

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

APPEAL NO 304/2024

BETWEEN

JULIAN SICHALWE

AND

**SATURNIA REGNA PENSION TRUST LIMITED
LUMWANA MINING COMPANY LIMITED**

APPELLANT

**1ST RESPONDENT
2ND RESPONDENT**

CORAM: SIAVWAPA JP, CHISHIMBA AND PATEL JJA
On 19th and 27th January 2026

FOR THE APPELLANT: MISS R. SAMANJOMBA OF MESDAMES NKUSUWILA
NACHALWE ADVOCATES

FOR THE 1ST RESPONDENT: MR. A. J. SHONGA Jr SC WITH P.S. NAMUSHI
BOTH OF MESSRS SHAMWANA & CO

FOR THE 2ND RESPONDENT: MRS. M.S. NAMWILA MWALA OF CORPUS
LEGAL PRACTITIONERS

J U D G M E N T

SIAVWAPA JP delivered the Judgment of the Court

Cases Referred to:

- Richard H. Chama & 13 others v National Pension Scheme Authority & others SCZ Appeal No 001/2018*
- Hastings Mwila v Local Authorities Superannuation Fund Cause No 2023/CCZ/001*
- Owen Mayapi & others v Attorney General Cause No 2019/CCZ/003*
- Anderson Mwale & others v Zambia Open University*
- Luke Mumba & another v Council of the University of Zambia Cause No 2022/CCZ/012*

Statutes referred to:

- The Constitution of Zambia, Act No 2 of 2016*
- National Pension Scheme Authority Act, Chapter 256 of the Laws of Zambia*
- Employment Code Act No 3 of 2019*

1.0 INTRODUCTION

- 1.1 This appeal challenges the Judgment of the High Court, Commercial Division, dated 26th July 2024, under the hand of the Honourable Mr. Justice Lameck Mwale. The Appellant is unhappy with the Court's decision rejecting his claims against the Respondents.
- 1.2 The issues to be interrogated in this appeal are two namely; whether or not the Appellant was paid his delayed pension with interest and which of the Respondents was liable for interest in the circumstances. This will become clear in the background part of this Judgment.

2.0 BACKGROUND

- 2.1 The Appellant was an employee of the 2nd Respondent, who subscribed to the pension scheme managed by the 1st Respondent. The Appellant reached retirement age on 9th November 2019 and he was entitled to receive his pension benefits on the same day. However, he was only paid his pension benefits five months later, on 6th April 2020.
- 2.2 Upon receiving his pension benefits, the Appellant felt that his pension had earned interest between 9th November 2019, when he retired and 6th April 2020 when he was paid, but that the said interest had not been paid together with the benefits.
- 2.3 The Appellant commenced an action in the Commercial division of the High Court by writ of summons and statement

of claim dated 16th March 2022 containing the following claims;

1. An order compelling the 1st Defendant to calculate and declare all interest and profit earned on the pension benefits of the Plaintiff from the 9th November 2019 to 6th April 2020.
2. An order for payment of all interest and profit earned on the pension benefits of the Plaintiff by the 1st Defendant from 9th November 2019 to 6th April 2020.
3. A declaration that the Plaintiff ought to have been retained on the 2nd Defendant's payroll from the 9th November 2019 to 6th April 2020.
4. An order for payment to the Plaintiff by the 2nd Defendant of his monthly salary inclusive of allowances in arrears from 9th November 2019 to 6th April 2020.
5. Interest
6. Any other relief the Court may deem fit
7. Legal costs for and incidental to this action.

2.4 Both Respondents filed their separate defences to the claims. They were in unison on the fact that the 2nd Respondent submitted the claim form for the Appellant on 8th November

2019 and that the 1st Respondent only paid the pension benefits on 6th April 2020.

2.5 On its part, the 1st Respondent averred that the amount it paid the Appellant included interest as claimed by the Appellant. The 2nd Respondent on the other hand averred that the Appellant was not entitled to salaries for the period 9th November 2019 to 6th April 2020 because it had paid the Appellant his terminal benefits.

3.0 DECISION OF THE COURT BELOW

3.1 After considering the evidence and the submissions by the parties, the learned formulated the following questions for his consideration;

1. Whether the 1st Defendant paid the Plaintiff the interest and profit from his pension benefits for the period between 9th November 2019 to 6th April 2020; and-
2. Whether the plaintiff is entitled to be retained on the 2nd Defendant's payroll for the period 9th November 2019 to 6th April 2020.

