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

2001/HP/0236

Between:

WATSON KANYIKA **PLAINTIFF**

AND

ZAMBIA RAILWAYS LIMITED **DEFENDANT**

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 27TH MAY, 2020 - IN CHAMBERS

For the Plaintiff : *Mr. Mukande- Messrs. M. L. Mukande & Company*
For the Defendant : *Mr. N. Sampa- Norman Sampa Advocates*

JUDGMENT

CASES REFERRED TO:

1. *Zambia Oxygen, Zambia Privitisation Agency and Paul Chisakula and Others (2000) ZR 27*
2. *Khalid Mohammed v Attorney General (1982) ZR 49*
3. *Development Bank of Zambia vs Dominic Mambo (1995-1997) ZR 89*
4. *National Milling Company Limited vs Simataa and Others (2000) ZR 91*
5. *Zambia National Commercial Bank Plc v Geoffrey Muyamwa and 88 Others, SCZ/8/262/2016 (Selected Judgment No. 37 of 2017)*
6. *Attorney General v Chibaya & Others, Appeal No. 70/2011 SCZ/8/44/2011*

In this matter commenced by writ of summons and statement of claim the plaintiff seeks the following reliefs:

1. *That the defendants be ordered to rework the plaintiff's retirement package to take into account the allowances;*

2. *Upon reworking of the retirement package as in (a) above, the defendants be ordered to apply the co-efficient of 4;*
3. *The defendants be ordered to pay the plaintiff the difference between what he should have been paid and what he was paid;*
4. *The defendants be ordered to pay interest as the court will deem fit on the difference due to the plaintiff;*
5. *Costs to be awarded to the plaintiff.*

The statement of claim shows that the plaintiff was an employee of the defendant from 22nd January, 1975, until 31st March, 1995 when he retired. The plaintiff enjoyed ZIMCO conditions of service in grade Z9/8, and was entitled to the following allowances:

1. *Servant*	*K72,716.40 per month*
2. *Entertainment*	*K48,000.00 per month*
3. *Utility*	*K11,520.00 per month*
4. *Telephone*	*K25,000.00 per month*
5. *Fuel*	*K3,000.00 per month*

On 28th March, 1995, the Government of the Republic of Zambia as the majority shareholders in Zambia Railways directed through ZIMCO, the holding company, that all allowances which were being enjoyed by employees under the ZIMCO conditions of service should be merged into salaries unconditionally. The defendants ignored the directive arguing that they had no capacity to

implement. Prior to the directive, on 20th July, 1994, the defendants wrote to the plaintiff to unilaterally reduce the plaintiff's emoluments without his consent which action was in violation of his conditions of service. When the defendant was subsequently retired on 31st March, 1995, the defendant refused to work out the plaintiff's retirement package taking into account the merging of the basic salary with allowances.

On 19th July, 1994, the defendants through a circular to all management employees who had served the company for 16 years and above would have a co-efficient of 4 in working out benefits. However, the defendants used co-efficient 3 in working out the plaintiff's retirement package when in fact the plaintiff had served the company for twenty years. One Mr. P.K. Chabwe who was in a similar situation as the plaintiff with regard to the wrong use of the co-efficient 3 had his package reworked and paid the difference.

In defence, the defendants averred that all the allowances which employees serving on ZIMCO conditions of service in the defendant's organization had been merged with salaries in July, 1994. The internal correspondence dated 28th March, 1995 between the Minister of Finance and the Director General of ZIMCO did not apply to the defendant as by then the allowances had been merged with salaries. At the time the plaintiff was seconded to Zambia Concrete Limited in 1995 all the allowances

had been lumped to his salary. The plaintiff's retirement package was correctly calculated on the rate of pay as merged with the allowances in 1994.

In April, 1995, the defendant and the Railways Workers' Union of Zambia agreed a uniform retirement/retrenchment package. Under the agreed uniform package, the plaintiff was entitled to Factor 3. Mr. P.K. Chabwe was paid on Factor 4 because of the short-term contract which he signed with the defendant.

At trial, the plaintiff testified on oath and did not call any other witness.

He testified that he had worked for the defendant company for 20 years. He referred the court to page 30 of his bundle of documents on how his terminal benefits were calculated. He added that the allowances he used to get included education allowance, which was K150 per child per term; he had three children. He pointed out that pages 8 to 9 of the bundle of documents showed his allowances.

