

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2003/HP/0131

BETWEEN:

FANWELL KAMWANDI



PLAINTIFF

AND

ATTORNEY GENERAL

DEFENDANT

**Before The Honourable Mr. I. C. T. Chali in Chambers the 16th day
of July, 2014.**

**FOR THE PLAINTIFF : P. G. KATUPISHA- MESSRS MILNER
KATOLO & ASSOCIATES**

**FOR THE DEFENDANT: MS. M. NZALA, ASSISTANT SENIOR
STATE ADVOCATE**

RULING

The Plaintiff had taken out an action on 7th February, 2003 for a declaration that his purported discharge/dismissal from the Zambia Army with effect from 28th February, 1997 was irregular and therefore null and void. He sought an order of re-instatement in his job with appropriate earnings, payment of salary arrears from date of discharge/dismissal to date of Judgment together with interest. In the alternative, the Plaintiff sought damages for wrongful discharge/dismissal.

In the Judgment delivered on 29th November, 2011, His Lordship Mr. justice G. S. Phiri ruled that the remedy of re-instatement was not available to the Plaintiff. The Honourable Judge held, instead, that the Plaintiff was entitled to damages for wrongful discharge/dismissal. He held that:

“the Plaintiff is entitled to salary for two years as damages available to him for wrongful or unlawful dismissal or discharge. The damages shall carry interest at average Bank rate from the date of issue of the writ up to the date of Judgment and thereafter 6 percent until payment is made...”

The Plaintiff then applied before the Deputy Registrar for “the assessment of inflation before interest is assessed and applied.” This was apparently after the Defendant had used the salary of a Sergeant prevailing in 1997, the position the Plaintiff had held, when computing damages due under the Judgment of November, 2011. The amount of damages came to K1, 929, 265 net (old currency) or K3, 094, 380 (old currency) after interest was added. The Defendant’s position was that damages (Salary) were to be calculated at the time of the breach and that the interest awarded accounted for inflation.

The learned Deputy Registrar dismissed the Plaintiff’s application. She held that the damages awarded were to be according to the salary he earned in 1997 when he was discharged from the Army. She said the damages could not be awarded as a stored value calculated at the present salary of the rank the Plaintiff held when he was discharged in 1997.

The appeal now before me is against the learned Deputy Registrar's refusal to assess inflation.

In my view, the issue revolves around the interpretation of the learned trial Judge's award of damages, i. e. what rate of salary ought to be used in computing the damages due, i. e whether it was the rate of salary the Plaintiff was receiving at the time he was discharged/dismissed, or the rate of salary at the time of the assessment before the learned Deputy Registrar.

In my opinion, considering that the learned Judge who tried the case is still available although now sitting in the Supreme Court, I find it to be an appropriate case for review by the Hon. Mr. Justice G. S. Phiri as to the correct interpretation of his Judgment of 29th November, 2011. I accordingly grant the Plaintiff special leave to apply for such review before the said Judge. I direct that the application be filed within 14 days from today.

I make no order as to the costs of the appeal before me.

DELIVERED IN CHAMBERS THE 16TH DAY OF JULY, 2014.


I.C.T. CHALI
JUDGE