

Lubway

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT NDOLA**  
(Civil Jurisdiction)

**APPEAL NO. 152/2010**

**BETWEEN:**

ZAMBIA TELECOMMUNICATIONS COMPANY LTD

APPELLANT

**AND**

BERNARD AARON SAKALA

RESPONDENT

**CORAM:** Mwanamwambwa, Chibomba, Muyowwe, J.J.S.  
On the 8<sup>th</sup> of June, 2011 and 15<sup>th</sup> July, 2014

*For the Appellant:*

*Mr H. Chinene, of Messrs Lumangwe Chambers.*

*For the Respondent:*

*Mr J. M. Katolo, of Messrs Milner Katolo and Associates and Mr M. Mutale of York Partners.*

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## **JUDGMENT**

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Mwanamwambwa, J.S., delivered the Judgment of the Court.

***Cases referred to:***

1. Orman Corrigan (suing by his next friend) Albert John Corrigan V. Tiger Limited and Abdi Jumale (1981) Z.R. 60 (SC).
2. Zimco Ltd (in liquidation) and another V. Michael Malisawa and 17 others SCZ appeal No. 139/2000 (unreported).
3. Jonathan Musialela Ng'uleka V. Furniture Holdings Limited (2006) Z.R. 19.
4. Bank of Australia V. Palmer (1897) A.C. 540 at page 545.
5. Jacob Nyoni V. Attorney General (2001) Z.R. 65.
6. Attorney General V. Katwishi Kapandula (1988-89) Z.R., 69 SC.
7. Kafue District Council V. James Chipulu (1995-97) Z.R. 190 (SC).
8. Masauso Zulu V. Avondale Housing Project (1981) Z.R. 172



9. Phillip Mhango V. Dorothy Ngulube and others (1983) Z.R. 61 (SC).

10. Attorney-General v D.G. Mpundu (1984) Z.R. 6 (S.C.).

***Other Works referred to:***

Odgers' Principles of Pleading and Practice, 21st Edition at page 164.

This is an appeal against a Ruling of the learned Deputy Registrar on assessment of damages, dated 16<sup>th</sup> June, 2010.

The brief facts of the matter are that the Respondent was employed by the Appellant, from December, 1967 and rose through the ranks to the position of Assistant Director in 1995. The position of Assistant Director was in the salary scale Z9. In January, 1996, the Respondent was promoted to the position of Director, Public Relations, in salary scale Z10. The position of Director was not permanent and pensionable, but contractual. As a result, the Respondent served on contract from January, 1996 to 30<sup>th</sup> November, 2001. When the Respondent was promoted and given a contract as Director, he was paid K54, 646,614.00 as long service gratuity up to 31<sup>st</sup> December, 1995 when he began serving on a contract. He was also paid his pension by the Zambia State Insurance Cooperation (ZSIC) which was the Pension Fund Manager for the Appellant. ZSIC paid the Respondent his pension calculated at the salary scale of Z9 instead of Z10.

As a result of the above, the Respondent brought an action in the High Court, for the following reliefs:



1. An order that he be paid his 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;
2. An order that the Plaintiff be paid his benefits in accordance with the conditions of service obtaining at grade Z10 and that all the benefits and allowances he should have enjoyed at grade Z10 since January, 1996 be paid to him as approved by the Board;
3. An order for payment of general damages for the inconvenience suffered;
4. Interest on (1) to (3) above at current bank lending rate; and
5. Costs of and incidental to these proceedings.

Upon hearing the matter, the learned High Court Judge was of the view that the Respondent was not fairly treated. The Judge granted the Respondent the above reliefs as pleaded.

The learned High Court Judge then referred the matter to the Deputy Registrar for assessment of the terminal benefits and damages.

In May, 2005, the Deputy Registrar assessed the damages. However, the Appellant was dissatisfied with the assessment so it appealed to the Supreme Court.

The Supreme Court held that the assessment, as done by the learned District Registrar, did not conform to the awards awarded in the Judgment of the learned trial Judge. That there was both oral and affidavit evidence on assessment and the figures given by the Appellant were different from those given by the Respondent and no reasons were given for preferring those given by the Appellant. The Supreme Court was of the



view that the Judgment had no assessment of pension benefits and long service gratuity for a period of 34 years, unbroken service, as awarded by the learned trial Judge. In short, the Supreme Court was of the opinion that the assessment was incomplete. The matter was sent back for full assessment before a different District/Deputy Registrar.

