for and keep all minerals and metals, in twelve of the areas where the company’s agents had secured treaties.

Certificate of claim ‘B’ phrased slightly differently confirmed the right to search, prospect, exploit, dig for and keep all minerals and metals in the

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<sup>35</sup> Ibid, pg 16.

<sup>36</sup> Mvunga M. P. “Land Law and Policy in Zambia.” PhD Thesis (1977), pg 72.



other six areas where the company had similarly secured treaties.<sup>37</sup> With these kinds of arrangements, the entire potential mineral wealth of North Eastern Rhodesia was assumed to have effectively been vested in the company. Of the other certificates 'A' and 'B', certificate 'A' was considered to be more important as it is this certificate together with the Lewanika concession which allegedly covered the Copperbelt, Zambia's economic backbone.

With time, the company set about administering the territory for its own profit and did little to change Northern Rhodesia. In order to encourage white settlement, the first governor set aside blocks of land for European use mostly along the line of rail, which had the best soil and access to markets. African reserves were set up, mostly on infertile land. Overcrowding and food shortages soon plagued the reserves pushing more Africans into wage labour.

The new Copperbelt mines started in 1926. By 1928, the mines had employed 10,946 Africans out of the 248,948 employed in the territory.<sup>38</sup> The new Copper mines were soon divided between two major investors on the Copperbelt. Beatty's Selection Trust (B.S.T.) incorporated the Roan Antelope and Mufulira Mines in 1927 and 1930 respectively. The Anglo-American Company established the Rhokana Corporation in 1931 to manage Nkana mine. In 1937, after a series of difficulties, the Anglo-American incorporated the Nchanga consolidated Mines Ltd, which

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<sup>37</sup> Ibid.

<sup>38</sup> Supra Note 2.

eventually became the second largest Open Pit Copper Mine in the World.<sup>39</sup>

## **2.2.2 The Mining Industry and the Nationalisation Era**

When the new government of Zambia took office in 1964, the mines were well established and highly profitable enterprises that paid dividends to the respective shareholders. The term nationalisation refers to conversion of property from private to state ownership or undertaking.<sup>40</sup> Nationalisation as a concept of governance, was initiated by the government through the Mulungushi Economic Reforms of 1968, when the Government of the Republic of Zambia (GRZ) acquired 51% shareholding in twenty six firms from all the sections of the economy - and the mines were no exceptions. In other words, the Matero and Mulungushi economic reforms ushered in the era of nationalisation, with the legislation to facilitate acquisition of 51% shares by the Republic being passed in the same year.<sup>41</sup> The nationalisation brought in revenues which enabled the creation of parastatals under the Zambia Industrial and Mining Corporation (ZIMCO).

The new shareholding structure was welcomed by one of two big mining companies - the South African Anglo-American Corporation and less so by the American Roan Selection Trust. The latter did not resist as the deal was extremely advantageous for the companies. Firstly, they received generous payments for their shares and secondly, they were retained on

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<sup>39</sup> Supra Note 34, pg 21.

<sup>40</sup> McIntosh, E The Concise Oxford Dictionary of Current English (Oxford, Clarendon Press, 1964) pg.802.

<sup>41</sup> Mines Acquisition (Special Provisions) Cap. 218 of the Laws of Zambia.

management contract and a large part of their income was therefore now secured irrespective of the profitability of the mines.<sup>42</sup>

Nationalisation temporarily brought economic success to Zambia. However, from about 1976, the mines started facing acute financial difficulties, were borrowing heavily and running at a loss. To a larger extent, these difficulties emanated from the fact that Zambia involved itself in full scale armed struggle against the Rhodesia regime, (now Zimbabwe). That support brought Zambia under increasing Rhodesia attack with the result that from 1977 to 1980, the country was subjected to a succession of bombing raids and military incursions; which had economical repercussions. It led to increased defence spending and created serious transport and communication problems.<sup>43</sup>

Similarly, the slump in world copper prices in the mid-seventies also had severe consequences for the country's budgetary position and foreign exchange reserves were low.<sup>44</sup> Eventually re-capitalisation of the mining industry almost became impossible and a new economical decision had to be taken.

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<sup>42</sup> Van Donge, J.K. Zambia (Oxford, Clio Press, 2000) pg XXV

<sup>43</sup> Gertzel C, Baylies C, Szeftel M. The Dynamics of the One-party state in Zambia (Manchester, University Press, 1984) pg.80.

<sup>44</sup> Ibid.

### **2.2.3 The Third Republic and the Dynamics of Economic Liberalisation**

Liberalisation is the opening up of the economy to market forces with minimum government control in industry whose prime objective is to facilitate a privatisation programme. The ushering in of the third Republic in 1991 is associated with economic liberalisation which equally did not spare the mines. Instead of contributing to economic growth, the mines became a drain on the government resources. The nationalisation programme which the Zambian government had embarked on proved very costly and unsustainable, as there was little emphasis on agriculture and continued dependence on copper. Similarly, lack of fresh investment in the non-mining sector compounded the general economic downturn as inflation and interest rates soared to unmanageable levels.<sup>45</sup>

The reliance on scarce foreign exchange whose access was governed by a cumbersome procedure worsened matters as Zambia failed to reduce dependence on foreign imported inputs. Instead of providing revenue, parastatals became a burden to government which was experiencing persistent budget deficits. The Zambian government in the circumstances had no choice, but to turn to international borrowing from the World Bank and International Monetary Fund (IMF) in order to inject money into industries and finance other budget expenditures under the Bretton Woods Agreement Act.<sup>46</sup>

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<sup>45</sup> African Region Private Sector Development Unit. The Challenge of Competitiveness and Diversification. November 2002

<sup>46</sup> Bretton Woods Agreement Act, Chapter 367 of the Laws of Zambia

However, the continued budget deficits compelled the World Bank and the IMF to recommend Structural Adjustment Programmes (SAP) to government in order to rejuvenate and liberalise the economy in order to attract foreign investment.

