

MUYAWA LIUWA

v

JUDICIAL COMPLAINTS AUTHORITY

ATTORNEY-GENERAL

SUPREME COURT

CHIBESAKUNDA., MWANAMWAMBWA, AND MUYOVWE, JJS.,

16th FEBRUARY, 2011, and 21st MARCH, 2011.

(S.C.Z. Judgment No. 6 of 2011

[1] Civil procedure - Review of the judgment - Whether the Supreme Court has jurisdiction to review, or set aside its judgments.

[2] Civil procedure - Costs - When Court can order costs against a lay person.

The appellant filed a notice of motion to set aside and review judgment, due to irregularities pursuant to Order 2, Rule 2, of the White Book on the following grounds:

1. The trial Court had ignored to adjudicate the issue of his claims which were based on the law;
2. The High Court judgment and the Supreme Court failed to address the issue of his retirement under section 20 of chapter 410;
3. His retirement package was erroneously calculated outside the law; and
4. The trial Court and the appellate Court deliberately ignored the fact that the defendant had conceded his claim that he was retired in accordance with section 20 of cap. 410, and that it was unlawful to pay him contrary to that provision.

Held:

1. The Supreme Court has no jurisdiction to review its judgments, or to set aside and re-open an appeal. If it were not so, then there would be no finality in dealing with appeals.
2. Ordinarily, we would not order costs against a lay person. However, in this case the appellant abused the Court process relentlessly. Consequently, the appellant was ordered to pay the costs of the appeal.

Case referred to:

1. Liuwa v Attorney General. appeal Number 43 of 1996 (unreported).

Legislation referred to:

1. Constitution of Zambia, cap 1, Articles 1, 18 (9), 23 (1) (2) (3), 91 (1) and (2), 92
2. Employment Act cap. 268 s. 36
3. Civil Service (Local Conditions) Pension Contributory (Amendment) Act No. 11 of 1986
4. Civil Service (Local Conditions) Pensions Ordinance cap 45 of the Northern Rhodesia

## Laws

5. Civil Service (Local Conditions ) Pension Act, cap. 410 s. 20
6. Supreme Court Act, cap 25, Rule 78
7. Judicial (Code of Conduct) Act Number 13 of 1999.

## Work referred to:

1. Rules of the Supreme Court, Orders 2, rule 2, and 20

## Appellant in person.

M. Mukwasa, Senior State Advocate for the respondents.

MUYOVWE, J.S.: delivered the judgment of the Court. The appellant filed a notice of motion to set aside and review judgments under cause No. 1994/HP/1806, and appeal No. 43 of 1996, and 213 of 2008, due to irregularities pursuant to Order 2, Rule 2, of the White Book for the following facts:

1. The trial Court had ignored to adjudicate the issue of his claims which were based on the law.
2. The High Court judgment, and the Supreme Court failed to address the issue of his retirement under section 20 of cap 410.
3. His retirement package was erroneously calculated outside the law.
4. The trial Court and the appellate Court deliberately, ignored the fact that the defendant had conceded his claim that he was retired in accordance with section 20 of cap 410, and it was unlawful to pay him contrary to that provision. That there was a legal error which can only be resolved by this Court. Further, his notice of Motion reads: it is my conviction and without doubt, that this honourable Court has the power to resolve this matter in compliance with the law as provided under section 20 of cap 410 through which I was retired, in order for justice not only to be done, but should and must effectively be seen to be done.

