

IN THE SUPREME COURT OF ZAMBIA SCZ/08/03/2023
HOLDEN AT LUSAKA **APPEAL NO.4/2023**
(Civil Jurisdiction)



BETWEEN

ZAMBIA TELECOMMUNICATIONS COMPANY **APPELLANT**

AND

FELIX MUSONDA AND 29 OTHERS **RESPONDENTS**

Coram: Musonda, DCJ, Wood and Chisanga, JJS

On 1st August, 2023 and On 12th February, 2025

For the appellant: Mr. M. Chiteba, Mr. P. Chomba Messrs.
Mulenga Mundashi Legal Practitioners

For the respondents: Mr. M. Mando Messrs. Mando and Pasi
Advocates

J U D G M E N T

CHISANGA, JS delivered the Judgment of the Court.

Cases referred to:

1. *Zulu and Others vs Chilanga Cement Plc, Appeal No. 12/2004*
2. *Kasote vs The People (1977) ZR 75*
3. *Match Corporation Limited vs Development Bank of Zambia and Another (1999) ZR 13*
4. *Malambo vs Patco Agro Industries Limited, Appeal No. 134/2015*
5. *Zambia Telecommunications vs Chimbo, Appeal No. 156/2015*
6. *Elvis Mulele Nakweti vs Zamtel, Appeal No. 1/2022.*
7. *Mtonga and Others vs Hamweenda & Others SCZ Appeal No. 18/2016*
8. *Jere and 15 Others vs Zambia Railways, Appeal No. 125/2015*
9. *Hamalambo vs Zambia National Building Society, Appeal No. 64/2013*

10. *Choonga vs ZESCO Recreation Club, Itezhi Tezhi*, Appeal No. 168/2013
11. *Mususu Kalenga Building Limited and Another vs Richmans Money Lenders Enterprises (1999)* ZR 27
12. *Chitala (Secretary of the Zambia Democratic Congress) vs Attorney General (1995-97)* ZR 91
13. *Zambia State Insurance Corporation & Another vs Muchili*, SCZ Judgment No. 10/1989.
14. *Zambia Telecommunications Company Limited and Mulwanda and Another*, SCZ Judgment No.7/2012
15. *McClure vs Cassady*, 426 So.2d 430 (Ala.Civ.App.1982)
16. *Wise vs Watson*, 286 Ala.22, 236 So.2d 681 (1970)
17. *Mayo Transport vs United Dominions Corporation Limited (1962) R and N 22*

Other Works referred to:

1. *Oxford Advanced Learners Dictionary 7th Edition*

BACKGROUND

1. This matter has been in Court for a long time. It was commenced by the respondent on, and tried and determined by Lenga Lenga J, as she then was. The respondents, who had been employed by the appellant, Zamtel, separated from that company by way of retirement. At the time of separation, the Zamtel conditions of service governed their contracts of service. Of relevance to their exit in those terms and conditions were clauses 8 and 9, which read as follows, respectively:

8.1 Eligibility

Long Service Gratuity shall be payable in the following circumstances:

- a. Normal retirement
- b. Death while in service
- c. Retirement on medical grounds
- d. Voluntary or early retirement at the request of the employee
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8.3 The level of Long Service Gratuity payment shall be three months' pay for each completed year of service and pro-rata for the incomplete year

8.4 In computing the Long Service Gratuity the last drawn monthly basic salary shall be the amount to be used.

9 (a) i. ...

ii. ...

iii. The benefits on retirement shall be in accordance with the company's pension scheme.

iv. In addition to the retirement benefits accruing from the Pension Scheme, an employee retiring from service shall be entitled to payment of three months pay for each completed year of service and prorata for any uncompleted year served.

2. To the respondents' grievance, Zamtel computed the benefits minus the allowances that had been part of their pay in addition to the basic salary.