On 4<sup>th</sup> July 1992, the *Zambian Privatisation Act*<sup>47</sup> was enacted to pave way for the privatisation and commercialisation of state owned enterprises and the establishment of the Zambia Privatisation Agency. In February, 2000, at the last hand over of the remaining Zambia Consolidated Copper Mining (Z.C.C.M) assets to the new proprietors; the then Finance and Economic Development Dr. Kalumba Katele had the following to say:-

***“.....it is done, government mining is over. Welcome to the new hopes for economic growth....”***<sup>48</sup>

In as much as there has been a lot of political will in transferring these mines from the state to private hands, the future of the mining industry really depends on how much Copper there is and yet to be mined. In turn this also depends on the following three factors:-

- The world demand for the product. If World War III could be created, then the product would be guaranteed of the market, although even in the modern industrialisation, copper still has a fair share in the world market.

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<sup>47</sup> Cap 386 of the Laws of Zambia.

<sup>48</sup> Privatisation News March/April 2000, Issue 9, pg 4.

- The general trends in the World. The world has different patterns of copper consumption. China, the emerging big economic nation is now apparently the largest consumer of Zambia's Copper.
- The Movement in the World Copper prices. Every business undertaking is largely influenced by price fluctuations. The business of copper will still continue to be of great importance to Zambia if the manipulative tendencies at the London Metals exchange do not persist.

### 2.3 THE HISTORICAL CONCEPT OF SAFETY LEGISLATION

Safety plays an important role in any industrial setting and without any legislative backup, it can hardly be enforced. The historical background of safety legislation in England dates as far back as 1802,<sup>49</sup> but this Act could only have been introduced in Northern Rhodesia then at the time the Mining Ordinance was enacted.

The first Act which was passed to regulate labour in factories, was the;

***“Act for the Preservation of the Health and Morals of Apprentices and others employed in cotton and other Mills, Cotton and other Factories.”***

This Act was initially meant for factory cleanliness and admission of fresh air by means of sufficient number of windows and yearly supply to every apprentice of sufficient and suitable clothing. Furthermore, it prohibited night work and excessive labour in the day and lastly further provided that all apprentices should be instructed in the principles of Christian religion.<sup>50</sup>

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<sup>49</sup> Fife, I (Judge) and Machin E.A. Redgrave's Factories Act. (London, Butterworths, 1972) pg 11.

<sup>50</sup> Ibid.

The movement therefore was more or less sanitary as well as educational, but was however the first step in the cause of sanitary improvement and to influence Factory legislation. No further factory legislation was passed until 1819, but from that year until 1856, a succession of statutes and subordinate regulations provided for the safety, hours, mealtimes and holidays of children, young persons and women. So far, the factory legislation only regulated textile industries and certain allied industries, but from 1864 to 1867, specified non-textile factories and workshops were brought within its compass. By 1876, the Royal Commission reviewed these circumstances and led to the enacting of the Factory and Workshop Act, 1878. This Act was said to be the first attempt at comprehensive factory legislation, but hardly was it upon the statute book than the further extension of the law which was later enacted between 1883 – 1897.<sup>51</sup>

In 1937, the Factories Act was enacted. This Act provided, for the first time, a comprehensive code for safety, health and welfare applicable to all factories alike, irrespective of whether they were textile or non-textile factories and whether mechanical power was used or not. Furthermore, the 1937 Act in its Section 60, provided for powers to make regulations governing dangerous processes or plant.<sup>52</sup>

## **2.4 CONCLUSION**

It is beyond dispute that while mining activities were taking root in the colonial Zambia, with a view of digging as much copper as they could, mining

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<sup>51</sup> Ibid.

<sup>52</sup> Opcit, pg 12.

legislation dealing with the healthy and safety of miners also received its early recognition just about the same time. In other words, it would be a prudent argument to make that safety legislation is just as old as the mining activity itself. What is yet to be seen however, is whether the safety legislation has sufficiently been brought to a level where it could address the safety challenges in Zambia today.



## CHAPTER THREE

### 3.0 THE GENERAL LEGAL FRAMEWORK GOVERNING THE HEALTH AND SAFETY OF MINERS IN ZAMBIA

Any worker's right or entitlement, in terms of how safe a particular working environment has to be, would be difficult, if not impossible to enforce without any legislative machinery or support. In other words, in as much as common law sets obligations on an employer to provide a safe working environment, those principles imposing legal liability for injuries sustained at work are inadequate in a factory; especially the Mines where the risk to safety and health are increased unless stringent and effective safeguards are established. Suffice then to say that supplementing the duties imposed upon the employer by the common law, are the very much more specific obligations laid down by Acts of Parliament, herein referred to as statutory law.

