

SCZ Judgment No. 19 of 2012

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IN THE SUPREME COURT FOR ZAMBIA

HOLDEN AT LUSAKA

(Civil Jurisdiction)

APPEAL NO. 173/2009

SCZ/8/113/2009

BETWEEN:

ZAMBIAN BREWERIES PLC

APPELLANT

AND

LAMECK SAKALA

RESPONDENT

CORAM: Mambilima, D.C.J., Chibesakunda, and Mwanamwambwa, J.J.S.

On 10th August 2010 and 19th June 2012

*For The Appellant: Mr. N. Makai of Messrs Christopher, Russell Cook
and Company.*

For the Respondent: Mr. R. Mainza of Messrs Mainza & Company

JUDGMENT

Mwanamwambwa, J.S., delivered the Judgment of the Court.

Cases Referred to:

1. ***Zulu v Avondale Housing Project Limited [1982] Z.R. 172.***
2. ***Kapembwa v Maimbolwa & A.G. [1981] Z.R. 127.***
3. ***Attorney-General v Achiume [1983] Z.R. 1.***
4. ***Minister of Home Affairs & Another v Habasonde [2007] Z.R. 207.***
5. ***UBZ v Shanzi [1977] Z.R. 397.***

Legislation referred to:

1. ***The Judgments Act, CAP 81 of the Laws of Zambia, Section 2.***
2. ***The High Court Rules, Order 36, Rule 8.***
3. ***The Law Reform (Miscellaneous Provisions) Act, CAP 74 of the Laws of Zambia. Section 4.***

This is an appeal against a Judgment “*on assessment*” by the Deputy Register, Lusaka, dated 10th May 2009, awarding the Respondent the sum of K1,025,107,189.60, as damages.

The brief facts of this matter are that the Respondent was employed by the Appellant from 1979 to May 1994, when he opted for early retirement. In June 1994, the Appellant re-employed him, till 25th August 1997, when he retired at the retirement age of 55 years. A dispute arose as to what was due to the Respondent as terminal benefits. On 21st March 2005, the Respondent issued a writ of summons in the Subordinate Court claiming the following:-

- a) **Payment of full terminal benefits and accrued leave days.**
- b) **Any relief the Court deems fit.**
- c) **Costs.**

On 30th April 2007, the Subordinate Court entered Judgment for the Respondent for full benefits, less only payments already made to him. Following the Judgment, the Clerk of Court wrote a letter to the Department of Labour, asking for a computation which was to be passed as an assessment of what was due to the Plaintiff. On 26th July 2007, the Assistant Labour Commissioner replied and advised as follows:-

“In line with our jurisdiction, we have been ... able to compute terminal benefits for the period rendered, of eighteen years

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(1979 to 1997) at such bank rates that prevailed at different years.....

Please, find attached computation of terminal benefits arrived at by the Department, which should have been awarded to Mr. Lameck Sakala as being:

- Leave days for four (4) years as the claimant had indicated that he had been on leave four years, unless disputed by the company records. This is amounting to K6,368,649.23.
- Terminal benefits in line with the 1996 to 1998 collective agreement, being K74,513,196.

The grand total for the leave days and terminal benefits stands at K80,881,845.20. Applying interest rates as per attached computation by Finance Bank Zambia Limited on the assumption that the Plaintiff had deposited such sum of money at that time comes to K1,025,107,180.60. It is hoped that this information provided shall be of help to the Court.

Yours faithfully,

Chola J. Chabala

Assistant Labour Commissioner(LI)

FOR/LABOUR COMMISSIONER”.

Since the computed figure exceeded the jurisdiction of the Subordinate Court, the matter was transferred to the High Court, for assessment of damages.

There was a hearing before the learned Deputy Registrar, on assessment of damages. At the end of the hearing he ruled as follows:

“I heard the evidence of the Plaintiff as well as another witness. I also had a close scrutiny of the calculation by the Labour Office. All told, I need only state that I am in total agreement with the calculation by the Labour Office and I now award that which was calculated as being K1,025,107,189.60, with costs.”

