

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CASE NO. 598 OF 2004**

BETWEEN

E. CHAPASUKA.....PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Mapila for the plaintiff

Kayuni for the Defendant

Chulu Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

This matter came for assessment of damages following a default judgment that was entered by the court on the 28<sup>th</sup> day of April 2005. During the assessment hearing two witnesses testified, including the plaintiff.

The claim before me was for damages for loss of salary, pension and gratuity, which were supposedly due to the late Edward Chapasuka, who was apparently forced to retire from the police in 1997. It was the testimony of Pw1, who introduced himself as the late Chipasuka's friend, that, to his knowledge, the deceased never applied for retirement and that at the time that he was retired he was 54 years old, six short of the mandatory retirement age for police officers of 60. Pw1's evidence was also confirmed by the plaintiff. In essence then this was a claim unlawful dismissal from employment.

Having failed to defend the matter, the defendants did attend the assessment hearing. However apart from cross-examining the plaintiff,

they never offered much during the assessment hearing except to concede to the plaintiff's claim. I should of course state that their concession was based on the fact that their client, the Police Service, was not forthcoming with any information which could have enabled counsel to defend this claim; a development which I believe was unfortunate.

In terms of the damages that the plaintiff is entitled to, it is well settled law that the measure of damages for wrongful dismissal is the amount the employee would have earned had his employment continued subject to any deduction accruing from other employment which he had or should reasonable have obtained in mitigating his loss (see **Press (Agencies) Ltd v Mkwawira t/a Chimwemwe Enterprises** 9 MLR 110). In the present instance it was the plaintiff's submission that had her husband's employment continued up to the age of 60, he would have been a salary, pension and gratuity for six years, which fact I do not doubt. However, apart from being told that the deceased was earning a salary of K56, 892 per annum and that at the time he was a Chief Superintendent, there was no evidence adduced as to how much gratuity or pension he would have earned during the 6 years. In this regard therefore, we cannot say that the plaintiff proved her claim regarding the pension and gratuity. Indeed the lack of evidence does also apply to the issue of prospective salary increments and promotions. On this note then the court cannot award any damages as doing so would be based on assumptions and speculation. Having said this then, the court proceeds to only award the plaintiff the sum of K341, 351 representing the salary that he would have earned for the remaining six years of his employment. Considering that at the time of his forced retirement the deceased was 54, it was the view of this court that he could not have been reasonably expected to mitigate his loss by getting another job as most companies or organizations would be unwilling to employ a person at that age, especially in his field. In view of this I am not going to make any deductions to the award. Suffice to say that the award is subject to income tax.

Finally the plaintiff is awarded costs of this action, which are to be assessed if not agreed.

Made in Chambers this.....day of.....2007

K.T. MANDA

SENIOR DEPUTY REGISTRAR