

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2010/HP/561

(Criminal Jurisdiction)

BETWEEN:

CHRISTOPHER LUBASI MUNDIA

APPELLANT

AND

MINISTER OF HOME AFFAIRS

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDANT

Before : E. M. Hamaundu, J



For the plaintiff : In Person

✓ For the defendants : Mr F. Imasiku, Mr C. Sikazwe, Senior
State Advocates and Ms M. Ndhlovu,
State Advocate

J U D G M E N T

The plaintiff's claim is for damages for breach of contract and payment of arrears of sitting allowances amounting to K24,300,000.

According to the statement of claim, the plaintiff was appointed to the position of Chairman of the Police Public

Complaints Authority by the Minister of Home Affairs on the 14th June, 2002. One of the terms of the appointment was that the plaintiff would receive allowances and remuneration to be determined by the Minister. On the 8th December, 2005, the plaintiff was re-appointed Chairman of the Police Public Complaints Authority for a term of three years. It was understood that the terms and conditions of service would be availed to the plaintiff. After a long time, the Minister approved a sitting allowance for the plaintiff of K600,000. The remuneration, however, was not set. In the meantime, members of the Judicial Complaints Authority were placed on fixed remuneration, with the Chairman earning K4million per month. The plaintiff's contract expired on the 31st August, 2009. The plaintiff then met the Minister to resolve the issue of remuneration. To-date the issue remains unresolved.

Hence this claim.

According to the defence, the plaintiff was initially paid a sitting allowance of K150,000 which was the approved allowance. In 2006, the allowance was increased to K600,000. The issue of remuneration for the plaintiff and the other members of the

Authority was resolved and fixed at K2million quarterly with effect from June, 2002.

At the hearing, the plaintiff's testimony was as follows: On the 14th June, 2002 the Minister of Home Affairs appointed him as chairman of the Police Public Complaints Authority. The appointment was pursuant to the **Zambia Police Act Chapter 107** of the **Laws of Zambia**. The letter of appointment stated that he would be paid allowances as stipulated in **Section 57(f)** of the **Act**. Initially, the Authority was beset with financial problems. As such, the plaintiff had to use his personal interventions to ensure that the secretariat was up and running. Eventually, the Authority was given a sum of K30million. The allowances at that time had not even been determined yet. The sitting allowances were only set and approved in 2006. Even then the remuneration was not fixed. On the 1st August, 2009, the plaintiff ceased to be Chairman and member of the Authority. When the Authority had received a grant from the Danish Embassy, the members had set for themselves sitting allowances. For the Chairman the figure was K300,000. When the Minister in 2006 set the allowances at K600,000 with effect from June, 2002 that meant that the plaintiff and other

members were entitled to a balance. Hence the claim for K24,300,000. As for the non-payment of the remuneration, he was claiming damages for breach of contract, inclusive of mental stress and anguish.

In cross-examination, the plaintiff replied as follows: He refused to accept payment of remuneration based the sum of K2million quarterly because that was a condition which was introduced after he had left and, therefore, did not apply to him.

That was the case for the plaintiff.

The defendant called one witness. The witness was Terence Chibani Ngwira, the Database Administrator at the Police Public Complaints Authority. His testimony was as follows: According to the information available on the Database, the members of the Authority, including the plaintiff, were owed arrears in allowances. In the case of the plaintiff the amount was K24,300 (new currency).

In cross-examination, the witness replied as follows: he was not aware that from June, 2002 to August, 2009, no remuneration had been approved by the Minister. He was not aware that the plaintiff had ceased to be a member of the Authority on 31st August, 2009, before the Minister had fixed the remuneration.

That was the case for the defendant.

From the documents filed on the record and the testimony adduced by both sides, the following facts are not in dispute:

- (i) On the 14th June, 2002, the Minister of Home Affairs appointed the plaintiff as chairman of the Police Public Complaints Authority for a period of three years on a part-time basis
- (ii) According to the appointment letter the plaintiff was to receive such allowances and remunerations as are provided for by **Section 57F** of the **Zambia Police (Amendment) Act No.19 of 1999**.
- (iii) The allowances and remuneration had not yet been determined
- (iv) The plaintiff and his fellow member set to work immediately
- (v) In the absence of determined allowances, the plaintiff as Chairman used to receive K300 as sitting allowance which the members had fixed as an interim measure.
- (vi) On the 14th June, 2005, the Minister of Home Affairs again appointed the plaintiff as Chairman of the Police Public

