

**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT LUSAKA**

**COMP NO.440/2016**

**BETWEEN:**

**LUCKFELL MAMBIPA**

**AND**

**ZAMBIA POSTAL SERVICES CORPORATION**



**COMPLAINANT**

**RESPONDENT**

Before the **Hon. Mr. Justice M. Musaluke** in Open Court on the 14<sup>th</sup> day of September, 2017

**Appearances:**

*For the Complainant: In Person*

*For the Respondent: Mr. T. Chikonde – In House Counsel*

---

**JUDGMENT**

---

**Legislation referred to:**

1. *The Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia*

**Cases referred to:**

1. *Attorney General vs. Richard Jackson Phiri, (1988-89) Z.R. 121*
2. *Zambia Electricity Supply Corporation Limited vs. Lubasi Muyambango, (2009) Z.R. 22*

1.0 **COMPLAINANT'S CASE**

1.1 On 16<sup>th</sup> September, 2016, the Complainant filed Notice of Complaint pursuant to **Section 85(4) of the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia.**

1.2 The grounds on which the Complaint was presented were that the Complainant was employed by the Respondent on 13<sup>th</sup> August, 2001 as a Postman and served under different positions. On 8<sup>th</sup> July, 2015 he was dismissed from employment.

1.3 At trial the Complainant gave viva voce evidence on oath.

1.4 The core of his testimony was that on 27<sup>th</sup> November, 2014 he was transferred to Lusaka International Airport Sorting Office (APSO) and became the Supervisor.

1.5 Two mails got stolen from the APSO by a Postman Mr. Yosa Chiwala and Mr. P. Kumwenda, the Driver.

1.6 It was his testimony that he was not the Supervisor for either Mr. Chiwala or Mr. P. Kumwenda.

1.7 He testified that he was charged with gross negligence. He denied the charge as he claimed he was not negligent since he was the Supervisor for the individuals that stole mail.

1.8 After the charge and exculpatory letter, the disciplinary Committee was convened and the Complainant was in

attendance. He was found guilty and recommended for his dismissal.

- 1.9 On 8<sup>th</sup> July, 2015, he was dismissed and advised of the right to appeal to the Director Operations within 14 days.
- 1.10 On 15<sup>th</sup> July, 2015, the Complainant appealed to the Director Operations against his dismissal.
- 1.11 On 9<sup>th</sup> March, 2016, the Respondent informed the Complainant that his appeal to the Director Operations was unsuccessful and was advised to appeal to the Postmaster General which he did and the Postmaster General upheld the decision to dismiss the Complainant.
- 1.12 Mr. Danister Chinyama was the other witness for the Complainant (CW2). He testified that he used to work with the Complainant when he was employed as a Postman from the year 2014 to June, 2015.
- 1.13 He contradicted the testimony of the Complainant as he testified that the Complainant was in fact the Supervisor at the APSO at the time two mails were stolen.

## 2.0 **RESPONDENT'S CASE**

- 2.1 On 13<sup>th</sup> October, 2015, the Respondent filed its Answer to the Notice of Complaint.

- 2.2 The Respondent contended that the dismissal of the Complainant was lawful and that the Complainant was not entitled to the reliefs sought.
- 2.3 The Answer was supported by an affidavit deposed to by one Twist Sitali Nawa the Respondent's Human Resources Officer.
- 2.4 At trial Mr. Sitali and Mr. Silva Simudumo the Security Officer at the Respondent gave evidence on oath for the Respondent.
- 2.5 Both witnesses explained how mail was stolen by a Mr. Kumwenda and Mr. Chiwala who were under the direct supervision of the Complainant.
- 2.6 They told Court that after investigations were concluded on the stolen mail, it was discovered that the Complainant was negligent, as he failed to Supervise this subordinates which led to thefts at place of work.
- 2.7 The negligent acts were said to be failure by the Complainant to stamp and sign the mail lists that were leaving the Airport Sorting Office for the Lusaka Main Post Office.
- 2.8 They testified that the Complainant was charged with the offence of Gross Negligence and asked to exculpate himself. That the Complainant went through the whole process of disciplinary up to the last stage of appeal where his dismissal was upheld.

