

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL NO. 45 OF 1997

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

B E T W E E N:

ZAMBIA AIRWAYS CORPORATION LIMITED APPELLANT

(IN LIQUIDATION)

AND

GERSHOM KATAMBO RESPONDENT

CORAM: Bweupe DCJ, Sakala and Muzyamba, JJS
29th July, 1999 and 13th January, 2000

For the Appellant: Mr. A.A. Dudhia, Dudhia and Company

For the Respondent: In Person

J U D G M E N T

BWEUPE, D.C.J., delivered the judgment of the court.

This is an appeal against the Deputy Registrar's order that the appellant do pay the respondent the Sum of K20,566,100-00 and that the respondent was a secured creditor for the balance of K15,566,100-00 after execution.

Briefly the facts of this case were that in April 1975 the respondent was employed by the appellant as Reserve Clerk. He rose through the ranks to the position of Controller of Flight Operations, the position he held when he was declared redundant on 3rd May 1991. Following his redundancy the respondent brought an action against the appellant for a declaratory judgment that his redundancy was unlawful or wrongful. In the alternative, that he was entitled to a redundancy package according to the new voluntary redundancy scheme. He got judgment in his favour on 20th June 1994 whereupon the respondent did his own calculations and arrived at a redundancy package of K23,000,000 and then issued a Writ of execution (hereinafter referred to as Fifa). The appellant's mini bus was seized and sold for K7,433,900 leaving the balance of K15,566,100. After all attempts had failed for him to recover the balance the respondent took out a notice of assessment of damages before the Deputy Registrar. In his reserved ruling

the learned Deputy Registrar found that the respondent was a secured creditor and ordered the appellant to pay him the balance of K15,566,100 as such and also awarded him K5 million nominal damages. These damages related to pension contributions.

We will deal with the award of nominal damages first. This award was not only wrong in principle but inappropriate in that it was made long after the respondent had computed what was due to him and issued a Fifa. In essence there was therefore, nothing for the Deputy Registrar to assess. We would therefore set aside this award. Had we been inclined to award nominal damages in this case we would have awarded the respondent not more than K150,000, the highest so far awarded by his court.

We now turn to the question of whether or not the respondent is a secured creditor in relation to the relation to the balance of K15,566,100. The respondent argued that he was a secured creditor and referred us to Section 346 of the Companies Act, Cap 388. We have examined the Section and the relevant subsections provide:

“346 (I) Subject to this Act, in a winding-up there shall be paid
in priority to all other unsecured debts.

(b) all amounts due-

- (i) by way of wages or salary (whether or not earned wholly or in part by way of commission) accruing to any employee within the period of three months before the commencement of the winding-up;
- (ii) in respect of leave accruing to any employee within the period of two years before commencement of the winding-up;
- (iii) in respect of any paid absence (not being leave) accruing to any employee within the period of three months before the commencement of the winding-up;

(c) an amount equal to three months' wages or salary, by way severance pay, to each employee.”

The respondent was declared redundant on 3rd May, 1991 and according to Mr. Ward's affidavit at page 47 of the record the resolution to wind up the appellant was made on 4th December 1994, well over three years after the respondent was declared redundant. The respondent is therefore not a secured creditor in terms of the above section. The appeal succeeds on this ground too.

For avoidance of doubt the amount that the appellant has to pay the respondent is K15,566,100 plus interest at 6 percent from 19th September 1996 until payment and the respondent is to rank as an unsecured creditor.

We award the appellant costs to be taxed in default of agreement.

B. K. BWEUPE
DEPUTY CHIEF JUSTICE

E. L. SAKALA
SUPREME COURT JUDGE

W.M MUZYAMBA
SUPREME COURT JUDGE