

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO 1272 OF 2003**

BETWEEN:

MRS EGIDIO MPANGAPLAINTIFF

AND

DZUKA PUBLISHING CO. LIMITED..... DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Kaphale, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages herein pursuant to a default judgment entered in favour of the plaintiff dated 11th June, 2003. The judgment is for payment of pension dues wrongfully withheld from the plaintiff when he retired from the defendant's employment on 19th December 2002 after serving the defendant for 17 years.

The notice of hearing of this assessment was duly served on the defendant. The defendant did not appear at the hearing of the assessment and that left the plaintiff's evidence totally uncontroverted.

The plaintiff herein retired from the defendant's employment on 19th December, 2002 after working in the defendant's employment for a period of 17 years. The plaintiff was employed on pensionable terms and was entitled to a pension payment. The plaintiff contributed to the pension through deductions from his salary. The defendant also contributed a certain sum of money towards the plaintiff's pension. Under the pension scheme the defendant was supposed to remit the plaintiff's contribution to Old Mutual who administer the defendant's employees' pension fund.

As it turned out the defendant only made such remission's for the period up to February, 2002. That leaves out revision of the plaintiff's pension contributions for the period covering the months of March to December, 2002. The calculation of plaintiff's pension benefits from Old Mutual for the period up to February, 2002 show that the plaintiff is entitled to K1,143,965.49 inclusive of interest up to the date of calculation of June, 2003 when this assessment was done. That sum is exclusive of tax deductible on the same and due to the Malawi Revenue authority. The defendant herein deliberately omitted to send a pension payment form to Boabab Pensions Brokers who are the brokers for Old Mutual Pensions' Scheme, with the defendant's employees.

The plaintiff is therefore being denied his pension benefits as a result of the defendant's omission to act accordingly. The plaintiff is therefore clearly entitled to his pension benefits herein. The pension benefits are a contractual right under the contract for the administration of the pension scheme between the defendant and Old Mutual for the benefit of the plaintiff herein. See **Chawani v Attorney General** MSCA Civil Appeal Number 18 of 2000. In the premises the court orders that this assessment be an interim one covering the plaintiff's pension benefits for the period up to February, 2002. The plaintiff is awarded K1,143,965.49 as pension benefits due under the defendant's employees' pension scheme of which the plaintiff is a member. The figure of K1,143,965.49 is exclusive of tax and so the court orders that a tax assessment be made by the Malawi Revenue Authority on the sum awarded and that once the tax is deducted the plaintiff be paid the remainder. A final assessment of damages shall be done for the remainder of the period from February, 2002 to December, 2002

Costs of this action are for the plaintiff.

Made at Blantyre this August, 2003.

M A Tembo

ASSISTANT REGISTRAR