Zamtel paid three (3) months salary for each year served. Although clause 9 of the conditions stipulated that an employee who retired would be paid pension benefits and 3 months salary for each year served, Zamtel understood this to mean that the 3 months entitlement in clause 9 meant the long service gratuity referred to in clause 8. Put differently, Zamtel thought the 3 months entitlement in both clauses referred to one and the same thing, and not two distinct benefits. With this understanding, Zamtel paid long service bonus only. It did not pay the additional 3 months salary for each year the respondents served, as provided under clause 9.

3. The respondents sought the Court's intervention in the matter. They claimed the following reliefs:

- i. Retirement packages**
- ii. Allowances on gratuity paid**
- iii. Housing allowances from date of retirement until full payment of terminal benefits.**
- iv. Alternatively damages for breach of employment contract**

**v. Any other relief the Court may deem fit,
interest and costs.**

4. Zamtel resisted the claim. Its position was that the respondents were only entitled to long service gratuity under clause 8. They were not entitled to another 3 months pay for each completed year of service. Therefore, they had been paid in full.
5. The respondents called two witnesses whose combined testimony was that they were entitled to another three months pay for each year served under clause 9. This was in addition to the long service gratuity that Zamtel had paid them. Housing allowance was also payable, because according to them, they had not been paid their benefits in full.
6. The Court also heard evidence from one defence witness, whose testimony was that the benefits payable to those who retired were similar to those who retired on medical grounds. These were, 3 months salary for each year served, cash in lieu of leave, repatriation allowance of two (2) months

salary and a pension. In the case of those who were retired on medical grounds, an additional 2 months salary was paid, to assist with medication. He explained that clauses 9 (iv) and 8.3 were the same, and referred to actual benefits payable on each mode of separation. Thus, the respondents were entitled to long-term service gratuity, which was the retirement package. Zamtel had a pension scheme with the Zambia State Insurance Corporation (ZISC) which was contributory. Retirement benefits were not payable over and above pension benefits.

7. The learned trial judge duly considered the evidence led by both parties. She accepted the evidence led by Zamtel's witness, concluding that clause 8 had to be read with clause 9, in order to arrive at a logical conclusion as to how the retirees were to be paid their dues on retirement. According to her, the bone of contention was that allowances were supposed to be included. She found that the respondents were underpaid because Zamtel

excluded allowances when computing retirement benefits. She said,

"Having found that the plaintiffs were not paid their retirement benefits in full, I accept that they are owed retirement benefits and I accordingly order the defendant to pay them in full."

8. Additionally, She awarded the respondents housing allowances from the date of retirement when the retirement benefits became due until date of payment of the retirement benefits in full.
9. Zamtel was dissatisfied with this outcome and appealed to the Supreme Court. The issue it raised was that the applicable conditions of service stipulated that the basic salary was to be used when computing long service gratuity. Contrary to this express term, the learned trial judge held that allowances fell to be included when computing long service gratuity. Another issue was that the trial Court had erroneously held that the directive of the Minister of Finance to ZIMCO subsidiary companies was applicable to Zamtel. She had also

relied on **Zulu and Others vs Chilanga Cement Plc¹** in holding that allowances should be taken into account when computing the respondents' retirement benefits.

10. The Supreme Court duly considered the appeal and allowed it, holding as follows:

- i. The Zamtel conditions of service were applicable to the contracts between Zamtel and the respondents.
- ii. Computation of long service gratuity was to be based on the basic salary.
- iii. The Zulu case was inapplicable because in that case, the word 'salary' was not defined, as opposed to this case, where it was defined.

11. Undeterred by this outcome, the respondents filed a notice for assessment of damages and or terminal benefits pursuant to Order 37 rule 1 RSC 1999. The notice was supported by an affidavit sworn by a Mr. Alex Singogo, one of the respondents. According to him, the trial judge had awarded the respondents all their claims, except damages and any other relief. She had also rejected the claims she had found to be statute barred. He deposed that

Zamtel had only appealed against the award of allowances and not the award of retirement packages and housing allowance. Therefore, the Supreme Court had not addressed the award of retirement benefits. Zamtel had not paid their retirement packages, which they had now computed for assessment.