3.2 In resolving the first question on interest, the learned Judge considered the statements relating to the Appellant's membership as at 31st December 2019 and as at 30th April 2020. The statements revealed that the total benefits accruing to the Appellant on 9th November 2019, were in the sum of

ZMW 450, 647. 01. The same had however, increased to ZMW 454, 913. 69 as at 30th April 2020. In the learned Judge's view, the increase is attributed to the accumulated interest between 9th November 2019 and 6th April 2020. The learned Judge therefore, found that the 1st Respondent had paid interest on the delayed pension benefits.

3.3 On the 2nd question on retention on the payroll, the learned Judge held that the relevant provisions of the law that the Appellant relied upon namely; Article 189 (2) of the Constitution and section 58 of the Employment Code Act No 3 of 2019 did not apply to the Appellant. He dismissed the claim in that regard accordingly.

4.0 THE APPEAL

4.1 Dissatisfied with the outcome of his claims, the Appellant filed Notice and Memorandum of Appeal containing three grounds of appeal on 26th August 2024. The three grounds of appeal as set out in the memorandum of appeal are couched as follows;

1. The Court below erred in law and in fact when it erroneously held that the accrued interest had been paid and refused to compel the 1st Respondent to declare interest and profits earned on the Appellant's pension benefits and

2. The Court below erred in law and in fact when it held that the benefits due to the Appellant did not qualify as pension benefit under any relevant law.
3. The Court below erred in law and in fact when it refused to order that the Appellant be retained on the payroll as his pension benefits had not been paid in full.

5.0 ARGUMENTS IN SUPPORT

- 5.1 The thrust of the Appellant's argument in ground 1 is that as a member of the defined contribution scheme, his pension benefit ought to be paid with interest. Further based on the case of Richard H. Chama & 213 others v National Pension Scheme Authority & others,¹ the Appellant argues that profits on the investment of the contributions are equally payable to a member upon retirement.
- 5.2 In ground 2, the Appellant argues that because he retired under sections 52 (7) (c) and 58 of the Employment code Act, his benefits qualified as pension benefits contrary to the learned Judge's finding. He also cited decisions of the Constitutional Court among them, the case of Hastings Mwila v Local Authorities Superannuation Fund.² In that case, the Court stated that a pension benefit relates to one who has reached retirement age and granted under a relevant law.

5.3 In ground 3, the Appellant cited Article 189 (1) and (2) of the Constitution which directs prompt and regular payment of pension benefits, but that where that is not the case, a separated employee shall stop working but remain on the payroll until he is paid. He also cited the case of Owen Mayapi & others v Attorney General,³ in which the Court held that Article 189 also applies to private sector employees.

6.0 ARGUMENTS IN OPPOSITION (1st Respondent)

6.1 The 1st Respondent has argued that in light of the variance in the accumulated benefits at the end of December 2019 and the end of April 2020, showing a higher amount in the latter, shows that interest continued to accrue until the pension benefits were paid on 6th April 2020. In addition, the 1st Respondent relied on the Appellant's own admission that interest reflected on the pension benefit statements and that the same was paid through his lawyers.

6.2 In arguing grounds 2 and 3 together, the 1st Respondent argued that the Pension Scheme Regulation Act Chapter 255 of the laws of Zambia, which the Appellant relied on does not establish a pension scheme but provides for the regulation and supervision of pension schemes. This was contrasted with the National Pension Scheme Authority Act, which creates the pension scheme.

6.3 On account of the above, the 1st Respondent states that the Appellant's pension scheme does not fall within the ambit of the pension schemes referred to in Articles 187, 188 and 189 of the Constitution.

6.4 As regards the claim for retention on the payroll, the 1st Respondent has drawn from decisions of the Constitutional Court, in the cases of Anderson Mwale & others v Zambia Open University⁴ and Luke Mumba & another v the Council of University of Zambia.⁵ In the first case the Court stated that under Articles 187, 188 and 189, for a person to be retained on the employer's payroll, the pension benefits should be one granted under a relevant pension law or other law applicable to the employee's service and secondly, that pension benefits must not have been paid.

