

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 125 of 2001

HOLDEN AT NDOLA

(Civil Jurisdiction)

BETWEEN:

CHRISTINE MWENZELA NDHLOVU

APPELLANT

AND

BARCLAYS BANK OF ZAMBIA LIMITED

RESPONDENT

CORAM: Ngulube, CJ, Sakala and Chitengi, JJS

On 6th March, 2002 and 4th June, 2002.

For the Appellant : Mrs S.M. Kunda of Messrs George Kunda & Co.

For the Respondent : Mr. C.H.J. Chileshe of Messrs Lloyd Jones & Collins

JUDGMENT

Chitengi, JS, delivered the Judgment of the Court.

Cases and authorities referred to:-

- 1. *Odgers on Pleading and Practice Pages 10 and 56***
- 2. *Atkins Court Form 2nd Edition Volume 33 Pages 287- 8***
- 3. *Development Bank of Zambia Vs Mambo (1995-1997)*
ZR 89**

In this Judgment, we shall refer to the Appellant as the Plaintiff and the Respondent as the Defendant which is what they were in the Court below.



This is an appeal by the Plaintiff against the learned Deputy Registrar's holding that the Plaintiff's application to assess benefits allegedly owing to the Plaintiff under the Staff Pension Scheme was irregularly before her.

Reduced to a narrow compass for the purpose of this appeal the facts of this case are that the Plaintiff brought an action against the Defendant who was her employer for damages for wrongful dismissal and libel. After trial the High Court dismissed the action for libel but found for the Plaintiff on the action for wrongful dismissal and made the following awards:-

1. One month's salary-in-lieu of Notice
2. Housing Allowance for one month
3. Gardener's salary for one month
4. Entertainment Allowance for one month.

The learned trial High Court Commissioner also found that the Plaintiff was entitled to some other claims, the amounts of which were not stated, and consequently he referred these claims to the learned Deputy Registrar to be assessed.

The learned High Court Commissioner also ordered that the Plaintiff be paid her benefits under the Defendant's Pension Scheme. The Judgment of the High Court was delivered on 18th May, 1999. The Plaintiff was dismissed some time in July, 1993.

The Plaintiff appears to have been happy with the other payments but not happy with the benefits under the Defendant's Pension Scheme. Thereupon

the Plaintiff took out a Summons before the learned Deputy Registrar for the learned Deputy Registrar to assess her benefits under the Defendant's Pension Scheme.

Before the learned Deputy Registrar the Plaintiff complained that the Defendant had only partially complied with the Judgment of the Court and that there was a dispute as to the quantum of benefits due to her under the Defendant's Pension Scheme. The Defendant had offered her a paltry sum of K2,785,209 as benefits under the Pension Scheme when she had rendered 23 years service to the Defendant. According to the Plaintiff, the Defendant should have paid her benefits as if she had retired as Senior Operations Manager at the age of 60 years because her dismissal was wrongful.

The Plaintiff also alleged that the Defendant discriminated against her because her juniors who left the Defendant bank in 1998 got much more in terms of benefits. The Plaintiff then gave the example of one Mrs Sophie Chifokola who held a position junior to her who in 1998 was given the option to go on early retirement with pension entitlement or to go on voluntary redundancy without pension.

Under the early retirement option, Mrs Chifokola would walk away with K61,660,794.65 and be entitled to pension on attaining retirement age. Under the voluntary redundancy option Mrs Chifokola would get K103,543,840.98. Mrs. Chifokola, quite naturally and not wanting to shoot in the dark, chose the second option and collected K103,543,840.98 after tax.

