

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO. 91/2001

(CIVIL JURISDICTION)

MUKUBA PENSION TRUSTEES LIMITED

APPELLANT

AND

KUNDA KALIFUNGWA

RESPONDENT

Coram: Lewanika, DCJ, Chirwa and Chibesakunda, JJS
5th December 2001 and 8th July 2002

For the Appellant: Mr M Chugani, of Chugani and Company
For the Respondent: Mr M Masengu of Micheal Masengu and Company

JUDGMENT

Chibesakunda, JS, delivered the Judgment in Court

Cases referred to

Dorothy Chibuye and Annie Mwape and Toyota (Zambia) Limited, SCZ Appeal No. 5/1998

In this appeal the Respondent sued the Appellant claiming for his pension contribution as calculated in KK1 and KK2 at page 19 – in the sum of K99 990 00 per annum which if commuted to cash is equivalent of K882 911 70. This document KK1 was a letter written by the Manager employed by the Appellant. ‘KK 1’ does say:-

“MUKUBA PENSION TRUSTEES LIMITED

MPT/MGR/432/94/A.10

December 1, 1994

Dear MR KUNDA

COMMUTATION OF RESIDUAL ANNUAL PENSION

Due to a recent relaxation in the tax laws governing pension schemes in Zambia, it is now possible to exchange (commute) a higher percentage of your pension for cash.

**MR KUNDA KALIFUNGWA,
16 ELEPHANT STREET,
NKANA EAST,
KITWE.**



The Commissioner General, Zambia Revenue Authority, has given the Board of Trustees of Mukuba Pension Scheme permission to commute all pensions currently in payment of less than K1,000,000.00 per annum.

As you will appreciate, commuting of the pensions will save our pensioners the inconvenience and costs incurred in collecting their monthly pensions.

In your particular case, your residual pension is currently K99 990 00 per annum. If you elect to commute this pension for a cash equivalent, you will receive a lump sum Payment of K882,911.70 (free of tax).

If you accept this offer to commute your pension, you will not receive any further pension payments from the Scheme and there will be no pension payable to your dependants (spouse or children) upon your death. In addition, you will not be eligible to benefit from any discretionary increases to pensions in payment which the Trustees may grant in the future.

Please confirm your option to commute your pension for cash by signing and returning to us the enclosed letter, which should reach us not later than 28 February 1995. In the meantime, the new Pension Order Book for 1995/96 Pension Year will be withheld until we hear from you.

However, if you have any questions regarding this letter, then please contact us before you make the final decision.

Yours faithfully
For an don behalf of
MUKUBA PENSION TRUSTEES LIMITED

C M G Mfula
MANAGER

encl."

The story behind this document is that after the early retirement of the Appellant, the Appellant become entitled to pension of K31,582.55 per annum. The pension was calculated at the rate of 1/60 of the final pensionable salary for each year service up to the date of early retirement.

The Respondent whose pensionable service was 14 years 18 months and 2 days and whose salary was K129,152.61, the pension worked out as follows:-

$$\frac{K129\ 152\ 61 \times 14.6722 \text{ years}}{60} = K31\ 582\ 55 \text{ per annum}$$

60

According to the affidavit evidence in 1992 the Appellant announced the first general increase to all pensions in payment and in the case of the Respondent his pension was increased by 58.30 per cent from K31 582 55 to K49 955 17 Per annum.

In 1997 there was a second general increase to all pension payments and in the Respondent's case his pension was increase by 87 per cent from K49 995 17 to K484 953 14 per annum. According to the Appellant's affidavit evidence, in 1994 the Respondent's record was checked and it was discovered that sometime in 1994 as a result of a clerical error the Respondent' pension was inadvertently recorded as K99 990 00 per annum instead of K49 995 17 per annum. That mistake occurred when there was an exercise, which entailed writing to each pensioner individually giving him or her cash if they so wished. It was, therefore, argued before the lower court that because of this mistake the Respondent was not entitled to benefit from this mistake. The case of **Dorothy Chibuye and Annie Mwape and Toyota (Zambia) Limited, SCZ5/98** was referred to and distinguished from this case. In that case it was argued that there was an estoppel and that in the case before us there is no doctrine of estoppel as it was argued that there was no proof that the Respondent acted on this mistake to his detriment.

The learned counsel for the Appellant had argued further that if the court looked at page 4, Exhibit KK1 the court would find that the computation was done in pen by a clerk and that she made typographical errors by typing K99 990 00 instead of K49 995 17. He referred to the discretion by their court under slip rule to vary any judgment, even by the High court under slip doctrine under Order 11 sub rule 2 of the Rules of the Supreme Court. The lower court contrary to this submission held in favour of the Respondent.

Now before us Mr Chugani, who did not appear, as he was un-disposed was said to rely on the arguments he submitted before the lower court. Mr Masengu also relied on his arguments before the lower court.

We have considered the evidence and submissions before us which submissions were before the lower court. We are persuaded by the arguments of Mr Chugani. We agree that this was a typographical error and as such there was no need for the court to deal at all with the doctrine of estoppel. We, therefore, hold that the lower court was wrong to have ruled in favour of the Respondent.

We quash the lower court's order and uphold the appeal. We order costs to be borne by each party because of the status of the Respondent.

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M D Lewanika
DEPUTY CHIEF JUSTICE

.....
D K Chirwa
SUPREME COURT JUDGE

.....
L P Chibesakunda
SUPREME COURT JUDGE