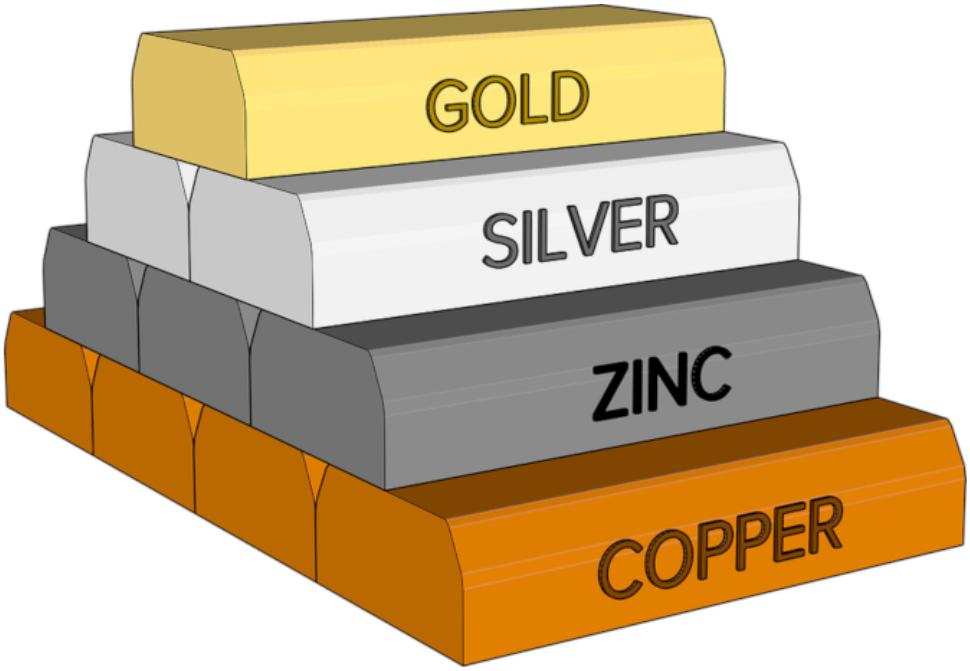

The Zambian copper mine case – What happened and why are we writing about it?

By Darren Isaacs - 29 May 2019

There was a lot of excitement in April about a UK Supreme Court decision dealing with a copper mine in Zambia.

Huh? A copper mine in Zambia, 7,500 km away from London?

For obvious reasons we don't normally write about copper mines in this publication, nor do we normally cover Zambian legal issues for that matter.

So what has peaked our interest this time?

The short answer is that the UK Supreme Court decision was a ground-breaking decision dealing with businesses and human rights issues (BHR). If you are tempted to stop reading now, then don't! The case has a potentially significant impact for HR specialists covering this area (e.g. those overseeing modern slavery issues from a UK head office).

But let us explain how we get to that conclusion:

First, a brief summary of the background. The case was Vedanta Resources PLC v Lungowe. It was a dispute brought by local community members in Zambia in relation to a copper mine operated there by a subsidiary company of Vedanta, Konkola Copper Mines (KCM).

Vedanta's primary line of defence was that any claim the Zambian community needed to have been brought against KCM (Vedanta's Zambian subsidiary company). This is because of the normal legal principle in most countries that individual companies are separate legal entities. So a subsidiary is not liable for the acts of its parent, or vice-versa. Consequently, Vedanta (in the UK) argued that – even if there was a valid claim for something that happened in Zambia – the UK parent could not be liable for any acts of its local

subsidiary in Zambia.

However, the UK Supreme Court disagreed. In doing so, the court made a ground-breaking new decision. It decided that in some cases, where the subsidiary is essentially just a tool of the parent (and not really operating on its own in practice) the parent could be liable for its breaches.

The court put it like this:

"Everything depends on the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary. All that the existence of a parent subsidiary relationship demonstrates is that the parent had such an opportunity."

There was a separate issue about whether any court case against the UK parent (if it proceeded) should be heard in the UK or in Zambia, but that is not what we are looking at here today (FYI – the court said the case could be heard in the UK).

So – what is the fallout for HR specialists in a UK head office who oversee international BHR issues? We can see two obvious ways of responding to the case.

One way of responding would be to reduce "head office" involvement in any foreign subsidiary to the point where the UK parent entity just becomes a passive investor. Let the local subsidiary operate as an entirely stand-alone business entity with its own policies, practices, and business interests. However – realistically – that seems highly unlikely to work in practice. It would negate the entire point of having an international/global business.

The alternative option is to make sure that if a UK head office oversees a foreign subsidiary's business then it does so with its eyes wide open and with full information. It is not just enough to roll-out global policies and press statements about the UK parent's global commitment to BHR issues like modern slavery, then let a local subsidiary just crack on. Instead, those tasked with overseeing these issues need to really understand what is happening on the ground with any foreign operations, and to make sure that appropriate decisions are being taken locally as well as by "head office" when it comes to HR issues.