On the other hand, while this research is anchored on reviewing all the relevant pieces of legislation relating to the Health and Safety of miners, the case law concerning these has not been as much as one would expect. In fact, a prominent labour law expert had the following to say:-

***“One of the most surprising thing one encounters in studying labour laws of Zambia is the lack of court decisions on safety or breach of the same in factories. It may be that the factories in the country are so well manufactured that there are no serious accidents resulting in serious injuries. Or, and this seems to be the real cause, the workers who suffer injury in factories and for that matter in mines are ignorant of their legal rights or silenced by payment of a certain sum of money as compensation....”***<sup>53</sup>

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<sup>53</sup> In his book entitled “Labour Laws in Zambia”, Supra note 2, Mtopa, AM has criticized the approach the miners take as they seem to be easily lured by the ‘little’ compensation they receive from their employers once for their injuries. This, he feels, has led to the scanty case law that we have on these matters.

The action for breach of statutory duty may often be used to compensate for the defects and lack of certainty in the common law action against the employer. It is a device evolved by the courts to allow a plaintiff to sue for damages when the conduct of the defendant who caused the injury was in defiance of a duty cast upon him by a statute, even though the statute itself will probably not even mention in question of civil liability.<sup>54</sup>

Therefore, although an act by the plaintiff to base his action on statutory law may be more satisfactory to him, its application is however not automatic because its constituent elements must be proved. Whatever the case may be, the role of common law should still be remembered. A worker may be injured either in circumstances not covered by an appropriate Act, or in work to which no particular Act refers. In either case however, he may still have a claim for damages founded on the common law duties which bind all employers.<sup>55</sup>

### **3.1 ESSENTIAL STATUTORY ELEMENTS REQUIRED TO PROVE EMPLOYER LIABILITY**

An employer will not simply be liable by the fact that he has broken a particular statute. The plaintiff will have to rely and prove the following essential constituents in his action.

- The first and most basic element upon which the plaintiff wishes to rely must be one which in law supports civil liability. Nowadays, because of

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<sup>54</sup> Supra note 15, pg 573

<sup>55</sup> Supra note 12, pg 59.

the case law that usually exists may render this step unnecessary. In fact, the decision of the Court of Appeal in the case of **Groves v. Lord Wimborne**,<sup>56</sup> safety provisions in industrial legislation such as the Factories Act and the Mines and Quarries Act will usually support civil liability, with minor exceptions. Generally however, industrial safety legislation are to be construed as giving rise to civil liability unless the regulation in question expressly provides otherwise.

- The second element is that the statutory duty in question must be owed to the plaintiff. To a larger extent, this will really depend on the detailed wording of the section on which the plaintiff wishes to sue. In other words, if a statute is framed in such a way that it protects the interest of the employers, an employee would find it difficult to sue on it.
- The third element is that the statutory duty must be imposed upon the defendant. When such a duty is laid upon him, he may not delegate it and so may still be liable even if the breach is caused by a third party.
- The fourth element is that the defendant must be in breach of that duty, but this really will depend on the detailed wording of the statutory provision in question. Thus, it is that wording which will determine the level of the duty, which in turn will have the effect on the defendant as to whether he has breached it or not.

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<sup>56</sup> (1898) 2QB 402.

- The fifth element is that the damage done to the plaintiff must be the type of damage which the statute or regulation was designed to prevent.
- The sixth element is that the injury must be caused by the defendant's breach. Causation is always important in the law of tort and it has been reaffirmed by the House of Lords that the action of statutory duty is no exemption. This argument was advanced in the case of ***Bonnington Castings Ltd v. Wardlaw***.<sup>57</sup> To prove liability really, there must be a fault on part of the employer.

It is therefore imperative for any legislator in Zambia to know that any statutory law that may be on statute books without due consideration of the above essential elements is devoid in principle and application. In the event that the law does not encompass the above, the injured miner or any would be litigant would find it difficult to bring a successful litigation against the defendant.

### **3.2 PRINCIPAL STATUTORY LAW OVERVIEW AND ANALYSIS**

The principle statutory law governing the health and safety of miners in Zambia is a sham and leaves much to be desired. Generally, while revising and updating the law has been a general problem in Zambia, one would however, think that urgent and frequent revision of these laws pertaining to health and safety of miners would be inevitable, especially that they touch on the lives of innocent individuals who work in dangerous environments.

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<sup>57</sup> (1956) AC 613.

In its current form, the law lacks direction to rise to the challenges of mine accidents in Zambia. It exhibits more or less general provisions and lacks the necessary 'teeth to bite'.

### **3.2.1 The Factories Act<sup>58</sup>**

The most important health and safety provisions of widespread application have historically been contained in the Factories Act and the vast majority, if not all of industrial workers are covered by this Act. While the Factories Act may be the Principal Act in this country, in as far as the safety and health of miners are concerned, extensive reference will also be made to the *Mines and Minerals Act<sup>59</sup>* and the *Pneumoconiosis Act.<sup>60</sup>* The *Medical Examinations of Young Persons (Underground Work) Act<sup>61</sup>* will be examined too and its efficacy established.

