

**IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA**

COMP/12/2015

BETWEEN:

BRIAN BESA & 26 OTHERS

AND

D.M. MONTA ENTERPRISES



COMPLAINANTS

RESPONDENTS

BEFORE:

Hon. Judge E.L. Musona

MEMBERS:

Hon. W.M. Siame

Hon. J. Hasson

For the Complainants : Mr. Maybin Chinyanta (in person)

For the Respondents : Mr. S. Thumasi of Messrs Kitwe Chambers

JUDGMENT

Date : 21st June, 2016

Cases referred to :

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

This is an appeal from the decision of the Learned Deputy Registrar for the Industrial Relations Court on assessment of damages.

The Appellants are M/Brian Besa and 26 Others. The Respondents to this appeal are D.M. Monta Enterprises. The brief history of this case is that this court delivered judgment in favour of the within Appellants on the 4th day of June, 2015. The matter later went before the Learned Deputy Registrar for the Industrial Relations Court for assessment and taxation upon the application of the within Respondents.

Dissatisfied with the judgment on assessment, the Appellants have appealed to this court. There are three (3) grounds of appeal as follows:

GROUND ONE

The lower court erred both in law and in fact by failing to recognize that when he ordered us to have our claim recomputed to K1,616,832 by the Labour Office according to the applicable Statutory Instruments from 1997 to 2012 attached to the Complainants' Notice to Produce filed on 4th September, 2015 which figure was agreed upon by the Director himself and the Complainants herein.

We have noted the semantic inadequacies which the Appellants suffered in the construction of this ground of appeal but have fully comprehended their intention.

In their evidence, purportedly in support of this ground of appeal the Appellants admitted that they had no evidence to show that the Respondents admitted to pay them K1,616,832 as alleged in their first ground of appeal. They also did not show this court how they arrived at K1,616,832.

On those basis, we have found that the Appellants have not proved this ground of appeal. This ground of appeal, therefore, fails accordingly.

GROUND TWO

The lower court erred both in law and in fact when it knocked off K8,000 paid to us as costs from the alleged balance of the judgment sum owed to us as the full court in its judgment did infact award us costs. That it is not known how the figure K1,187,832 as the judgment on assessment was arrived at.

Surprisingly, when the Appellants testified in support of this ground of appeal, they stated that they had no complaint as to costs.

Their claim for costs was K12,000. During taxation before the said Learned Deputy Registrar, K8,000 was taxed off leaving a

balance of K4,000 in favour of the Appellants. We have seen no basis to interfere with the finding of the Learned Deputy Registrar, particularly, that even the Appellants themselves admitted that they had no complaint regarding their costs.

The Appellants also argued on this same ground that it is not known how the figure of K1,187,832 as judgment on assessment was arrived at. Regarding this issue, we have looked at the judgment of the Learned Deputy Registrar. We are satisfied that this was arithmetical, and it is this arithmetic which the Appellants failed to comprehend. The arithmetic is that, the Respondents admitted liability of K1,212,832 during assessment. From this admitted sum, K8,000 was taxed off from the Appellants' items for costs because the Appellants did not prove. Further what the Respondents had already paid into court was deducted and reduced the figure further to K1,187,832.

This ground of appeal, therefore, also fails.

GROUND THREE

The lower court erred in law and in fact when it adjudged that the amounts that have been liquidated so far in the amounts of K704,000 bringing the amount to a balance of K483,832 as the judgment sum now due and payable when infact not. That the Complainants will demonstrate at the hearing that the amounts due to them is K912,832 and not as adjudged by the Deputy Registrar.

In this ground of appeal, it is stated that the Appellants would demonstrate at the hearing of the appeal that the amount due to them is K912,832=. However, at the hearing of the appeal the Appellants did not demonstrate that they were entitled to K912,832=. What they said instead was that they had no proof of this.

Clearly, this ground was not substantiated and, therefore, fails.

The net result is that the whole appeal has failed for being destitute of merit.

We must state that this appeal was a mere fishing expedition. An Appellant must prove his grounds of appeal, just like what was stated by the Supreme Court in the case of **Wilson Masuso Zulu v Avondale Housing Project(1)**. Indeed, an Appellant who does not prove his grounds of appeal cannot succeed on his appeal.

We shall order no costs because this court rarely orders costs against employees.

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

J6

Delivered and signed this the 21st June, 2016 at Ndola.



Hon. E.L. Musona
JUDGE



Hon. W.M. Siame
MEMBER



Hon. J. Hasson
MEMBER