6.5 in the second case, the Court held as follows;

"For a pension to qualify as a pension benefit under the constitution, it must first be provided for under an Act of Parliament and if it is not provided for by an Act of parliament, then the benefit cannot be categorised as a pension benefit and thus, retention on the payroll cannot be sustained."

6.6 On the basis of the Anderson Mwale case (supra), the 1st Respondent submits that the Appellant could not be retained on the 2nd Respondent's payroll pending payment of pension benefits from a private pension scheme because the 2nd Respondent paid him benefits prescribed by the law.

7.0 ARGUMENTS IN OPPOSITION (2nd Respondent)

- 7.1 In opposing ground 1, the 2nd respondent argues that because the Appellant, in his pleadings before the Court below only referred to interest accruing between his retirement date and the date he was paid the pension benefit by the 1st Respondent, he cannot now expand it to the entire period of his employment. That since the Court below found that interest covering the period in issue was paid, the Appellant had no further claim. The other limb of the argument is that the Appellant was not allowed to raise on appeal, issues not raised in the Court below.
- 7.2 With regard to the 2nd ground, the 2nd Respondent submits that whereas the Court below agreed that the Appellant's entitlement from the 1st Respondent was a pension benefit, the same was derived from a private pension scheme not covered by Article 187 of the Constitution.
- 7.3 In response to the 3rd ground, the 2nd Respondent has submitted that the Appellant was not entitled to be retained on its payroll for two reasons namely, because it had discharged its obligations to the Appellant and that the Appellant was under a private pension scheme not covered by Articles 187, 188 and 189 (2) of the Constitution.
- 7.4 The 2nd Respondent has further submitted that it was not in breach of any contractual provision with the Appellant.

Further to that, it states that it had no role to play in the contract between the Appellant and the 1st Respondent. To that extent, it argues that once it had submitted the claim form timely to the 1st Respondent, it had no role in the disbursement of the pension benefits to the Appellant.

8.0 AT THE HEARING

8.1 At the hearing, counsel for the parties had very little to add to their filed heads of argument which they relied upon. Miss Samanjomba, on her part, for the Appellant, emphasized the basis of the grievance as the learned Judge's refusal to order computation of the interest.

8.2 Mr. Shonga Jr SC, on his part, for the 1st Respondent, merely pointed us to the two issues we needed to determine namely; whether the Court below was wrong to find that interest was paid and whether the Appellant ought to have been retained on the payroll until his benefits were fully paid.

8.3 As for Miss Namwila, for the 2nd Respondent, her point of emphasis was that the Appellant belonged to a private pension scheme created by a Trust Deed to which Articles 187, 188 and 189 (2) of the Constitution did not apply.

9.0 OUR ANALYSIS AND DECISION

9.1 From the reading of the impugned Judgment, grounds of appeal and the arguments filed by the parties, it seems that the dispute revolves around the findings of fact by the learned

Judge. The facts relate to payment of interest on the pension benefits for the period 9th November 2019 to 6th April 2020 and retention on the 2nd Respondent's payroll during the same period.

- 9.2 The basis of the dispute is that although the 2nd Respondent issued the Appellant with Notice of Normal Retirement on 25th February 2019, and the Appellant in turn submitted a claim to the 1st Respondent on 8th November 2019 for payment of pension benefits on 9th November 2019, the 1st Respondent only paid the pension benefits five months later.
- 9.3 The following facts are a matter of common cause namely; that the Appellant had subscribed to the pension scheme managed by the 1st Respondent, that the Appellant was employed by the 2nd Respondent, that the 2nd Respondent issued notice of retirement to the Appellant on 25th February 2019, that the Appellant submitted his claim to the 2nd Respondent on 8th November 2019, that the 2nd Respondent in turn submitted the claim form to the 1st Respondent the same day late in the afternoon, that the Appellant finally retired on 9th November 2019 but only received his pension benefits on 6th April 2020.
- 9.4 In the first ground of appeal, the Appellant criticizes the learned Judge below for holding that the accrued interest had been paid. The question therefore, is did the 1st Respondent pay the accrued interest on the Appellant's pension benefits for the period 9th November 2019 to 6th April 2020?

