

CLEVER GAHA
versus
LOCAL AUTHORITIES PENSION FUND
and
CITY OF HARARE

HIGH COURT OF ZIMBABWE
MUSHORE J
HARARE, 7 February 2018

Pre-Trial Conference

MUSHORE J: At a resumed Pre-Trial Hearing held in my Chambers on the 4th October 2017; with plaintiff having made an application in terms of Order 26 r 182 (11), I ordered that the second defendant's defence be struck out and that judgment as prayed for by the plaintiff in his declaration be ordered against second defendant.

Before I lay down the foundation and reasons for having made such an order, I will first recount the facts which led rise to plaintiff filing the present suit. Plaintiff was employed full time by second defendant; up until he retired on a pension from service on the 30th June 2014. According to plaintiff, upon his retirement; he became immediately entitled to receive his pension benefits from the first defendant. It was averred by plaintiff that after waiting for almost a year for his pension benefits to be remitted to him; and having pressed first defendant to pay him his pension benefits; first defendant wrote a letter to the plaintiff; copied to the second defendant itemising the amounts it had calculated as being due for payment to plaintiff. In a letter dated 10th December 2015; (Annexure 'A' to the declaration) first defendant wrote:-

"10th December 2015
Mr Clever Gaha
[His address]
Dear Sir

RETIREMENT PENSION BENEFIT

We have been informed that you retired from the service of Harare Water on 30 June 2014 and have pleasure in giving the full details of your pension as follows:-

One Third Commutation (Lump Sum)	\$28,935.89
Add: Pension Arrears from 1 July 2014 to 30 April 2015	<u>\$ 5,015.20</u>

Total Amount Payable \$33,951.09

Due to cash flow challenges currently being faced by the Fund your retirement benefit with your monthly pension of \$501.52 will be paid as and when the Fund gets the requisite cash resources.

Your monthly pension is guaranteed for seven years and thereafter for life. The ..”

Plaintiff pleaded in his declaration that so far he had received part of the One Third Commutation that being \$10,278.10, leaving \$18,657.79 due for payment to him. Plaintiff calculated the pension arrears outstanding on at the time of filing suit [end of May 2017] as being \$17,051.68. Thus the total amount due to him as at the time of his filing his claim in his court was \$35,709-47; plus of course future monthly amounts which would become due to him within the guaranteed seven year period.

In its plea, first defendant pleaded that second defendant had failed to remit to it the amounts due to plaintiff, save for \$10,278.10 which it had immediately remitted to the plaintiff.

Second defendant filed a plea which in my view is excipiable for lack of substance to the extent that it is a bare denial. In its plea, second defendant admitted that it had fallen into arrears in making payments to first defendant. Then without offering up any figures in its denial of liability to plaintiff; it simply pleaded that it owed plaintiff nothing at all by way of pension benefits due to plaintiff.

At the Pre-trial hearing, in trying to settle the matter, I enquired from second defendant’s counsel if he could furnish receipts in support of its plea that it owed plaintiff nothing at all. My line of enquiry was aimed at ascertaining what amounts’ if any, may be due and owing to plaintiff so that the matter could perhaps be resolved and brought to finality. In answer to my question, second defendant’s counsel replied in the affirmative, submitting that given enough time to source such proof, he would be able to furnish proof of payment to plaintiff by way of receipts. It was then that counsel for second respondent guided the court as to how much time he required to find and furnish those receipts. Accordingly and in accommodating second defendant’s request for time, it was agreed by all that the PTC be stood down. The PTC was stood down to reconvene on the 4th October 2017. In addition counsel for second defendant agreed to furnish plaintiff and first defendant with the receipts; and also to file the receipts with the court, by the end of day on the 3rd October 2017.

It was then that plaintiff applied for directions in terms of Order 26 r 182 to pave the way forward. I granted plaintiff’s application and issued the following directions:-

1. 2nd defendant be and is hereby directed to produce all receipts of payments made to plaintiff and payments remitted to 1st respondent, and to serve them on Plaintiff and 1st defendant's counsel; and file copies with the Court by close of business on 3rd October 2017.
2. The parties are to appear at a reconvened PTC hearing on the 4th October 2017 at 12pm so as to finalize the matter upon proof of payment"

By the 3rd October 2017, neither the court nor the plaintiff and first defendant had received anything at all, from second defendant's counsel; neither did he communicate with the court regarding any difficulty he may have been encountering in procuring the receipts.

The following day, at the reconvened hearing of the 4th October 2017, second defendant still failed to produce any documentation showing that he had made payments to plaintiff; which payments it had specifically pleaded had been made in the discharge of all of its obligations to plaintiff.

At that juncture, plaintiff's counsel made an application for second respondent's defence to struck out for its failure to comply with the directions of the court in accordance with O 26 r 182 (11) (a) and (b).

Accordingly, and due to second defendant's lack of compliance with the specific directions of the court, I granted the application; striking out second defendant's defence and giving an order granting plaintiff's claim as prayed for in his declaration.

Chizengeya Maeresera & Chikumba, plaintiff's legal practitioners
Sawyer & Mkushi, 1st defendant's legal practitioners
Mbidzo Muchadehama & Makoni, 2nd defendant's legal practitioners