The appellant has been before this Court several times as far back as 1996. The background to this case, is found in our judgment under this same cause whereby we heard the appellant's appeal on the 12th May, 2009, and delivered our judgment on 21st December, 2009. In short, the appellant retired from the civil service at the age of 55 years in 1992. His grievance, and which he has been fighting for redress for years, is that he was retired at the age of 55 years when at time of joining the civil service, the retirement age was 60 years. The appellant commenced proceedings in the High Court against the State under cause No. 1994/HP/1806 seeking a declaration that his retirement at the age of 55 years was null and void as it was contrary to his conditions of service. He lost in the High Court, and he then proceeded to appeal to this Court under appeal No. 43 of 1996, which upheld the High Court judgment. The appellant again filed a notice of motion, to set aside the Supreme Court judgment, which dismissed his earlier appeal. The Notice of Motion was dismissed yet again and he then lodged a complaint with the 1st respondent then called 'the Judicial Complaints Committee' which refused to consider his complaint. From there, he decided to commence proceedings against the 1st respondent and the Attorney-General, in the High Court, by way of originating notice of motion which was dismissed by the High Court on ground that the matter was now res judicata, and that the principle of stare decisis applied in this case. The appellant appealed to this Court against the High Court judgment. His appeal

to this Court was again dismissed. Against this background, the appellant has now returned to this Court with a fresh Notice of Motion to set aside, and review the High Court judgment under cause No. 1994/HP/1806, and two judgments of this Court under appeal No. 43 of 1996, and 213 of 2008.

The appellant filed his heads of arguments, at the hearing of the Notice of Motion on 16th February, 2011. The learned Senior State Advocate, also filed his heads of arguments at the same time. The appellant was, however, granted more time to file further arguments and he filed the same on the 21st February, 2011.

In his heads of arguments, the appellant submitted inter alia that, the Public Service Commission is the only constitutional and statutory body, which is charged with the following functions i.e. to employ personnel; institute disciplinary control and terminate employment in the civil service, and it is not subject to interference from anyone. He submitted that, he was employed in the civil service on 19th September, 1965, under the Zambia civil service (Local Conditions) Pensions Ordinance cap 48 of the laws of Northern Rhodesia under which retirement was put at 60 years. He submitted that, later, the civil service (Local Conditions) Pension Contributory (Amendment) Act No. 11 of 1986, the retirement age for men was reduced from 60 to 50 years. The appellant was retired from the civil service at the age of 55 years on the 14th December, 1992. According to the appellant, there was a legal error in working out his retirement benefits, as the calculations were based on a non-existent law, which this Court should resolve. As to whether this Court has power, to review its own judgment, the appellant referred to this Court's judgment in appeal No. 43 of 1996. He, however, referred us to Order 20, of the Rules of the Supreme Court. The appellant accused the Attorney-General's chambers of being inconsistent in their submissions on this matter. The appellant urged the Court to protect its reputation and integrity in determining this case, and relied on Article 92 (1) as read with Article 18 (9) of the Constitution of Zambia, and other relevant subsidiary laws. The appellant further submitted that he brought this Notice of Motion upon realizing that the issue of his retirement had not been addressed and he relies on Order 2, rule 2, of the Rules of the Supreme Court (White Book) read with Rule 78 of the Supreme Court Act cap 25. In his own words, "there is glaring irregularity due to the omission and therefore an 'error' which was committed in working out my terminal benefits since section 20 of cap 410 was not complied with".

He cited authorities including Articles 1, 18, 23(1)(2)(3), 91(1) and (2) of the Constitution; the Judicial (Code of Conduct) Act No.13 of 1999, and section 36 the Employment Act.

According to the appellant, no Court has ever adjudicated over the issue of his retirement based on section 20 of cap 410, and if this Court does not consider this matter, he will feel discriminated against contrary to the provisions of the Constitution.

On the question of finality of litigation, he submitted that this cannot be used to "negate and disparage the powers of the law," and he maintained that he is claiming no more than his legal entitlement under section 20 of cap 410.

In response, Mr. Mukwasa, in his filed written heads of arguments, after giving a brief background to this Notice of Motion submitted, that the question that the Motion before us raises, is whether this Court can review and set aside its own judgments and the judgments of the High Court already confirmed by this Court on appeal? In answer to this question, Mr. Mukwasa referred to this Court's judgment in an earlier Motion (appeal No. 43 of 1996) raised by the appellant in which he called upon this Court to set aside its judgment, and the same was dismissed. Mr. Mukwasa submitted that, this Court has no jurisdiction to review or set aside its own judgment. He submitted that, the intention of this present notice of motion is to re-open the appeals which were dismissed by this Court under appeals No. 43 of 1996, and 213 of 2008. He submitted that, this is not tenable and that the application is misconceived and must be dismissed with costs.

