

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

APPEAL NO. 121/2003

BETWEEN:

JONATHAN MUSIALELA NG'ULEKA

APPELLANT

AND

FURNITURE HOLDING LIMITED

RESPONDENT

CORAM: LEWANIKA, DCJ, MAMBILIMA, SILOMBA, JJS.

On 24<sup>th</sup> May, 2005 and 14<sup>th</sup> March, 2006

For the Appellant: M. MUTEMWA of Mutemwa Chambers

For the Respondent: No Appearance

---

JUDGMENT

---

LEWANIKA, DCJ delivered the judgment of the Court.

AUTHORITIES REFERRED TO

1. ZAMBIA RAILWAYS CORPORATION LTD VS GERSHOM MUBANGA,  
1990 – 1992, Z.R. 149
2. JOSEPH DANIEL CHITOMFWA VS NDOLA LIME COMPANY LIMITED, SCZ  
APPEAL NO., 15 OF 1999
3. ZAMBIA CONSOLIDATED COPPER MINES LIMITED VS HENRY SAFELI MUTALE  
SCZ APPEAL NO. 84 OF 1999.

This is an appeal against the quantum of damages awarded to the Appellant by the Industrial Relations Court in its judgment on review delivered on 15<sup>th</sup> May 2003.

The short history of this matter is that the Appellant had instituted proceedings against the Respondent pursuant to Sections 85A and 108 (2) of the Industrial and Labour Relations Act claiming that the termination of his employment by the Respondent was unlawful because it was based on racial grounds.

The Appellant sought the following reliefs from the court:-

1. Reinstatement in his former job;
2. Arrears of salary from the date of termination to the date of reinstatement;
3. Any other relief the court may deem fit.

At the conclusion of the trial the Court below found for the Appellant but declined to order reinstatement but made an order in the following terms:

*"We order that the complainant be paid 24 months salary plus 40 percent interest from the date of his dismissal and his terminal benefits until payment"*

the hearing of the appeal we questioned Counsel for the Appellant as to the reason for this state of affairs and he informed us that there was no record of the proceedings before the Registrar because she advised them orally to apply to the Court to seek an interpretation of the judgment. This is what led to the judgment on review which is the subject matter of this appeal. In its judgment on review, the Court below made the following Order:-

*"The learned Registrar is ordered to calculate the damages as follows; Basic salary at termination x 24 months plus 40 per centum interest from the date of dismissal until date of payment, which figure even Counsels can agree."*

Counsel for the Appellant has only filed one ground of appeal namely:-

1. That the learned trial Judge erred in ordering that terminal benefits for the Appellant be computed or calculated on the basis of salary excluding allowances to which the Appellant was entitled to.

At the hearing of the appeal, Counsel for the Appellant informed us that he was relying entirely on the heads of argument filed herein. There was no appearance by Counsel for the Respondent and no heads of argument were filed on its behalf. Counsel for the Appellant submitted that according to the evidence on page 22 of the record, the Appellant's basic salary was K250,000.00 per month. However, the Appellant's take home monthly pay including allowances was K809,319.68 according to the payslip evidence on

page 24 of the record. That the judgment of the court below implies that K250,000.00 should apply as basic salary instead of K809,319.68 when computing the Appellant's terminal benefits. Counsel said that the Court below ought to have considered the issue of allowances which have a monetary value in defining what was due to the Appellant. Counsel referred us to our decisions in the cases of **ZAMBIA AIRWAYS CORPORATION LIMITED VS GERSHOM MUBANGA (1), JOSEPH DANIEL CHITOMFWA VS NDOLA LIME COMPANY, (2) ZAMBIA CONSOLIDATED COPPER MINES LIMITED VS HENRY SAFELI CHILESHE (3)** where the compensation or damages awarded included allowances and other entitlements such as leave pay.

We have considered the submissions of Counsel for the Appellant as well as the evidence on record. From our reading of the main judgment of the Court below, it is apparent from the strong language used, that the Court took a dim view of the cavalier manner in which the Respondent terminated the Appellant's employment. It is also apparent from the judgment on review that the court below misapprehended the import of '*basic salary*' in our decision in the past. We have not awarded or endorsed compensation or damages based on '*basic pay*' where the trial court felt that it would have

ordered reinstatement but decides to award compensation for a number of years of 'service'. Such awards have always included allowances and any other perks that the aggrieved party was entitled to at the time of termination. For this reason, we would allow the appeal and set aside the Order of the court below in its judgment on review and substitute it with an Order that the Appellant be paid 24 months' salary and all allowances and other perks that he was entitled to at the time of termination. As there was no appeal on the award of interest, we shall not interfere with it. We award costs of the appeal to the Appellant to be taxed in default of agreement.

D.M. Lewanika  
DEPUTY CHIEF JUSTICE

I.M.C. Mambilima  
SUPREME COURT JUDGE

S.S. Silomba  
SUPREME COURT JUDGE