The Factories Act provides codes of safety, health and welfare applying to a wide variety of trades and industries. In its preamble, the acts states thus:-

***“An act to make further and better provisions for the regulation of the conditions of employment in factories and other places as regards the safety, health and welfare of persons employed therein, to provide for the safety, examination and inspection of certain plant and machinery; and to provide for purposes incidental to or connected with the matters aforesaid.”***

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<sup>58</sup> Cap 441 of the Laws of Zambia, first enacted on 01.May, 1967 and duplicated the colonial statute.

<sup>59</sup> Cap 213 of the Laws of Zambia

<sup>60</sup> Cap 217 fo the Laws of Zambia

<sup>61</sup> Cap 216 of the Laws of Zambia

It is evident from the preamble that from the onset, the intention of this Act has been to address codes of safety and provide for examination and inspection of certain plant and machinery. An overall critical evaluation of this Act reveals that as regards examination and inspection of certain plant and machinery, the Act has detailed provisions, relatively adequate enough to address safety issues related to plant and machinery. This is evidenced by provisions under Part VI, Sections 27 to 62 and Part X Sections 69 to 75.

However, the specific safety provisions pertaining to mines are contained under Part XII of the Act which deals with Special Applications and Extensions. Sections 83(1)'a' to 'c' specifically applies to the miners. These provisions to deal with mine safety are inadequate to start with and the necessary coercive force that a statute deserves to have is lacking. Understandably, the Minister is empowered under section 105 to issue a statutory instrument for better carrying into effect of this Act, but at the moment, there is no statutory instrument in force to adequately address such issues. In fact, most of the statutory instruments issued by the Minister of mines that are currently in force are ones dealing with fines. But whether fines/penalties are meted out, they can never bring back a life of a miner who dies during the course of his duty. Deaths and serious injuries from unsafe and unhealthy conditions and practices in the copper mining industry cause grief and suffering to the miners and their families.

Therefore, efficient safeguards must be put in place to prevent more accidents; but even where an accident takes place, mere compensation may not be enough but the law could provide a means of taking care of a family by way of paying the deceased's salary to a deceased family till his retirement age in order to reduce their grief and suffering. Just compensating the deceased family or the permanently injured miner is not really an issue to these mine owners because of their financial muscle - they can pay any one with ease whether they were in breach of the law or not.

In the case of *The People v. Beaumont*<sup>62</sup> there was an attempt by the state to bring criminal proceedings against a factory manager under the Factories (Safety) Regulations as read with regulation 10(2) and Section 5(1) of the then Factories Ordinance.<sup>63</sup> The brief facts of the case were that Mr. G. E. Beaumont, was a factory manager of Westhuzen Brickfields Ltd, Kitwe and therefore responsible for maintaining efficient guards to the pig mill gears of the brick making machine which had severed the fingers of this employee.

In this case, the prosecution was trying to argue that the true meaning of regulations 19 is that a machine is proved to be dangerous if in fact an accident occurs such as the present one even though the injured person was acting contrary to instructions.... In dismissing the argument by the prosecution, the court held that:-

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<sup>62</sup> (1965) ZLR 130.

<sup>63</sup> Cap 193 of the Laws of Zambia. This act was repealed by Factories Act 1962 which now reflects the provisions of the current Factories Act.

***“We must be very careful in construing that section, because it implies a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections.”***

In other words, the ‘confusion’ that the court was advancing is that even if a person dies, as far as the Factories Act is concerned, and if there are two options involved, the court must go for a lighter one. This really favours employers who may be perpetrators of some of the industrial accidents.

### **3.2.2 The Mines and Minerals Act**

Apart from the Factories Act just considered, the Health and Safety of mining employees in Zambia is further governed and regulated by the Mines and Minerals Act.<sup>64</sup>

This Act provides, inter-alia, for statutory offices cardinal to the effective implementation of this Act. One such office, is the position of the Director of Mine Safety. Section 83(2) provides that:

***There shall be a Director of Mines Safety , who shall be a public officer and who shall have and may exercise and perform the powers and functions conferred or imposed upon him by or under this Act or any other written law and who shall have general responsibility for matters concerning the safety of prospecting, exploration and mining operation.”***

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<sup>64</sup> This Act was last revised on 13<sup>th</sup> September, 1995.



Furthermore, the Act gives the Director of Safety sweeping powers in section 77 to 78 in which he can serve a written notice on any holder of mining right to comply with certain obligations. Failure to comply by such a person entails being guilty of an offence and liable upon conviction to a penalty not exceeding fifty thousand penalty units.<sup>65</sup>

In view of the foregoing, it is evident that there is good intention in creating statutory offices and confer them with power to ensure that the health and safety of miners is taken care of. However, the indemnity that is conferred upon such officers by the same Act really defeats the purpose of the Act.

Section 90 of the Act provides that:-

***“No officer of the ministry or other public officer shall be liable for anything done or omitted to be done in good faith in the exercise of or purported exercise or performance, of any power or function vested in him by, or in accordance with an appointment made under, this Act. ”***

With the current trend of mine accidents in Zambia, it is totally illogical to confer such kind of indemnity on mine officials at the expense of the lives of miners who are working under the most dangerous conditions in the world. The word, “good faith” that is provided for under the Act is so wide such that even sheer negligence in carrying out health and safety regulations could be justified for “good faith”. Section 90 of the Minerals

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<sup>65</sup> One unit is equivalent to K180.00. Therefore the fifty thousand is actually K9million.

and Mines Act, is therefore not legally justified under the current mining conditions in Zambia and must therefore be struck out.