The matter went before another Deputy Registrar for a second assessment. The Deputy Registrar awarded the Respondent K63, 363,543.90, as housing allowance in line with the order by the High Court that the Respondent be paid 100% of his salary as housing allowance. The learned Deputy Registrar awarded a total of the allowances the Respondent was entitled to, plus the salary of K3,143,000.00 multiplied by 3 months and multiplied by 34 years. He also awarded the Respondent pension. For damages, the learned Deputy Registrar found that some of the special damages claimed were not proved. However, he proceeded to award an amount of K260,000,000.00 as damages.

Dissatisfied with the above assessment, the Appellant now appeals against the Ruling.

There are five grounds of appeal. And these are:

**Ground one:**

**That the learned Deputy Registrar erred in awarding the Plaintiff housing allowance at 100% of the basic salary when the said housing allowance was subject to revision by the Board and was computed at a fixed sum for the period the**



Respondent was claiming in accordance with the existing housing policy.

Ground two:

That the learned Deputy Registrar erred in law in merging the Respondents salary and allowances in computing terminal benefits contrary to the Respondents conditions of service and the High Court Judgment which was not appealed against.

Ground three:

That the learned Deputy Registrar misdirected himself in finding that the Respondent was on permanent and pensionable conditions of service when in fact the Respondent was on contract and his contract determined by effluxion of time without the need for notice.

Ground four:

The learned Deputy Registrar misdirected himself in awarding the Respondent pension dues when the Respondent was on contract and was not entitled to a pension. That further, the learned Deputy Registrar had no basis for accepting the Respondents computation of pension dues.

Ground five:

The learned Deputy Registrar erred in law in awarding the Respondent K260, 000,000.00 in damages after making a finding of fact that the Respondent did not provide proof of the claims for damages.

On behalf of the Appellant, Mr Chinene submitted in ground one that the Respondent was serving under a contract for the period 1<sup>st</sup> January, 1996 to 30<sup>th</sup> November, 2001. He stated that according to clause 12 of the Respondent's contract of employment appearing at page 44 of the Record of Appeal, Volume 1, the Respondent was to be paid housing allowance at the approved rates. He stated that the rate for owner occupier was 100% of basic salary and the Respondent fell under the



category of owner occupier in 1996 and thus entitled to 100% of the basic salary.

He submitted that the allowance was revised in May 1998, to a fixed sum or quantum as opposed to per centum. Counsel argued that the approved rates applied to the Respondent and that the rates were graduated according to the hierarchy of seniority and grade. He submitted that the Respondent was entitled to housing allowance at the approved rate of the relevant grade as a fixed sum or quantum and not as a per centum.

In response on behalf of the Respondent, Mr Katolo submitted that this ground of appeal flies in the teeth of the Appellant's own evidence. He stated that the Appellant's witnesses clearly stated, in the Affidavit in opposition to assessment and at trial, that the Respondent was in receipt of 100% housing allowance. He argued that the circular on housing allowance clearly stated that where an employee had been receiving a higher housing allowance than the approved rate, then the higher allowance will continue to be paid on personal to holder basis.

He argued that the Deputy Registrar made a clear finding of fact that the Respondent was entitled to housing allowance at 100% of the basic salary. He cited **Orman Corrigan (suing by his next friend) Albert John Corrigan V. Tiger Limited and Abdi Jumale (1)** where it was held that:



**“before the appellate Court can properly interfere with the quantum of damages, it must be satisfied either that the Judge in assessing the damages applied, a wrong principle of law, or, if he did not error in law then that the amount awarded was either inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”**

He added that the Memorandum of Appeal does not in any way suggest that a wrong principle of law was applied or that the award was excessive.

We have looked at the evidence on record and considered the submissions filed by both parties. Clause 12 of the Respondent's contract of employment, appearing at page 44 of Volume 1 of the record of appeal provides:

**“that in the event of the employee not being provided with such accommodation as aforesaid for any period during his/her appointment or if the employee occupies his/her own house, he/she shall be paid monthly in arrears in addition to his/her said salary, a housing allowance at the approved rates.”**

Clause 2.0 of the revised allowances for non represented staff, appearing at page 41 of volume 2 of the record of appeal states that:

**“Housing allowance-owner occupier (monthly)**

<u>Grade</u>	<u>Current</u>	<u>Revised</u>
Chief Executive	K600,000	K640,000
Z10/9 and above	K600,000	K620,000



Z9/8 to Z9	K500,000	K520,000
Z8/7 to Z8	K400,000	K420,000

**N.B Employees in receipt of higher housing allowance rates than those in 1.0 and 2.0 above will continue to receive the higher rates.”**

At this time, the Respondent was receiving a housing allowance that was equivalent to 100% of his basic salary. The note on the revised allowances referred to above meant that the Appellant, who was receiving a higher housing allowance than the approved rates, would continue receiving the higher housing allowance at 100% of his basic salary.

