

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 169/2003

HOLDEN AT KABWE

(Civil Jurisdiction)

BETWEEN:

INAMBWAE L. LIKANDO & OTHERS

Appellants

And

ZAMBIA RAILWAYS LIMITED

Respondent

Coram: Chirwa, Chibesakunda and Chitengi, JJS.

On 18th October, 2006 and 17th April, 2007

For the Appellant : Mr. M. M. Imenda of
Messrs Veritas Chambers

For the Respondents : No Representation

JUDGMENT

Chitengi, JS, delivered the judgment of the court.

In this judgment we shall refer to the Appellants as the Plaintiff and the Respondent as the Defendant, which were their designations in the High Court.

In the hope that this judgment will put to rest this case, which has been coming before us on several occasions, it is again necessary to give the history of this case. The Plaintiffs were

former employees of the Defendant. In August, 1992 the Plaintiffs were retrenched. However, the Plaintiff challenged their retrenchment in the High Court and brought an action claiming the following: -

- (1) 1992 salary appraisals.
- (2) July 1992 ZIMCO salary increase.
- (3) The employer's contribution of the Pension Scheme.
- (4) Repatriation allowance.
- (5) Six months pay in lieu of Notice.
- (6) Compensation for loss of employment.
- (7) Reversion to management conditions of service.

The Plaintiffs substantially succeeded in the High Court, losing only the claims relating to repatriation allowance, compensation for loss of employment and six months pay in lieu of notice. The High Court ordered the claims, which were proved to be assessed by the learned District Registrar. The Plaintiffs appealed to the Supreme Court against the High Court's decision that they were not entitled to the repatriation allowance they had claimed.

After the Supreme Court Judgment the parties went to assessment. At assessment the Plaintiffs claimed K2,235,565,282.00 as the amount owing to them. The Defendant's reply to the Plaintiffs' claim was that in fact the Plaintiff were overpaid by K99,371,280.00. The Plaintiffs and

the Respondent led evidence at the assessment. In his judgment on assessment, the learned District Registrar found that Plaintiffs misunderstand the import of the High Court and Supreme Court judgments or deliberately chose to misinterpret the judgments. As examples, the learned District Registrar said while the judgments gave the Plaintiffs three appraisals less one, the Plaintiffs in their calculations gave themselves four increments, and while the judgments stated that the Plaintiffs be deemed to have been declared redundant the Plaintiff kept referring to themselves as employees who had been retrenched, resulting into the Plaintiffs using wrong formula when calculating their redundancy packages. The other example the learned District Registrar gave was the Plaintiffs' assertion the Supreme Court had awarded them pension when the Supreme Court like the High Court ruled that the Plaintiffs had to be paid only the employer's share of the contributions to the pension scheme. The learned District Registrar gave other examples, which it is not necessary for us to repeat.

On the evidence that was before him on assessment, the learned District Registrar concluded that the Plaintiffs' calculations were flawed and in error because the Plaintiffs used a wrong formula of retrenchment when they were deemed to have been declared redundant and that the Plaintiffs gave themselves more notches than were awarded by the Court.

Finally, the learned District Registrar found that the Plaintiffs were fully paid their redundancy packages and allowances. The Plaintiffs appealed to the Supreme Court against the judgment of the learned District Registrar on assessment. We dismissed the appeal and affirmed the judgment of the learned District Registrar. We said that the Plaintiffs' calculations were not based on the judgments but on what the Plaintiffs thought should be in the judgments. We also expressed surprise that counsel for the Plaintiffs himself did not understand the judgments for him to give correct legal advice to his clients, the Plaintiffs.

Our judgment was on 28th April, 2006. On 1st August, 2006 the Plaintiffs filed a Notice of motion pursuant to Rule 48(5) of the Supreme Court of Zambia, which counsel who settled the motion, erroneously refers to as RSC Order 48(5) of the Supreme Court of Zambia. The Notice of Motion is asking the Court to vary its judgment of 28th April, 2006. The reasons given in the affidavit in support of the Notice of Motion are actually challenging the correctness of the judgment of the Supreme Court. It is clear that the Plaintiffs want the hearing reopened. We do not see any errors which we can call accidental steps which we can correct under Rule 78 which is our slip Rule.

The Plaintiffs have asked us to vary our judgment under Rule 48(5). That Rule does not give the Court power to vary its judgment. Counsel for the Plaintiff has completely misunderstood the provisions of Rule 48(5).

In arriving at our decision we have not found it even necessary to consider the Plaintiffs' heads of argument because this Notice of Motion is patently misconceived and a clear case of abuse of court process.

All along counsel for the Plaintiff has been wrongly advising his clients to bring frivolous appeals and applications which from the clear judgments he should have known were doomed to failure. Most importantly counsel for the Plaintiffs should know or ought to know that you cannot challenge a final judgment of the Supreme Court. For this reason we asked counsel for the Plaintiffs why he too should not be ordered to pay the costs of this Notice of Motion but he gave us no meaningful and convincing explanation. We must say here that counsel should not take up matters simply because he wants to earn fees. Counsel must always bear in mind that he is a member of the Court.

We find no merit in this Notice of Motion and we dismiss it with costs to the Defendants. Costs to be paid by the Plaintiffs and their counsel, to be agreed upon and in default of agreement to be taxed.



.....
D. K. CHIRWA
SUPREME COURT JUDGE



.....
L. P. CHIBESAKUNDA
SUPREME COURT JUDGE



.....
PETER CHITENGI
SUPREME COURT JUDGE