

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

2011/HP/1120

BETWEEN:

**FELIX MUSONDA & 29 OTHERS**

Plaintiffs

AND

**ZAMBIA TELECOMMUNICATIONS  
COMPANY LIMITED**



For the plaintiffs: Mr. M. Mando – Messrs M L Mukande and Company

For the defendant: Mr. K. Kamfwa – Messrs Wilson and Cornhill  
Advocates

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## **RULING ON INTERPRETATION OF AWARDS**

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### **Case cited:**

**1. JAMES MANKWA ZULU v CHILANGA CEMENT PLC – APPEAL  
No. 12/2004.**

### **1.0 INTRODUCTION**

1.1 This matter comes to this Court by way of a reference by the learned Deputy Registrar, Mrs. Arida Chulu for interpretation of the awards that I made in my judgment dated 17<sup>th</sup> January, 2014 in light of the

Supreme Court's judgment dated 22<sup>nd</sup> February, 2017 in an appeal concerning the same parties.

## **2.0 BACKGROUND**

2.1 In this Court, the plaintiffs who were former employees of the defendant sought the following reliefs:

- 1) Retirement packages;**
- 2) Allowances on gratuity paid;**
- 3) Housing allowances from date of retirement until full payment of terminal benefits;**
- 4) Alternatively damages for breach of employment contract;**
- 5) Any other relief the court may deem fit;**
- 6) Interest; and**
- 7) Costs."**

2.2 After hearing the matter, this Court found in favour of the plaintiffs and awarded them the following reliefs:

- 1) Retirement packages – that the defendant pays them in full, that is, salary plus allowances;**
- 2) Housing allowances – that the defendant pays them housing allowances from the date of retirement when the retirement benefits became due until date of full payment of retirement benefits;**
- 3) Repatriation – to include the calculation or computation of allowances to the basic salary; and**

**4) Interest – that the sums of money due to the plaintiffs be paid at the average short term deposit rate from date of writ of summons to date of judgment, and thereafter at Bank of Zambia average lending rate up to payment.**

2.3 In the High Court judgment, salary was defined to mean salary plus allowances.

### **3.0 APPEAL AND DECISION OF THE SUPREME COURT**

3.1 The defendant, being dissatisfied, appealed to the Supreme Court raising two grounds of appeal as follows:

- 1. The court below erred both in law and in fact when it held that in computing the plaintiffs' long service gratuity, monthly salary was supposed to be used instead of basic salary contrary to the clear and express term in the conditions of service under which the plaintiffs served and retired; and**
- 2. The court below erred both in law and in fact when it held that the directive of the honourable Minister of Finance at the time to ZIMCO subsidiary companies as well as the definition assigned to the word salary by the Supreme Court in the case of JAMES MANKWA ZULU v CHILANGA CEMENT PLC<sup>1</sup> were applicable to the defendant company in the instant case.**

3.2 The Supreme Court considered the appeal and took the view that the issues for determination were as follows:

- 1. What salary should have been used to calculate the respondents (plaintiffs) long service gratuity and what is pay under the Zamtel conditions of service;**



**2. Was the directive by the then Minister of Finance applicable to the appellant (defendant)?**

3.3 With regard to ground one, the Supreme Court stated at page J10 to J11 as follows:

**"From the above, it is clear that the basic salary that is to be used when calculating the long service gratuity does not include allowances. It follows, therefore, that the basic salary, minus allowances is what should have been used to calculate the long service gratuity. We note that clause 8.3 uses the word "pay" and not "basic salary." However, we are of the view that clause 8.3 only provides the level of long service gratuity. The fact that the conditions of service specify how the long service gratuity should be computed shows that that was the intention of the drafters, that is, that it should be the basic salary without allowances that should be used to calculate the long service gratuity.**

.....

**We, therefore, disagree with the finding by the learned trial judge that the word salary includes allowances."**

3.4 Coming to ground two, the Supreme Court held as follows at page J12:

**"The trial judge rightly found that the Zamtel conditions of service are what applied to the respondents. Further, the Appellant Company was detached from ZIMCO in 1994. The directive was made in 1995. If, indeed the directive by the then Minister of Finance was meant to apply to the respondents who served under the Zamtel conditions of service, it is our view that the directive would have been drafted in such a way as to reflect the directive. This was not done. What was done was that the conditions of service stated the exact**