Dissatisfied, the Appellant has appealed, advancing four grounds.

The **1st ground** is that the Deputy Registrar erred in law and fact in awarding, the Respondent the sum of K1,025,107,189.60, based on an incorrect basic salary that was applicable to the Respondent at the time of his retirement and also based on incorrect calculation of interest.

On behalf of the Appellant on **ground one**, Mr. Makai submits that the lower Court totally ignored the evidence as to the Respondent's last salary. He points out that the Respondent could not even recall what his salary was. That the Respondent's witness at assessment, the Assistant Labour Commissioner too, confirmed that the letter from the Clerk of Court, did not state the Respondent's last salary. The computation of K1,025,107,189.60 was based on the letter in question. He wonders how the

Assistant Labour Commissioner was able to discern the last salary for the Respondent if the Respondent failed to do so himself. He points out that the Appellant's witness testified that the Respondent's last salary in 1997 was K136,000.00. He argues that the lower Court was not presented with sufficient evidence by the Respondent, for it to have stated that it closely scrutinized the letter from the Labour Office, to justify granting the award. He urges us to reverse the lower Court's findings as perverse and misapprehension, on the authority of **Zulu v Avondale Housing Project Limited (1)**. He adds that if the Respondent was last earning K136,000 per month in 1997, the Court has to properly determine what rate of interest would be applicable and from when.

In response on ground one on behalf of the Respondent, Mr. Mainza submits that the finding by the learned Deputy Registrar that the Appellant owed the Respondent, the sum of K1,025,107,189.60, as terminal benefits, is neither perverse nor made in the absence of any relevant evidence or upon a misapprehension of facts. He argues that the learned Deputy Registrar anchored his findings on documentary evidence appearance at pages 16, 17 and 194, of the record of Appeal. He submits that the Appellant made no effort to challenge the computations by the Labour Office, at those pages. He adds that the Appellant having failed to object to the computations by the

Labour Office, it is estopped from challenging it on the authority of **Kapembwa v Maimbolwa & Attorney-General (2)**.

Ground two is that the Deputy Registrar erred in law and fact when delivering a Judgment on assessment which did not delve into all the facts presented by both parties and without giving due regard to the evidence and submissions presented by the Appellant.

On ground two, Mr. Makai points that the lower Court was asked to determine whether the Respondent, after nearly 18 years of employment, from 1st December 1979 to 30th May 1997, was entitled to the claimed sum of K1,025,107,189.60. He submits that the Appellant vigorously opposed the claimed sum by calling one witness, a Human Resource Officer, in addition to an affidavit in opposition. That both parties filed submissions, as per pages 78-110 and 111-115 of the appeal record. He submits that after two hearings, the Court below made a 3 paged Judgment in which it directed to the Respondent's evidence by stating that: *"I heard the evidence of the Plaintiff as well as another witness. I also had close scrutiny of the calculations by the Labour Officer. All told, I need only state that I am in total agreement with the calculation by the Labour Officer and I now award that which was calculated as being K1,025,107,189.60 with costs."*

He submits that the Court misdirected itself in discharging of its duty to give a clear, fair and reasoned Judgment, when it did not state what lack of evidence the Appellant had that led to its findings in favour of the Respondent. That on the flip side, the lower Court ought to have clearly pointed out what strength it relied on to find against the Appellant. He argues that the Court ought to have seriously considered the relevant issues such as: what was the correct salary, which was used to calculate the package; when was the interest supposed to start running, whether the Respondent received any other payments that needed to be considered in the calculation of the package. That all these issues remained unanswered in the Judgment. That the lower Court did not evaluate evidence of the Appellant. He submits that the lower Court gave an unbalanced evaluation of the evidence, resulting in its flawed Judgment. In support of his submissions he cited **Attorney General vs Achiume (3)**.

In response on ground two, on behalf of the Respondent, Mr. Mainza submits that the learned Deputy Registrar properly evaluated the evidence for and against the application for assessment. That, after doing so, he found in favour of the Respondent. He submits that the lower Court cannot be faulted for finding against the Appellant, in light of the overwhelming evidence of calculations by the Labour Office, which was not challenged. He adds that there is nothing wrong in the Court

below writing a three paged Judgment since only three witnesses testified.