Further, Mr. Mukwasa submitted that the appellant, though a layman, is fully aware of the judgment of the Court, and argued that, therefore, the present Motion is an abuse of the Court process. He prayed that the appellant should be condemned in costs.

We have considered the appellant's submissions and those of learned counsel for the State. In his submissions, the appellant claims that the issue of his retirement has never been adjudicated upon. This is far from the truth, because his pleadings in the High Court under cause No. 1994/HP/1806 shows that part of his claim was for a declaration that his retirement was wrongful and unlawful and therefore null and void. After his claim was dismissed by the High Court, the same was again dismissed by this Court on appeal (see appeal No. 43/1996).

Further, according to the appellant, the issue of his retirement has never been adjudicated upon due to the fact that section 20 of cap 410 was never taken into consideration. In our view, this argument by the appellant, confirms Mr. Mukwasa's argument that the appellant brought this Motion, with the sole purpose of re-opening the appeals he has lost before this Court and in the Court below. The appellant has had his chances to present this same case before the High Court, and this Court, and he cannot continue coming to Court on the same matter.

In our earlier judgment in this case, delivered on 21st December, 2009 under the same cause number, we said at page J4:

“As the appellant quite rightly pointed out in his heads of arguments in reply, the issues relating to his retirement were already adjudicated upon by the High Court, and the Supreme Court on appeal.”

We find it strange, that the appellant can claim, that the issue of his retirement has never been adjudicated upon, when he has the judgments and refers to them in his submissions. Mr. Mukwasa has referred us to our earlier judgment in *Liuwa v The Attorney-General (1)*, where we said at page J3 that:

“.....Has this Court jurisdiction to re-open or indeed review its own judgment? Quite clearly, therefore, this Court has no jurisdiction to review its judgment, or set aside and re-open the appeal. If it were not so, then there would be no finality in dealing with appeals.”

We are not persuaded by the appellant's arguments, which are misconceived, to depart from

our earlier reasoning. This is a Court of law and we cannot change our position on the matter, simply because the appellant is adamant and seems determined to misinterpret the judgments passed by the High Court and this Court for reasons best known to himself. We believe that our earlier judgments are clear, and if the appellant has a challenge in understanding our judgments, and that of the High Court, the best course for him is to seek legal advice, instead of continuously choosing to bring the same applications over the same issues over and over again. Indeed, there has to be finality in litigation whether the appellant agrees with us or not. The appellant has been in the Courts over the same issue since 1996, and the same has been adjudicated upon against the appellant. In arriving at its judgment, the High Court examined the relevant laws including cap 410, and took into account of the amendments to the said Act. It is abundantly clear to us, that the appellant is abusing the Court process. It seems to us, that the appellant wants this Court to pass judgment in his favour in total disregard of the law which we are bound to uphold. In fact, if we were to find in favour of the appellant, we would be contradicting our earlier decisions and even misinterpreting the law.

Having considered the issues raised in this Motion, and for reasons given herein, we find that this application is misconceived; it lacks merit and it is in fact frivolous and vexatious and we dismiss it accordingly.

Mr. Mukwasa submitted that, perhaps the appellant should be penalized in costs, having regard to the fact that he is abusing the Court process. We agree. Ordinarily, we would not order costs against a lay person but in this case, the appellant has abused the Court process relentlessly yet knowing that his case has already been adjudicated upon. We cannot encourage such conduct as it is obviously costly to the respondent and to this Court. Therefore, we order, that the appellant bears the costs of this appeal to be taxed in default of agreement.

Appeal dismissed.