

HERBERT IJEGALU OKWO OZOKWO v THE ATTORNEY-GENERAL (NO. 2)  
(1985) Z.R. 218 (S.C.)

SUPREME COURT  
SILUNGWE, C.J., GARDNER AND MUWO, J.J.S.  
3RD SEPTEMBER, 1985 AND 15TH NOVEMBER, 1985  
(S.C.Z. JUDGMENT NO. 25 OF 1985)

Flynote

Damages - Calculation - Effect of inflation - Damages Costs of air tickets - Value at time of payment.

Employment - Government Servant - Gratuity - Private practice allowance - Whether included in calculation.

Headnote

The appellant was employed by the Government of the Republic of Zambia as a medical Officer. He was wrongfully dismissed. In heads of damages he claimed, inter alia, gratuity to be calculated by including non-private practice allowance, and the present cost of air tickets for himself and his family.

**Held:**

- (i) Awards to a plaintiff who has wrongfully been deprived of something must be realistic and afford a fair recompense. The plaintiff should be paid the costs of air tickets at the rate applicable when the actual payment is made;
- (ii) Where in contract the words "emoluments" and "salary" are inter-changeable and initial emoluments are set out in the contract as being a certain plus amount of non-private practice allowance, the allowance is to be regarded as some thing different from the emoluments and salary and should not be included in calculating the gratuity based on the amount of salary.

**Case referred to:**

(1) Jefford and Anr v Gee [1970] 1 All E.R.1220.

For the appellant: S. S. Zulu, of Zulu and Company.

For the respondent: A.G. Kinariwala, Acting Principal State Advocate.

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Judgment

**GARDNER, J.S.:** delivered the judgment of the court and in addition to matters which are not the subject of this report said-

As to the rate at which the cost of such air passages should be calculated, we must take note of the original contract and the history of this case.

When the appellant was first dismissed he received a letter from the Government to the effect that tickets for his air passages were available and would be given to him if he paid to the

Government an amount which was alleged to be due from him. The appellant did not agree that any money was due from him to the Government; on the contrary, he claimed that there was a balance of money due from the Government to himself. For that purpose, he issued a writ claiming such money and obtained judgment in his favour calling upon the Government to pay him some money, part of which was to cover the cost of his air passages. There is evidence that, on the 27th of June, 1983, (after the first High Court judgments) the respondent paid to the appellant the sums of K3,332 in respect of air passages. There is no evidence why this particular figure was chosen but there is evidence, consisting of letter from Aeroflot, that the appropriate rate in June, 1983 would have been K4,842.25n. This latter figure appears to be the one chosen by the learned trial judge when, in her award dated 18th March, 1985, she awarded for passages a sum of K4,842.50n. Also before the learned trial judge at the time of making her award was another letter from Aeroflot setting out that the cost of air passages on the 6th March, 1985 would be K8,794.50n. As result of the award of the 18th March, 1985 the respondent paid a further K1,510.50 which, together with the original payment of K3,332, made a total of K4,842.50n, the amount of the judge to award.

Mr Zulu hits argued that his claim is for tickets to enable his client and family to travel by air to Moscow. For this purpose, the sum of K3,332.50n paid in June 1983 was inadequate because the fare then was K4,842.25n and the payment of a further K1,510.50n in April, 1985, making a total of K4,842.50n, was also inadequate because, on that date, the fare was K8,794.50n. Mr Kinariwala has argued that, if the appellant was paid too little, that he cannot claim anything other than interest for money which he should have been paid and of which he has been deprived. There is an abundance of authority and especially the case of *Jefford and Another v Gee* (1970)(1) All E.R.120(1), which, although it has been qualified by latter judgments, remains in effect in this respect, that a plaintiff who has been deprived of his money must be paid a reasonable rate of interest from the time when he was first wrongfully deprived, in order to recompense him. We agree entirely with this authority and this court has always applied that principle. However, in the extraordinary circumstances which apply today whereby inflation has made old values meaningless, awards to a plaintiff who has been wrongly deprived of something must be realistic and afford a fair recompense. We accept Mr Zulu's argument that, at the time it was needed, insufficient payment was made to cover the cost of air passages at the date such payment, and we also accept that the purpose of his claim

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is to provide for the actual cost of air passages when the money is paid. In order to give sensible effect to the learned trial judge's original judgment we allow this ground of appeal and we order that the respondent pay to the appellant the cost of air passages by Aeroflot direct between Lusaka and Moscow at the rate applicable when the actual payment is made.

6. (b) Gratuity -By Clause 15 of the contract the appellant is entitled to a gratuity at the termination of his employment at the rate of 25 per cent of the amount of his salary. The actual wording of the relevant part of Clause 15 is "at the rate of 25 per cent of amount of salary paid in this agreement" The respondent has calculated the gratuity payable to the appellant on the basis of salary not including non-private practice allowance and Mr Zulu argues that, in calculating the gratuity, the salary should be taken as including that allowance. The contract, so far as it is relevant to its construction in this respect, reads as follows: "(2) The gross emoluments (hereinafter called

'emoluments') of the office are at the rate of K6,324 a year then K6,540 a year then, K6,756 a year. The salary shall be payable monthly in arrears by the Government". At the foot of page (1) of the contract, the following words appear - under signatures of the parties: "Initial emoluments under this Agreement: K6324 a year plus K2,000 non-private practice allowance". We note that in the first part of clause 2, the word "emoluments" is used and at the end of the clause, the word "salary" is used. It is not clear why these two different words have been used by the draftsman but it is clear that, as only one set of figures is referred to in the same clause, both words must be synonymous. In the last line on the first page of the Agreement. The initial emoluments are set out as being K6,324 a year, plus K2,000 non private practice allowance. In our view the separation of the allowance from the emoluments by the use of the word "plus" indicates that the allowance is to be regarded as something different from the emoluments. In view of our finding that the word "salary" and the word "emoluments" in the first part of Clause 2 are synonymous, the allowance must be regarded as separate from the salary. We find therefore, that the proper construction of the employment agreement in order to give effect to the intention of the parties is that the word "salary" in clause 15 relating to the calculation of the gratuity must be the basic salary, without the inclusion of the non-private practice allowance. This ground of appeal therefore fails.

Appeal allowed in part

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