It was further his testimony that he was retrenched on 31st March, 1995. He showed the court the computation on page 30 and pointed out that because he had worked for 20 years, the calculation was supposed to be made on co-efficient 4. This was in accordance with ZIMCO conditions on pages 1 to 3 of the bundle

of documents. It was his testimony that these are the conditions under which he served until his retirement. He stated that his basic monthly pay was K218, 750.00.

He further referred the court to pages 27 to 29 showing how a junior officer, Mr. Chabwe, was in the same year paid under the correct Factor 4. It was his testimony that Mr. Chabwe had initially been paid on Factor 3 but when he wrote the letter on page 28, his calculations were corrected and was paid under Factor 4.

In cross examination, he confirmed that in reference to the document on page 1 of his bundle of documents dated 18th August, 1992, he was written to with the option to be retrenched. The conditions which would have been applicable to him if he had opted to be retrenched were those on page 2, with Factor 4. Further that those conditions were superseded by those on page 18 dated 19th July, 1994. He further confirmed that Mr. Chabwe's letter on page 28 referred to a contract. In reference to his letter on page 30, he confirmed that he was not retrenched but was seconded to another institution, Zambia Concrete, fully owned by Zambia Railways. Before he left the defendant company his position was Senior Accountant Grade Z8 and under the new position his grade was Z9/8. He stopped working for Zambia Concrete in 1996. He was paid benefits on the position of Chief

Accountant Grade Z9/8. He was referred to two letters, one on page 20 and another on page 30.

The plaintiff further confirmed that all the allowances were incorporated into the salary. He told the court that the allowances on page 3 of the statement of claim were per annum.

In re-examination, the plaintiff clarified that the claim he brought to court has nothing to do with Zambia Concrete. He testified that if you are retrenched the co-efficient was still Factor 4. He made reference to pages 18 and 19 of the bundle of documents. He was given a new salary (on page 2) which did not incorporate the allowances. The salary at the time was K1,797 but after merging servant, transport, utility and entertainment allowances the salary came to K2,277.

Mr. Davies Mukonkela, the Director Human Resource and Admin, gave evidence on behalf of the defendant.

He testified that he joined the defendant company in 1978. In 1992 the company decided to retrench some employees and as per company policy, whenever need arose to retrench management and the union would agree on the package. That particular year a retrenchment package was agree for implementation. When the exercise was completed the package ceased to be effective.

However, in 1995 there was need again to retrench some employees from the company. Another package was negotiated and modalities to apply specifically for the retrenchment exercise for 1995. The agreement was effective 8th February, 1995. The salient features of the two retrenchment packages of 1992 and 1995 is that for 1992, employees who had served for 20 years and above were entitled to Factor 4 whereas those in 1995 were entitled to Factor 3. This is what applied to the plaintiff whose retrenchment was on 31st March, 1995. The witness referred to pages 2 and 3 of the bundle of documents. Also referred to page 1 and 2 of the defendant's supplementary bundle of documents. He reiterated that the co-efficient for the claim we are dealing with is 3. This was contained in circular No. 1 dated 28th February, 1995. When the plaintiff was retrenched the package that was applicable to him was the one agreed upon on 7th April, 1995 and came into effective on 8th February, 1995.

It was further his testimony that Mr. Chabwe retired from the defendant company upon reaching retirement age and the retirement package was different from a retrenchment package. It is for this reason that his package was calculated under co-efficient Factor 4. Secondly, Mr. Chabwe was serving a specific contract where it was expressly stated that upon his retirement his benefits would be calculated under Factor 4. He referred the court to page 27 of the plaintiff's bundle of documents, the letter written to Mr. Chabwe. He also made reference to the letters on

page 28 and 29, and exchange of correspondence over the wrong calculation of Mr. Chabwe's package.

He further testified that the Director of ZIMCO made a resolution that recurring allowances (paid on a monthly basis) should be merged with the salary. However, there was a proviso that this would depend on each company's capacity to absorb the costs. In line with this directive on 1st August, 1994, the defendant identified the recurring allowances which were being paid along the salary and merged those allowances, with an exception of some allowances. These are the allowances the plaintiff is claiming.

He went on to discuss each allowance separately; retention allowance was for highly qualified professionals and in the case of the plaintiff who was in an accounting field the criterial set was such that he had not attained it. This is why he could not be paid the retention allowance. The criteria was contained in a Statutory Instrument which was issued. It only recognized Bachelor of Arts in Accountancy and Zambia Diploma in Accountancy with 8 years post experience in qualification which the plaintiff had not attained.

