**REPORTABLE** **(11)**

***EXTEMPORE***

**EMILY MASHIYA**

**v**

**PIONEER CORPORATION AFRICA**

**SUPREME COURT OF ZIMBABWE**

**BHUNU JA, MATHONSI JA & CHATUKUTA JA**

**HARARE: 12 JULY 2023**

*V. Mukumba*, for the appellant

*M. Ndlovu*, for the respondent

**MATHONSI JA:** This is the unanimous decision of this Court.

This is an appeal against part of the judgment of the Labour Court handed down on 21 October 2022. The part appealed against is the dismissal of the appellant’s claim for cellphone and holiday allowances as part of her damages in *lieu* of reinstatement as well as the award of those damages at the parity rate of one as to one instead of the prevailing interbank rate.

At the hearing of the appeal, and after an exchange with the court, Mr *Ndlovu* for the respondent abandoned the cross appeal filed without the leave of the court. He also conceded that the appellant was entitled to cellphone and holiday allowances in terms of her contract of employment.

Only the narrow issue of the conversion rate of damages remains. Relying on the authority of *Zambezi Gas v H. Barber* SC 3/20 Mr *Mukumba* for the appellant submitted that the rate should be the prevailing interbank rate at the time of payment. In that case this Court determined that the origin of the liability is not the criterion for its exclusion but that what brings the asset or liability within the provision of s 4 (1) (d) of S.I. 33/19 is the fact that its value was expressed in United States Dollars immediately before the effective date, namely 22 February 2019.

That resolves the appeal. The value of the damages claimed by the appellant was only expressed on 21 October 2022 after the effective date. There is no merit in Mr *Ndlovu’s* argument that the origin of the liability, being the employment contract, and the date of unlawful dismissal determine the conversion rate.

The court *a quo* misdirected itself by holding that the applicable rate was the parity rate of one as to one. The correct rate is the interbank rate prevailing at the time of payment.

There is the minor issue of the wrong calculation of the holiday allowance. The parties agreed that it should be $900-00 multiplied by 3 years. An appropriate correction has to be made.

The appeal has merit and ought to succeed. The costs follow the result.

In the result it be and is hereby ordered as follows:

1. The appeal succeeds with costs.
2. The judgment of the court *a quo* is amended to read as follows:

“1. Application for quantification of damages be and is hereby granted with costs on the ordinary scale.

1. 36 months damages

$3 500 x 36 $ 126 000

1. 3 months notice pay

$3 500 x 3 $10 500

1. 3 months cash in *lieu*

$3 500 x 3 $10 500

1. Cellphone allowances

$100 x 36 $ 3 600

1. Holiday allowance

$900 x 3 $2 700

**Total** $**153 300**

2. The amount is to be paid in Zimbabwean dollars at the prevailing interbank rate on the date of payment.”

**BHUNU JA :** I agree

**CHATUKUTA JA :** I agree

*Makuwaza & Gwamanda Attorneys*, appellant’s legal practitioner

*Matsikidze Attorneys- At-Law*, respondent’s legal practitioner