

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

2015/HP/2178



**B E T W E E N :**

LISINIYO MWANZA

**PLAINTIFF**

**AND**

THE ATTORNEY GENERAL

**DEFENDANT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 8<sup>th</sup> day of May, 2017**

For the Plaintiff : In Person  
For the Defendant : Mr. D. M Chileshe, Acting Senior State Advocate

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**J U D G M E N T**

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**Case Authorities Referred To:**

1. *Colgate Palmolive (Z) Inc. v Shemu and Others Appeal No. 11 of 2005*

**Works Referred To:**

1. *Chitty on Contracts, Volume 1 (General Principles) 26<sup>th</sup> Edition*

By Writ of Summons and Statement of Claim, the Plaintiff seeks the following reliefs:

- (i) Leave dues K18,530.00
- (ii) Retirement package K55,437.00
- (iii) Repatriation K1,500.00
- (iv) Long Service K18,479.00
- (v) Costs

*(vi) Any other relief that the Court may decide*

The particulars given in the Statement of Claim are that the Plaintiff was employed by the Ministry of Tourism, Environment and Natural Resources from 12<sup>th</sup> April, 1994, until his retirement on 31<sup>st</sup> December, 2011. The Plaintiff states that the Defendant never paid him his full terminal benefits of K93,776 and instead paid him a paltry K15,600.

The Defendant settled a Defence wherein it denied the Plaintiff's claims. It averred that the Plaintiff received his full terminal benefits of K35,155,435.30 less K24,872,042.64, which he owed in loans, and the balance due to him was K10,283,388.66. The Defendant averred that as a Classified Daily Employee in the category of Driver, the Plaintiff was only entitled to Long Service Bonus, Leave days and Repatriation and was entitled to a Retirement Package, as contended in his claim.

At trial, the Plaintiff **Lisiniyo Mwanza**, testified as **PW1**. His evidence was that after his employment with the Defendant, his terminal benefits were wrongly paid. PW1 testified that he was paid

K8,360,000 in February, 2012, K4,000,000 on a date he could not recall and later K3,600,000 on 11<sup>th</sup> May, 2012. He stated that the payments did not meet his expectations and he consulted Lunar Park Labour Consultancy, who advised that the Defendant owed him K93,776.00. He prayed to the Court to compel the Defendant to pay him his money because he was in a deplorable state.

In **cross-examination**, PW1 testified that he was employed as a Driver and Public Servant by the Ministry of Tourism, Environment and National Resources. At page 4 of the Defendant's Bundle, PW1 stated that he was employed on a monthly contract and was not aware that he was not a pensionable employee. At page 6 of the Defendant's Bundle, PW1 conceded that his contract did not confer him civil servant status. He also stated that he was not aware that non-civil servants were entitled to a Long Service Bonus (LSB) as a form of pension.

When referred to his terminal pay slip at page 9 of the Defendant's Bundle, PW1 pointed out that there was no provision for pension, however, the pay slip showed that he was contributing

to NAPSA. PW1 asserted that he was entitled to a pension because he had served the Defendant for a long time.

It was PW1's testimony that he procured a household loan from the Government but did not know whether he had fully served it. He however, conceded that his pay slip, at page 9 of the Defendant's Bundle showed that his household loan had 111 months of outstanding payments. He also stated in reference to page 9 that he had a NATSAVE loan of which 16 months payments were outstanding. It was PW1's testimony that the NATSAVE loan was supposed to be recovered from his pension entitlements.

PW1 testified that his leave days were calculated on his number of years of service and stated that the terminal leave certificate at pages 15 and 16 of the Defendant's Bundle showed that he was entitled to 130 leave days. At page 19 of the Defendant's Bundle, he challenged the calculation of his LSB at K13,921,075.20 and insisted on his claim of K18,350.00. PW1 conceded that his letter of retirement at page 7 in the Defendant's Bundle had no provision for retirement and when he received it, he did not challenge its contents. At page 28 of the Defendant's

Bundle, PW1 stated that he was entitled to K10,283,388.66 and had been over-paid. He however, denied owing the Government money.