12. Upon being served with the notice for assessment, Zamtel applied to strike it out. It contended that the trial Court never awarded a retirement package contrary to the respondents' claim. When the parties appeared before the Deputy Registrar, Mr. Mando, who appeared for the respondents, asked her to refer the judgment to the trial judge, with a specific question, that is, whether the plaintiffs were awarded retirement packages or not.

13. In-house legal counsel for Zamtel resisted the application, his view being that the judgment was very clear, and that the application to strike out and dismiss the notice of assessment of damages be heard instead. The learned Deputy Registrar took

the view that the trial judge had to highlight what was to be assessed as the parties were in disagreement. She accordingly made an Order, referring the matter to the trial judge.

14. Following the Deputy Registrar's Order, the respondents applied that the trial judge interpret the judgment as it had become apparent that the judgment was not clear as to whether the Court had awarded the respondents the claim for retirement packages.

15. After considering the application, the learned judge indicated that she had awarded the respondents as follows:

Retirement Packages - that the defendant (Zamtel) pays them in full, that is, salary plus allowances;

Housing allowances - that the defendant (Zamtel) pays them housing allowance from the date of retirement when the retirement benefits became due, until date of full payment of retirement benefit,

Repatriation - to which include the calculation or computation of allowances to the basic salary.

16. In determining the application, the learned judge referred to what she had said at pages J48-J50 of the judgment. She recalled that she had concluded that the respondents were not paid their retirement benefits in full as the calculation excluded allowances. She reproduced her findings as follows:

"... it is, therefore, correct that the plaintiffs' retirement benefits were calculated excluding allowances and this Court having accepted that 'salary' includes allowances in line with the Supreme Court's decision in the case of James Mankwa Zulu & Others vs Chilanga Cement Plc, accordingly finds that the plaintiffs were underpaid when the defendant used the wrong mode of calculation of their retirement benefits.

Having found that the plaintiffs were not paid their retirement benefits in full, I accept that they are still owed retirement benefits and I, accordingly, order the defendant to pay them in full..."

17. The learned judge referred to the Supreme Court's decision on appeal that the word 'salary' did not include allowances, and went on to conclude that

the respondents were paid the retirement packages and long service gratuity using the salary without allowances, and that they had no further claims to pursue on the issue. That therefore, the learned Deputy Registrar could not assess the retirement packages and long service gratuity in that regard.

18. This outcome prompted an appeal to the Court of Appeal by the respondents. The issues that the respondents raised in that Court were that the Supreme Court had only dealt with long service gratuity, and not retirement packages. The trial judge misdirected herself in concluding that the respondents' claims were paid in full without supporting evidence to that effect. The learned judge having correctly found that the respondents were awarded retirement packages inclusive of allowances, she misdirected herself by holding that the Supreme Court reversed the finding. Another misdirection was that the learned judge went beyond interpretation of the trial judgment,

and delved into interpreting the Supreme Court judgment.

JUDGMENT OF THE COURT OF APPEAL

19. The Court of Appeal considered the appeal. Reciting the words of the trial Judge, the court observed that the learned Judge did more than interpret her judgment. She proceeded to review it, and in the process, amended the substantive judgment. She failed to appreciate the difference between interpreting and reviewing a judgment.
20. The Court of Appeal concluded that the trial Judge had awarded the respondents retirement package, allowances and housing allowance in the substantive Judgment. However, after considering the Supreme Court judgment, she reversed the awards she had made and held that the appellants' claims were fully settled in her ruling on interpretation. The Court of Appeal opined that by referring to the Supreme Court decision which was not before her in the main judgment, the learned judge re-examined her own judgment and departed from the

awards she had granted, which was tantamount to reviewing the judgment.

21. The portion of the ruling that reviewed the judgment according to the Court of Appeal was set aside and the portion interpreting the Judgment upheld. The Court found that the trial Judge had awarded retirement packages under Clause 9 (iv), allowances on gratuity paid, repatriation and housing allowance until full payment of retirement benefits.

