

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2009/HP/1247



(Civil Jurisdiction)

BETWEEN:

BENSON MANGILASHI AND 79 OTHERS

PLAINTIFFS

AND

THE ATTORNEY GENERAL

DEFENDANT

Before: E. M. Hamaundu, J

For the plaintiffs: Mr. N. Okware, Messrs Okware and Associates

For the defendant: Col. J. Makanta and Lt. Col. C. Nambote, State
Advocates

JUDGMENT

The plaintiffs claim: repatriation allowance, accrued salaries and refunds of house rent.

According to the statement of claim, the plaintiffs were at the material time non-civil servant employees of the Zambia Air Force stationed in Mumbwa and Livingstone. They served on permanent and pensionable conditions of service which stipulated that they would retire upon reaching 55 years of age. Between 1991 and 1993 the plaintiffs were retrenched, whereupon they became entitled to the following benefits: Long service bonus, leave pay, three months' salary as redundancy pay and repatriation allowance. The Zambia Air Force paid all the benefits except repatriation allowance. After many years, the Zambia Air Force paid repatriation allowances to those retrenchedes who had

been stationed in Lusaka. Only one retrenchee from Mumbwa was paid while none of the retrenchees from Livingstone was paid. Hence this claim.

According to the statement of defence, the plaintiffs were employed as Classified Daily Employees whose terms of employment were covered by *Appendix III of the Personnel Division Circular No. B19 of 1984*. The plaintiffs were indeed retrenched and were paid all benefits that were due to them.

During a session for settlement of issues, the following facts were settled and found as facts:

- (i) That it is not in dispute that the plaintiffs were employed by the Zambia Air Force:
- (ii) That it is not in dispute that the plaintiffs were retrenched:
- (iii) That it is not in dispute that, upon the retrenchment, the plaintiffs were paid a retrenchment package: and
- (iv) That it is not in dispute that, according to their conditions of service, the plaintiffs were entitled to travel benefits (also known as repatriation allowance) upon termination.

The only issue that was found to be in dispute was whether the travel benefits were included in the retrenchment package.

The plaintiffs called one witness, John Simwinga. His testimony was thus: He was employed by the Zambia Air Force in 1975 and was based at Mumbwa. He was employed as a Classified Daily Employee and his last job was that of time-keeping. He was retrenched in 1992. At that time, the mode of obtaining travel benefits was for the employee to obtain three quotations from transporters and present them to the Zambia Air Force; which, in turn, would pay on the basis of the cheapest quotation. He duly obtained three quotations for the trip to his repatriation destination, Livingstone. He presented them to the Zambia Air Force who have neglected to pay, to-date.

Reacting to a Civilian Ledger card for the 1st plaintiff which showed that a sum of K50,000.00 (un-rebased) as repatriation was taken into account in the computation thereon, the witness said that the ledger card was only meant to show the entitlement. The evidence for payment would be on a payment voucher. He gave as an example a payment voucher for Abel Pakati which the defendant had produced. He also gave as an example a payment voucher for Gershom Musepa, who was paid a sum of K1million (un-rebased) in 2002 as repatriation allowance.

In cross-examination, the witness conceded that, according to the circular which governed their employment, the plaintiffs were merely entitled to travel warrants.

That was the case for the plaintiffs.

The defendant's sole witness was Warrant Officer James Chalwe, who was in charge of the Civilian Accounts Section. His testimony was as follows: Before 1993, the Zambia Air Force did not have pay slips for employees in the plaintiffs' category. Instead, the Air Force had what were called Civilian Ledger Cards where all entitlements for civilians were recorded.

The witness gave the 1st plaintiff's Civilian Ledger Card as an example and pointed out that the card showed that the 1st plaintiff was paid 21 months' salary for long service and K50,000.00 as repatriation.

In cross-examination, the witness was shown the payment voucher for Gershom Musepa who was paid a sum of K1million in 2002 as repatriation. He replied that he did not have the facts as to when Gershom Musepa left employment in order for him to explain why Musepa was paid K1million. The witness said, however, that repatriation was never paid on the basis of quotations.

That was the case for the defendants.

The main facts of this case were already settled. The only issue left to be determined is whether payment for repatriation was included in the retrenchment package. The witness for the plaintiff contended that, although a sum of K50,000.00 as repatriation allowance appeared on the Civilian Ledger Card, it was merely there as an entry showing entitlement; but it was never paid. I have looked at the 1st plaintiff's Civilian Ledger Card. It shows computations of his retrenchment package; broken down into leave days, long service bonus and repatriation. All these were added up to give a gross figure. From that figure, some deductions were made. In the end, the net package for the 1st plaintiff came to K574,248.90. There are writings showing the number of the cheque on which this amount was paid. I have also looked at the payment voucher for Abel Pakati, who was paid leave days and K50,000.00 for repatriation. What these documents tell me is that the repatriation allowance for the plaintiff was K50,000.00 and that it was paid as part of the package.

The plaintiffs, during cross-examination of the defendant's witness, raised issue as regards the disparity in the amount of the allowance between the plaintiffs and Gershom Musepa who was paid K1million in 2002. As the defendant's witness said, it is not known when Gershom Musepa's employment came to an end. There was a gap of ten years between 1992, when the 1st plaintiff and many others were retrenched and paid, and 2002 when Gershom Musepa was paid. The allowance could have been reviewed. Further, it is not known what position Gershom Musepa held. It could be that he was in a superior position which entitled him to a far much superior allowance. In any event, the case which the plaintiffs brought to court is not about the disparity in payments. That issue is not in the pleadings at all. The issue they brought to court was that they were not paid repatriation

allowance at all. I have just found that they were paid. Therefore, the plaintiffs have not proved their case.

The plaintiffs' claim is dismissed. Costs to the defendant.

Dated the 26th day of May 2017.



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E. M. HAMAUNDU
JUDGE