

IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO 175/99

(Civil Jurisdiction)

B E T W E E N :

MUYUNDA MWANGANA AND
282 OTHERS

APPELLANT

AND

ZAMBIA AIRWAYS CORPORATION LIMITED
(IN VOLUNTARY LIQUIDATION)

RESPONDENT

Coram: Chaila, Muzyamba and Chibesakunda, JJS
on 21st September 2000 and 30th March 2001

For the Appellants: In person

For the Respodent: Mr A A Dudhai of Musa Dudhai Company

JUDGMENT

Chibesakunda delivered the Judgment of the Court

Authorities referred to:

1. Zambia Airways Corporation Limited (In Liquidation) vs Gershom Katambo
SCZ Appeal No. 45 of 1997

The bench which heard the appeal included Honourable Late Justice W M Muzyamba. The judgment is a majority one.

This is an appeal against the ruling by Phiri J, in the originating Notice of Motion under Order VII Rule 2 of the High Court Rules of the High Court Act, Cap. 27 of the Laws of Zambia in which the High Court held against the appellants' and 180 Others.

Briefly the facts are that in Cause No. 1992/HN/1855, Mutale J, on 10th August 1994 dismissed the appellants' claim for specific performance of the alleged agreement between the appellants and the respondents on the tax rebates. Whereas he ordered in their favour damages for breach of contract in respect of the failure by the Appellants to utilize the rebated air tickets, the payment of their gratuity, their house rents and their repatriation expenses. Before Mutale J, the facts were that the appellant who was the plaintiff together with 180 others had sued the respondents as their former employers claiming *inter alia*:-

- 1) The difference on basic pay from 1992 to 1993.
- 2) Redundancy Package for loss of office on the basis of 5 months salary for each completed year of service less amount paid in 1991 with interest.
- 3) Six months salary for loss of office less 3 months salary paid in 1991 with interest.
- 4) Gratuity on a uniform formula less that paid in 1991.
- 5) House rent refund for 9 months.
- 6) Repatriation expenses at the rate of K200,000.00 across the board.

The appellants established before Mutale J, that the respondents in their quest to save money introduced the package's claim for voluntary retirement. The appellants agreed to go by that early retirement voluntary scheme. According to the understanding such early retirement package was tax-free. The court rejected that this understanding was

induced by the respondent. The appellants claimed that the respondents failed to keep all the promises on the tax rebate, house rent, gratuity, payment for repatriation and on air tickets, which they were entitled to as employees. The court as already stated rejected their claim on the tax free, but awarded damages on the rest. This judgment was served on the respondents together with the computerised claim amounting to K5,426,856,488.00. The respondents appealed to the Supreme Court and this was dismissed on 24th January 1995. In the meantime, in December 1994, Zambia Airways, the respondents went into liquidation. The appellants then sent a form proof of debt to the liquidators together with a copy of the High Court judgment and listed all claimants. The liquidators on 20th February 1995 acknowledge their claim but stated that their claim was to be listed as unsecured creditor. The appellants then by originating summons applied before the High Court asking the High Court to determine whether or not the payments regarding terminal benefits on voluntary retirement in 1991 as judged by the court on 10th October 1994 were preferential claims in the liquidation of the respondent company. As stated, the High Court ruled against this application hence the appeal before us.

Before the main arguments, Mr Dudhai raised two preliminary points. The first preliminary objection was that some of the documents filed, Documents P46, P63 – P66, P69 – P104 and P112 – P145 were documents which were not before the learned trial Judge, the court below and as such these documents were to be excluded from the record of appeal.

The Appellants who appeared in person had not objection to that. The application was granted.

The second application was that in the court below only 180 plaintiffs were included as plaintiffs before the High Court and that in the appeal before us 282 appellants with Mr Muyunda Mwangana as appellants – so the application was to struck 102 persons not included at High Court. There was no objection from the appellants. The application was equally granted and the number now for the appellants before us is Mr Muyunda Mwangana together with 180 Others, not 282 as stated in the record of appeal.

The main argument by the appellants before us was that the lower court erred in ruling that the appellants' claim fell within the ambit of Section 346 (1)(b) of Companies' Act No. 26 of 1994 as amended by Act No. 6 of 1995. It is their argument that by the time the respondent company was going into liquidation in December 1994 their terminal benefits as had judged by the lower court were accrued rights and as such they fell within the ambit of Section 346 (1)(b) of the Companies Act. They cited a number of authorities which are not of any relevance arguing that their terminal benefits should have been held by the court below as falling within the ambit of Section 346 (1)(b) of the Companies Act.

The learned counsel for the respondent responded citing the case of Zambia Airways Corporation (In liquidation) vs Gershom Katambo (1) that the terminal benefits, as ordered by the High Court, did not fall within the categories of the personal emoluments as provide in Section 346 (1)(b) of the Companies Act.

We have looked at the evidence before Mutale J. We have also looked at the application before Phiri J. In our view, the learned Judge in the motion was on firm ground when he held that the terminal benefits awarded to the appellants by the High Court did not fall within the ambit of Section 346 (1)(b) of the Companies Act. Section 346 (1)(b) of the Companies Acts says:-

“Subject to this Act, in a winding-up there shall be paid in priority to all other unsecured debts-

(b) all wages accruing to any labourer or workman within the period of three months before the commencement of the winding-up.”

We hold this view because the appellant opted for early retirement in 1991 long before Zambia Airways (In Liquidation) went into liquidation. Their terminal benefits therefore cannot be described as preferential debts under the Companies Act. We find no merit in the appeal. We dismiss the appeal with costs.

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M S Chaila
SUPREME COURT JUDGE

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L P Chibesakaunda
SUPREME COURT JUDGE