

Gwembere v Malawi Railways Limited

Summary

Court:	Supreme Court Of Appeal
Bench:	Skinner, CJ, Honourable Justice Villiera, Ag. JA., Honourable Justice Topping, Ag.
Cause Number:	9 MLR 369
Date of Judgment:	June 07, 1980
Bar:	Mhango, Counsel for the Appellant. Alufandika, Counsel for the respondent.

The Appellant appealed to the Supreme Court of Appeal against a decision of the High Court concerning claims for arrears of salary, leave pay, pension contributions, and interest on the refund of his pension contributions following his dismissal after working for the Respondent for 20 years. The Appellant, an electrical foreman, was suspended on half salary on 10 October 1977, following his arrest for theft by servant, and was subsequently convicted and dismissed on 6 May 1978. Following dismissal, the Respondent acknowledged that the Appellant was due a refund of K3,054.02 in pension contributions. However, having previously had other cheques returned by the Appellant, the Respondent kept the pension money available for collection in its current account rather than remitting it. The Appellant instituted proceedings, claiming for arrears of salary,

leave pay, the pension refund, and interest on the refund. The High Court allowed the claims for salary arrears and leave pay for the period before suspension was correctly implemented but dismissed the claim for interest, finding the Appellant had not specifically demanded the money, nor was the Respondent unjustly enriched.

The principal issues before the Supreme Court of Appeal were whether the suspension was valid for the entire period until dismissal, given a contractual term requiring a formal extension agreement, and whether the Court should have exercised its discretion under section 11 of the Courts Act to award interest on the undisputed pension refund debt.

The appeal was allowed in part on the salary and leave pay claims but dismissed in respect of the claim for interest. The Court held that, the appeal regarding the suspension period, according to the supplementary rules governing the disciplinary code required reinstatement if an extension of the initial 14-day suspension period was not formally agreed by a General Manager, which had not occurred in this case. As no such agreement was obtained, the contract of employment was deemed to have revived after the initial 14 days, and the Appellant was entitled to the balance of his full salary until dismissal. The Court accordingly granted judgment for the Appellant in the total sum of K1,308.88, representing the successful claims for salary and leave pay. Regarding interest, the Court held that, section 11 of the Courts Act conferred an unrestricted judicial discretion to award interest, but this discretion was not to be exercised automatically, but rather must be governed by the principle that it should be awarded only where a party is driven to legal proceedings to recover money.

Consequently, the court held that, since the Appellant was aware the pension money was available and had deliberately not collected it, the Court concluded that he was not "driven to litigation", hence, the litigation was deemed unnecessary, and interest was therefore rightly denied. The Court further ordered that the costs in the court below be taxed, excluding any costs attributable to the claim for refund of the pension moneys.