

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO. 197/2000

(CIVIL JURISDICTION)

NEUSTON CHIRWA

APPELLANT

AND

UNION INSURANCE CORPORATION LIMITED

RESPONDENT

Coram: Ngulube, CJ, Chibesakunda, and Mambilima JJS
15th November 2001 and 8th July 2002

For the Appellant: Mr P Chisi of Chifumu Banda and Associates
For the Respondent: Mr M Mutemwa of Mutemwa Chambers

JUDGMENT

Chibesakunda, JS, delivered the Judgment in Court

This is an appeal against the assessment of damages by the learned Deputy Registrar in favour of the Appellant who was the plaintiff in the claim before the High Court and who won his claim on liability.

The learned trial Judge at page 33 of record interpreted Clause 11 (d) of the Appellant's employment contract which says:-

"If the employment is terminated prematurely by the company in accordance with clause 11 (c) of this agreement during the first 12 months of employment, the employee shall be entitled to the full gratuity and other benefits as provided herein."

to mean that the Appellant was only entitled to 12 months salary and other terminal benefits. The Appellant had appealed to this court. This court at page 18 ruled that the Appellant was entitled only to benefits as he would have received if he had actually served the Respondent for the whole duration of the employment contract of 36 months.

This court then directed the matter to go back to the Deputy Registrar for re-assessment. The learned Deputy Registrar in assessing the quantum of damages rejected all the other claims of the Appellant except for the gratuity of US 13,500.00, which he ruled had already been paid to the Appellant.

This appeal before us is challenging this holding by the learned Deputy Registrar.

Mr Chisi then advanced the following grounds of appeal.

His first ground of appeal was on the interpretation of this Clause 11.d which is already quoted supra. In arguing this ground he advanced the argument that according to this Clause the Appellant was entitled to all the benefits provided in the contract which the Appellant would have been entitled to if he had served the Respondent for the 36 months stipulated in the contract. He argued that this is the only interpretation to be drawn on such a clause as stated by the Supreme Court in its Judgment of 11 January 1999.

His second argument is that the learned Deputy Registrar erred in fact and in law in not awarding the Appellant the value of business class air passage. He submitted that although Clause 8 of the agreement was silent on the class of air passage the Appellant was entitled under Clause 2 (b) of the agreement, he submitted that the clause categorically states that the appellant is entitled to a business class air passage. The Appellant, therefore, according to him, was entitled to business class air ticket value as compensation. The learned Deputy Registrar, therefore, should have granted that value of a business class air ticket to the Appellant.

His third ground is that the learned Deputy Registrar erred in fact and in law in not awarding the Appellant transport and social tour fares for every single year served by the Appellant.

In response the Respondent supported the learned Deputy Registrar's findings and argued that he was on firm ground in rejecting all the claims by the Appellant except on the claim of gratuity.

We have considered the arguments before us. We have taken time to look at the case record. We agree with the Appellant's arguments that as stated in our Judgment of appeal the Appellant is entitled to all the benefits he would have received had he served the 36 months contractual period. The view we hold is that Clause 11 (d) was included to bring in the security of tenure to the Appellant. The clause in question was meant to invoke in the fiction of service of the whole contractual period. According to this clause regardless of whether or not the Appellant completed the contractual term, provided the employment of the Appellant was prematurely terminated during the first 12 months contract, the Appellant was entitled to full gratuity and other terminal benefits as provided in the contract. Therefore, the Appellant because of this fiction of service is entitled to not only to gratuity for the whole period but also to other terminal benefits spelt out in the contract.

We, therefore, find partial merit in this appeal. We set aside the Deputy Registrar's order. We order that the Appellant be paid the gratuity if not paid and any other terminal benefits spelt out in the contract. We order, therefore, the Deputy Registrar to calculate these other perks if not paid. We order no cost as there is no out right winner of this appeal.

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M M S W Ngulube
CHIEF JUSTICE

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L P Chibesakunda
SUPREME COURT JUDGE

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I M C Mambilima
SUPREME COURT JUDGE