

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT KABWE**  
(CIVIL JURISDICTION)

Appeal No. 154/2005

IN THE MATTER BETWEEN:

**ZAMBIA TELECOMMUNICATIONS  
COMPANY LIMITED**

**APPELLANT**

**AND**

**BERNARD AARON SAKALA**

**RESPONDENT**

**Coram: Chirwa, Chibesakunda, Mushabati, JJS,**  
**On 8<sup>th</sup> August 2007 and 6<sup>th</sup> October 2008**

For the Appellant: N.P Legal Counsel, ZAMTEL

For the Respondent: Mr M. Chanda, York Partners

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**JUDGMENT**

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**Chirwa, JS, delivered the Judgment of the court.**

This is an appeal and cross-appeal against assessment of damages by the learned District Registrar upon judgment being entered in favour of the respondent. The respondent, BERNARD AARON SAKALA, was successful in his action against the appellant, ZAMBIA TELECOMMUNICATIONS COMPANY LTD, for pension benefits and long service gratuity for a period of 34 years of unbroken service in accordance with

what was paid to other Directors, less what he received; an Order that he be paid benefits in accordance with conditions of service obtaining at Grade Z10 and all benefits and allowances he should have enjoyed at Grade Z10 since January 1996 as approved by the Board; an Order for general damages for the inconvenience.

The judgment of the lower court was that the respondent be paid:-

- (i) Pension benefits and long service gratuity for a period of 34 years unbroken service in accordance with what was paid to other Directors, less what he received.
- (ii) Benefits in accordance with conditions of service obtaining at Grade Z10 and all benefits and allowances he should have enjoyed at Grade Z10 since January.
- (iii) General damages for the inconvenience suffered.

- (iv) Interest on (i) - (iii) above at current Bank of Zambia short term deposit rate from the date of writ to date of judgment and thereafter at Bank of Zambia lending rate.

The respondent was also awarded costs of and incidental to the proceedings to be agreed, in default, to be taxed.

Judgment on assessment awarded the respondent the following:-

Entertainment allowance	K80,000:00
Salary Differentials	K20,195,869:00
Furniture allowance	K1,073,333:00
Utility allowance	K890,000:00
Social Tour	K4,000,000:00
Garden allowance	K720,000:00
Domestic Servant	K8,822,000:00
Security Guard	K8,660,000:00
Housing allowance	K3,143,000:00

and general damages

K240,000,000:00

The learned District Registrar also awarded long service gratuity to be calculated based on the formular used for other Directors per exhibit "EZ5" exhibited to the affidavit of one Edwin Zulu. This exhibit showed that one was to be paid 3 months basic salary per each year of service and the appellant paid the tax. The learned District Registrar did not award any damages in lieu of notice as the contract had come to an end and it was not renewed. The learned District Registrar did not award retention allowance as the respondent did not qualify as he only held a diploma.

**There are two grounds of appeal and these are that:-**

- (i) The court below erred in law and in fact in deciding that Exhibit "EZ1a" - "EZ1e" were not approved by the Board and that the respondent was entitled to housing allowance at 100% by his basic salary as provided in his contract.**

- (ii) **The court below erred in law and fact in deciding that it would be difficult to point out any measure by which damages are to be assessed and that the respondent was entitled to damages of K240,000,000:00.**

**There were four(4) grounds in the notice of cross-appeal and these are:-**

- (i) **Housing allowance in the court having found that the respondent is entitled to 100% housing should have proceeded to award the full amount of the claim in the sum of K70,123,956:00 instead of K3,143,000:00.**
- (ii) **Retention allowance in the court erred by holding that the respondent was not entitled to retention allowance when the evidence on record from the appellant was to the contrary.**
- (iii) **Long service gratuity in the court erred in law and fact by failing to consider payment of long service**

**gratuity in light of the legal authority cited and the court ought to have given direction on the matter considering that the formular for calculating long service gratuity was in dispute.**

- (iv) Notice period in the court erred by requesting to award damages in lieu of notice when the evidence before it was that the respondent was entitled to the same.**

Both parties filed detailed heads of argument in support and counter appeal and cross-appeal. At the hearing of the appeal, Mr Chanda for the respondent, indicated that Counsel for the appellant was not in attendance and that she would rely on her written submissions and he also relied on his filed written submissions filed on 1<sup>st</sup> May 2007 and 1<sup>st</sup> August 2007. However, in view of the stand we take in this matter, we will not delve into the detailed arguments.

The assessment as done by the learned District Registrar does not conform to the awards awarded in the judgment of the

learned trial Judge. There was both oral and affidavit evidence on assessment and the figures given by the appellant are different from those given by the respondent and no reasons are given for preferring those given by the appellant. There is no assessment of pension benefits and long service gratuity for a period of 34 years unbroken service as awarded by the learned trial Judge. Some of the benefits as provided in the conditions of service obtaining at Grade Z10 such as fuel allowance and housing allowance have not been assessed. In short, the assessment is incomplete. We would therefore, for this reason, allow the appeal and remit the case back for full assessment before a different District/Deputy Registrar. Costs will abide the assessment.



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

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

  
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**C.S. MUSHABATI**  
**SUPREME COURT JUDGE**