22. Premised on the findings on the foregoing paragraph, the Court ordered that the Registrar assess the following:

1. Gratuity under (Clause 8.3) if not paid, exclusive of allowances.
2. Retirement package (under Clause 9 (a) (iv) to be paid exclusive of allowances.
3. Housing allowances, from the date of retirement until payment of retirement benefits as above.
4. Repatriation, if not paid, exclusive of allowances.
5. Interest, to be paid at the short-term deposit rate from date of writ to date.

APPEAL IN THIS COURT

23. Zamtel was taken aback by this decision, and appealed to this Court with leave of a single judge, the Court of Appeal having refused leave to appeal. The grounds on which Zamtel impugns the decision of the Court of Appeal can be summarized as follows:

1. The Honourable Court erred in law and in fact in faulting the High Court judge for interpreting her initial Judgment in the light of the Supreme Court Judgment on appeal, as the high court judge was bound to consider the decision of the Supreme Court.
2. The court erred in law and in fact in referring the case back to the Deputy Registrar without considering whether the high court Judgment had been set aside by the Supreme Court, and if so, whether assessment of the reliefs awarded in the high court Judgment could be done when the high court decision had been overturned by the Supreme Court.
3. The court erred in law and fact in failing to consider whether the issues between the appellant and respondent were *res judicata* following the decision of the Supreme Court on Appeal.
4. The court misdirected itself by faulting the high court for considering the decision of the Supreme Court on Appeal but referring the case

for assessment and excluding the allowances from the awards which allowances were only excluded by the Supreme Court.

APPELLANT'S ARGUMENTS

24. With respect to the first ground, ZAMTEL's advocates take the point that in basing the interpretation of her Judgment on the Supreme Court Judgment, the High Court Judge correctly interpreted the awards she had made in favour of the appellants. It was inevitable for her to do so, because of the principle of *stare decisis*, which ensures that conflicting decisions between the High Court and the Supreme Court are avoided. This submission is based on **Kasote vs The People**,² and **Match Corporation Limited vs Development Bank of Zambia and Another**.³

25. Learned counsel concede that a trial judge should restrict themselves to interpreting a judgment when called upon to do so and not delve into reviewing their judgment per **Malambo vs Patco Agro Industries Limited**.⁵ They however point out that

the trial judge neither admitted new evidence nor reviewed her earlier judgment by dealing with new matters that were not before her at the time she rendered the High Court Judgment. Had the High Court judge interpreted the judgment without referring to the Supreme Court judgment as suggested by the Court of Appeal, she would have awarded retirement benefits which included allowances when the Supreme Court judgment had categorically set it aside.

26. Counsel submit that the learned trial judge had held that clauses 8 and 9 were to be read together for a logical conclusion to be made as to how the respondents were to be paid their retirement benefits upon retirement. The respondents never challenged the learned judge's interpretation of these Clauses whose effect was that they were entitled to a single retirement benefit of 3 months salary for each completed year of service. This finding was still valid as between the parties.

27. The Supreme Court having held that allowances should be excluded, it followed that the respondents had been paid their retirement benefits in full. The **Zambia Telecommunications vs Chimbo⁵** and **Elvis Mulele Nakweti vs Zamtel⁶** cases were decided after the decision of the Court in this case. These cases could not come to the respondent's aid. **Mtonga and Others vs Hamweenda⁷ and Others** as well as **Jere and 15 Others vs Zambia Railways,⁸** Limited were cited in support of this argument.

28. According to counsel, the issue of retirement benefits was put to rest in the High Court and Supreme Court judgments. It cannot be re-opened on account of a party's omission or negligence, per **Hamalambo vs Zambia National Building Society.⁹** The respondents' arguments in the Court of Appeal were an attempt to resurrect the issue of retirement benefits, which had been conclusively addressed by both the High Court and Supreme Court. This was an abuse of Court process.

29. By excluding allowances, the Court of Appeal effectively interpreted the High Court judgment in the light of the Supreme Court, after roundly condemning the High Court for doing so. In awarding the respondents a retirement package under Clause 9 (9) (iv) the Court of Appeal ignored the principle of *res judicata*. This was wrong because as between the parties, the effect of Clauses 8 and 9 had been finally determined.