On the other hand, while the Minister of Mines is empowered to make 15 regulations for the better carrying into effect of this Act under Section 108(2)(e) and Section 108(2)(f) for safety and health provisions respectively, the practical situation is that some of these regulations have been on the statute books for some time and therefore do not run concurrently with the new safety and health questions that are evolving as a result of fresh developments that are taking place on the Zambian mines today. The new owners of the mines may have invested heavily in the re-capitalisation of these mines, but on the contrary fresh developments on these mines have exposed health and safety problems to the people working in these mines. In other words, the developmental trends in the mining industry while economically good, have not adequately addressed the new safety challenges that have evolved, especially in the advent of privatisation.

### **3.2.3 The Pneumoconiosis Act**

Apart from plant and machinery, the miners may also be exposed to another risk of pneumoconiosis. In its preamble, the Act provides as follows:

***“An Act to make new provision for the assessment and payment of compensation in connection with pneumoconiosis, to provide for the medical examination and standards of physical fitness to be required of persons exposed or likely to be exposed to the risk of pneumoconiosis and to provide for matters incidental to or connected with the foregoing.”***

Part III, Sections 34 to 56 of Act makes it mandatory for any employer to subject a miner to pneumoconiosis examination prior to his engagement and thereafter regular periodical examinations. This is basically done to ensure the miners' health. Failure to comply with the provisions of the Act, the pneumoconiosis Act has reasonable penalties for any employer who fails to comply with the provisions of the Act. Section 100 of the Act provides for fine not exceeding one thousand five hundred penalty units or to imprisonment for a term not exceeding six months, or both.

The penalty of imprisonment that this Act provides for is progressive and in practice, really compels employers to subject their miners to periodical pneumoconiosis examinations. The law is firm on the 'fraud' in as far as Pneumoconiosis risks are concerned.

### **3.2.4 The Medical Examinations of Young Persons (Underground Work) Act**

In an effort to provide for health and safety of young person working under ground in Zambia, the medical examination of Young Persons (Underground Work) Act was enacted by domesticating the International Labour Organisation Convention. In its preamble, it states:

***“An Act to provide for the implementation in Zambia of the International Labour Organisation’s Convention number 124 concerning medical examination of young persons for fitness for employment underground in mines; and to provide for matters ancillary to or connected with the foregoing.”***

This Act is similar to the Pneumoconiosis Act and makes it mandatory under section 5 for a young person to be examined once in twelve

months to ascertain their fitness. In the event that an employer fails to do so, section 8 provides for an offence of a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding six months or to both.

While the above analysis of safety and health legislative measures was by no means intended to be exhaustive, but rather illustrative, it is evident that the overall legislation pertaining to safety of miners in Zambia is a disaster. The Pneumoconiosis and Medical examination of Young person (Underground Work) Acts have adequate provisions; and Pneumoconiosis diseases have not been an issue in this country as such. However, the provisions under what one would call principal legislation pertaining to safety leaves much to be desired. It is now almost 100 years ever since the first mining locations were cited in the then North-Western Rhodesia.<sup>66</sup> Over time, these mines have been heavily mined with the advent of privatization of late. However, what has been a set back in as far as safety laws are concerned in Zambia is that there has not been a frequent review of these laws to match up with mine developments that have taken place. Surely, the conditions of the mines 100 years ago cannot in any way be compared to the conditions today. Just recently, the Minister of mines attributed some of the accidents in the mines to casualisation.<sup>67</sup> This is really what is painful in this country that politicians continue making political statements for

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<sup>66</sup> Supra note 4.

<sup>67</sup>The Post, 16<sup>th</sup> November 2006. Dr. Kalombo Mwansa was addressing the stakeholders meeting on casualisation of labour in the Zambian mines.

appeasement purposes even where they know that lives of people are at stake.

### **3.3 CONCLUSION**

It is evident from the forgoing that the present legislation pertaining to safety of miners is archaic and in many respects present a picture of considerable uncertainty. The law still has a colonial character and calls for an urgent review of the law. The recent mining disasters in this country attests to this fact. In other words, the longer one ponders the problem of mine accidents, the more sceptical one gets as regards the effectiveness of the law. Government must stop issuing political statements, just for the sake of pleasing the Zambian people, it must initiate legislation and stop this rot in the Zambian mines.

## CHAPTER FOUR

### 4.0 CONCLUSIONS AND SOME PROPOSALS FOR REFORM

The importance of the Mining Industry to this country cannot be over-emphasised. Mining has always been an important source of financial revenue for the country. For these reasons, the safety and health laws that are put in place to safeguard the lives of miners must be aimed at promoting safety and prevention of mine accidents.