Ground three is that the Deputy Registrar erred in law and fact when he incorrectly awarded interest at various lending rates that were in use from 1st December 1979 to July 2007, despite Rules of Court and law that direct the manner in which a Court is to award interest. On this ground, he refers us to Section 2 of **the Judgments Act, CAP 81** of the Laws of Zambia, which provides as follows:-

“Every judgment, order or decree of the High Court or Subordinate Court whereby any sum of money or costs, charges or expenses, is or are to be payable to any person shall carry interest at the rate as may be determined by the Court which rate shall not exceed the current lending rate as determined by the Bank of Zambia, from the time of entering up of such judgment, order or decree until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment, order or decree.”

He submits that this Section clearly gives directions what interest rate is to be used and when interest is applicable on Judgment. He submits that the lower Court ignored this law and allowed assessment based on calculation of interest that goes as far back as 1979. He points out that the Respondent commenced his action on 21st April 2005 and Judgment was delivered on 21st May 2007. He submits that according to **Section 2** of the Act,

interest was to be calculated at the ruling lending Bank of Zambia rate, as at 21st May 2007, until satisfaction of the judgment sum. That interest is not supposed to commence from the date of engagement of employment of the Respondent, which was 1st December 1979. He submits that the principal sum accrued in 1997, when the Respondent retired and not December 1979, when he was employed. He submits that Courts operate under the rule that when judgment is delivered, interest is calculated from the date of issue of the writ of summons to the date of judgment and also until the date of payment.

In response on behalf of the Respondent, on ground three, Mr. Mainza concedes that interest is awarded at the rate prescribed by Section 2 of the Act. But he submits that the said Act only relates to post-judgment interest. The Act is silent on the power of the Court to backdate interest. He submits that the lower Court acted within **Section 4** of **the Law Reform (Miscellaneous Provisions) Act, CAP 74** of the Laws of Zambia; when it allowed the assessment based on calculation of interest, dating back to 1979. **Section 4** of **CAP 74** reads as follows:-

“4. In any proceedings tried in any Court of record for recovery of any debt or damages the Court may, if it thinks fit, order that there shall be included in the sum for which Judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period

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between the date when the cause of action arose and the date of the judgment.”

He submits that from Section 4 of CAP 74, it is clear that Courts have power to backdate interest to the date when the cause of action arose. He submits that in the instant case, the Respondent is entitled to terminal benefits calculated from 1979, when he was engaged by the Appellant and hence the computation of interest from 1979. He concludes that the Court below exercised its discretion judiciously when it allowed the assessment based on calculation of interest backdated to 1979.

We have examined the Judgment appealed against and have considered the submission and arguments of Counsel on **grounds one, two and three**. The brevity of the judgment of the lower Court and the reasoning or otherwise, in it have featured in these three grounds. In **the Minister of Home Affairs and another v Habasonde (4)**, this Court gave guidance to trial Courts on what a Judgment should contain, as follows:-

“Every judgment must reveal a review of the evidence, where applicable, a summary of the arguments and submissions, if made, the findings of fact, the reasoning of the Court on the facts and the application of the law and authorities if any, to the facts.”

And Assessment of damages is also regarded as a trial within the above quoted holding: **See UBZ v Shanzi (5)**.

In the present case, the parties gave oral evidence and produced documentary evidence. The documentary evidence is at pages 16,192 – 194 of the appeal record. The oral evidence is at pages 173- 184. Parties also filed written submissions. These are at pages 78 – 81 and 111 – 115. At pages 174-175 of the appeal record, the record, the Respondent said this, under cross examination:-

“As on 30th May 1994, I was on a salary I cannot recall. I lost my payslips so I do not know how much I got paid ... I also do not recall exactly how much my salary was, but about K500,000 in 1994... I do not know how much I got as a salary, but about K500,000 in 1997. It has taken long I cannot recall.”

