

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2014/HP/1134

(Civil Jurisdiction)

BETWEEN:

PETER NG'ANDU

AND

ZESCO LIMITED



DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 30TH OCTOBER, 2017 – IN CHAMBERS

For the Plaintiff : *Mr. Katuta- Luboko Chambers*

For the Defendant : *Mrs. D. Machona – Legal Counsel Zesco*

JUDGMENT

CASES REFERRED TO:

1. *Development Bank of Zambia vs Dominic Mambo (1995-1997) ZR 89*
2. *National Milling Company Limited vs Simataa and Others (2000) ZR 91*
3. *North-Western Energy Company Limited vs The Energy Regulation Board (2011) 2ZR 562*
4. *Council of Civil Service Union v Minister for the Civil Service[1985] A.C. 374*
5. *Hotel and Tourism Training Institute Trust vs Happy Chibesa SCZ Appeal No. 58/2001 (unreported)*
6. *Kasenge vs Zanaco (2000) ZR 72; Nguleka vs Furniture Holdings Limited (2006) ZR21; and James Mankwa Zulu and Others v Chilanga Cement Plc, SCZ Judgment No. 12 of 2004*
7. *Rosemary Ngorima and 10 Others v Zambia Consolidated Coppermines Appeal No. 97 of 2000*
8. *Zambia Oxygen Limited v ZPA, Paul Chisakula and Ors (2000) ZR 27*
9. *Zambia Telecommunications Company Limited v Felix Musonda and 29 others, SCZ/8/26/2014 (Appeal no. 51 of 2014)*
10. *Zambia National Commercial Bank Plc v Geoffrey Muyamwa and 88 Others, SCZ/8/262/2016 (Selected Judgment No. 37 of 2017)*

In this case the Plaintiff claims the following reliefs against the Defendant:

1. *K397,636.28 being an underpayment on his retirement benefits following his retirement from the Defendant's employment on 11th March, 2011 particular whereof exceed three folios and have been furnished to the Defendant;*
2. *Interest; and*
3. *Costs*

The basis of his claim as stated in his statement of claim is that when calculating the long service gratuity the Defendant used a fictitious figure of K5,339.25 representing his service allowance instead of K6,776.74 as contained on his pay slip and as receivable by him on a monthly basis. As a result of this he was underpaid by an amount of K133,379.00. Secondly, the Plaintiff claims to have suffered a further underpayment of K264, 157.28 by reason of the Defendant's omission to incorporate the Plaintiff's housing allowance of K2,847.60 (receivable by him on a monthly basis) into his basic salary when it calculated the Plaintiff's retirement benefits as by law established.

In its defence, the Defendant denied underpaying the Plaintiff and stated that no fictitious figures were used in computing the Plaintiff's long service gratuity but the applicable formula at the time was applied. It was further stated that for the purpose of

