

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

APPEAL NO. 161/2013

BETWEEN:

KENNY SILILO

APPELLANT

AND

LOCAL AUTHORITY SUPERANNUATION FUND

1ST RESPONDENT

CHONGWE DISTRICT COUNCIL

2ND RESPONDENT

Coram: Phiri, Muyovwe and Wood, JJS
on 1st March, 2016 and 9th March, 2016

For the Appellant: In Person

For the Respondent: Ms. T. Bulaka, Messrs Chifumu Banda and
Associates

JUDGMENT

MUYOVWE, JS, delivered the Judgment of the Court

Cases referred to:

- 1. Andrew Tony Mutale vs. Crushed Stones Sales Ltd (1994/95) Z.R. 98**
- 2. Attorney-General vs. Roy Clarke (2008) Z.R Vol. 1 38**
- 3. Bryne vs. Kanweka (1967) Z.R 82**
- 4. Nigel Mutuna, Charles Kajimanga and Philip Musonda vs. Attorney General Appeal No. 8/2012**
- 5. Christopher Mundia vs. Sentor Motors (1982) Z.R. 66**

This is an appeal against the refusal by the Deputy Registrar of the High Court to assess damages for loss of business; non-remittance of contributions; withholding benefits; mental torture and hardship allegedly suffered by the appellant on the ground that these were not pleaded by the appellant who was the plaintiff in the court below while the 1st and 2nd respondent were the 1st and 2nd defendant.

The brief background to this appeal is that the appellant commenced an action in the High Court against the respondents for payment of pension benefits; interest; any other relief the court would deem fit and costs. Before the trial, the parties entered into a Consent Order narrowing the issues for determination by the learned trial judge in the following terms:

1. That the 2nd defendant shall compensate the plaintiff in the form of paying him the benefits he would have earned for the disputed period of December, 1993 to December, 1996, had his contributions been remitted to the 1st defendant by the 2nd defendant.

2. The amount of compensation payable by the 2nd defendant to the plaintiff shall be calculated after the court's determination of the issues mentioned in clause 3 hereof.
3. The court shall deliver, taking into account the evidence adduced by the plaintiff and 1st defendant, its judgment herein on the following other contentious issues as between the plaintiff and 1st defendant-
 - i. The applicable formula in computing the plaintiff's benefits
 - ii. Whether the plaintiff is entitled to the inclusion of the employer's contributions when computing his benefits.
4. The issue of costs and interest shall be finally determined by the court in the judgment to be delivered as aforesaid.

It is clear, therefore, that from the beginning the parties were on the same footing as regards the issues in contention.

It was common cause that the appellant became a member of the Fund on 1st January 1997 and he resigned from employment on 3rd December 2007. In his judgment, the learned judge who found in favour of the appellant gave guidance as to the proper calculation of the interest payable after judgment. The learned judge found that on the question of interest, the 1st respondent took the wrong

approach and the appellant who “was not correctly paid” should have been paid in accordance with Section 33(b) of the Local Authority Superannuation Fund Act, Cap 284 of the Laws of Zambia. In the circumstances, the learned Judge referred for assessment to the Deputy Registrar, the amount of compensation payable to the appellant as well as the re-calculation of the interest on the sum found to be due to the appellant. The interest was pegged at 20% per annum from the date of issue of writ to the date of payment.

Before the Deputy Registrar, the appellant, in relation to the issue of compensation argued that his claim was divided into two categories namely: compensation for loss of business and income which he pegged at KR144,000.00 and compensation for pain and suffering which he calculated at KR244,670.03. The appellant maintained that these claims, which were vehemently, opposed by the respondents, were actually awarded to him by the trial court.

The learned Deputy Registrar calculated the appellant’s claim taking into account the fact that the writ was issued on 15th January, 2010. She held that up to 2012 the appellant was

entitled to KR 571,915. That 20% interest would be payable up to date of payment.

The learned Deputy Registrar rejected the appellant's claim for damages for loss of business, non-remittance for payment; withholding benefits without due cause; mental torture and hardship. The learned Deputy Registrar observed that these claims were not pleaded. Relying on the cases of **Andrew Tony Mutale vs. Crushed Stones Sales Ltd¹**; **Attorney-General vs. Roy Clarke²** and **Bryne vs. Kanweka³** the learned Deputy Registrar refused to adjudicate on the appellant's claims for damages.

According to the learned Deputy Registrar, it was not sufficient, as suggested by the appellant, to plead claims for damages under "any other relief". She, therefore, declined to consider the claims for damages.

Aggrieved by the judgment on assessment the appellant appealed before us advancing seven grounds of appeal namely:

- 1. That the Deputy Registrar in court misdirected herself on the point of Law and fact by refusing to adjudicate**

on the matter awarded to me by the court through a consent order consented to by parties.

2. That the Deputy Registrar in court misdirected herself on the point of Law and fact by interpreting the meaning of to compensate and compensation using her own understanding disregarding the established procedures used in the legal system in Zambia the literal rule.
3. That the Deputy Registrar in court misdirected herself on the point of Law and fact by holding that the words to compensate and compensation are not separate and clause two make reference to clause one, when these items are stand alone on the consent order and do not make reference to each other contrary to the manner appear in the consent order.
4. That the Deputy Registrar in court misdirected herself on the point of Law and fact by holding that the 2nd defendant is objecting to payment of compensation contrary to the consent order consented to, thereby disallowing the claim of compensation.
5. That the Deputy Registrar in court misdirected herself on the point of Law and fact by holding that the compensation claim must be specifically pleaded contrary to the High Court rule order 16 Rule 1.