We do not see why the Appellant should insist that the Respondent was to receive housing allowance at the approved rates, contrary to the note in the revised schedule on allowances. The Respondent was already receiving a higher housing allowance and hence, despite the revision in 1998, the Respondent should have been paid the higher, 100% housing allowance in accordance with the note in the revised schedule.

Accordingly, we hold that the Respondent is entitled to payment of 100% of his basic salary at salary grade Z10, from January, 1996, with interest, less what he has been paid so far.

Accordingly, this ground of appeal fails for lack of merit.

In ground two, Counsel for the Appellant submitted that the Respondent claimed the following in his pleadings:



- i. An order that he be paid his pension 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. An order that the Plaintiff be paid his benefits in accordance with the conditions of service obtaining at grade Z10 and that all the benefits and allowances he should have enjoyed at grade Z10 since January 1996 as approved by the Board be paid to him.

He argued that the trial Judge granted the Respondent the above reliefs. He stated that the evidence at page 150, volume 1 of the record of appeal, shows what other Directors were paid. He submitted that the other Directors were paid gratuity of three months basic pay for each year of service, with tax to be paid by the company. He argued that the Deputy Registrar misdirected himself in awarding gratuity to be merged with the total of the allowances the Respondent was entitled to at salary scale Z10. He stated that the cases cited by the Respondent should be distinguished from this case.

In response, Mr Katolo submitted, in ground two, that the law is very clear as to how terminal benefits should be calculated. He stated that the case of **Zimco Ltd (in liquidation) and another V. Michael Malisawa and 17 others**

<sup>(2)</sup> laid the law as follows:

**“in our considered opinion, if the Respondents were entitled to club membership and a social tour, whether a one off payment or not, they are still benefits. This is so because these fringe benefits have a value. Thus when computing the true earnings or true loss of earnings, they**



have to be taken into account... The club membership and social tour benefits ought to be incorporated into salaries for purposes of computing the Respondent's terminal benefits."

He submitted that the Deputy Registrar was on firm ground when he merged the allowances and basic salary for purposes of computing the Respondent's benefits. He stated that **the Malisawa case** was not concerned with interpretation of ZIMCO conditions of service but was concerned with the formula to be adopted when computing terminal benefits in instances where the employee is in receipt of allowances in addition to the basic salary.

He added that the Supreme Court has consistently maintained that allowances and all other perks must be included in the computation of compensation or damages. He cited the case of **Jonathan Musialela Ng'uleka V. Furniture Holdings Limited** <sup>(3)</sup>, to support his argument.

We have looked at the evidence on record and considered the submissions filed by both parties on this ground. We wish to state from the onset that the cases relied on by the Respondent, are distinguishable from the case at hand. In **the Jonathan Musialela case**, the Court ordered compensation in a case where reinstatement should have been granted. In awards for compensation, the damages include allowances which an employee was entitled to. This is not the case in this matter. There was no award for compensation, arising from



wrongful termination. Hence, there is no justification as to why the principle in **the Jonathan Musialela case** should apply.

The Respondent, in his arguments, also relied on **the Malisawa case** referred to above. The **Malisawa case** dealt with conditions of service that applied to employees under ZIMCO and not those employed by the Appellant. In employment cases, what determines an employee's entitlements are the conditions of service an employee is employed under. The conditions of service under which the Respondent was employed did not provide for the merging of the salary and allowances when calculating the long service gratuity.

In the case before us, the lower Court ordered that the Respondent be paid long service gratuity for a period of 34 years unbroken service in accordance with what was paid to other Directors, less what he received. The evidence on Page 130, Volume 2 of the record of appeal shows that the other Directors of the Appellant were paid three months basic salary for each year served.

