

**IN THE SUPREME COURT FOR ZAMBIA SCZ APPEALAPPEALNO.60/2000**  
**HOLDEN AT NDOLA**  
**(CIVIL JURISDICTION)**

**NATIONAL BREWERIES LIMITED  
AND  
ROBIN MAPOMA**

**APPELLANT  
RESPONDENT**

**Coram: Sakala, Muzyamba and Lewanika JJS  
6<sup>th</sup> June and ...7<sup>th</sup>....September,2000**

**For the Appellant, Mr. K. Bindo of Jacks & Partners.  
For the Respondent, Mr. H. Mbushi of Ndola Chambers.**

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**J U D G M E N T**

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**Sakala JS delivered the Judgment of the Court.**

This is an appeal from an assessment of damages by the Deputy Registrar of the Industrial Relations Court at Ndola. The brief facts leading to the assessment were that the respondent was employed by the appellant company in 1988 at a salary of K1,000.00 per month. This salary was reduced to K979.00. In 1990, the respondent was transferred to Mbala in an acting capacity as a Brewery Manager. He did not receive any allowances in that acting capacity. In 1991, he attended a one year course following which he was transferred to Choma as an Acting Brewer on an allowance of K1,050 adjusted to K13,000. In 1994, the acting allowance was removed. According to the complaint he lost K216,000 per annum. There was evidence from the respondent that during these periods when he was transferred and made to act increments were based on a wrong salary scale of Z5 instead of Z8/7.

There was also evidence on behalf of the appellant that the salary structures referred to by the respondent in his evidence were never implemented by the appellant company because the implementation of the ZIMCO Conditions were based on each company's

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ability to pay as well as on appraisals. According to the witness on behalf of the appellant, the appellant's performance had been declining over the years hence its inability to pay new salaries. There was also evidence on behalf of the appellant in relation to a man named Simukondiya who was at the same level as the respondent which evidence showed that Mr. Simukondiya worked from 1988 to 1997 before his services were terminated and that for the said period he was paid K7,661,475.00 an amount below K63,592,681.55 that the respondent claimed. There was also evidence that the respondent had already been paid K5,305,303.00. According to the appellant, the respondent could now only be entitled to K2,356,172.00.

The learned Deputy Registrar considered the evidence and the submissions before him. He found that evidence not very helpful in arriving at an appropriate figure. The court complained of the fact that one Simukondiya who was alleged to have been paid over K7million for ten years he worked, had not been called as a witness. However, the court found that the respondent was not entitled to the amount over K63million which he was claiming and also found that the amount of over K7million suggested by the appellant for the period of ten years was unrealistic. The learned Deputy Registrar took judicial notice that ZIMCO conditions were over the years, among attractive conditions in the country. The learned Deputy Registrar considered the claim for K8million as damages for distress, hardship and inconvenience. He expressed his difficulties in dealing with that claim in that there was not sufficient evidence to support it. Having lamented the insufficiency of evidence to support the claim, the Deputy Registrar awarded the respondent an unpaid monies in form of salary progression in the sum of K31,796,340.78 and compensatory damages for distress in the sum of K4million, making a total award of K35,796,340.78. The appellant has appealed against this award

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on the ground that the award of K31,796,340.70 was not supported by the evidence, a fact, which according to counsel, was acknowledged by the learned Deputy Registrar.

On the other hand, on behalf of the respondent, Mr. Mbushi has supported the award. We take note that there were no arguments against the award of K4million although the appeal also attacks that award.

We have considered the assessment and the arguments of both learned counsel. In the instant case, both parties had the opportunity to present evidence in support of their respective positions. The learned Deputy Registrar did his best in the circumstances in making an inspired guess which on the evidence can not be criticised. This appeal is therefore dismissed with costs to be taxed in default of agreement.

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E.L. Sakala,  
**SUPREME COURT JUDGE**

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W. M. Muzyamba,  
**SUPREME COURT JUDGE.**

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D.M. Lewanika,  
**SUPREME COURT JUDGE.**