ARGUMENTS BY THE RESPONDENTS

30. In Mr. Mando's opinion the respondents are victims of draftsmanship issues in that both the High Court judgment, and the ruling on interpretation have left the parties unsure of their rights.
31. He argues that Article 118 assists the respondents in that, justice leans towards paying the retirement benefits. Deciding otherwise entails that Zamtel will retain the respondents' retirement packages, never to be paid.
32. Counsel submits that the appellant failed to file heads of argument within 30 days as required by

Order 10 Rule 9 (16) of the Court of Appeal Rules. It only made brief, oral submissions. Therefore, it cannot raise issues it did not raise in the Court below, per **Choonga vs Zesco Recreation Club, Itezhi Tezhi** and, **Mususu Kalenga and Another vs Richman's Money Lenders Enterprises**.¹¹

33. Another argument is that the appellant raised a preliminary issue with respect to the words that 'the two clauses must be read together.' The Court of Appeal dismissed it, and Zamtel did not appeal. It cannot raise the issue now, per **Elvis Mulele Nakweti vs Zamtel**.⁶
34. In learned counsel's view the question should have been whether the High Court judge reviewed or amended the judgment and not the grounds of appeal that have been advanced.
35. He goes on to argue that the trial judge never stated that the claim for retirement benefits, which stood alone, and was distinctly argued, had been dismissed. The Court made a distinct award of this claim. Zamtel made a partial appeal.

36. Mr. Mando submitted that when interpreting the judgment, the learned trial judge indicated that she had awarded the retirement packages, and that the Zamtel should pay the respondents in full. "salary" related to claim number (i) in the statement of claim, being retirement packages comprising 3 months salary for each year served, while allowances pertained to the second claim, which related to allowances in the long service gratuity. There is no principle that the High Court should consider a subsequent judgment of the Supreme Court when interpreting a judgment. The learned judge should have addressed the import of the phrase '*must be read together*' which the appellant contended meant that the retirement package and allowances were one and the same thing, while the respondents contended that they were awarded retirement packages as a stand-alone relief.

37. Learned counsel argues that the principle of stare decisis is inapplicable when interpreting a

judgment. Interpretation is aimed at clarifying what was said. It is not a determination. The judge is *functus officio* and cannot amend or review the judgment in light of later Supreme Court judgments.

38. It is argued that the present appeal arises from the Ruling on interpretation. The High Court judgment is no longer applicable as it has been clarified. The phrase '*must be read together*' has been overtaken by the ruling on interpretation, which clarifies that the allowances and retirement packages were awarded as independent reliefs.

39. In learned counsel's view ground two of the appeal is otiose and should not have graced the record. The reference to assessment was not an appealable order as it depended on the question whether the retirement packages were not due or not. The question of assessment was not in issue and was never raised in the Court below.

40. Counsel submits that the doctrine of *res judicata* was not alluded to at the hearing. It was raised as a preliminary issue in the Court of Appeal, but

that Court dismissed it. ZAMTEL did not appeal. In any event, referring the matter to the Deputy Registrar for assessment could not be subject to *res judicata* estoppel unless the question of assessment was in issue and had already been determined.

41. It is contended that the Court of Appeal did not state the basis on which it excluded allowances from the respondents' dues to be assessed. This appeal does not raise any serious issues warranting reversal of the Court of Appeal judgment. Issues regarding Zamtel's conditions of service have received enough attention in **Zambia Telecommunications vs Chimbo**,⁵ and **Elvis Mulele Nakweti vs Zamtel**.⁶

42. Another submission is that the appellant has voluntarily paid several other employees through consent orders in three other cases. This leaves the respondents as the only former employees who have not been paid their dues. The appellant will suffer no injustice if the appeal is dismissed and

the respondents paid their dues. Alternatively, should the appeal present any challenges, it is prayed that the Court rehears the matter on record. This argument is anchored on **Chitala (Secretary of the Zambia Democratic Congress) vs Attorney General¹² and Zambia State Insurance Corporation & Another vs Muchili.¹³**

ARGUMENTS IN RESPONSE

43. Counsel for the appellant respond that the finding by the trial judge that Clauses 8 and 9 were to be read together, and that both related to the same retirement packages were not appealed against. The effect was that the respondents were entitled to a single retirement benefit that was to include allowances.
44. The issue on appeal to this Court was whether the single retirement benefit from Clauses 8 and 9 should include allowances. The respondents sat on their rights and did not appeal.
45. The interpretation was consistent with the judgment, and in light of the Supreme Court

judgment, the trial judge concluded that there was nothing to be paid, as allowances had been excluded.