**manner the terminal benefits ought to have been calculated and this was acceptable to the respondents. As regards the case of JAMES MANKWA ZULU & ORS v CHILANGA CEMENT PLC, we agree with the submission on behalf of the appellant that that case is distinguishable from the case at hand. In that case, the word salary was not defined and hence the Court defined it to include allowances. The situation is different in this case because the conditions of service expressly stated that the 'basic salary' shall not include allowances."**

3.5 Consequently, the appeal succeeded on both grounds.

#### **4.0 PROCEEDINGS BEFORE THE DEPUTY REGISTRAR**

4.1 Following the decision of the Supreme Court, the plaintiffs filed a notice of assessment of damages on 29<sup>th</sup> June, 2019 supported by an affidavit sworn by Alex Singogo, the 4<sup>th</sup> plaintiff. In the affidavit, the deponent stated that this Court awarded the plaintiffs all the claims endorsed on the Writ except for damages for breach of contract and any other relief the Court may deem fit. The other reliefs that were rejected were claims that were found to be statute barred.

4.2 The said Alex Singogo further deposed that from the awards made by the High Court and a consideration of the grounds of appeal to the Supreme Court, it was plain and he verily believed that the defendants only appealed against the awards for allowances and not the award for retirement packages and housing allowances. He further stated that the claim for retirement packages and the award thereof was very distinct as set out in the Statement of Claim and

that, consequently, the Supreme Court in determining the appeal, did not address the award of retirement packages.

- 4.3 He concluded by deposing that from the date of judgment, the defendant has not paid them their retirement packages as ordered by this Court. The plaintiffs have since computed their retirement packages and other claims as indicated in exhibits "**AS4 to AS28**" bringing the total to K31, 625, 492.91.
- 4.4 In response, the defendant caused to be filed into Court an application dated 3<sup>rd</sup> July, 2019 to strike out and dismiss the plaintiffs' notice of assessment. The application was supported by an affidavit sworn by Mulawo Mwaba, Counsel for the defendant herein.
- 4.5 He deposed that the plaintiffs were applying for assessment of retirement packages, housing allowances and interest. He stated that a perusal of the High Court judgment relied upon by the plaintiffs, clearly shows that this Court only awarded the plaintiffs retirement benefits, inclusive of allowances with the housing allowances to be payable until the full payment of benefits.
- 4.6 While referring to page J48 of the High Court judgment exhibited as "**MM1,**" the deponent stated that this Court came to the conclusion that Clause 8 and 9 of the conditions of service, refer to one and the same thing, and further that the retirement benefits were calculated excluding allowances. He further stated that the Court accepted that salary includes allowances and consequently found that the plaintiffs were not paid in full and that they were still owed retirement benefits.



- 4.7 He further deposed that the High Court only awarded the plaintiffs the underpayment on the retirement benefits in that allowances were supposed to be included in calculating the retirement benefits as the Court found that the wrong mode of calculation was used. The said Mulawo Mwaba stated that on appeal, the Supreme Court reversed this Court's finding and that consequently, there is no other claim that the plaintiffs are entitled to in the judgment of the High Court. He further stated that since the Supreme Court found that the plaintiffs were fully paid their retirement benefits by calculating the same using the basic pay, it follows that the plaintiffs are also not entitled to housing allowances. He concluded by stating that he verily believes that the plaintiffs' claims for payment of retirement packages and housing allowances are not recoverable in the circumstances.
- 4.8 When the matter was taken before the learned Deputy Registrar, Counsel for the plaintiffs, Mr. Mando stated that it was very clear that the point of difference between the two parties could only be resolved by the judge who delivered the judgment rendering an interpretation of the issues now in contention. He stated that the plaintiffs have taken a position that they were awarded the retirement package, while the defendant has taken the view that no such package was awarded. He thus prayed that the matter be referred to the trial judge with a specific question for determination, being whether the plaintiffs were awarded retirement packages or not, and that the application for assessment be stayed.

- 4.9 In response, Counsel for the defendants, Mr. Mwaba, objected to the application to refer the matter back to the trial judge on the basis that the judgment is very clear in terms of what was awarded to the plaintiffs.
- 4.10 In her ruling, the learned Deputy Registrar stated that her jurisdiction was limited to determining the quantum of damages to be awarded and not whether or not the plaintiffs were awarded damages. She found that there was a serious issue to be determined by the trial judge who delivered the judgment in order to give her a clear indication of what she should assess. In this regard, she referred the matter to this Court for interpretation.