- 9.5 In finding that the interest had been paid, the learned Judge considered the statements of account for the Appellant as at 31st December 2019 and 30th April 2020. We have looked at the Members Benefit Statement of 31st December 2019 relating to the Appellant occurring at page 171 of the Record of Appeal. The Statement shows that the Appellant's investment had accumulated the amount of ZMW 450, 647.01 as at 31st December 2019.
- 9.6 Because the 1st Respondent did not pay the Appellant his pension benefits on the 9th November 2019, when he retired, the contributions remained with the 1st Respondent until April 2020 when the 1st Respondent paid the benefits. The question then is; how much did the 1st Respondent pay the Appellant?
- 9.7 The learned Judge below relied on the Members Benefit Statement as at 30th April 2020, relating to the Appellant, occurring at page 172 of the Record of Appeal. Our perusal of the said document confirms that the Appellant's accumulated benefits as at that date stood at ZMW 454, 911. 69. This translates to an increment of ZMW 4, 264. 68.
- 9.8 Although the figures are not very clear on the document, it is clear that interest appears at the bottom both on the contributions and the transfer sides. In our view and in the absence of evidence to the contrary, the amount paid to the Appellant on 6th April 2020 included earned interest for the period 9th November 2019 and 6th April 2020. In addition, the

Members Benefit Statement as at 30th April 2020 shows the opening balance of ZMW 490, 467.01, which is the same amount reflecting on the 31st December 2019 Statement.

9.10 As regards the claim for profits accrued, the Appellant sought the aid of the case of Richard Chama & 213 others (supra) in which the Supreme Court stated among other things as follows;

“Valuation of portable benefits is a defined contribution scheme that thus entails measuring the market value of the asset held in the retirement account. The actual size of the retirement benefit will depend upon the realized investment performance of the retirement account, the interest rate of retirement and the ultimate salary path of the employee concerned.”

9.11 According to the Appellant, any profits accruing on the investment should be paid to the employee on retirement. In our view, interest earned on the investment constitutes the profit accruing on the investment. With the inclusion of interest on both the 31st December 2019 Statement and the 30th April 2020 Statement, there was no need for the 1st Respondent to declare profits.

9.12 The Appellant has also criticized the learned Judge for his alleged failure to give due consideration to the evidence before him. We are unable to find fault in the learned Judge’s treatment of the evidence before him. The Judgment shows his reasoning based on the material before him to make findings of fact as he did.

9.13 The second issue, under ground three, contends that in view of the delayed payment of his pension benefit by the 1st Respondent, he was entitled to be retained on the 2nd Respondent's payroll from the date of his retirement until the day he was paid. For this contention, the Appellant has sought recourse to Article 189 (1) (2) of the Constitution and the case of Owen Mayapi & others v Attorney General (supra). This issue is also linked to ground two which criticizes the learned Judge for finding that the benefits he received did not qualify as pension benefits.

9.14 The cited Article of the Constitution provides for the retention on the payroll of an employee whose pension benefits have not been paid on his last working day. This Constitutional provision is enforced by the Constitutional Court's decision in the case of Owen Mayapi (supra). There is therefore, no dispute that an employee who has retired normally but has not been paid his benefits shall be retained on the employer's payroll until benefits are paid.

9.15 From our reading of the Judgment of the Court below and the arguments by the 2nd Respondent, it seems to us that the Appellant has misunderstood the basis upon which the Court made the disputed finding. It is clear that the Court below did not hold that the benefit payable to the Appellant was not a pension benefit. The Court instead, held that the pension scheme to which the Appellant subscribed was private and not

established under an Act of Parliament and therefore, not covered by Articles 187, 188 and 189 of the Constitution.

9.16 The Appellant has also relied on the Pension Scheme Regulation Act to argue that the scheme to which he had subscribed was established by that Act under section 11 and the Rules thereof. We have looked at the hereinbefore referred to Act. As a starting point, its title is informative. It is a “Pension Scheme Regulation Act.” This means that it is an Act intended to regulate Pension Schemes. A further check of the Act, discloses no section establishing the 1st Respondent. This is contrary to the interpretation the Constitutional Court gave to Article 187 (3) of the Constitution in the Case of Anderson Mwale & others v Zambia Open University (supra) in the following terms;

“It is evident from the plain language of Article 187 (3) of the Constitution that the framers of the Constitution intended that a pension benefit to which clauses (1) and (2) of Article 187 should apply, is a pension benefit which was granted to an employee by or an Act of Parliament.”

