

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



**BETWEEN:**

**PETER MUMBA AND 18 OTHERS**

**PLAINTIFF**

**AND**

**UNITED QUARRIES LIMITED**

**DEFENDANT**

**BEFORE: A. M. CHULU – REGISTRAR – CHAMBERS**

**For the Plaintiffs: Major C. Lisita: Messrs Central Chambers**

**For the Defendant: A. Banda from L. M. Chambers**

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## **JUDGMENT ON ASSESSMENT**

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This is the Plaintiff's application for Assessment of Damages Pursuant to the Consent Judgment dated 29<sup>th</sup> November, 2011. The application was supported by an Affidavit filed on 27<sup>th</sup> October, 2015.

The Defendants filed their Affidavit in Opposition on 23<sup>rd</sup> November, 2015 wherein, the averments in Paragraph 5 are that Paragraphs 5 and 6 of the Plaintiff's Affidavit are admitted except to state that the applicable Conditions of Service are those of 1999 which became effective on 1<sup>st</sup> October, 1999; and not the

1996 Conditions appearing as exhibit **"PM4"** of the Plaintiff's Affidavit now produced as **"WMI"**.

The gist of this assessment is that, the Plaintiffs contend that the Conditions applicable were those for 1996 and not the 1999 Conditions. The Plaintiffs adduced oral evidence through the 1<sup>st</sup> Plaintiff Peter Mumba.

PW1 testified that he swore an Affidavit in Support of the claim and paragraph 5 of the Affidavit show that the Plaintiffs were appointed at various times. Attached to the Affidavit is exhibit **"PM3"** which are letters of appointment. PW1 deposed that they were employed under Permanent and Pensionable Conditions. Exhibit **"PM4"** from Page 43 to Page 84 is a copy of the Conditions of Service. PW1 deposed that their Services were terminated on 21<sup>st</sup> October, 2005. The Plaintiffs were communicated to, as shown by exhibit marked **"PM5"** from Pages 85 to 103. According to the letters, the effective date of termination is 21<sup>st</sup> October, 2005.

For purposes of understanding and clarity, the matter was referred to the Deputy Registrar for determination of appropriate and applicable entitlements of the Plaintiffs namely:

- a) Salary arrears if any and all matters connected thereto;
- b) Terminal benefits as applicable to each employee;
- c) Damages for wrongful termination of employment;
- d) Interest.



The record shows that the then Honorable Deputy Registrar who dealt with the matter now Honorable Justice C. Zulu delivered a Ruling on 22<sup>nd</sup> December, 2015. The Ruling was to the effect that the agreed Default Judgment granted the Plaintiffs all the reliefs sought therein, regardless of whether the relief was declaratory or not. He went on to state that, even when the parties settled on Consent Order, the parties agreed to maintain the Default Judgment without amending or varying it. The effect thereof, was that all the reliefs as prayed in the Writ of Summons and Statement of Claim were accordingly maintained. He stated in the Ruling that the specific mention of some reliefs in the Consent Order did not invalidate or oust reliefs granted by the Default Judgment.

A perusal of the record shows that the Defendants did not appeal against the Ruling delivered on 22<sup>nd</sup> December, 2015. I therefore proceeded to assess the damages as prayed for by the Plaintiffs based on their Writ of Summons and Statement of Claim. I further considered the oral evidence adduced by both parties.

It was PW1's testimony that the Conditions of Service stipulated that they were eligible to be retired at the age of 55 or after serving the company for 20 years. None of the Plaintiffs was 55 years or had worked for 20 years. It was his contention that none of the Plaintiffs was supposed to be terminated. When shown **"PM3"** at Page 3 of the Affidavit in Support of Assessment, PW1 said that **"P3"** is an Employment Offer letter. It was not his

Contract of Employment. He stated that **"P3"** is stipulating his Conditions of Service. Page 3 to Page 42 are letters offering employment to the Plaintiffs.

It was his evidence that despite National Pensions Scheme Authority (NAPSA) Contributions being deducted from their salaries, the Defendant was not remitting the contributions to National Pensions Scheme Authority as evidenced by the Member's Statement marked **"P8"** from page 168 to page 210. PW1 denied that they were early retired. When shown **"PM5"** which is a Notice of Early Retirement, PW1 conceded that the letters stipulate that they were being early retired, but their Conditions do not contain any Clause for an option of early retirement or not.

PW1 testified that everybody was entitled to Education Allowance. He nonetheless added that the amount to be paid was according to one's grade. PW1 exhibited **"PM6"** which is a Pay Slip for one Joseph Daka to show that Joseph Daka was under paid.

PW1 further stated that Repatriation Allowance was only applicable to those who were employed outside Lusaka. As such, Lydon Malembeka was entitled to be paid an Allowance because he came from Chingola. It was his contention that Lydon was entitled to K7, 000.00 Repatriation Allowance.



PW1 stated that Housing Allowance was paid according to the grades. He added that those who were accommodated by the Company were not paid Housing Allowance. It was his evidence that the Conditions of Service were subject to change by approval of Management.

When PW1 was referred to the 1999 Conditions of Service, he said that they were still in Draft form, hence the cancellations. What was applicable were the 1996 Conditions of Service which were approved and circulated.

