

LUKAMA AND OTHERS v LINT COMPANY OF ZAMBIA LIMITED (1998) S.J. 28 (S.C.)

SUPREME COURT

NGULUBE, C.J., SAKALA AND MUZYAMBA, JJ.S.

22ND APRIL AND 4TH AUGUST, 1998.

(S.C.Z. JUDGMENT NO. 8 OF 1998)

Flynote

Employment Law - Retrenchment and retirement packages - Whether the same could be calculated on basis of increased salaries

Headnote

The appellants were employees of the respondents. In June 1992, the respondents carried out a retrenchment exercise in which they terminated the employment of the appellants either through redundancy or early retirement. The appellants contention was that they were entitled to dues calculated on the basis of the 110% salary increment introduced by the respondents after terminating the appellants' employment.

Held:

- (i) The appellants were entitled to dues calculated on the basis of the 110% salary increase

For the appellants: In Person through Mr Axon Mukango

For the respondent: C. M .Ngenda, Christopher Russel Cook and Company

Judgment

NGULUBE, C.J.: delivered the judgment of the court.

For convenience, we will refer to the appellants as the plaintiffs and the respondent as the employers. In June, 1992, the employers carried out a retrenchment exercise in which the plaintiffs' employment was terminated either by way of early retirement or by way of redundancy. In either case, compensation packages were agreed between the employers and the Union representatives. A challenge in the Industrial Relations Court based on the alleged lack of mandate by the Union representatives was unsuccessful.

However, there was also a claim based on the fact that some retrechees were separated on salaries and wages which were 110% more than the plaintiffs. This came about, it appears from the record, because the plaintiffs who were in the first batch of rentrenchees received a package based on current salaries as at 30th June, 1992 while the second batch of workers retrenched the following year benefited from the salary increases awarded in July 1992. The plaintiffs claimed to have been entitled to packages based on the higher salaries but this claim was not specifically addressed below. There was evidence, which needs to be under lined, that, in terms of the collective agreement applicable to these plaintiffs as well as under the terms of the Redundancy Package or the Early Retirement Package, there were clauses providing for three months' notice by payment of three months' salary in lieu of notice.

There was another clause dealing with accommodation and which said that the affected employees "shall be entitled to live in company houses which they may occupy for up to three months or payment of housing allowance up to three months in lieu of accommodation."

The representatives of the plaintiffs filed a lot of arguments and submissions. None but one of which had any merit, in our considered view. The point that had merit was a submission that the three months' notice took the plaintiffs well into the period when the 110% increases took effect since the employment then ended in September, 1992. Mr Ngenda argued that the current salary under the packages meant the salary at the date of the separation so that the notice period was immaterial although admittedly this took the plaintiffs into the period of the new increased salaries.

We have given very anxious consideration to this matter. We have been greatly assisted by the learned authors of Chitty on Contracts, vol. 2 paragraphs 3962 and 3963. The question we had to consider was whether, on the facts of this case, payment in lieu meant that the employment terminated forthwith or it only terminated when the notice in lieu of payment would have expired. We are alive to the various views which can be taken, including one in favour of immediate termination when the payment can be regarded as pre-payment of damages for breach of contract. We are also alive to the possibility of employers and employees entering into agreements to terminate by mutual consensus.

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Naturally, the Court should be vigilant when the "consensus" is in fact at the behest of the employers such as the "consensus" which was generated by the respondent in this appeal. The bottom line, however, is that the facts and circumstances of each case have to be examined in order to glean what was intended. In this case, the clause on accommodation was most instructive and threw light on the payment in lieu of notice which can legitimately be viewed as notice accompanied by a waiver of services by the employer which was accepted by the employee. The accommodation clause argued against any view of immediate termination.

The appeal has to succeed on this point. It is allowed and there will be judgment for the plaintiffs for the packages to be worked out on the basis of the increased salaries of 110% more which were applicable by the end of the notice period. The amounts due will carry simple interest at 10% per annum to the date of payment, such fairly low interest rate having been selected to take account of the undue length of time this litigation has taken.

The appeal succeeds, with costs limited only to the disbursements and out of pocket expenses incurred, if any, by the representatives of these litigants in person.

Appeal allowed
