

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 10 OF 1988



BETWEEN:

S CHIMASULA PLAINTIFF

AND

IMPERIAL TIMBERS LIMITED DEFENDANT

CORAM: E B TWEA, REGISTRAR

Mr Katsala, for the plaintiff

Defendants counsel absent

RULING

This is an assessment resulting from the judgement of the Supreme Court of Appeal granting that, among other things, the appellant was entitled to receive gratuity and pension.

The appellant was an employer of the defendant for 35 years standing before he was summarily dismissed on allegations of theft. The Supreme Court of Appeal found that the defendant/respondent had no basis for ordering such a dismissal. It ordered that the appellant be paid his one month salary in lieu of notice, salary during the period of suspension and he be deemed to have retired normally and be paid his gratuity and pension.

While as the parties were able to agree on all other heads, they failed to agree on the issue of pension and gratuity. It came out clearly in the evidence of the



defendant/respondent that they had great difficulty in appreciating the scope of the ruling of the Supreme Court of Appeal. DW1 the Personnel Manager kept insisting that the appellant had not reached retirement age and that he was dismissed therefore not entitled to such benefits. With due respect to DW 1, he seemed notable to grapple with the legal effects of the Court's ruling. It was then agreed between the parties that in the interest of justice the trustee of the defendant/respondents pension scheme be called to give evidence on this issue of gratuity and pension.

After DW2 was summoned the defendant/respondent took time to provide the required information on which such dues could be worked out. Indeed, it was in evidence that the defendant once had a Retirement and Gratuity Allowances Scheme which was superceded by the Contributory Pension Scheme. At the time the parties closed their evidence, the Retirement and Gratuity Allowances Scheme rules had not been provided. The parties then decided to dispense with them.

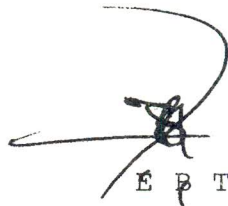
It was the evidence of DW1 and DW2 that the contributory pension scheme did not provide for payment of gratuity. Be this as it may, DW2 say that the scheme allowed for payment of commutation which was a lump sum that a retiring person could chose to receive. The effect of this was to reduce the pension payable per annum. It was said in the case of Kayira and 5 others vs Malawi National Examination Board Misc. Civil Cause no. 49 of 1995 that this commutation was the same as gratuity.

DW2 told this could that the appellant was on Retirement and Gratuity Allowance Scheme for 28 years and his pension would have been K667.27 per annum. He was on the Imperial Group Fund Scheme for 7 years and his pension would have been K494.37 per annum. In total his pension would have been K1,161.64 per annum; had been retired normally. It was further DW2 evidence that had the appellant decided to get his contribution he

would have received K1,936.07 as a lump sum. He would then be entitled to pension per month at K80.67. In the absence of choice of commutation, he would have received pension at K96.80 per month.

It is my ruling therefore that on the ruling Company Scheme, the appellant be given K1,936.07 commutation and be paid pension at the rate of K80.67 per month as from the date of his discharge from the services of the company. Plaintiff is entitled to costs.

Pronounced in Chambers this 20 day of November, 1996 at Blantyre.

A handwritten signature in black ink, appearing to be 'E B Twea', is written over a horizontal line.

E B Twea
REGISTRAR