

HC

**THE SUPREME COURT OF ZAMBIA**

**APPEAL NO. 189/2007**

**HOLDEN AT LUSAKA**

**SCZ/8/162/2007**

*(Civil Jurisdiction)*

**BETWEEN:**

**ZAMBIA RAILWAYS LIMITED**

**APPELLANT**

**AND**

**FRED MUBANGA**

**RESPONDENT**

**CORAM: Mambilima, DCJ., Mwanamwambwa and Chibomba, JJS.**

**On the 16<sup>th</sup> June 2009 and 14<sup>th</sup> November, 2013.**

*For the Appellant: Mr. N. Sampa of Messrs Mumba Malila and Company.*

*For the Respondent: Mr. W. Mwenda of Lukona Chambers.*

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## **JUDGMENT**

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**Mwanamwambwa, J.S, Delivered the Judgment of the Court.**

**Cases referred to:**

1. **Mususu Kalenga Building Ltd.,(and another) v Richman's Money Lenders Enterprises (1999) Z.R. 27**

**Legislation referred to:**



**Industrial Relations Court Rules. Rules 76 and 77.**

This appeal emanates from an assessment of damages by the Registrar of the Industrial Relations Court on 17<sup>th</sup> October, 2006.

The facts giving rise to the case are as follows:

On the 15<sup>th</sup> of October 1996, the Appellant terminated the services of the Respondent. That was after he was charged under the disciplinary Code. He filed a Complaint in the Industrial Relations Court. On 14<sup>th</sup> September, 2001, the Court found his dismissal unfair. It ordered that he be deemed to have been declared redundant, effective from 2<sup>nd</sup> December 1996, when he commenced his suit. It ordered that his redundancy package would attract interest at Bank of Zambia lending rate till it was paid. It also ordered that if the Appellant did not have the redundancy package in place in 1996, then the redundancy would be paid as per Regulation 10 of the Statutory Instrument No. 171 of 1995. The Industrial Relations Court did not refer the matter to the Registrar for assessment of damages.

On 12<sup>th</sup> August 2002, the Respondent filed a Notice of Assessment, before the Registrar. In the affidavit supporting the Notice of assessment, he put his redundancy package at K73,412,456.06. The Appellant filed an affidavit in opposition and stated that it had already paid the Respondent a redundant package of K18,316,081.66, based on Statutory Instrument No. 171

of 1995, Regulation 10. By a Judgment dated 11<sup>th</sup> October 2006, the learned Registrar of the Industrial Relations Court assessed the Respondent's redundancy package at a total of K67,628,780.84.

The Appellant appealed against the assessment to the full Court. The main argument of the Appellant before the Industrial Relations Court was that it was wrong for the Registrar to impose on the redundancy package, by awarding things like salary increments, education allowances, Christmas bonus and all other allowances not related to redundancy.

On behalf of the Respondent, it was argued in support of the assessment Judgment that the Appellant took long to pay the Judgment debt. That it took 63 months to pay the terminal benefits to the Respondent. That the payment was made not in a lump sum but in two installments, the second being paid on 13<sup>th</sup> February 2003. The full court similarly held as follows:

**“The Registrar was on firm ground in her interpretation of the Judgment and dissatisfaction of the decision of the Court can only be by way of appeal to the Supreme Court.”**

On 22<sup>nd</sup> June, 2007, the Appellant appealed to this Court, against the above verdict. There are four grounds of appeal. These read as follows:

- (1) The Deputy Chairman erred and misdirected herself by upholding the Registrar's Judgment on Assessment which disregards the Judgment of**

the Industrial Relations Court of 14<sup>th</sup> September, 2001 which deemed the Respondent to have been declared Redundant on 2<sup>nd</sup> December, 1996 and proceeding with Assessment as if the Respondent had been reinstated to Duty.

- (2) The Deputy Chairman erred in upholding the Registrar's decision to apply Regulation 53(1) of the Zambia Railways General Staff Regulations to the Respondent when the Judgment had ruled that the Respondent was deemed to have been declared redundant. It was wrong for the Lower Court at Assessment to invoke Regulation 53(1) of the Zambia Railways General Staff Regulations which had the effect of nullifying the Industrial Relations Court's Judgment dated 14<sup>th</sup> September, 2001.
- (3) The Deputy Chairman erred in upholding the Registrar's decision to award the Respondent salary arrears, salary increments, upkeep allowances, education allowances, transport allowances, bonus and long service awards being matter not part of the Redundancy Package and had already been paid in full.
- (4) The Deputy Chairman erred in upholding the Registrar's decision in determining that the Employment Act No. 15 of 1997, Section 28B Clause 3(a) and (b) applied to the Respondent when infact that provisions related to persons who had been declared Redundant by the Employer. In this case it was the Court which ruled that the Respondent be deemed to have been declared Redundant.