In **re-examination**, PW1 testified that he did not know that he owed the Government money because the Ministry of Finance did not avail him information on the loan recoveries.

**PW2** was **Mpundu Mwanamwela**, a Director at Lunar Park Labour Consultancy. His evidence was that sometime in November, 2015, PW1 approached his Organisation with a complaint on his terminal benefits. He advised PW1 that his terminal benefits had been under-calculated and he consequently wrote a letter to the Ministry of Tourism, Environment and Natural Resources. PW2 testified that he was dissatisfied with the Ministry's response and in consequence, advised PW1 to sue his former Employer.

In **cross-examination**, PW2 testified that he did not know PW1's class of employment. When referred to pages 4-6 of the Defendant's Bundle, he stated that PW1 was employed on a monthly contract. PW2 further stated that PW1's contract was not

pensionable and that at page 6 of the Defendant's Bundle, PW1 accepted his terms of contract. It was PW2's testimony that PW1's terminal benefits were shown at page 7 of the Defendant's Bundle. On PW1's terminal pay slip, PW2 testified that there was no provision for pension. He however, indicated that the NAPSA contribution on PW1's pay slip was a form of pension and he did not advise PW1 to pursue that Organisation.

At page 28 of the Defendant's Bundle, PW2 testified that after the various deductions, PW1 was only entitled to K10,283,388.66 as terminal benefits. He further stated that PW1 was only entitled to 130 leave days as computed at page 16 of the Defendant's Bundle. At pages 12 and 14 of the Defendant's Bundle, PW2 testified that PW1 was paid LSB of K8,360,000 and K3,600,000 respectively. PW2 conceded that the money paid to PW1 was more than his entitlement and PW1 never informed him of the payments.

The witness was not **re-examined**.

The Defendant's only witness was **Barnabas Mulenga**, Chief Management Resources Officer, Ministry of Tourism and Arts. DW1

testified that PW1 was employed as a Classified Daily Employee (CDE) on a monthly contract, and that CDE's in the Government were not entitled to retirement packages but were instead paid a Long Service Bonus (LSB). DW1 added that LSB was payable after the completion of the first ten years of service. Thereafter, if a CDE had not reached 55 years, the subsequent LSB's would be paid in intervals of five years. In the event that a CDE reached the age of 55 years and had not completed the five year cycle, then he would only be entitled to terminal leave.

DW1 went on to testify that PW1 was employed in 1994 and in 2004 was paid about K10,000,000 as his first LSB. Between 2004 - 2009, PW1 was paid another LSB of K13,000,000 and was also entitled to terminal leave benefits for the period. According to DW1 after subtracting the leave days taken during that period, PW1 remained with 21 leave days, which were commuted into cash of about K6,000,000. After adding the LSB and leave days, DW1 testified that PW1's terminal benefits were about K35,000,000. All loans obtained by PW1 from the Government and other financial institutions totaling about K24,000,000, were recovered from the K35,000,000. PW1 was paid the difference of about K10,000,000.

DW1 testified that PW1 was given an advance for sustenance before the payment of his terminal benefits and as a result, he received excess money.

At page 4 of the Defendant's Bundle, DW1 confirmed that PW1 was employed on a monthly contract. Further, that PW1 received his retirement letter three months prior to his last day of employment, on 30<sup>th</sup> December, 2011. At page 7 of the Defendant's Bundle, DW1 stated that PW1's retirement letter informed him of the terms, namely that he had reached the Statutory retirement age of 55, he was entitled to a LSB, repatriation and leave days. DW1 stated that prior to retirement, PW1 was afforded an opportunity to raise queries.

Since PW1 did not raise any query, it was DW1's evidence that the Ministry went ahead to process his terminal benefits, namely a payment of K6,000,000 for leave days, K1,500,000 for repatriation and Long Service Bonus.

DW1 testified that PW1 wrongly calculated his leave days at K18,350,000 instead of K6,000,000. He maintained that as a CDE,

PW1 was not entitled to a retirement package as the condition only applied to civil servants. On repatriation and LSB, DW1 relied on page 28 of the Defendant's Bundle, bearing the computation of PW1's entitlement at K10,283,388.66.