The education allowance was not being paid as part of the salary. It was either paid directly to the school or paid on reimbursement if the employee used their own money. This is why it could not be

added to the plaintiff's salary and it was not unique to him alone. This is how it is done to date.

It was further his testimony that when the plaintiff was working for the defendant, he was in grade Z7 as a Senior Accountant. When he left the defendant, he was appointed Chief Accountant at Zambia Concrete Limited. The grade could have been as he claims there but not at the defendant company.

He explained that what was showing on page 15 of the plaintiff's bundle of documents was that for the plaintiff's grade, it was 80% of the cost. This could not be merged as it was not paid on a monthly basis with his salary.

He moved to the telephone allowance where he said the plaintiff was not entitled to the allowance. There was a phone facility for the people in operations. However, in 1994 to 1995 the company decided to do away with the loan facility and the phone facilities for all employees. For those who were entitled to the phone facility were given an allowance.

As for the furniture maintenance allowance, the witness told the court that this was not one of the allowances grossed up with the salary because it was being paid as a one off at the end of each year and not as part of the salary. That is the reason why it was not grossed up in the plaintiff's case.

It was his testimony that other allowances such as water, electricity, servant and transport allowance were grossed up to the salary.

The document on page 30 shows when the plaintiff was called back from secondment in 1996 to pay him his dues from the defendant. The plaintiff's salary was K218,750 per month. He ended by saying that there is no pay slip to challenge the position of the defendant.

The matter was adjourned for cross examination but the witness never came back even after many adjournments. At the last sitting, on 11th October, 2019, Counsel for the defendant told that if the witness did not come at the next hearing which was set for 28th October, 2019, the parties would just file submissions and the matter would be adjourned for judgment. Since then nothing has happened. However, I received submissions from the plaintiff filed into court on 25th November, 2019. Based on the discussion we had with both Counsel, I proceeded to render this judgment. One of the things that came up in the discussion, as the record would show is that this case is very old and it was not in the interest of justice to delay it any further.

In the submissions, Counsel for the plaintiff contended that the variation of conditions of service for the better and accepted by an employee cannot later be altered to his disadvantage without his

consent. The Supreme Court has stated in a number of decisions one of them being ***Zambia Oxygen, Zambia Privitisation Agency and Paul Chisakula and Others (2000) ZR 27; Ngandwe and Others v Zamox Limited and Another SCZ Judgment No. 13 of 1999 and Kabwe v BP Zambia Limited (1995-1997) ZR 218.*** Ngulube, CJ as he then was, said the following in the ***Zambia Oxygen, Zambia Privitisation Agency and Paul Chisakula and Others (2000) ZR 27***[1]:

> ***"Conditions of service already being enjoyed by the employer cannot be altered to their disadvantage without their consent nor can this principle depend on whether the employee are continuing in employment or they have separated. The principles for the safeguarding of the terms of the contract already being enjoyed cannot vary in the manner proposed."***

It was contended that the plaintiff used to enjoy the ZIMCO conditions and terms of employment in grade Z9/8, the benefits of which are clearly tabulated at page 5 to 12 of the plaintiff's bundle of documents. These conditions and terms of employment could not be altered for the worse without the consent of the concerned employee. It this is done it amounts to violation of the employee's rights and entitlement for which a claim can validly be made.

Counsel submitted that in an attempt to water down the employee's entitlement, the defendants wrongly and without the consent of the employee's rationalized perks (paragraph 1, page 20 of the plaintiff's bundle of documents), this was a violation of employee's rights and arrears so withheld are due.

It was further contended that the plaintiff served for a period of twenty (20) years thus, there was no way his terminal benefits could be computed on the Factor of 3 (page 30 of the plaintiff's bundle of documents). In his letter of termination, the defendants acknowledge that the fact that he served for 20 years but wrongly applied Factor 3 instead of 4 as provided in his conditions of service at page 22.

It was submitted that the evidence of defendant's witness implied that the plaintiff was entitled to Factor 3 pursuant to a circular issued by Management and the Union on 7th April, 1995 (page 1 to 2 the defendant's bundle of documents). However, the testimony of the defendant's witness was not subjected to cross examination as he declined to attend court. Furthermore, the circular was issued long after the plaintiff left employment on 31st March, 1995. It was submitted that the circular is therefore irrelevant. The new conditions between Management and the Union could only be applied to the new employees after 31st March, 1995.

It was submitted that the plaintiff succeeds in his prayers on the balance of probabilities.

I am indebted to Counsel for the foregoing submissions.

