

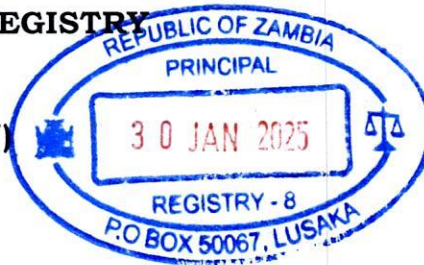
IN THE HIGH COURT FOR ZAMBIA

2021/HP/1380

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



BETWEEN:

BORNWELL MUMBA

PLAINTIFF

AND

FIRST NATIONAL BANK ZAMBIA LIMITED

DEFENDANT

BEFORE HON. JUSTICE ELITA PHIRI MWIKISA

FOR THE PLAINTIFF: MR. J.C. KALOKONI OF MESSRS KALOKONI & CO

FOR THE DEFENDANT: Mr M. NALISHUWA OF MESSRS MULENGA  
MUNDASHI LEGAL PRACTITIONERS

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## RULING

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### Cases Referred To:

- 1. Teichman Zambia Limited v. Mumana Pleasure Resort and Another SCZ Appeal No. 196/2014*

This is an application for determination of matter on law and construction of document pursuant to order 14A of the Rules of the Supreme Court of England 1965 (1999) Edition, the white book, by

the defendant, filed into court on 4<sup>th</sup> December, 2023. The issues of to be determined are:

- (i) Whether the National Pension Scheme (Amendment) Act No. 7 of 2015, applied to the plaintiff's contract of employment with the defendant; and
- (ii) Whether according to the plaintiff's contract of employment, he was entitled to the payment of accrued bonus following the termination of employment.

The application is supported by an affidavit sworn by one Vivian Kondolo, the Head of Human Capital in the defendant bank. The deponent deposed that it was a term of the contract of employment that the payment of a bonus was entirely at the discretion of the defendant and that should a member of staff leave employment before the payment of a bonus, they would automatically forfeit the bonus upon leaving employment. The deponent produced a copy of the said contract of employment marked as "VK1" and attached to the said affidavit in support.

That on 2<sup>nd</sup> March, 2020, the defendant brought into effect the 2020 Human Resource Manual to replace the 2017 Human Resource

Manual to which the Plaintiff refused to consent. That the defendant proceeded to declare the Plaintiff redundant as a result of the plaintiff's refusal to consent to the revised Human Resource Manual and the plaintiff was paid all his outstanding benefits. I have noted the rest of the contents of the said affidavit.

The Plaintiff (Respondent) filed into court an affidavit in opposition to the application at hand, on 19<sup>th</sup> February, 2024, together with skeleton arguments. The deponent who is the plaintiff herein, deposed that at the time he left employment, he served on the 2017 terms and conditions of service. That when the Bank purported to unilaterally, amend the conditions of service, he objected to the same, and during trial, he showed the court his objection and the Bank's assurance to him that the newly introduced conditions of service would not apply to him. That in the meantime he gave the Bank one (1) year's notice of retirement, which the Bank accepted without any objections at all. That while the retirement notice was running and without the Plaintiff or deponent withdrawing it, the Bank purported to declare him redundant and that according to what his lawyers have advised him, the real issue is not the applicability of the NAPSA Amendment Act, but it is the legality of the Bank's action of declaring

him redundant while the notice of retirement which the Bank accepted, was still running with the Plaintiff/Deponent withdrawing it.

The plaintiff further deposed that he had already placed on record his evidence before this court to show that he earned his bonus while he was in employment. That the real issue is whether or not his separation with the Bank meant forfeiture of his accrued right to payment of bonus which he had already qualified for while in employment. That these are issues on which he has already testified and they need to be settled by both parties adducing evidence.

The Plaintiff in his skeleton arguments, inter alia submitted that he opposes the application herein because it is intended to preempt this court's determination of the legal issues that have been raised in the summary of the legal issues filed in court. It was submitted that the legal issues raised in this matter are of a contentious nature requiring a full trial. Counsel for the Plaintiff referred the court to the case of **Teichman Zambia Limited v. Mumana Pleasure Resort and Another SCZ Appeal No. 196/2014<sup>1</sup>**, to the effect that triable


issues should be taken to trial in order not to preempt the trial court's decision on them.

I have considered the affidavit evidence on record together with the skeleton arguments on both sides. I am of the considered view that order 14A of the Rules of the Supreme Court 1999 edition (white book) does not apply to this application as can clearly be seen from the legal issues raised by the Applicant herein, that what is contained in the preliminary issues, are the very issues on which the Plaintiff has already testified and even adduced evidence in support of the said legal issues. I hold the view that the issues raised in casu are contentious and can only be determined at a full trial.

For the reasons indicated above, I decline to grant the application and dismiss it with costs to the Plaintiff/Respondent to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka the 30<sup>th</sup> day of January, 2025

  
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**ELITA PHIRI MWIKISA**  
**JUDGE**