The problem of mine safety has not only been a challenge to Zambia, but has been a world wide problem. The only difference is that other countries where similar problems are found have taken serious legislative steps to address the scourge. For instance, in a bid to curtail mine accidents, President George Bush of the United States of America when assenting to the Miner's Act of 2006 had the following to say:-

***"I am pleased that the Congress has acted in a bipartisan way to pass important mine legislation. This legislation will complement the Mine Safety and Health administration's effort to enhance mine safety training, improve safety and communications technology and provide emergency caches of breathable air for miners. The bill also increases penalties for those who violate mine safety laws. American miners and their families can be confident that their government is committed to taking measures that will help prevent accidents and save lives. I look forward to signing this bill into law"***<sup>68</sup>

The tone of the American President's speech reflects the seriousness and commitment in addressing mine safety. It follows therefore that necessary law reform needs to equally be effected in Zambia to effectively address the challenge of mine accidents.

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<sup>68</sup> Source:<http://www.msha.gov>.

The general orientation of this study was meant to critically examine the general legal framework that regulates the entire miners' health and safety system in Zambia with a view of bringing out the character of the law and thereby assess its efficacy. Taking into account the foregoing analysis in the preceding chapters, it becomes apparent that the law in its current form cannot adequately address the challenge of mine accidents in this country. It is evident that the law has a lot of inadequacies whose gaps need to be filled in order to address this challenge.

#### **4.1 CONCLUSIONS**

The law that is at the core of the mine safety system is made up of the **Factories Act**<sup>69</sup> which appears to be the Principal Act. Though this statute has a colonial character, it however does provide codes of safety, health and welfare applying to a wide variety of other trades and industries.

This Act has comprehensive safety provisions to address codes of safety and provide for examination and inspection of certain plant and machinery.

In other words, on the face of it, the Act has detailed provisions, relatively adequate enough to address safety issues related to plant and machinery, as provided for under part VI, sections 27 to 62, and part X sections 69 to 75.

Despite these positive attributes about the Factories Act, it has very retrogressive specific safety provisions pertaining to the mining industry as provided under its part XII. First and foremost, a quick glance by any

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<sup>69</sup> Supra note 58.

reasonable man with a legal mind, reveals the inadequacy of the law to address the enormous challenge of mine safety that has all for a sudden confronted this country. One possible explanation to this inadequacy could be attributed to the fact that at the commencement of mining operations these mines could not have been that deep implying that the mining conditions could have been reasonably stable then.

It is now a well known fact that it is over 100 years since the first mining locations were cited in Zambia and the 100 years of digging cannot guarantee the same mining conditions in 2007 as they were at the time the mining operations commenced.

Apart from the long period of mining time, another problem has emerged in Zambia. These mines have now changed hands with a lot of recapitalisation, suggesting that a number of new areas underground have been developed. It is undisputed fact that new developed areas are usually accidents prone and the facts on the ground have revealed that these mine developments have not been accompanied by the necessary safety legislation to match with the new discovered mine conditions.

The Factories Act, the Principal Legislative Safety Act, as it may be perceived in this country, has some shortcomings namely; that the Act has serious flaws in as far as the substantive law is concerned, in the sense that it contains general provisions that are also applicable to other industrial settings that are less dangerous. The implication made by the Act is that these general



provisions could also apply to the mines as indicated under Part XII of the Act. Secondly, apart from the rather weak general provisions, the Act also lacks the necessary coercive force that a statute of that nature needs to have.

Similarly, the ***Mines and Minerals Act*** was considered as well earlier in this study. While this Act generally provides for prospecting and mining of minerals, it has however a specific safety provision providing for a Director of Mine Safety under Section 83(2) of the Act. While the intention of providing for such a position may have been good from the health and safety point of view, the derogations however, provided for under section 90 defeats the purpose of the whole Act. It would no longer be justified to maintain such a provision under the prevailing mining conditions because it could easily lead to being abused.

On the other hand, while others may argue that the Minister of Mines is empowered under section 108 to make regulations for the better carrying into effect of this Act, experience in Zambia, has however shown that such regulations are rarely issued and are largely dependent on the whims and caprices of a Minister and the government in power.

The ***Pneumoconiosis Act*** was as well considered. The provisions and the standards that this Act sets for medical examination and standards of physical fitness to be required of persons exposed or likely to be exposed to adverse conditions provide sound law. In other words, the legal provisions under this

Act seem adequately enough to address the challenge of Pneumoconiosis risk among Zambian miners.

Like the Pneumoconiosis Act, the ***Medical Examinations of Young Persons (Underground work) Act*** has adequate provisions to address Pneumoconiosis challenges in this country. In fact over the years, Pneumoconiosis diseases among miners in Zambia, have not gone beyond proportion. It is something that the government and the mine owners have managed to put under control.

Apart from the statutory law considered above, the common law provisions also provide a credible part of the law in as far as promotion of safety and prevention of mine accidents is concerned. The neighbour principle, as enunciated in the old case of ***Donoghue v. Stevenson***<sup>70</sup> still makes it mandatory for any employer to take reasonable care and not subject his employee to unnecessary risk.

As has been observed by some labour experts in the country, one of the most surprising thing one encounters in studying labour laws in Zambia is the lack of court decisions on safety or breach of the same in factories. It may be that the factories in the country are so well maintained that there are no serious accidents resulting in serious injuries. Or, and this seems to be the real cause, that the workers who suffer injury in factories and for that matter in mines, are ignorant of their legal rights and are simply silenced by payment of

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<sup>70</sup> Supra note 14.

a certain sum of money as compensation. The view of this writer is that the situation has also been compounded by the fact that safety laws in Zambia generally have not been in the favour of workers. Apart from the inadequacy of the law, it is also evident that the law has been not clear, resulting in the few cases that have gone to court to rely on common law provisions of having to prove negligence, strict liability, e.t.c.