The Respondent was entitled to a salary of K3,143,000. Therefore, K3,143,000.00 multiplied by 3 months and by 34 years, less what the Respondent has been paid, is what the Respondent was entitled to. We, therefore, award him long service gratuity of K3,143,000.00 multiplied by 3 months and by 34 years, with interest. It was erroneous for the learned



Deputy Registrar to add allowances to the basic salary when calculating the long service gratuity.

We, therefore, allow this ground of appeal. We set aside the award by the learned Deputy Registrar.

In ground three, Counsel for the Appellant argued that at page J9 of his Judgment, the learned Deputy Registrar, under the heading, "*period of notice*" treated the Respondent as if he was employed on permanent and pensionable ZIMCO conditions of service. He added that the Deputy Registrar held that the Respondent was entitled to be given notice and therefore be paid allowances as per the gratuity plus salary multiplied by 3 months in lieu of notice.

He argued that the Respondent's contract was for a specific term, up to 30<sup>th</sup> November, 2001. And that indeed, the Respondent separated from the Appellant's employment on 30<sup>th</sup> November, 2001. He submitted that there was, therefore, no need for the Appellant to give the Respondent notice because the Respondent's contract came to an end by effluxion of time. He stated that there was no requirement for notice. That in any event, notice was not pleaded in the pleadings. He cited the case of **Bank of Australia V. Palmer** <sup>(4)</sup> in support of his argument.

On behalf of the Respondent, Mr Katolo submitted that there is nowhere in the Judgment where the learned Deputy



Registrar made a finding of fact that the Respondent was on permanent and pensionable conditions of service. As regards the notice period, Mr. Katolo submitted that the record clearly shows that the Respondent was entitled to not less than 3 months previous notice in writing before termination. That it is not in dispute that the Respondent was informed about the termination of contract on 29<sup>th</sup> November, 2001 as shown by the letter appearing at page 166 of volume 1 of the record of appeal.

He added that in the case of **Jacob Nyoni V. Attorney General** <sup>(5)</sup>, the Court held that:

**“in a case of wrongful termination, the award of damages is rarely computed on the basis of the remaining period of service. Damages awarded range from the notice period required under a contract to the equivalent of two years.”**

We have looked at the evidence on record and considered the submissions filed by both parties on this ground. The Respondent had entered into a written contract with the Appellant. The clause on termination in the contract stated as follows:

**“that the employee shall hold his/her said office subject as hereinafter provided until his/her appointment shall be determined by not less than three months previous notice in writing to that effect, given by either of the parties or until the 30<sup>th</sup> day of November, two thousand and one, whichever shall first occur. Notwithstanding what is provided herein above, the company may terminate the appointment by paying the employee three (3) months salary in lieu of notice and the employee may give notice of**



**a lesser period than three months and forfeit one (1) month salary from his terminal benefits.”**

The Respondent argued that the letter on page 166 of the Record of Appeal is a termination letter. However, the wording of the letter in question, dated 29<sup>th</sup> November, 2001, was as follows:

**“REQUEST FOR RENEWAL OF CONTRACT**

**I refer to your memorandum of 6<sup>th</sup> November, 2001 in which you requested for renewal of your contract which is expiring on 30<sup>th</sup> November, 2001.**

**I regret to inform you that your application has not been successful and therefore your last day of service stands at 30<sup>th</sup> November, 2001....”**

The letter in question was not one of termination of contract. It was a response to an application to renew a contract. In any case, even if the Respondent had not applied to renew his contract and the Appellant wrote to him saying that his last day of work was 30<sup>th</sup> November, 2001, it would still not be a letter of termination. We say so because the termination clause in the contract of employment clearly stated when the contract would come to an end. There was no need for the Appellant to give the Respondent notice as the contract was set to expire on the 30<sup>th</sup> of November, 2001. Notice was going to be required if the Appellant decided to terminate the contract before it came to an end.



Further, we agree with the contention by the Appellant that the notice period cannot be granted to the Respondent because it was not pleaded. The learned Deputy Registrar granted damages for notice period despite the fact that the Judge in the lower Court did not grant these. We do not know why the Deputy Registrar made an assessment on notice period when it was not granted by the trial Judge. The role of the Deputy Registrar in assessment of damages is limited to awards granted by the Judge. The learned Deputy Registrar cannot assess awards that have not been granted.

Therefore, we reject the Respondent's argument that he is entitled to be paid damages for the notice period. This ground of appeal is accordingly allowed. The award under this head is hereby set aside.

In ground four, Mr. Chinene submitted that the issue of pension can be traced back to the pleadings and the Judgment of the High Court which granted this relief word for word as in the pleadings.