9.17 The fact that section 11 of the Pension Scheme Regulation Act speaks to pension schemes “registered” under it does not imply creation of the said pension schemes under the Act. Instead, the 1st Respondent is a creature of the Trust Deed appearing at page 123 of the Record of Appeal. Under clause 1.2, the Trust Deed interprets Scheme as follows;

“.....shall mean the Lumwana Mining Limited Pension Scheme as established by this Trust Deed.”

9.18 Under Clause 2.1, the Trust Deed establishes the Scheme in the following manner;

“The Principal Employer hereby establishes the Scheme as an approved scheme under an irrevocable Single Employer trust as provided for under Section 11 of the Pensions Act and the Trustees here appointed shall administer and manage the Scheme in accordance with the provisions of this Trust Deed, and the Rules.”

9.19 The import of this Clause as read with the interpretation provision entails that whereas the scheme is established by the Trust Deed, it is an approved scheme under the Pensions Act. This is in contrast to the National Pension Scheme which is expressly created by the National Pension Scheme Act which creates both the National Pension Scheme Authority and the National Pension Scheme in the following terms;

Section 3 (1)

“There is hereby established the National Pension Scheme Authority, which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.”

Section 8 (1)

“There is hereby constituted a Scheme to be known as the National Pension Scheme into which shall be paid all contributions authorised under this Act and out of which shall be met all payments authorised to be paid under this Act.”

9.20 From the above cited provisions of the law, it is clear that the 1st Respondent, being a private Pension Scheme created by a Trust Deed, is not covered by Article 187 (3) as per the Anderson Mwale case (supra). On that score, we would not

interfere with the finding by the learned Judge below that the pension benefits the Appellant was paid are not pension benefits under an Act of Parliament.

9.21 This inevitably leads to the third issue, whether the Appellant deserved to be retained on the 2nd Respondent's payroll during the delayed payment period of his benefits. Having found that the benefits in issue derive from a private Pension Scheme, it follows that the Appellant's claim has no legal leg to stand on. On that account alone, the ground lacks merit.

9.22 However, there are other aspects to this claim. In the first place, it is common cause that the 2nd Respondent, which was the employer of the Appellant, complied with the requirements for the payment of the Appellant's benefits by the 1st Respondent by submitting the claim form a day before the Appellant's retirement date. It follows therefore, that the delay in paying the Appellant his pension benefits has nothing to do with the 2nd Respondent, on whose payroll the Appellant wished to be retained after retirement.

9.23 The other aspect is that there is evidence that under the contract of employment between the Appellant and the 2nd Respondent, the Appellant was entitled to receive terminal benefits from the 2nd Respondent. To this end, the 2nd Respondent paid the Appellant all his dues on the date of retirement. This means that the 2nd Respondent would not be caught-up under Article 189 (2) of the Constitution which

provides for retention on the payroll an employee who has retired. The condition for retention on the payroll however, is that the employer would not have paid the pension benefits to the employee.

9.24 It is therefore, our considered view that the Appellant misconceived the law on the retention of a retired employee on the payroll. The misconception is both in relation to the law and the party to the claim. The 2nd Respondent had no obligation to retain the Appellant on its payroll as it discharged its contractual obligations to him on the date of his retirement.

10.0 CONCLUSION

10.1 The Appellant in this case was deprived of his pension benefits for close to five months by the 1st Respondent. However, because the employer and the fund manager are two different entities, he could not be retained on the 2nd Respondent's payroll during the period he was kept out of the pension benefits. The 2nd Respondent did not cause the delay in the disbursement of the pension benefits to the Appellant.

10.11 The only claim the Appellant had against the 1st Respondent was on accrued interest on the contributions to the Fund. The record shows that the said interest was duly computed and added to the accumulated balance as at the date of his

retirement. This, in our view, left the Appellant with no further claim on the both the 1st and the 2nd Respondents.

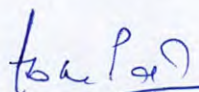
10.11 The net effect of this Judgment is that the appeal is dismissed for want of merit with costs to be taxed in default of agreement.



M.J. SIAVWAPA
JUDGE PRESIDENT



F.M. CHISHIMBA
COURT OF APPEAL JUDGE



A.N. PATEL SC
COURT OF APPEAL JUDGE