It is for these reasons that Zambia needs express statutory provisions to deal with promotion of safety and prevention of mine accidents. The problem of safety in the mines has been a world wide problem as noted earlier on and trying to keep workers safe on the job can be very challenging. Practically, real work safety solutions are hard to come by, but to start with, we at least need a reform in the law that will ensure that government puts in place legislation that will guarantee that every miner in Zambia returns home safely to his or her family at the end of the shift.

Even before we blame the mine owners of being negligent or passive about safety issues, the onus first, falls on the government to initiate legislative measures that will act as a solid base in fighting mine accidents. A 'leaf' drawn from countries where safety and health issues of miners have been taken serious such as South Africa and the United States of America show that firstly, mine safety largely depends on a strong statutory legal framework, secondly, a strong commitment from company operators and thirdly a commitment from miners themselves to make the safest working conditions

possible. This study therefore makes a call on the government to act now or else the mines in Zambia will continue to be open graves.

## **4.2 SOME PROPOSALS FOR REFORM**

It is apparent that a number of measures need to be taken in order to improve the legal framework regulating the miners' health and safety in this country. There are some specific suggestions that have been made throughout this study, but some of them will be repeated for the sake of emphasis. This is an opportunity to see things afresh and with relatively greater detachment than is available to those within a situation. In order to move quickly, this study makes the following proposals for reform.

**4.2.1** This study has revealed that the law relating to the healthy and safety of miners is found in different pieces of legislation that appear not to be linked to one another and yet, they were intended to address the same issues of safety. These pieces of legislation must therefore be repealed and replaced by one single act that could embrace all the relevant provisions pertaining to miners' healthy and safety. This will make the administration of the law on healthy and safety of miners much easier. This one single Act could be referred to as The Miners' Act which basically will be the Law pertaining to Miners' Healthy and Safety in Zambia. Apart from administering the Act effectively, it will also avoid the idea of having so many pieces of legislation that sometimes appears to contradict one another. Secondly, over and above this, it will provide sound law in the sense

that it will be very easy to deal with the amendments since the law is to be found under one act whose sole purpose would be of mine safety. The present scenario is that one piece of legislation dealing with one aspect of mine safety could be amended while other pieces of legislation, which are equally important remain in their dormant, static stage for a while, without having to respond to dynamic challenges of mine safety that confronts us in this nation.

To illustrate this point further, it is evident for example from the preamble of the Factories Act which states as follows:-

***“An Act to make further and better provision for the regulation of the conditions of employment in factories and other places as regards the safety, health and welfare of persons employed therein; to provide for the safety, examination and inspection of certain plant and machinery; and to provide for purposes incidental to or connected with the matters aforesaid.”***

The word “other places” used above obviously includes places like the mines, but what must be pointed out is that the conditions of safety that may be obtaining in a textile industry for example would be very much different from those obtaining in an underground mine. It is for such reasons that the general provisions contained under the Factories Act cannot adequately address the mine safety challenges that require a specific and coercive law.

The other reason that would justify the repealing and replacing the Factories Act would be that the Mining industry is a unique business with dangerous mining conditions. The entire Factories Act has only

two specific provisions to deal with the mines and these provisions are to be found in section 83 and 84 of the Act. Apart from these two provisions being inadequate, they also seem not to address the core issue of miners' safety and health.

- 4.2.2** There are certain provisions contained in the current law that are very retrogressive to the promotion of mine safety and prevention of mine accidents.

Section 90 of the mines and Mineral Act provides that:

***"No officer of the Ministry or other public officer shall be liable for anything done or omitted to be done in good faith in the exercise or performance, of purported exercise or performance, of any power or function vested in him by or in accordance with an appointment made under, this Act."***

The above provision that confers indemnity on public officers must be repealed in the interest of safety. If anything, a public officer must be held accountable for his actions under this Act.

The intents and purposes of the Mines and Minerals Act, as contained in its preamble is to make provision with respect to prospecting for and mining mineral. This Act therefore must be left alone to deal with matters of prospecting and mining minerals. The relevant provision under its section 83(2) which deals with appointment of Director of Mines Safety could be a relevant provision under the new Miners' Act being proposed.

**4.2.3** It would be sound law for the new Miners' Act that is being proposed to continue providing for assessment and payment of compensation in connection with pneumoconiosis and provide standards of physical fitness to be required of persons exposed or likely to be exposed to the risk of Pneumoconiosis under the Pneumoconiosis Act. This is good law. However, this study makes a proposal that assessment of compensation for such kind of problems must be for an affected miner's life time. It is likely that a miner who is discharged on grounds of a Pneumoconiosis problem will never find employment again. But on the other hand, this would also act as a deterrent to mine owners to ensure that their employees do not contract such kind of diseases anyhow.

**4.2.4** In terms of penalties, when one breaches the law, it is evident that the law has not been deterrent enough in Zambia. The fines that the Zambian Law provide for when the law is breached is not something that the new mine owners can be scared of because they are generally on the lower side. Similarly, in certain cases, the law also provides for simple imprisonment of one year on average. But as the case of ***The People v. Beaumont***<sup>71</sup> referred to earlier revealed, the actual mechanics of prosecution under the Zambian laws could be a problem.