Then at page 177 is the evidence of Simon Muleya Kapilima, the Assistant Labour Commissioner, who was the Respondent’s witness. This witness testified that the Labour Ministry did not calculate any interest at all. That all calculations were done by Finance Bank, as regards interest on the figure the Ministry arrived at. That the salary rate used to calculate the package was that applicable in each successive year from 1994-1997. That the salary has not been shown in the letter from the Subordinate Court.

D.W.1, Frankson Mutale, a Human Resources Officer gave evidence for the Appellant. He testified that the Respondent's last salary was K136,000.

The interest computation Chart, which the learned Deputy Registrar relied on, is at page 194 of the record of appeal. It reads as follows:-

JUDGMENT DEBT FROM 1979 TO 1997 AT BANK INTEREST RATES AND THEREAFTER ON SIMPLE BASIS AT BANK OF ZAMBIA RATE NOT EXCEEDING BANK OF ZAMBIA RATE.				
<u>Date</u>	<u>No. of Days</u>	<u>Rate</u>	<u>Interest</u>	<u>Amount</u>
01.12.1979	31	25	1,717,354.31	80,881,848.20
1980	366	25	20,275,860.58	80,881,848.20
1981	365	25	20,220,462.05	80,881,848.20
1982	365	25	20,220,462.05	80,881,848.20
1983	365	25	20,220,462.05	80,881,848.20
1984	366	25	20,275,860.58	80,881,848.20
1985	365	25	20,220,462.05	80,881,848.20
1986	365	25	20,220,462.05	80,881,848.20
1987	365	25	20,220,462.05	80,881,848.20
1988	366	25	20,275,860.58	80,881,848.20
1989	365	25	20,220,462.05	80,881,848.20
1990	365	25	20,220,462.05	80,881,848.20
1991	365	43	34,779,194.73	80,881,848.20
1992	366	53	42,984,824.42	80,881,848.20
1993	365	136	109,999,313.55	80,881,848.20
1994	365	69	55,808,475.26	80,881,848.20
1995	365	57	46,102,653.47	80,881,848.20
1996	366	68	55,150,340.77	80,881,848.20
1997	365	65	52,573,201.33	80,881,848.20
1998	365	53	42,867,379.55	80,881,848.20
1999	365	58	46,911,471.96	80,881,848.20
2000	366	69	55,961,375.19	80,881,848.20
2001	365	61	49,337,927.40	80,881,848.20
2002	365	62	50,146,745.88	80,881,848.20
2003	365	58	46,911,471.96	80,881,848.20
2004	366	48	38,929,652.31	80,881,848.20
2005	365	42	33,970,376.24	80,881,848.20

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2006	365	40	32,352,739.28	80,881,848.20
Jan 2007	31	11.3	776,244.15	80,881,848.20
Feb 2007	28	11.7	725,942.29	80,881,848.20
March 2007	31	13.5	927,371.33	80,881,848.20
April 2007	30	13.4	890,808.30	80,881,848.20
May 2007	20	13.2	585,008.44	80,881,848.20
21.05.2007	11	13.2	321,754.64	80,881,848.20
Jun 2007	30	13.2	877,512.65	80,881,848.20
Jul 2007	31	13.2	906,763.08	80,881,848.20
TOTAL:			1,025,107,189.60	1,105,989,028.80

The Judgment by the learned Deputy Registrar does not reveal review of the evidence, it does not make a summary of the arguments and submissions, it does not make findings of fact as to what was the Respondent's last salary, and it does not show the reasoning on the facts and the application of the law and authorities to the facts. The Judgment in question was in fact just one paragraph, as set above. The rest of it were just the background that led to assessment.

