

File

IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA

COMP/33/2015

BETWEEN:

CHRISTOPHER M. KATUTA



COMPLAINANT

AND

NDOLA LIME COMPANY LTD.

RESPONDENT

BEFORE:

HON. JUDGE E.L. MUSONA

MEMBERS:

1. Hon. W.M. Siame
2. Hon. J. Hasson

For the Complainant : Mr. K. Tembo of Legal Aid Board, Ndola

For the Respondent : Mr. C. Matibini of Messrs L. M. Matibini & Co.

JUDGMENT

Date : 4th March, 2016

Cases referred to:

1. Wilson Masauso Zulu v Avondale Housing Project (1982) ZR.

**2. Galaunia Farms Ltd v National Milling Corporation Ltd (2004)
ZR**

This Complaint was filed by M/Christopher M. Katuta. It was filed against Ndola Lime Ltd. We shall, therefore, refer to M/Christopher M. Katuta as the Complainant and to Ndola Lime Ltd as the Respondents which is what the parties to this action actually were.

The Complainant's claim is for the following relief:

- a, under payment of medial retirement package;
- b. any relief the court may deem fit.

The duty for this court is to ascertain whether or not the Complainant has proved his claim. The evidence for the Complainant was that he was employed by the Respondent on 7th August, 2003 and retired on medical grounds on 5th February, 2015.

He told this court that in 2012 prior to the introduction of the voluntary defined contribution pension scheme the defined contribution benefit pension scheme was frozen. He was given a letter which stated that the benefits under the defined contribution pension scheme would be taken to Mukuba Pension Scheme. In the place of the defined contribution pension scheme the Respondents introduced the voluntary defined contributions pension scheme.

The Complainant fell sick in June 2013 and remained sick for over a year. He was eventually retired on medical grounds on 5th February, 2015.

Following this retirement, the Complainant sought his retirement benefits from Mukuba Pension Scheme but discovered that the Respondent did not remit the Complainant's benefits. Only the Complainant's monthly contributions were remitted to Mukuba Pension scheme. He was, however, paid by the Respondent what the Respondent had not remitted to Mukuba Pension Scheme. Mukuba Pension Scheme also paid the Complainant what had been remitted to Mukuba Pension Scheme.

When the Complainant retired his salary was K4,118.70 but was paid based on the rate of his old salary of K3,211.84. According to the Complainant, this shows that he was under paid and he now wants to be paid the difference.

The Complainant referred this court to the computations of his payments. This was produced by the Complainant and marked exhibit "CMK6". We have looked at CMK6. CMK6 shows that the computations were made in two (2) parts. Part one (1) shows the computations for the old salary based at K3,218.84. Part two shows the computations based on the later salary of K4,118.70. The results of these two computations were added and paid to the Complainant less the deductions as shown on CMK6.

We, therefore, have seen no basis for this complaint.

We must mention here that the Respondents did not give any evidence. We shall not belabor that point because the circumstances under which the Respondents did not give evidence were canvassed and were the subject of a ruling which this court delivered in this case on 10th February, 2016.

We have looked at the case of **Wilson Masauso Zulu v Avondale Housing Project (1)** and have been well guided. In that case it was held that a Plaintiff who fails to prove his case cannot obtain judgment whatever may be said of the opponent's case. Indeed, where it is plain as was in this case that the Complainant did not prove his case, the Complainant shall not obtain judgment in his favour merely on the basis that the Respondents did not give evidence in their defence.

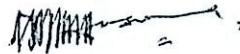
We have also looked at the case of **Galaunia Farms Ltd v National Milling Corporation (2)** where it was held that a Plaintiff must prove his case. Again we have been guided. On the basis of the facts of this case we dismiss this Complaint for being destitute of merit.

We shall order no costs.

Leave to appeal to the Supreme Court within 30 days from today is granted.

J5

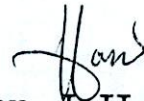
Signed at Ndola this the 4th day of March, 2016 for uplifting
by the parties.



Hon. E.L. Musona
JUDGE



Hon. W.M. Siame
MEMBER



Hon. J. Hasson
MEMBER