A proposal is therefore made that penalties in terms of fines be increased to such levels where they will assume their deterrent value.

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<sup>71</sup> Supra note 62.

Similarly, in the event that persistent violations of the law occurs, prosecution laws should also be streamlined to remove all the bureaucracy that may be involved in prosecuting mine owners.

For example, the American Law on the Miners' health and safety is very explicit and excessive where fines are concerned. Section 8(a)(2) of the Miners Act of 2006 provides that:

***“Any operator who wilfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under the Act.... shall, upon conviction, be punished by a fine of not more than one year, or both, except that if the conviction is for a violation committed after the first conviction of such operator under this Act, punishment shall be by fine of not more than \$500,000 or by imprisonment for not more than five years, or both.”<sup>72</sup>***

When assenting to the bill, the President had the following to say:

***“...and to ensure compliance with the law, the Act will increase the maximum penalty for flagrant violations of mine safety regulations nearly four-fold.”<sup>73</sup>***

It is clear from the above provisions that the American Law is quite stiff on penalties, especially for perpetual offenders who could be fined as much as \$500,000 or for imprisonment of five years, or both.

Similarly, the South Africa Mine Health and Safety Act also has similar provisions under its section 92(5), but only provides for a maximum imprisonment of 2 years in the event that the mine owner defaults on the payment of the fine.

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<sup>72</sup> Source: <http://www.msha.gov>. :Miners' Act 2006”

<sup>73</sup> Ibid



**4.2.5** The government wing of the Mine Safety Department must increase its staffing levels. At the moment, the kind of inspection that the government does is more or less reactive in the sense that they will only intensify inspections to a particular mine after an accident occurred. It is suggested that each mine be allocated with a government mine inspector stationed at each mine and financed by that particular Mine. These inspectors, to be based at every mine must up date the stakeholders of the mining industry, to reflect changes in operations of the mine such as change in systems of mine layout, new developments, relocation of escape ways or other relevant safety considerations.

In addition to the above, the mine based inspectors must be conferred with broader powers to impose civil penalties for violations of mine safety laws where an accident has not occurred, but where they feel a penalty of some kind needs to be imposed as a deterrent measure.

Similarly, where they feel that uncorrected hazards become the order of the day, the law should confer them with such powers to close the mine temporarily, and if need arises, permanently.

**4.2.6** Promotion of safety and prevention of mine accidents cannot be a cost free event and therefore, the new miners must commit a substantial part of their budget to improving safety standards in their respective mines. It is suggested that the law compels mine owners to train every

miner in safety aspects. Similarly, training programmes on long term basis must be worked out between mine owners and the government.

**4.2.7** It is further proposed that the law provides for research and development in the safety of the mines. Mine owners could constitute at each mine a team of experts to research into issues of mine safety. As long as there is no one into research of how these mines could be secured, people will always depend on the ancient methods of safety and the problem of safety will never be adequately addressed in this country.

## BIBLIOGRAPHY

### BOOKS

Mtopa, A. Labour Laws in Zambia. Lusaka: Zambia, KKF, 1989.

Cunningham, S. The Copper Mining Industry in Zambia. New York, U.S.A. Praeger Publishers, 1981.

Ndulo, M. Law in Zambia. Lusaka, Zambia. East African Publishing House, 1954.

Whincup, M. H. Industrial Law. London, England. Heinemann, 1968.

Smith J. T and Wood, J. Industrial Law. London, England. Butterworths, 1989.

Ndulo, M. Mining Rights in Zambia. Lusaka, Zambia, KKF, 1989.

Prain, R. Copper – The Anatomy of an Industry. London, England. Mining Journal Books, 1975.

Hall, R. Zambia. London. England. Pall Mall Press, 1965.

Mvunga, M.P. Land Law and Policy in Zambia. PhD Thesis, 1977. (Unpublished).  
Van Donge, J. K. Zambia. Oxford, England. Clio Press, 2000.

Gertzel. C, Baylies C and Szeftel M. The Dynamics of the One Party State in Zambia. Manchester, England. University Press, 1984.

Fife I and Machin, E.A. Redgraves Factories Act. London, England. Butterworths, 1972.

## **OFFICIAL PUBLICATIONS AND REPORTS**

Office of the President, National Commission for Development Planning, Lusaka.  
Republic of Zambia. First National Development Plan. 1966 – 1970.

Mining Industry Journal. "The Zambian Mining Industry: The Past 50 Years"  
1978.

African Region Private Sector Development Unit. The Challenge of  
Competitiveness and Diversification. November, 2002.

## **JOURNALS**

Central Statistical Office Bulletin, September 2006, Volume 42.

Zambia Law Journal, Volume 6, 1974.

Privitisation News, March/April 2000, Issue 9.

## **OTHER GENERAL REFERENCES**

Newspapers: The Post, 01 April, 2006.

The Post, 16 November, 2006.

Internet; <http://www.Statehouse.gov.zm>.

<http://www.msha.gov>.

McIntosh, E. The Concise Oxford Dictionary of Current English. Oxford, England,  
Clarendon Press, 1964.