In **cross-examination**, DW1 stated that PW1's LSB for the first five years was K13,921,075.20. Further that, PW1 was availed various documents at the time of his retirement, informing him of his terminal benefits. These included the terminal leave certificate and pay slip. DW1 maintained that PW1 was notified of his retirement three months prior to the effective date. DW1 stated that the expenditure details narrative at pages 12 and 14 showed that PW1 was paid K8,360,000 and K3,600,000 as Long Service Bonus.

The witness was not **re-examined**.

Both parties forfeited their right to file submissions and placed reliance on the evidence on Record.

I have paid the closest attention to the evidence adduced. It is not in dispute that the Plaintiff was employed by the Ministry of

Tourism, Environment and National Resources from 12<sup>th</sup> April, 1994 up to the time of his retirement on 31<sup>st</sup> December, 2011. It is also not in dispute that the Plaintiff was employed as a driver on a monthly contract in the class of a Classified Daily Employee. What the Plaintiff brings in contest to Court is the calculation of his terminal benefits.

As stated above, the Plaintiff was employed on a monthly contract and as a CDE. From the evidence led by the Defendant, there is no dispute that the Plaintiff accepted the Agreement for Service for Non-Civil Service Employees of Government, wherein the following conditions were stated:

***“(b) that I am not a member of the Civil Service.***

***(d) that I shall be entitled to receive benefits applicable to non-civil service employees of Government.***

***(e) that I shall be required to contribute regularly to the Zambia National Provident fund...”***

By these conditions, I am comforted that the Plaintiff obliged himself to conditions of service, which did not bestow on him conditions reserved for civil servants.

The learned Authors of **Chitty on Contracts 26<sup>th</sup> Edition, Vol. 1** at paragraph 772 state that:

**“Where the agreement of the parties has been reduced into writing and the document containing the agreement has been signed by one or both of them, it is well established that the parties signing will be bound by the terms of the written agreement whether or not he has read them or whether or not he is ignorant of their precise legal meaning.”**

In the case of **Colgate Palmolive (Z) Inc. v Shemu and Others<sup>1</sup>**, the Supreme Court citing the case of *Printing and Numerical Registering Company v Simpson (1895) L.R. 19 E Q 462* held that:

**“if there is one thing more than another which public policy requires it is that men of full age and competent understanding shall have the utmost liberty in contracting and that their contract when entered into freely and voluntarily shall be enforced by Courts of justice.”**

It follows therefore, that a contract binds the parties. It matters less that a contracting party was not alive to the responsibilities or the consequences of contract. In the present case, the Agreement for Service for Non-Civil Service Employees of Government demonstrates without rigmarole that the Plaintiff was never a civil servant. He was a Classified Daily Employee who was entitled to terminal benefits as provided in his letter of retirement. This did not include a retirement package as contemplated under the Pension Scheme. Thus, I have no hesitation in holding that the Plaintiff's claim lacks merit and it accordingly fails.

I find that the Plaintiff was severely misled by PW2 into a delusion that he is entitled to K18,350 as leave dues and a Long Service Bonus of K18,849 when PW2 clearly had no basis for his calculations. I am satisfied with DW1's evidence supported at page 28 of the Defendant's Bundle, which shows PW1's terminal benefits. I therefore, have no reason or basis to fault the calculations and in the result, PW1's claims fail.

During trial, I observed that PW2 had no expertise whatsoever in labour issues. I strongly condemn his behavior and warn him to desist from engaging in labour consultancy.

Let me state that PW1's argument that he was not aware of his indebtedness to the Government and other financial institutions is feeble. He personally procured the loans and should have known the level of his indebtedness from his pay slip. If he had sought proper advice from his Employer then he would have probably avoided this undesirable litigation. He had been making contributions to NAPSA and must therefore pursue that Organisation.

Although costs abide the event, I order each party to bear their own costs. The Plaintiff is already in a deplorable state and it is unnecessary to confound his situation.

Leave to appeal is granted.

Dated this 8<sup>th</sup> day of May, 2017.

*M. Mapani*

M. Mapani-Kawimbe  
**HIGH COURT JUDGE**