It is a settled principle of law that he who alleges must prove. The Supreme Court in the celebrated case of ***Khalid Mohammed v Attorney***

General (1982) ZR 49[2]; where it was stated by Ngulube, CJ, as he then was that:

> ***"A plaintiff must prove his case and if he fails to do so the mere failure of the opponents defence does not entitle him to judgment.***
>
> ***I would not accept a proposition that even if the plaintiff's case has collapsed of its own inanition or for some reason or other, judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed..."***

In this case, it is not in dispute that the plaintiff worked for the defendant company for 20 years. That he was retrenched on 31st March, 1995. It was also not in dispute that the plaintiff's basic salary was K218, 750 after grossing up with allowances.

What is in dispute is how his retrenchment package was calculated. Particularly, whether the calculations should have been based on co-efficient Factor 3 or 4. There was also a dispute as to as to whether the plaintiff was entitled to other allowances other than the ones that were grossed up to form the basic salary. Related to the allowances was also a dispute of the grade of the plaintiff.

The plaintiff relied on the conditions of service allegedly awarded to him in 1992, contained in a letter on page 2 of the plaintiff's bundle of documents. He further made reference to pages 5 to 12 of the same bundles of documents showing the ZIMCO conditions

and the plaintiff's grade of employment. He is further relying on the conditions which were further revised in a circular dated 19th July, 1994. The plaintiff alleges that he was personally written to concerning the change of conditions in a letter dated 20th July, 1994. The letter is on pages 20 and 21 of the plaintiff's bundle of documents. His argument is that in both the 1992 and 1994 conditions the co-efficient factor that applied to him is 4.

The defendant's argument is that the conditions of 1992 and 1994 being referred to by the plaintiff are actually negotiated retrenchment packages. The defendant's witness pointed out that the package of 1992 ceased to be applicable after the retrenchment exercise was completed. The plaintiff was paid off in accordance with the package for 1994, as he was retrenched in 1995.

On page 1 of the plaintiff's bundle is a letter from the defendant to the plaintiff requesting him to choose between being retrenched or opting for a position of Assistant Accountant within the Union. The letter further stated that should he not opt for the position he would be retrenched upon the attached conditions. However, if he chose the position of Assistant Accountant in the Union, it would be on the Union conditions. The letter clearly shows that what was attached on pages 2 and 3 is the retrenchment package. The letter shows that the plaintiff opted for the position of Assistant Accountant within the Union. At this point I agree with the

defendant's witness that the retrenchment package of 1992 did not apply to the plaintiff.

Page 4 of the plaintiff's bundle of documents shows a memorandum for the implementation of the revised ZIMCO corporate terms and conditions of service. The said conditions were attached to the memorandum. I will only pick out what is being claimed by the plaintiff herein:

1. *Schools, those who were entitled were Grade Z8/7 to Z9/8. This was 80% of the school fees but employees may opt for a fixed allowance;*
2. *Telephone allowance, this was for Grade Z8/7 to Z9/8, K600 per month for local calls;*
3. *Retention allowance, there was no specification of grade but simply stated that it was to be considered with the implementation of new salaries.*
4. *Furniture maintenance, applicable to Grades Z8/7 to Z12. Grade Z8/7 to Z9/8 were entitled to K50,000 per annum.*
5. *Special entertainment allowance to which Grade Z8/7 to Z9/8 were entitled to K48,000 per annum.*
6. *Transport allowance to which Grade Z7/8 to Z8/9 were entitled to K35,000 per annum*
7. *Utility allowance, where Grades Z5 to Z9/8 were entitled to K30,000 per annum.*

On 26th July, 1993 there was further correspondence from the Group Investment Director Human Resources and Administration (ZIMCO) concerning revised compensation package, in relation to clauses 28, 39, 40 at appendices A1, A2 and A3, for surplus labour for employees serving on ZIMCO conditions of service. The revision was effective 1st April, 1993. It provided for twenty-four (24) months pay plus one month's salary inclusive for each completed year of service. In addition, the affected employees would be paid repatriation, three months in lieu of notice and accommodation for four months after last shift or housing allowance covering four months. Further, employees who have served within the Group for a minimum of ten (10) years of continuous service will be entitled to a long service gratuity in accordance with clauses 24, 29, and 30 at Appendices A1, A2, and A3 of the ZIMCO Corporate Terms and Conditions of Service.

