

IN THE HIGH COURT FOR ZAMBIA

2006/HP/0114

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA
(Civil Jurisdiction)

B E T W E E N:

PHILIP SINCLAIR MAINZA



PLAINTIFF

AND

KARIBA NORTH BANK COMPANY LIMITED

1ST DEFENDANT

ZESCO LIMITED

2ND DEFENDANT

Before the Honourable Lady Justice F. M. Chisanga, this day of 2020

For the Plaintiff:

Mr. R. Mainza of Mainza & Company

For the 1st Defendant:

N/Az

For the 2nd Defendant:

Mr. M. V. Chiwale, Senior Manager, Legal Services

R U L I N G

Cases cited:

- 1. *Lisulo and Lisulo (1980) ZR 75***
- 2. *Zamtel vs Aaron Mweene Mulwanda Paul Ngandwe SCZ Judgement Number 7 of 2012.***

This matter revolved around the conditions of service in which Mr. Mainza served the defendants, and his entitlements on retirement. I rendered judgment on 14th April 2020. However, Mr. Mainza has come back to the court, seeking a review of my decision.

The premise of this application is, as revealed in the affidavit in support sworn by Mr. Mainza, as follows:-

1. The order that the underpayment of salary and attendant allowances be assessed by the deputy registrar must be reviewed as it is at variance with the letter at pages 41 and 42 of the plaintiff's bundle of documents, which backdates the upgrade to 1st April 1999. The effective date was 1st April 1999, and not October 2003.
2. The claim for K467,500,984. 17 as pension benefits which would have accrued to him had he retired at 60 years in accordance with the pension rules, coupled with the evidence he adduced that he did not qualify to be a pensioner because he did not retire at 60, meant that he incurred loss as the result of being retired at 50. Therefore the statement in the judgment that the plaintiff did not claim that he had lost out on pension benefits as a result of being retired earlier than 60 years of age should be reviewed.
3. The rate of 5% as short term deposit is low, when compared to the average short term deposit rate as determined by Bank of Zambia.
4. He was only obliged to vacate the company house on 1st April 2010, after the defendant had paid him his repatriation allowance on 15th March 2010, and vacated the house on 1st April 2010 as directed by the 2nd

defendant in its letter addressed to him. The letter addressed to him is at variance with the consent settlement order to that effect and should be varied.

The opposition to the application is as follows:-

- i. The plaintiff's arguments appear to wholly relate to further grounds on matters and evidence ably considered by this honourable court.
- ii. The rate of interest at 5% as short term deposit rate, should also apply to the defendant on the rentals, should the court be inclined to accede to the plaintiff's application.
- iii. The plaintiff actually vacated the house on 4th May 2010, and not on 1st April 2020.
- iv. The plaintiff's application is not only frivolous, but an attempt to re-open the case.

I have considered the arguments tendered by the parties. As per ***Lisulo and Lisulo¹*** cited by learned counsel for the defendant, there must be sufficient grounds to motivate a judge to review their decision. This entails that the evidence brought was not available at the hearing, but discovered afterwards.

Also, it must be shown that the evidence could not have been discovered with due diligence. The power to review is not intended to afford a 'second bite' at the dispute, obviously intended to elicit a favourable response.

The first issue relates to the period when Mr. Mainza should have been upgraded to grade M7. At paragraph 113 of the judgment, I referred to letter dated 8th July 1999, although the judgment reveals a typographical error stating the year as 1991. Be that as it may, the contents of the letter at page 41 are reflected in paragraph 113. My reasoning is in paragraph 115 of the judgment, and at paragraph 118, I stated when he should have progressed from grade 6, according to the progression chart. Having thus reasoned, it is not competent, under review, to re-open this issue, and begin to reconstrue the import of the letter at page 41 of the plaintiff's bundle of documents. The proposed exercise cannot be validated under the review jurisdiction exercisable after trial, and judgment. Review on this ground is refused.

I turn to consider my finding that the plaintiff had not claimed that he had been underpaid his pension as a result of being retired at 55 and not 60. In my judgment, at paragraph 120, I noted that Zambia State Insurance had stated that it would be unable to meet 100% of the normal pension retirement benefits as a result.

I moreover noted, in paragraph 121 that Mr. Mainza's case was distinguishable from the *Unyibi* case, as the evidence did not show that he was merely refunded his contributions. I did erroneously state that the plaintiff did not claim that he had lost out on pension benefits as a result of being retired earlier than 60 years of age. Be that as it may, that error cannot be rectified by way of review. The amended statement of claim was before the court, and the manifest intention of the court cannot be said to have been misstated, given the reasoning in paragraph 121 of the judgment. Review is not the appropriate avenue to correct this error. See ***Zamtel vs Aaron Mweene Mulwanda Paul Ngandwe²***.

Turning to the interest awarded as short term deposit rate, this error is not rectifiable. My intention was expressly revealed. If I had expressed doubt concerning the applicable rate, perhaps review would have been appropriate. The danger of entertaining this ground lies in the fact that it is a party who approached the court to correct a rate of interest expressly stated for being wrong, and not the court itself that realized it had made an error.

I next turn to the order that economic rentals the plaintiff should have paid be assessed from December 2004. I have since been availed with the Consent Settlement Order, which was not on record. The order reveals that the parties agreed that the defendant was to pay the plaintiff the sum of K5,000,000.00 and the plaintiff was to vacate the house by the 1st day of April 2010. However,

the plaintiff only vacated the house on 4th May 2010. Therefore, the plaintiff will pay economic rent from 1st April to 3rd May 2010 when he vacated the house, upon being paid repatriation allowance as agreed. The rentals will bear interest at average short term deposit rate as indicated in the judgment.

The application for review having partially succeeded, each party will bear own costs.

Dated the^{21st}.....day of^{AUGUST}..... 2020



F. M. CHISANGA
HIGH COURT JUDGE