6. That the Deputy Registrar in court misdirected herself on the point of Law and fact by not recording responses I gave according to how I answered them when cross examined contrary to the proceedings of the case.

7. That the Deputy Registrar in court misdirected herself on the point of Law and fact by not recording the question I put through to the witness before court and his responses contrary to the proceedings of the case.

The appellant filed detailed heads of argument which he relied on entirely. We do not think it is necessary to reproduce his arguments but we will deal with all the issues raised simultaneously in the seven grounds of appeal in our judgment.

The gist of the appellant's detailed arguments is that the learned Deputy Registrar had no legal basis upon which she declined his claims for damages. In his quest to persuade us that the learned Deputy Registrar erred when she refused to consider his claims for damages, he went to great length to discuss the cases of **Nigel Mutuna and Others vs. Attorney General⁴; Attorney-**

General vs. Roy Clarke² Bryne vs. Kanweka³ Andrew Tony

Mutale vs. Crushed Stone Sales Ltd.¹

In his grounds of appeal, the appellant also complained that the learned Deputy Registrar did not record his responses during cross-examination and neither did she record the questions which he put to the witnesses during the assessment proceedings.

In response, Counsel for the 2nd respondent filed heads of argument which she relied on entirely. She summed up all the appellant's grounds of appeal in one argument only namely: that the learned Deputy Registrar was on firm ground when she refused to grant the appellant damages for pain and suffering; loss of business and inconvenience in the sum of KR244,670.03. Counsel submitted that the learned judge never granted the appellant the damages as they were not included in the Consent Order. It was pointed out that no evidence was led in support of the claims for damages and that the matter was restricted to his claim for pension benefits adding that this was what was referred to the Deputy Registrar. Counsel contended that the appellant only raised the

issue of damages during assessment. It was submitted that the Deputy Registrar has no power to assess damages which were not granted by the learned judge. Further, that the damages were never pleaded. Counsel relied on the case of **Andrew Tony Mutale vs. Crushed Stone Sales Ltd.**¹

It was submitted that if the appellant was dissatisfied with the judgment of the learned judge which referred the matter for assessment to the Deputy Registrar then he should have appealed to this court. It was contended that the learned Deputy Registrar rightly assessed the 2nd respondent's liability to the appellant in terms of Section 33(b) of the Act as ordered by the learned Judge. Counsel urged us to dismiss the appeal with costs.

We have considered all the arguments and authorities cited in support by the parties in this appeal.

The question that we have to determine in this appeal is whether the Deputy Registrar erred when she declined to adjudicate on the claims for damages brought before her by the appellant.

From the outset, we must state that it is not true that the learned judge awarded the appellant the damages which he claimed before the learned Deputy Registrar. Although the appellant was adamant, even during the hearing of this appeal, that he was entitled to damages as a result of the Consent Order, we take the view that he misapprehended the contents or terms of the Consent Order that he consciously signed. It seems to us that the appellant decided to read into the Consent Order and the judgment, provisions that were not included therein. His allegation that the Deputy Registrar misunderstood the meaning of the words "compensate" in Clause one and the word "compensation" in Clause two goes further to show that the appellant chose to have his own interpretation of the Consent Order to suit his own claims which it would appear were an afterthought as they were not pleaded in his statement of claim from inception. In our view, the terms of the Consent Order are so clear that there is no need to call in aid the rules of interpretation as suggested by the appellant in his lengthy submissions.

In Clause one, the Consent Order is simply stating that the 2nd respondent agreed to pay the appellant the benefits which he would have earned for the period December 1993 to December 1996 had his contributions been remitted to the 1st respondent by the 2nd respondent. Clearly, the 2nd respondent misapprehended the formula to be applied in computing the appellant's package hence the request by the parties that the court gives guidance on this issue. It is noteworthy that the issue of damages was not part of the Consent Order as it suddenly crept into the proceedings at assessment stage and the learned Deputy Registrar rightly declined to consider the claims. In the same vein, the 2nd respondent was in order to object as the claims were not pleaded from inception.

In the case of **Christopher Mundia vs. Sentor Motors**⁵ we held that:

“The function of pleading is to serve fair notice of the case which has to be met and to define the issues on which the court will have to adjudicate in order to determine the matters in dispute between the parties.”

Indeed, the spirited arguments advanced by the appellant citing various authorities on the issue of pleadings cannot be of any assistance to him as the learned Deputy Registrar was on firm ground when she declined to adjudicate on his claims for damages.

We also see nothing wrong in the judgment by the Deputy Registrar. A judgment is the final decision by a court or tribunal that resolves all issues in dispute. There is no rule in judgment writing which stipulates that a judgment must contain all the questions and answers put forward to the witnesses in examination in chief and in cross-examination during the hearing. The appellant's complaint that his questions and answers were excluded from the judgment on assessment is baseless as it stems from a misapprehension of the contents of the judgment.

In fact, it is clear that the appellant attended before the Deputy Registrar for assessment without an open mind as he had already done his own assessment. It is no wonder that the appellant rejected the learned Deputy Registrar's decision as he had already passed his own decision in his favour.

All in all, we find that all the grounds of appeal have no merit and we dismiss the appeal. We order each party to bear their own costs.



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G.S. PHIRI
SUPREME COURT JUDGE



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E.N.C. MUYOVWE
SUPREME COURT JUDGE



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A.M. WOOD
SUPREME COURT JUDGE