

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 39 OF 2005

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

**LOCAL AUTHORITIES SUPERANNUATION FUND**

APPELLANT

AND

**NEWTON SAMAKAYI**

RESPONDENT

**CORAM:** Chirwa, Mumba and Silomba, JJS

On the 13<sup>th</sup> July, 2006 and 31<sup>st</sup> January, 2008.

For the Appellant: Mr. Kalokoni, Kalokoni & Company

For the Respondent: Mr. Chilembo, T. S. Chilembo Chambers

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

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**SILOMBA, J. S., delivered the judgment of the Court.**

Case referred to:

**Buchman Vs The Attorney General (1993 – 94) ZR 131**

At the outset, we wish to inform the parties that we regret the delay in the delivery of this judgment, which was occasioned by the heavy work schedule.

This appeal is against the ruling on assessment by the learned Deputy Registrar in which he assessed the sum of K111, 420,012.14 as the amount due to the respondent as his pension benefits.

The respondent, as plaintiff, had alleged in his statement of claim that the appellant had calculated and fixed a sum of K111, 420, 012.49 as the amount due to him but had failed and or neglected to pay the said sum. In its defence, the appellant admitted the sum owing to the respondent but denied that it had failed and or neglected in effecting payment as the Lusaka City Council, as former employer of the respondent, had not been remitting the workers' contributions to the appellant. As per the proceedings in the Court below, the Lusaka City Council was a party to the proceedings as the 1<sup>st</sup> respondent.

Flowing from the pleadings, the brief history of the case was that on the 30<sup>th</sup> July, 2002, the respondent applied to the learned District Registrar to enter judgment on admission for the sum of K111, 420, 012.49. On the 24<sup>th</sup> November, 2003, the learned District Registrar granted leave to the respondent to enter judgment on admission.

The appellant appealed to a Judge at Chambers alleging that the admission of the quantum of K111, 420, 012.49 was in error. After considering the statement of claim and the defence, the documentation and the submissions of counsel, the

learned trial Judge found that the learned District Registrar was in error when she entered an interlocutory judgment for the sum of K111, 420, 012.49 without assessment. He quashed the judgment sum and remitted the matter back to the learned Deputy Registrar for assessment.

On the 9<sup>th</sup> August, 2004, the learned Deputy Registrar sat to assess the judgment sum due to the respondent. At that hearing, the appellant or its counsel was not in attendance. There was proof that the appellant and its counsel were aware of the proceedings through an affidavit of service which was exhibited before the learned Deputy Registrar. In the circumstances, the evidence of the respondent was unchallenged and the learned Deputy Registrar, in his ruling of the 11<sup>th</sup> October, 2004, assessed the judgment sum at K111, 420, 012.14.

There are two grounds of appeal according to the memorandum of appeal. These are;

1. The Learned Deputy Registrar misdirected himself in law in failing to appreciate that Statutory Instrument Number 115 of 1996 and Council Conditions of Service of 1996 for non-unionized council employees cannot expressly or impliedly purport to amend Acts of Parliament on the definition of basic salary and are therefore, null and void to the extent of their inconsistence.

2. That the Learned Deputy Registrar misdirected himself in law in awarding the Respondent terminal benefits in the sum of K111, 420, 012.49 on insufficient documentary evidence to justify the amount.

The appellant filed the heads of argument and at the hearing of the appeal counsel indicated to us that he was relying on them. The heads of argument were reinforced with oral arguments. On ground on, the combined effect of his heads of argument and oral submissions was that the whole appeal was on a point of law i.e. on the interpretation of Statutory Instrument No. 115 of 1996 *vis-à-vis* the two Acts of Parliament namely, the Local Authorities Superannuation Fund Act Chapter 284 and the Income Tax Act, Chapter 323, on the meaning of "basic salary". The question counsel posed was: What is the position of the law when a statutory instrument purports to affect, contradict or purport to impliedly or expressly amend or alter an Act of Parliament?

He submitted that as a member of the Local Authorities Superannuation Fund, the respondent was entitled to be paid his pension benefits by the Fund on retirement; that the formula for computing benefits was to be found in Section 35 of the Superannuation Fund Act. Counsel however, pointed out that in calculating the sum of K111, 420, 012.14, the appellant used Statutory Instrument No. 115 of 1996 under which salary includes any allowances. As far as counsel was concerned, this was wrong as the Statutory Instrument could not amend an Act of

Parliament. We were asked to declare the computation of the sum of K111, 420, 012.14 null and void.

In response, counsel for the respondent, relied on the respondents' heads of argument. He submitted that the arguments being advanced under ground one were contrary to pleadings before the trial Court and that they raised fresh legal arguments on appeal. On pleadings, counsel submitted that the appellant accepted liability in the sum of K111, 420, 012.14 and that to argue now and rely on the Statutory Instrument was rather too late.

We have considered the arguments for and against ground one. Our reaction is that the ground is irrelevant in that the issues it seeks to raise for consideration by the Court were not issues canvassed in the Court below. As a result, the ruling appealed against does not contain the thoughts of the learned Deputy Registrar on the formula used and whether the appellant was justified or not in computing pension benefits based on the Statutory Instrument.

In reply to the submission of counsel for the respondent, counsel for the appellant submitted that the interpretation of an Act or a Statutory Instrument was a matter of law and as such it could be raised at any stage of the proceedings. We agree but we hasten to say that if an issue is to be raised on appeal then it must be raised before the trial Court to enable that Court to express its views on the matter.

In Buchman Vs The Attorney General, a case cited to us by the respondent, the High Court refused to extend the appellant's stay in Zambia. After a deportation order, he took out summons to challenge the order, which action was dismissed. He, however, secured two consecutive extensions to enable him to wind up his affairs. The third application for an extension was dismissed by the Court. He appealed claiming bias on the part of the trial Court and the reasoning of the Supreme Court was that a matter, which was not raised in the lower Court cannot be raised in a higher Court as a ground of appeal.

Counsel did not address us on ground two either in the heads of argument or in his oral submissions, and our inevitable conclusion is that the ground was abandoned. The appeal has no merit and it is dismissed with costs, to be taxed in default of agreement.



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D. K. CHIRWA

ACTING DEPUTY CHIEF JUSTICE



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F. N. M. MUMBA  
SUPREME COURT JUDGE



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S. S. SIOMBA  
SUPREME COURT JUDGE