As at that date of hearing, the Appellant had not yet filed its heads of argument. We refused its application for an adjournment to file heads of argument out of time. We ordered that hearing proceeds.

On behalf of the Appellant, Mr. Sampa, submits, on all the grounds, that the Registrar of the Industrial Relations Court substituted her own view against the Judgment of the full Court. In answer to our question, he says that the Court did not direct the Registrar to assess damages. He then points out that after Judgment by the Court, the Appellant prepared the redundant package of K18,315,089.66 and paid the Respondent. This is as per pages 115 – 116 of the record of appeal. That thereafter, the Respondent proceeded with assessment before the Registrar as per pages 47 – 129 of the record of appeal. In further answer to our question, Counsel submits that in the absence of an order for assessment by the Court, the assessment proceedings were a nullity; because the Registrar has no jurisdiction to assess damages without the Court Order.

In response, on behalf of the Respondent, Mr. Mwenda submits that the Appellant then did not have a redundancy package. And that was why Regulation 10 of Statutory Instrument No. 171 of 1995 and Section 26(B) of the Employment Act were used.

In answer to our question, Counsel says that the Appellant was employed under a written contract. And confirms that the Court did not order an assessment by the Registrar.

We have examined the trial Judgment of 14<sup>th</sup> September, 2001, the Judgment on assessment by the Learned Registrar and the Court's Ruling of 7<sup>th</sup> June, 2007, appealed against. In our view, this matter raises a question of jurisdiction of the Registrar of the Industrial Relations Court, in relation to assessment of damages. Jurisdiction of the Registrar is governed by Part XII of the Industrial Relations Court Rules, Rules 76 and 77. These provide as follows:

## **"PART XII**

### **REGISTRAR OF THE COURT**

- 76. The Registrar shall have the custody of the record of the Court and shall exercise such functions as are assigned to him under these Rules or as may be assigned to him by the Chairman or the Deputy Chairman.**
- 77. Application in the following matters shall be made to the Registrar in writing in, or substantially in accordance with, the Form IRC 28 contained in Part F of the Schedule or a letter addressed to him-**
- (a) for certified copies of the document;**
  - (b) for issue of summonses to witnesses in any matter filed in or referred to the Court;**

(c) for inspection of documents filed in Court;

(d) for withdrawal of matters filed in the Court before these are placed for hearing; and

(e) for return of exhibits.”

In our view, the Registrar can assess damages only if she/he is specifically assigned to do so by the Chairman or Deputy Chairman. On His/Her own, on the mere application by a party to the case, and without a directive or order by the Chairman or Deputy Chairman, she/he has no jurisdiction to assess damages.

Coming back to this case, we note that there was no order or directive by the Chairman or Court for the Registrar to assess damages. She assessed damages on the mere application of the Respondent. We hold that she did so without jurisdiction. According the assessment proceedings and the Judgment hereon are a nullity.

Under ordinary circumstances where an issue was not raised in the Court below, it is not competent for any party to raise it in this Court: See **Mususu Kalenga Building Ltd v Richman's Money Lenders Enterprises**.<sup>(1)</sup> The issue of jurisdiction of the Registrar was not raised in the Court below. We consider the issue of jurisdiction exceptional in the sense that it is one of law; which goes to the root of the proceedings giving rise to the appeal. And indeed it arose as a result of questions from this Court itself.

We allow the appeal. The Ruling of the Industrial Relations Court of 7<sup>th</sup> June 2007 is hereby reversed and set aside. The Judgment on assessment by the Registrar, of 17<sup>th</sup> October 2006 is hereby quashed for being a nullity. Given the nature of this matter, we order that each party shall bear own costs.

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I.C. Mambilima

**DEPUTY CHIEF JUSTICE**

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M.S. Mwanamwambwa

**SUPREME COURT JUDGE**

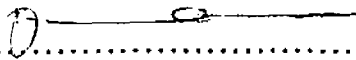
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H. Chibomba

**SUPREME COURT JUDGE**




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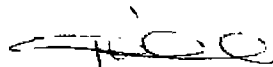
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H. Chibomba

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