In particular, the Respondent admitted that he could not recall what his last salary was at retirement in 1997. He put it at a doubtful figure of K500,000 per month. And the computation chart, as set out above, does not show his last salary. At page 15 of the appeal record is a letter from the Subordinate Court, to the Labour Office, asking for calculation of the Respondent's terminal benefits, on the judgment attached thereto. The letter does not mention the Respondent's last salary. The Subordinate Court Judgment itself is at page 65 – 66 of the appeal-record. It too,

does not give the salary of the Respondent. At the assessment, the Respondent put his terminal package at K1,025,107,189.60, as calculated by Finance Bank Zambia Limited. The Appellant put his terminal package at K5,875,000. This is as per notice of payment into Court, at page 58 of the appeal record. In view of all these, the learned Deputy Registrar should have evaluated the evidence and make findings of fact. On the evidence on record, we are of the view that the learned Deputy Registrar erred on facts and law, when he summarily, and without giving reasons, said:-

“I heard the evidence of the Plaintiff as well as another witness. I also had a close scrutiny of the calculation by the Labour Office. All told, I need only state that I am in total agreement with the calculation by the Labour Officer and I now award that which was calculated as being K1,025,107,189.60.”

We would not call this an unbalance evaluation, of evidence, within our decision in **Attorney General v Achiume (3)**, as submitted by Mr. Makai. In our view, there was no evaluation of evidence at all. We would add that there was no assessment of damages by the lower Court in this matter. On the evidence on record, we do not accept the submission by Mr. Mainza that there was overwhelming evidence supporting the award of K1,025,107,189.60 and that the Appellant failed to challenge such evidence.

On the merits, we are of the view that it was wrong to calculate interest from 1st December 1979, when the Respondent was employed. We say so because his cause of action for terminal benefits did not arise from the date he was employed. It arose from the date of his retirement. As to the rate of interest and the effective date, the standard practice on debts, is to award interest on the sum owing, at the average short term bank deposit rate, from the date of issue of the writ of summons to the date of Judgment. This is pursuant to **Order 36, Rule 8** of **the High Court Rules**. Thereafter, up to the date of settlement, interest is awarded at the current lending rate, as determined by the Bank of Zambia. This is pursuant to **Section 2** of **the Judgments Act, CAP 81** of the Laws of Zambia, as amended by Act No. 16 of 1997. We uphold the submission of Mr. Makai on this issue. We do not accept the submission by Mr. Mainza that the learned Deputy Registrar exercised his discretion judiciously, under **Section 4** of **the Law Reform (Miscellaneous Provisions) Act, CAP 74** of the Laws of Zambia, when he allowed the assessment based on calculation of interest, backdated to 1979, when he was employed by the Appellant. We do so for the reason that Section 4 gives a Court discretion to award interest:

“On the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.”

As already stated above, the Respondent’s action for terminal benefits arose when he retired in 1997 and not when he was

employed in 1979. The operation of **Section 4** of **CAP 74** is illustrated by **UBZ v Shanzi (5)**.

Ground 4 is that the Deputy Registrar erred in law and fact when he awarded the judgment on assessment to the Respondent without deducting any amounts that have been previously paid to the Respondent and also have been paid into the Subordinate Court by the Appellant.

The gist of Mr. Makai's submission is that as per pages 57 or 197 of the appeal record, on 23rd August 2007 and the evidence of D.W.1, the Appellant paid K5,875,000 into Court. That the lower Court did not mention this payment and never deducted upon it from the claimed amount. He adds that the Respondent admitted having been paid K938,000, as repatriation allowance and K1,200,000 as far back as 2001. That these too, were never deducted from K1,025,107,189.60.

In response on behalf of the Respondent, Mr. Mainza submits that the failure by the Court to order that moneys paid prior to assessment be deducted from the K1,025,107,189.60 is not fatal as the Appellant is at liberty to deduct it.

We consider this to be a concession on the part of the Respondent. We simply wish to add that the failure by the lower

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Court to consider and deduct the paid moneys is because it did not evaluate the evidence.

For the reasons given above, we hereby reverse and set aside the award of K1,025,107,189.60. This appeal is allowed. However, we are not in a position to assess damages ourselves. Accordingly, we hereby sent the matter back to the High Court, for assessment of damages before another Deputy Registrar. Costs shall abide by the outcome of the new assessment.



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L. P CHIBESAKUNDA
ACTING CHIEF JUSTICE



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I.C. MAMBILIMA
DEPUTY CHIEF JUSTICE



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M. S. MWANAMWAMBWA
SUPREME COURT JUDGE