46. The appeal does not raise any new issue as the appellant has consistently asserted that the appeal by the respondents to the Court of Appeal was an abuse of Court process as it sought to relitigate matters that had been determined by the Supreme Court.

47. The High Court judgment cannot be divorced from the ruling on interpretation of the award. Both the High Court judgment and ruling on interpretation should be understood in the light of the Supreme Court judgment irrespective of the outcome this may have on the respondents.

THE HEARING

48. At the hearing, learned counsel for both sides relied on their respective heads of argument, which they reiterated orally. We will not reproduce the oral arguments, as they reflect the written heads of argument.

REASONING OF THE COURT

49. We have duly considered the grievances the appellant has with the judgment of the Court of Appeal, the premise of the dissatisfaction, as well as the resistance put up on behalf of the respondents. Principally, the appellant's discontent stems from the decision of the Court below to refer the matter to the Deputy Registrar for assessment without considering whether Lengalenga J's judgment had been overturned by the Supreme Court, and the matter put to rest for all intents and purposes. All the grounds revolve around the question whether there remained anything to be assessed in light of the Supreme Court judgment. We will address the grounds as we find convenient.

50. The background we have given above indicates that whereas the appellant understood Lengalenga J's decision, the respondents appear not to have grasped the meaning of the judgment. They accuse the trial judge of failing to clearly draft the

judgment, and claim they are victims of this shortcoming. They lament that both the High Court judgment and ruling on interpretation have left the parties unsure of their rights. It appears, from the arguments, that it is the respondents who are unsure of their rights, and not the appellants.

51. It is not true that the arguments now made on the appellant's behalf were not ventilated in the Court below. The record indicates that in resisting the appeal, learned counsel argued that the High Court judgment had been overturned by the Supreme Court, and that the appellants had raised issues not raised on appeal or were seeking to cure defects.

52. Equally incorrect is the assertion that the issue that Clause 8 and 9 had to be read together was dealt with by the Court of Appeal and dismissed. The record indicates that the Court intimated that they would look at and answer the issue in the appeal.

53. In addressing the question whether the Court of Appeal should have set aside part of the trial

Court's decision and referred the matter to assessment, it is imperative for us to examine both the judgment, and the ruling on interpretation. We have in the past enjoined trial judges to be thorough, exhaustive and clear on all issues. **Zambia Telecommunications Company Limited and Mulwanda and Another**¹⁴ is one case where we did so. We referred to the words of Mr. Justice Frits Brand of the Supreme Court of Appeal of South Africa in an Article entitled '*writing a judgment*'

54. His observations remarks bear repetition:

"I often hear colleagues that complain that their judgments have been misconstrued by the press. Though of course the press can be mischievous, I think we have to admit that many misunderstandings result from less than carefully formulated judgments. We only get one opportunity to explain our decisions. Judgments are not accompanied by a telephone number and a note to say 'if you want further information, phone me.' Our judgment is our final word. We have no right of reply"

55. When a judgment is delivered, it is construed by the parties to the dispute, and the appellate

Court if appealed against. We concur with the views reiterated by the Supreme Court of Alabama **McClure vs Cassady**,¹⁵ that if the terms of a judgment are not ambiguous, they should be given their usual and ordinary meaning. The Court referred to **Wise vs Watson**,¹⁶ where the Supreme Court had held as recited above, adding that the legal effect of a judgment must be declared in light of the literal meaning of the language used.