complaints Authority for another term of 3 years on a part-time basis

- (vii) On the 6th April, 2006 the Deputy Permanent Secretary in the Ministry of Home Affairs wrote to the Police Public Complaints Authority, informing them that the Cabinet had directed payment of the following allowances;
 - (a) K600,000 per sitting for the Chairperson
 - (b) K550,000 per sitting for the vice Chairperson, and
 - (c) K500,000 per sitting for the ordinary member
- (viii) The plaintiff's three year contract expired in June, 2008. The plaintiff, however, continued to render services to the Authority
- (ix) On the 2nd March, 2005, the plaintiff wrote to the Minister requesting to be relieved of his functions as Chairman of the Authority and member.
- (x) On the 8th October, 2009, the Minister wrote to the plaintiff, granting his request and also, retrospectively, deeming him to have been appointed as Chairman from the 17th June, 2008 to 31st August, 2009.

- (xi) The plaintiff, however, continued to pursue the issue of unpaid remuneration by way of a letter to the Minister dated the 13th October, 2009 and another letter to the President of Zambia dated the 22nd April, 2010.
- (xii) In July, 2010, the Minister set remuneration for members in the sum of K2million quarterly from the year 2002 to the year 2008 when the law was amended to provide for allowances only. It was emphasized that the remuneration would be paid only to members who had served from 2002 to 2008.
- (xiii) Following the fixing of the remuneration, the plaintiff was informed in writing that he was entitled to a total sum of K48million
- (xiv) The plaintiff did not agree with the rate of remuneration that was fixed by the Minister. Therefore he made representations to the Minister, stating that he and his fellow members in the Police Public Complaints Authority had been unfairly treated and discriminated against in comparison with their counter parts in the Judicial Complaints Authority who had enjoyed far much higher

remuneration which was paid monthly in addition to sitting allowances until the law was amended in 2008 to leave payment of sitting allowances only.

(xv) The plaintiff, then, commenced this action.

I find the foregoing as facts.

The main claims before me are two: (i) the claim for breach of contract on account of alleged failure by the Minister to set the remuneration, and; (ii) payment of arrears in sitting allowances amounting to K24,300,000.

I would like to resolve the claim for payment of arrears of sitting allowances first. The plaintiff's explanation as to how the arrears arose was as follows: From 2002 to 2006, the Minister had not fixed any rate for sitting allowance or remuneration. In the meantime, the members of the Authority fixed an interim sum of K300,000 per sitting for the Chairman. In 2006, the Minister fixed the allowances which I have stated above. The allowances were far above the interim ones which the members used to give themselves. The Ministry, however, did not pay to the members the difference, hence the arrears.

There has been no explanation from the defendant as to why the arrears were not paid to the members. Infact the defendant's own witness said that according to the Database, the plaintiff was owed K24,300,000 which is now K24,300.

Section 57F of the **Zambia Police Act, Chapter 107** of the **Laws of Zambia**, before its amendment in 2008, provided as follows:

“The members of the Authority shall be paid allowances and remuneration determined by the Minister.”

Clearly the allowances that were to be paid to the members were those determined by the Minister. The interim sitting allowances which the members of the Authority gave to themselves were not allowance determined by the Minister. Therefore, when the Minister fixed the allowances in 2006, they were with effect from the inception of the Authority. It follows that since the interim allowances were below those that the Minister fixed, the members were entitled to the difference. Therefore the plaintiff has proved that aspect of the claim and, since the sum claimed is not in dispute, I will award the plaintiff judgment in the sum of K24,300 in new currency.

I come back to the main claim; that the defendants were in breach of contract on account of the Minister's failure to determine and pay to the plaintiff remuneration.

At the time that the Police Public Complaints Authority was set up, no remuneration or sitting allowance had been set by the Minister. The Minister did subsequently set the allowances in 2006 and the remuneration in 2010. The plaintiff's dispute with the remuneration that was set is that it is very inferior to that which members of the Judicial Complaints Authority used to receive before the law abolished remuneration for part-time members of Commissions.

Section 57F which I have cited above shows that the power to set remuneration and allowances was vested in the Minister. The section did not provide guidelines as to how the Minister should arrive at the amount. Most important is the fact that the section did not require the Minister to have regard to what was payable in other Authorities in arriving at the amount. Therefore, the Minister of Home Affairs cannot be faulted for arriving at the sum of K2million per quarter of the year. I find, therefore, that the Minister of Home Affairs did not breach the contract when he set the above amount

as remuneration. The first claim therefore fails. With it fails the consequential claim for damages for mental strain and anguish.

However, since the plaintiff's claim for arrears of sitting allowances has succeeded, the plaintiff will have costs of this action.

Dated the^{4th}..... day of^{February}.....2016



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E.M.Hamaundu
HIGH COURT JUDGE