He submitted that the evidence on record is that the Respondent was employed under permanent and pensionable conditions until 31<sup>st</sup> December, 1995 and from 1<sup>st</sup> January, 1996 to November, 2001, on contract. He stated that the record of appeal, on Page 234, Volume 2, shows that the Respondent received a monthly pension of K300,000.00 from the Zambia State Insurance Cooperation Limited (ZSIC). He stated that



ZSIC is a separate legal entity and as Fund Manager, ZSIC paid the Respondent's pension. He submitted that this award must fail as the Appellant is not a Pension Fund manager.

In response to this ground, Mr. Katolo submitted that the High Court Judgment that granted the pension benefits has not been appealed against and it is not correct for the Appellant to raise points of appeal against the Judgment after assessment and which grounds tries to attack the Judgment that has not been appealed against.

He added that as to the quantum of damages, the Respondent clearly tabulated how the figure of K92,361,606.35 was arrived at. He stated that this is found at page 228, lines 15 to 25 of volume 2 of the Record.

We have looked at the evidence on record and considered the submission filed by both parties on this ground. The trial Court awarded pension benefits to the Respondent. However, we note that the Respondent was paid his pension benefits by the Appellant's pension Fund Manager, the Zambia State Insurance Cooperation (ZSIC). We note that, however, the pension benefits were paid at the salary scale Z9 instead of Z10. Therefore, what is owed to the Respondent is the difference in pension benefits between Z10 and Z9. However, the Pension Fund is operated by ZSIC and not the Appellant.



We agree with the Respondent's submission that the Judgment of the lower Court was not appealed against by the Appellant. However, we also note that ordering the Appellant to pay the pension benefits would be unfair as the Pension Fund Manager is ZSIC and not the Appellant. Therefore, in the interest of Justice, we are of the view that the difference in the pension benefit should be claimed from ZSIC and not the Appellant.

This ground of appeal is, therefore, allowed. The award of the pension benefits to be paid by the Appellant is set aside.

In ground five, Mr Chinene argued that the learned Deputy Registrar should have dismissed some of the claims for damages when he found that medical and transport claims were not supported by evidence.

He submitted that the award of K260, 000,000.00 was without evidence.

On behalf of the Respondent, Mr Katolo argued that the claim for damages by the Respondent was not challenged in cross examination by the Appellant. That the learned Deputy Registrar was justified in accepting the Respondent's unchallenged evidence on damages for mental anguish, distress and inconvenience. He cited the cases of **Attorney General V. Katwishi Kapandula**<sup>(5)</sup> and **Kafue District Council V. James Chipulu**<sup>(6)</sup> to support his argument.



He stated that the record shows that the Respondent had two children in school and that he required money to pay for them.

We have looked at the evidence on record and considered the submissions filed by both parties on this ground. We wish to dismiss the submission by the Respondent that he is entitled to judgment simply because the Appellant did not challenge the evidence on damages for mental anguish, distress and inconvenience. It is a well settled principle that a plaintiff has the burden of proving his or her case, no matter what the defendant's case. **See: Masauso Zulu V. Avondale Housing Project** <sup>(8)</sup>.

We note from the record that the learned trial Judge ordered that the Respondent be paid general damages for the inconvenience suffered. We also note from the record that the inconvenience suffered by the Appellant, was brought about by the payment of the Respondent's benefits on a lower salary scale than he was entitled to. The Respondent, during the hearing of the assessment before the learned Deputy Registrar, claimed to have spent the following:

- |                         |                        |
|-------------------------|------------------------|
| <b>1. Medical tests</b> | <b>K37,000,000.00</b>  |
| <b>2. Clinic visits</b> | <b>K36,000,000.00</b>  |
| <b>3. Education</b>     | <b>K122,797,368.00</b> |
| <b>4. Transport</b>     | <b>K126,000,000.00</b> |



However, no evidence was led to support the above claims. This was acknowledged by the learned Deputy Registrar. However, the learned Deputy Registrar went ahead and awarded the Respondent a sum of K260, 000,000.00 as damages for inconvenience. In the case of **Phillip Mhango V. Dorothy Ngulube and others**<sup>(9)</sup>, this Court held that:

**“Any party claiming a special loss must prove that loss and do so with evidence which makes it possible for the court to determine the value of that loss with fair amount of certainty.”**