56. It should be borne in mind that when a judge is requested to interpret their judgment, they are being asked to state what they meant by what they said. To interpret, according to **Oxford Advanced Learner's Dictionary 7th Edition**, is to explain the meaning of something.
57. Inherent in the Court is the power to clarify an ambiguous judgment. This is on account of the duty of a Court to determine a matter before it in clear terms so that it is capable of being readily effected. When contesting parties read a judgment rendered in a matter between them, they should

understand its import without difficulty. In the event the judgment is unclear, which eventuality it is hoped will be rare, a Court can be requested to clarify the ambiguity, as was done in this case.

58. Regrettably in this matter, when the trial judge was asked to clarify whether she had awarded the respondents' claim for retirement benefits in addition to allowances on gratuity, the judge did not address the issue. She made no clarification at all. Instead, she merely repeated what she had said, that the respondents should be paid in full, that is salary plus allowances.

59. Having made the above observations, the first issue we consider appropriate to deal with at this juncture is the question whether the High Court judgment was set aside by the Supreme Court, and if so, whether there could be assessment of the respondents' dues. The appellant's grievance is that the Court of Appeal did not consider this question. In addressing this issue, it behoves us to construe the judgment of the trial judge, and

that of the Supreme Court. Put differently, 'What relief did the trial judge award the respondents in the judgment of 17th January 2014?' Did the Supreme Court reverse the decision of the High Court?

60. The answer to the first question lies in considering the judgment in light of the evidence and submissions of the parties at trial. Firstly, the learned judge noted that the plaintiffs (respondents) were claiming retirement packages, allowances on gratuity paid and housing allowance from date of retirement until full payment of dues, among other claims.

61. The Court accepted that the question for determination was what the natural and ordinary meaning of the words '*retirement benefits*' in Clause 9 of the conditions of service was. Before proceeding to deal with Clause 9, she acknowledged that Clause 8 dealt with '*Long Service Gratuity eligibility*', that is, the circumstances in which

it was payable, the level of payment and its computation.

62. Upon examining Clauses 8.3 and 8.4, the learned judge concluded that the plaintiffs who had served under the Zamtel conditions of service and exited at various dates were eligible upon retirement to payment of long service gratuity at a rate of three months pay for each completed year. She however held that the allowances fell to be incorporated into the salary.

63. The learned judge proceeded to examine Clauses 9 (a) iii and (iv), and concluded that the provisions of Clause 8 and 9 should be read together for a logical conclusion as to how the plaintiffs (respondents) were supposed to be paid their dues upon retirement from the defendant company. She referred to the **Notice of Retirement** which indicated the benefits **Christopher Ngambi**, a retiree was entitled to:

1. Gratuity payment of three (3) months salary for each completed year of service and prorata for incomplete year.
2. Cash in lieu of leave days.
3. Repatriation allowance of two (2) months salary.
4. Pension.

64. The learned judge examined the computation and concluded that allowances were excluded. She made a finding that the plaintiffs (respondents) were underpaid because allowances had been excluded. Consequent on this finding, she accepted that the respondents were still owed retirement benefits. She ordered Zamtel to pay them in full. She also found that the plaintiffs (respondents) were entitled to housing allowance until receipt of their terminal benefits in full.

65. Zamtel was dissatisfied with this outcome. It appealed to this Court. This Court held that the word 'salary' was defined to mean basic salary in the applicable Clause. Allowances were not included. The learned trial judge was held to have misdirected herself. Zamtel's appeal was allowed.

66. Having examined the evidence the learned judge received, and the reasoning of the trial judge, we entertain no doubt that she held that the respondents had been underpaid because their dues were computed without allowances. She never made a separate award of retirement benefits. This is because she read Clauses 8 and 9 together. She accepted the evidence of the defence witness in arriving at the conclusion that Clause 8 only dealt with eligibility to receive long service gratuity.
67. Had the Court of Appeal examined the judgment in the light of the evidence and the submissions of the parties, it would have observed that the learned judge did not award the respondents retirement benefits as a relief separate from allowances on gratuity. And having so observed, the Court of Appeal would have come to the inevitable conclusion that it was impermissible for the trial judge to award the respondents further relief in its ruling on interpretation when called upon to interpret its judgment. We say so

because the Court of Appeal appears to have thought that the trial judge had indicated that she awarded the respondents retirement benefits. It must be borne in mind that when interpreting a judgment, a Court clarifies what it had earlier stated. It does not make additional awards **Mayo Transport vs United Dominions Corporation Limited**¹⁷ is authority for this proposition. The Court held as follows:

- 1) The general rule as to the amendments and setting aside of judgments or orders after a judgment or order has been drawn up was as follows:

"Except by way of appeal, no Court, judge or master has power to rehear, review, alter or vary any judgment or order after it has been..... or drawn up, respectively, either in an application made in the original action or matter, or in fresh action brought to review such judgment or order. The object of this rule is to bring litigation to a finality but it is subject to a number of exceptions."

68. **Zambia Telecommunications Company Limited and Mulwanda and Another**¹⁴ addresses a situation similar to the present one. This is what this Court said:

"In the present case, the learned trial judge acknowledged the fact that in her judgment of 5th June 2008, she had inadvertently omitted to state that the award of damages was over and above terminal benefits due to the plaintiffs. To address that omission, she altered her judgment by adding that terminal benefits should be paid to the plaintiffs. In our view, the learned trial judge amended her judgment, by adding a relief which she, inadvertently, did not grant. Such an amendment is not permitted on the various authorities cited above. The terminal benefits were specifically pleaded. That she omitted to make a determination on them was an error on a fact. Such an error could only be addressed by an appeal and not an amendment of the judgment or review."

69. In that case, the learned trial judge was requested to interpret the judgment she had delivered. She dismissed the application on the ground that it was unambiguous, but realising that she had omitted to address a relief the plaintiffs had asked for, she reviewed her judgment. Her decision was reversed by this Court.

70. Similarly, it was impermissible for the learned judge in this matter to alter the awards she had made in the judgment by adding further relief when

interpreting the judgment. We do not understand the learned judge to have altered the award. As indicated in the excerpt from the ruling on interpretation, the learned judge indicated that under retirement packages, she had ordered the appellant to pay the respondents in full, that is salary plus allowances. The term '*pays them in full,*' denotes that a partial payment had been made. The learned judge reiterated what she had stated at J48-J50. At J48, she had concluded that Clause 9 dealt with retirement. She had gone on to express the view that Clauses 8 and 9 should be read together to come to a conclusion as to how the plaintiffs were to be paid their dues upon retirement from the appellant. She also noted that although the respondents were paid long service gratuity as stipulated in Clause 8.3, the computation excluded allowances. She identified exclusion of allowances as the bone of contention, and went on to hold that allowances should have been included in the computation. She then said,

"having found that the plaintiffs were not paid their benefits in full, I accept that they are still owed retirement benefits and I accordingly order the defendant to pay them in full."


71. Having referred to what she had said in the judgment, the learned judge concluded that as the Supreme Court had reversed her decision that allowances be factored in when computing the respondent's dues, there was nothing to assess. Although admittedly, the wording in the concluding paragraphs of the ruling was bound to confuse the parties her reference to retirement benefits separately from gratuity in the concluding paragraphs of the ruling does not change what the learned judge had said earlier in the ruling.
72. It was permissible for the trial judge to refer to the Supreme Court judgment when interpreting hers because the award of allowances had been set aside on appeal. In guiding the learned Deputy Registrar as to the reliefs she had awarded, and whether an assessment could be done, the learned judge had no

option but to refer to the effect of the Supreme Court judgment on the High Court judgment. She cannot be condemned for doing so.

73. The appeal is allowed on grounds 2 and 1. We consider it unnecessary to address grounds 3 and 4 as they are rendered otiose. We accordingly set aside the judgment of the Court of Appeal with costs to be agreed and in default taxed.

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M. MUSONDA
DEPUTY CHIEF JUSTICE


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A.M. WOOD
SUPREME COURT JUDGE


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F.M. CHISANGA
SUPREME COURT JUDGE