## **5.0 THIS COURT'S CONSIDERATION OF ISSUES RAISED FOR ITS INTERPRETATION**

- 5.1 The plaintiffs have taken the view that they were awarded all the claims being retirement packages, allowances on gratuity paid, housing allowances, interest and costs. They hold the view that only damages for breach of employment contract and any other relief, were denied.
- 5.2 On the other hand, the defendant's position is that the Supreme Court reversed the High Court judgment, and that consequently, there is no other claim due to the plaintiffs as they were fully paid their retirement benefits by calculating them using the basic pay. In the view of the defendant, it followed that the plaintiffs are also not entitled to housing allowances.



5.3 With regard to retirement packages and allowances on gratuity, this Court dealt with the same at page J48 to J50. This Court found that Clause 9(a)(iii) and (iv) provided for benefits on retirement in accordance with the company's pension scheme and an addition of gratuity. Thereafter, this Court came to the conclusion that the plaintiffs were not paid their retirement benefits in full as the calculations excluded allowances. Consequently, this Court opined and found that:

**"... It is, therefore, correct that the plaintiffs' retirement benefits were calculated excluding allowances and this Court having accepted that 'salary' includes allowances in line with the Supreme Court's decision in the case of JAMES MANKWA ZULU & ORS v CHILANGA CEMENT PLC, accordingly finds that the plaintiffs were underpaid when the defendant used the wrong mode of calculation of their retirement benefits. Having found that the plaintiffs were not paid their retirement benefits in full, I accept that they are still owed retirement benefits and I, accordingly, order the defendant to pay them in full...."**

5.4 In its judgment, the Supreme Court reversed this Court's findings when it stated at page J10 to J11 that:

**"From the above, it is clear that the basic salary that is to be used when calculating the long service gratuity does not include allowances. It follows, therefore, that the basic salary, minus allowances is what should have been used to calculate the long service gratuity. We note that clause 8.3 uses the word "pay" and not "basic salary." However, we are of the view that clause 8.3 only provides the level of long service gratuity. The fact that the conditions of service specify how the long**

**service gratuity should be computed shows that that was the intention of the drafters, that is, that it should be the basic salary without allowances that should be used to calculate the long service gratuity.**

.....

**We, therefore, disagree with the finding by the learned trial judge that the word salary includes allowances."**

- 5.5 Consequently, in view of the Supreme Court's decision that the calculation of the retirement packages and gratuity of the plaintiffs should not include allowances, the inescapable conclusion to the issues raised is that the plaintiffs were paid the retirement packages and long service gratuity using the salary without allowances, and that they have no further claims to pursue on the issue. Therefore, the learned Deputy Registrar cannot assess the retirement packages and long service gratuity, in that regard.
- 5.6 Turning to the claim for housing allowances, this Court specifically stated in its judgment at page J50 that:

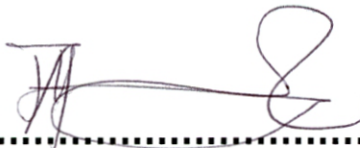
**"... Further, in pursuance of paragraph 5 in the plaintiffs' Notices of Retirement, I also find that the plaintiffs are entitled to monthly housing allowances until full payment has been made by the defendant in accordance with their own commitment which was couched in mandatory terms and therefore the defendant company cannot renege on it. As a way of emphasis the said housing allowances are to be paid from the date of retirement when the retirement benefits became due until date of full payment of retirement benefits."**



- 5.7 As can be seen from the foregoing, the claim for housing allowances was awarded on the basis that the defendant had underpaid the plaintiffs by not including allowances in the salary, and had thus not paid the retirement benefits in full. Therefore, since the Supreme Court found that allowances were not to be included in the salary when calculating retirement packages and long service gratuity and that the defendant had already paid the said benefits and gratuity on the basic salary, it follows that the claims for the plaintiffs were fully settled. Therefore, the said claims having been fully settled, it follows that the plaintiffs cannot claim for housing allowance unless the defendant did not pay the same while they were waiting for the said packages.
- 5.8 The claims for retirement packages, long service gratuity and housing allowance having failed in view of the Supreme Court judgment. Consequently, the plaintiffs are not entitled to interest and costs as the issue of costs was already dealt with by the Supreme Court when it stated that:

**“For the reasons we have given above, we find merit in the appeal and we allow it.  
We order that each party bears their own costs.”**

DATED this ..... 1/19th ..... day of September, 2020 at Lusaka.



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**F. M. Lengalenga**  
**JUDGE**