In the case of the **Attorney-General v D.G. Mpundu**<sup>(10)</sup>, the Supreme Court referred to a passage in **Odgers' Principles of Pleading and Practice, 21<sup>ST</sup> Edition** at page 164, which states that-

**“As to the allegation of damage, the distinction between special and general damage must be carefully observed. General damage such as the law will presume to be the natural or probable consequence of the defendant's act need not be specifically pleaded. It arises by inference of law and need not, therefore, be proved by evidence, and may be averred generally. In some cases however, part of the general damages which it is sought to recover may have resulted from the wrong complained of in an unexpected though foreseeable way, in which case particulars should be given so as to avoid surprise at the trial and to enable your opponent to consider making a payment into court...”**

**Special damage, on the other hand, is such loss as the law will not presume to be the consequence of the defendant's act, but which depends in part, at least, on the special circumstances of the case. It must therefore always be explicitly claimed on the pleadings and at the trial it must be proved by evidence both that the loss was incurred and that it was the direct result of the defendant's conduct. A mere expectation or apprehension of loss is not sufficient. And no damages can be recovered for a loss actually sustained, unless it is either the natural or probable**



consequence of the defendant's act, or such a consequence as he in fact contemplated or could reasonably have foreseen when he so acted. All other damage is held 'remote'."

From the above, it is clear that special damages must not only be pleaded, but proved as well. In the case before us, the special damages claimed by the Respondent were neither pleaded nor proved. Therefore, they cannot be awarded.

However, we note that the Respondent suffered some inconvenience arising from payment of benefits calculated at a lower salary scale than what the Respondent was entitled to. This inconvenience is a consequence of the Appellant's actions.

In the circumstances of the case, we find that an amount of K260,000,000.00 to be inordinately high and excessive as general damages. Accordingly, we set it aside. Since we have awarded the Respondent interest on the housing allowance and on the long service gratuity, we are of the view that the interest will cover the inconvenience suffered by the Respondent.

Therefore, we allow this ground of appeal in part.

In summary,

**Ground one is dismissed**

**Ground two is allowed**

**Ground three is allowed**

**Ground four is allowed**



**Ground five is allowed in part.**

We now come to the assessment of the awards.

We have awarded the Respondent housing allowance at the rate of 100% of the basic salary of a Director at salary scale Z10 from January, 1996 to 30<sup>th</sup> November, 2001, less what has been paid to the Respondent so far. The learned Deputy Registrar entered Judgment in the amount of K63,363,543.90. The Appellant does not dispute the fact that the Respondent is entitled to Housing allowance. The only dispute is as to the quantum of 100% of the salary. In light of what we have said above, we uphold the learned Deputy Registrar's award of K63,363,543.90. Of this amount, the Appellant paid the Respondent K560,668.90 leaving a balance of K62,802,875.00(*unrebased*). We, therefore, enter Judgment in the amount of **K62,802.88 (rebased)**. We award interest on this sum, at the average short term Bank deposit rate from the date of the Writ to the date of Judgment. Thereafter, up to date of settlement, we award interest, at the current lending rate, as determined by the Bank of Zambia.

We awarded the Respondent Long Service Gratuity to be calculated at 3 months basic salary (salary obtaining as at 30<sup>th</sup> November, 2001) multiplied by 34 years, less what has been paid to the Respondent so far. The Respondent's last salary was K3,143,000. This figure, multiplied by 3 months then multiplied by 34 years comes to K320,586,000. The



Respondent stated in his affidavit at page 153 of the record that he was paid a total of K289,768,698 as gratuity. This leaves a balance of K30,817,302 (unrebased). Therefore, we award the Respondent long service gratuity in the amount of **K30,817.30 (rebased)**. We award interest on this sum, at the average short term Bank deposit rate from the date of the Writ to the date of Judgment. Thereafter, up to date of settlement, we award interest, at the current lending rate, as determined by the Bank of Zambia.

The interest on the sums found due is awarded pursuant to **Order 36, Rule 8** of the High Court Rules and **Section 2** of the Judgments (Amendment) Act No. 16 of 1997 of the Laws of Zambia.

The appeal has partly succeeded and partly failed. Accordingly, we order that each party bears its own costs of this appeal and in the Court below.



M.S. MWANAMWAMBWA

**ACTING DEPUTY CHIEF JUSTICE**





H. CHIBOMBA  
**SUPREME COURT JUDGE**



E.C. MUYOVWE  
**SUPREME COURT JUDGE**