

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA**

**Appeal No. 29 of 2001**

**(CIVIL JURISDICTION)**

**BETWEEN**

**KENNEDY NDILI**

**Appellant**

**And**

**ATTORNEY GENERAL**

**Respondent**

***Coram: Sakala, CJ, Chirwa and Chibesakunda JJS on 18<sup>th</sup>  
June, 2003 and 29<sup>th</sup> November 2004***

For the Appellant: Mr M Lisimba, Lisimba & Company

For the Respondent: Mr S W Chirambo, Chief State Advocate (Civil)

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**JUDGMENT**

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***Chirwa, JS delivered the judgment of the Court:-***

This is an application for interpretation of our judgment of 13<sup>th</sup> September 2002. The matter arose from the dismissal of the applicant from the Zambia Army on 30<sup>th</sup> November 1997. He issued a writ in the High Court in which he sought a declaration that his dismissal was null and void and he sought for an order of reinstatement in his former job without loss of rank and payment of salary arrears from date of discharge to date of judgment. In the alternative he claimed for damages for wrongful discharge and payment of salary arrears and any other relief that the Court may deem fit. The High Court dismissed the applicant's case on reaching a conclusion that the applicant did not come to Court with clean hands as he sneaked into the office where official documents were kept after cheating the custodian of the keys that another officer was available

at the office when in fact that was not true. The High Court found that the appellant was properly charged with the offences and that the same were proved by the tribunal.

On appeal to this Court, we agreed with the applicant that the procedure under the Defence Act on disciplining or charging the applicant was not followed and therefore his dismissal or discharge was wrongful. Having succeeded, we then went to consider whether this was a proper case in which to order reinstatement and we opined that this was not a proper case to order reinstatement, instead we held that this was a proper case to award damages and we awarded the applicant 12 months salary of Staff Sergeant at that time.

The present application which is supported by an affidavit, the applicant reads our judgment to mean that we awarded him salary arrears.

In his oral submission, Mr Lisimba on behalf of the applicant submitted that since the dismissal was wrongful, the applicant should be paid his pension contribution and gratuity calculated up to the time he should have retired.

On behalf of the Attorney General, it was submitted that the judgment was very clear and that there was nothing to interpret; that in fact they are prepared to pay the applicant his pension contribution and any gratuity earned under his conditions of service up to the time he was wrongfully dismissed.

We have considered the affidavits in support and in opposition of this application and also the oral submissions. We agree with the respondent that there is nothing ambiguous in our judgment that needs to be interpreted. The wrongful dismissal is on 30<sup>th</sup> November 1997 and damages are calculated as on that date, but instead of calculating the 12<sup>th</sup> months salary on the salary scale of Staff Sergeant on that date, the scale to be used is that of 13<sup>th</sup> September 2002. These are the damages that were awarded and salary arrears do not arise. The applicant is entitled to the refund of his pension and if under his conditions of service provide for gratuity, he should be paid his due gratuity as on 30<sup>th</sup> November 1997. The Attorney General properly interpreted our judgment. This application is dismissed with costs.

E L Sakala  
**CHIEF JUSTICE**

D K Chirwa  
**JUDGE OF THE SUPREME COURT**

L P Chibesakunda  
**JUDGE OF THE SUPREME COURT**