By letter dated 20th July, 1994, the plaintiff was informed of new conditions of service, which according to the letter were necessitated by financial problems the company was experiencing. Concerning house rent, it was K7,500, K5,000 and K3,000 per month for heads of departments, high costs houses and medium costs houses, respectively. The telephone allowance and payment of rentals would be borne by himself if he wished to continue using the facility. He would no longer be entitled to a domestic servant but the servant allowance would be lumped to his basic salary. The entertainment allowance, utility allowance, transport

allowance, servant (as already indicated) and cushion allowance would be lumped to his basis salary. The salary was thus adjusted as follows:

Current salary	K1,797,000
Add one not Z8	96,000
Add servant allowance	240,000
Add utility allowance	30,000
Add cushion allowance	-
Add transport allowance	35,000
Add entertainment allowance	48,000
Total salary, effective 1st August, 1994	K2,277,000

Furthermore, on 19th July, 1994 there was a circular no. 2/94 which contained revised conditions of service. The conditions related to, among other things, retirement package for both optional and compulsory separations. It stated that the employee who separates shall receive in addition to the benefits due: Monthly ROP x co-efficient Factor x service period in years. The Factor applicable to those who had serviced for 16 years and above was stated to be 4. This package was effective 1st April, 1994.

The plaintiff exhibited a letter dated 25th April, 1996, on page 30 of his bundle of documents showing the terminal benefits that were paid to the plaintiff. The benefits were following the de-secondment to the defendant company and subsequent transfer to Zambia Concrete Limited with effect from 31st March, 1995. The calculations therein show that the co-efficient that was applied to the plaintiff was Factor 3.

The defendant relied on the retrenchment package communicated to all employees on 7th April, 1995. The letter stated that the package was effective 8th February, 1995 and was applicable to both union represented and non-represented employees and superseded the package agreed upon in 1992, as well as the one contained in the Managing Director's circular no. 1 dated 28th February, 1995.

The co-efficient Factor 3 was thus based on the communication of 7th April, 1995. I have considered the fact that both the plaintiff and defendant agreed that the plaintiff was retrenched on 31st March, 1995. This before the communication of 7th April, 1995. From the testimony of the defendant's witness, each time there was a retrenchment, a package would be agreed between management and the union. My understanding especially considering the letter of 18th August, 1992, is that the package is agreed before the employees actually ago on retrenchment. The letter of 18th August, came with the package attached. The plaintiff

opted to remain in the position of Assistant Accountant within the union. The revised conditions contained in the circular of 3rd November, 1992, back dated to 1st October, 1992 affected the plaintiff as management represented employees. These were further revised by the letter dated 20th July, 1994 written to the plaintiff as a Senior Accountant, as tabulated above. Other than the foregoing, there was no other agreement concerning the plaintiff's package until after his retrenchment on 31st March, 1995.

While it is unusual that the retrenchment package should be agreed subsequent to one's retirement, the plaintiff's retrenchment is quite unusual as well. The evidence of his retirement is a letter on page 30 of the plaintiff's bundle of documents, dated 25th April, 1996 (aforementioned).

The letter is captioned: *"Staff Rationalisation"*. The states as follows:

> *Following your descondment to Zambia Railways Limited and the subsequent transfer to Zambia Concrete Limited with effect from 31st March, 1995, Management has decided to pay you off your terminal benefits for the period you served Zambia Railways Limited as follows:*
>
> *Package*

Monthly Rate of Pay x Served Period x C-efficient Factor

K218,750.00 x 20 x 3= K13,125,000.00 before tax

Gratuity

10 x K218,750.00 x 1 = K2,187,500.00

10 x K218,750.00 x 1.5 = K3,281,250.00

K5,468,750.00 tax to be borne by the company.

Pension

The rules of Zambia Railways Limited pension scheme shall apply.

Other contents of my letter dated 10th February 1995 will remain unchanged. However, your future employment effective 1st April 1995, shall be determined by Zambia Concrete Limited.

Signed:

CCF Mambwe

One thing that is certain in this letter is that the plaintiff could not be affected by the letter dated 7th April, 1995, as this letter clearly talks about the plaintiff being transferred to Zambia Concrete Limited on 31st March, 1995. This was before the said transfer.