### 3.0 **COMMON CAUSE FACTS**

3.1 I find the following as undisputed common cause facts:

- (a) The Complainant was employed by the Respondent as a Postman and at the time of dismissal he was a Supervisor at the Respondent's Lusaka International Airport Sorting Office.
- (b) On 10<sup>th</sup> June, 2015, the Complainant was charged with the offence of Gross Negligence of the duty. He exculpated himself on 12<sup>th</sup> June, 2015;
- (c) On 8<sup>th</sup> July, 2015, he was dismissed from employment on 15<sup>th</sup> July, 2015, he appealed his dismissal to the Director Operations who upheld the decision to dismiss him and he yet again appealed to the Postmaster General who on 7<sup>th</sup> September, 2016 upheld the decision to dismiss the Complainant.
- (d) The Complainant claimed that his dismissal was wrongful and claimed for payment of Terminal Benefits, Notice Pay, Leave Days and Housing Allowance.
- (e) The Respondent claimed that all the disciplinary processes were followed in dismissing the Complainant and therefore the dismissal was lawful. The Respondent urged me to dismiss the Complaint.

#### 4.0 **ISSUES FOR DETERMINATION**

4.1 There is only one issue for determination in this cause: Was the dismissal wrongful?

#### 5.0 **OPINION**

##### 5.1 **WRONGFUL DISMISSAL**

5.2 For a claim of wrongful dismissal to succeed, the Complainant must adduce evidence and prove that the provisions of the Contract of Employment and/or Disciplinary Code of Conduct to which he/she was a party was breached by the Respondent when he/she was dismissed.

5.3 Wrongful dismissal is a common law term which in essence is a breach of Contract of Employment by the Employer.

5.4 When a claim for wrongful Dismissal is presented before Court, the duty of the Count is to examine if there was breach of Contract of Employment by the Employer in the manner the dismissal was done.

5.5 The breach of Contract of Employment may take the form of a flawed disciplinary process. The cases of ***Attorney General vs. Richard Jackson Phiri*** and ***Zambia Electricity Supply Corporation Limited vs. Lubasi Muyambango*** are leading authorities on this aspect.

- 5.6 The evidence adduced at trial does not show that there was breach of contract by the Respondent in the manner the dismissal was done.
- 5.7 To the contrary, the only evidence before me is to the effect that the Respondent followed the provisions of the Disciplinary and Grievance Procedure Code in the manner it handled the Complainant's case from the time he was charged to the time the dismissal was upheld by the Respondent's Postmaster General.
- 5.8 That being the case, I find that the Complainant had undergone the disciplinary processes and there were no flaws, therefore, the case for wrongful dismissal has not been made by the Complainant, I consequently dismiss this claim.
- 5.9 Since I have found that the claim for wrongful dismissal is not justified and I have dismissed it, the Complainant is not entitled to the reliefs outlined in paragraph 5 of the Notice of Complaint. I will talk about these claims under paragraph 5 of the Notice of Complaint as follows:

(a) **Terminal Benefits**

Terminal benefits payable at dismissal as was the case with the Complainant are accrued leave days and salary at the date of dismissal. No evidence was adduced that the salary was not paid at the time of dismissal.

(b) **Leave days**

Leave days are an accrued right that is payable even when an employee is dismissed. No evidence was adduced by the Complainant that he was owed leave days.

(c) **Notice pay**

This claim does not apply where the Contract is being terminated by way of dismissal.

(d) **Housing Allowance**

No evidence was adduced that the Complainant was owed any housing allowance.

6.0 **CONCLUSION**

6.1 From the judgment, I make the following order:

- (a) The Claim for wrongful dismissal is dismissed;
- (b) Each party to bear their own costs.

Delivered this ..... day of ..... 2017



.....  
**M. MUSALUKE**  
**HIGH COURT JUDGE**