The Defendant filed an Affidavit in Opposition to the Affidavit in Support of the Summons for Assessment to which he deposed that the Plaintiffs herein are only entitled to no more than K533, 076.00. He argued that the applicable Conditions of Service are those of 1999 which came into effect on 1<sup>st</sup> October, 1999 and not the 1996 Conditions appearing as exhibit **"PM4"**.

The Defendants through their witness Mr. Walufeya Mfunne who is the Company Secretary at Zambia National Holdings Limited deposed that the 1999 Conditions were approved and communicated to all the General Managers of the Subsidiaries of Zambia National Holdings Limited including United Quarries where the Plaintiffs used to work. It was his evidence that the 1996 Conditions of Service were phased out and they started implementing the 1999 Conditions of Service from 1<sup>st</sup> October, 1999.

It was his testimony that, when the Company started experiencing financial difficulties; the Board decided to scale down the labour force to enable it operate effectively. The Board placed all workers for United Quarries on Contract in 2005. He referred to exhibit marked **"PM3"** captioned **"Introduction of Contract of Employment"**. He said that these were Standard Conditions of Service depending on the position each employee held. All the employees accepted the Conditions except the (19) Plaintiffs now before the Court.

DW1 said that the total quantum for all the 19 employees was calculated at K533, 076.00. The amount was communicated to the Plaintiffs. They disputed the calculations and they opted to go to Court.

When crossed-examined, DW1 insisted that the Conditions of Service which were in effect were those for 1999 and not for 1996. When shown the 1999 Conditions of Service which had a number of markings and cancellations, DW1 stated that he did know why the document had a lot of cancellations, markings and crossings. He said that he did not know who crossed or made the markings in the document.

The Court noted that the document had a number of cancellations and markings on several conditions. Notable were the following conditions;

1. Out of Pocket Allowance,
2. Meal Allowance,



3. Medical Allowance,
4. Housing Allowance,
5. Holiday Allowance and
6. Education Allowance.

When further cross-examined, DW1 said that the 1999 Conditions of Service which have cancellations and markings was used by the Plaintiffs, hence they are privy to those Conditions. It was his evidence that the 19 Plaintiffs were laid off after they refused to accept the New Conditions of Service. When shown **"PM5"** which is a Notice of Early Retirement DW1 admitted that the Plaintiffs were not given their one Month's Notice Pay as is indicated in Paragraph 2 of **"PM5"**. DW2 further stated that he had no knowledge whether or not the Plaintiffs were paid for the two Months of September and October, 2005. He could not substantiate how the K533, 076.00 was arrived at. He conceded that in the absence of how the figure was arrived at, the amount awarded by the Defendant is therefore arbitrary.

I am indebted for the submissions availed to me.

It is not disputed that the Plaintiffs were separated on 21<sup>st</sup> October, 2005. It is on record that the Plaintiffs refused to be subjected to the 1999 Conditions of service. It is not disputed that the Plaintiffs were employed by and served the Defendants for various periods of time prior to their employment being terminated on 21<sup>st</sup> October, 2005. It is a fact that the Defendant failed to convince the Court that the alleged applicable

Conditions of Service for 1999 were communicated to the Plaintiffs as was the case with the 1996 Conditions. The Plaintiffs exhibited letters marked **"PM4" - 43** where the Managing Director (Zambia National Holdings Limited) communicated to them and enclosed a copy of the approved Conditions of Service to the Defendant's General Manager. The Managing Director implored him to bring those Conditions of Service to the attention of the employees. The Plaintiffs exhibited **"PM4 - 43"** to substantiate their assertion that in fact the 1999 Conditions of Service were not communicated to them as was the case with the 1996 Conditions of Service.

Going by the above arguments, it is a fact that the 1999 Conditions were not communicated to the employees. The Defendant exhibited no proof of such communication. It is a fact therefore, that the Conditions applicable for the Assessment are those for 1996 and not 1999 which clearly seem to be in Draft form.

The Plaintiffs tabulated their demands striatum and I order as follows;

1. Particulars of Salary Arrears for September  
and October, 2005, A total of K26, 110.44
2. Particulars of One Month's Notice Pay  
Arrears K13, 055.22



3. Particulars of Outstanding Allowances	K29, 410.62
4. Particulars of Accrued Leave Days and Cash in Lieu thereof	K30, 868.09
5. Particulars of Salary Refund for Joseph Daka	K 264.03
6. Particulars of Medical Refunds	K1, 185.64
7. Particulars of Redundancy Payments and Service Benefits	K554,435.50
8. Damages	K156,668.64
<b>Total</b>	<b><u>K811,998.18</u></b>

For avoidance of doubt, the Plaintiffs have proved the quantum of their damages. I therefore, order that the same be paid to each of them in accordance with the tabulations; except for National Pensions Scheme Authority Contributions where a sum of **K19, 890.31** should directly be remitted to the National Pensions Scheme Authority.

The amounts shall attract interest from the date of the Writ of Summons to the date when the Default Judgment was entered. Thereafter, at the Bank of Zambia, long term lending rate up to the final Judgment.

The Plaintiffs are further awarded Costs to be taxed if not agreed.

Leave to appeal granted.

DELIVERED ON ..... DAY OF ..... 2017