However, this letter says nothing about the retrenchment of the plaintiff, neither does it talk about the package that was

applicable, though it was generally accepted by the plaintiff in cross examination that he was retrenched. I am of the opinion that the plaintiff was actually retired from the defendant company and then seconded to Zambia Concrete Limited. Going by the testimony of the defendant's witness, there was always a package that was negotiated whenever there was a retrenchment. In the case of the plaintiff no such evidence was given, except for what came after the plaintiff had been retired. It is therefore only just that the calculation of the retirement's package be based on the co-efficient that was earlier communicated to the plaintiff, which is Factor 4. In the case of ***Development Bank of Zambia vs Dominic Mambo (1995-1997) ZR 89***[3] it was stated:

> ***"....as at that date the only way of calculating what... was to apply the only rate that was known to the parties, that is, the old rate."***

Further in the case of ***National Milling Company Limited vs Simataa and Others (2000) ZR 91***[4] in which *Ngulube CJ*, as he then was said the following:

> ***"In this regard, we accept that to a person leaving employment the arrangements for terminal benefits – such as pension, gratuity, redundancy pay and the like – are most important and any unfavorable unilateral alteration to the disadvantage of the affected worker and which was not previously agreed is not justifiable and in this connection it is unnecessary to place a label of basic or non-basic on it."***

I agree that similarly circumstanced people should be treated the same, as guided in the case of ***Zambia National Commercial Bank Plc v***

Geoffrey Muyamwa and 88 Others, SCZ/8/262/2016 (Selected Judgment No. 37 of 2017)[5] where the Supreme Court stated the following:

> ***"In effect, we took the position that the Respondent's terminal benefits should be calculated in the manner those of Kalaluka and Mwiinga were calculated because they were similarly circumstanced..."***

However, in this case there is no proof that the plaintiff similarly circumstanced as Mr. Chabwe. I have no reason to doubt the differences between the two pointed out by the defendant's witness in the absence of any other evidence. The plaintiff has just exhibited correspondence concerning the calculations of Mr. Chabwe's package. This is not enough.

In fact, the position of being similarly circumstanced was further clarified by the Supreme Court in the ***Geofrey Muyamwa*** case on page J57 of the judgment as follows:

> ***"We have in the past held that the wording of sections 3 and 85(6) of the Industrial and Labour Relations Act, reveals that orders made by the then Industrial Relations Act, reveals that orders made by the then Industrial Relations Court can have binding effect on the parties to the action and any other person who is affected by that order. However, this is the case only in cases where the affected person's services were terminated at the same time and in the same manner. This is what amount to 'similarly circumstanced" which is not applicable in this case because whilst the mode of payment for the Complainants in the Kalaluka and Mwiinga case was similar to what the Respondents in this appeal sought to be paid, the mode of separation was different because they declared redundant and at a different time. For this reason the principle of similarly circumstanced was wrongly applied by the court below...."***

All in all, it is very difficult to follow what allowances the plaintiff was entitled to. The evidence just shows circulars and some letters written to the plaintiff. For some exhibits, it is difficult to tell whether they applied to the plaintiffs, as they are just pieces of paper showing allowances. It is at least agreed by both parties that the allowances were grossed up to the basic salary.

I face the same difficulty in determining the plaintiff's Grade. Apart from stating that he was Grade Z9/8, he did not bring any proof to back his assertions. This is difficult especially in the face of an objection as the defendant's witness testified to this court that he was Grande Z7. It would have been helpful if the plaintiff had exhibited some pay slips to show exactly what he was entitled to.

In the case of ***Attorney General v Chibaya & Others, Appeal No. 70/2011 SCZ/8/44/2011***[6] the Supreme Court in a judgment for assessment of damages, which I find useful on this point, had this to say:

> ***"....We also wish to observe that the respondent's evidence was given by PW1, the so called 'Debt Collector', who had no personal knowledge of the respondent's actual salaries and conditions. He presented his own calculations which were based on unsubstantiated information. The Deputy Registrar ought not to have accepted this evidence over the evidence of the appellant's witnesses who were in the system and had firsthand information of the salaries and conditions of service that pertained in the system."***

In that case the cases that were being referred to by the court such as ***Mary Musambo Kunda v The Attorney General (1993-94) ZR1*** and ***George Chishimba v Zambia Consolidated Copper Mines Limited (1999) ZR 198***, the court's direction that a plaintiff ought to adduce evidence such as pay slips to support a pecuniary claim.

In the premises, I will allow a recalculation of the package based on the co-efficient Factor 4; the plaintiff be paid the difference between what was already paid and the new calculations, with interest thereon. However, the claim for allowances fails for the reason I have stated above. The costs are for the plaintiff in this case.

Leave to appeal is hereby granted.

DELIVERED AT LUSAKA THIS 27TH DAY OF MAY, 2020.

G.C. CHAWATAMA
JUDGE