

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2015/HP/2474

BETWEEN

JACOB SHAMILIMO NYEMBA

AND

ATTORNEY GENERAL



PLAINTIFF

DEFENDANT

Before the Honorable Lady Justice C. Lombe Phiri in Chambers

For the Plaintiff: Mrs. I. Kunda – George Kunda & Co

For the Defendant: Mrs. D. Mulwandila– ASSA

JUDGMENT

CASES REFERRED TO:

1. **Contract Haulage vs Mumbuwa Kamayoyo (1982) ZR 13**
2. **Zambia Airways Corporatipon Limited v Gershom Mubanga B.B (1992) S.J. 24 SC**
3. **Attorney General v Richard Phiri (1988) (1989) ZR**
4. **Konkola Copper Mines v Kaleya (2018) ZMSC 41**
5. **Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa (1986) Z.R 70 (S.C).**
6. **Tolani Zulu and Musa Hamwala v Barclays Bank of Zambia Limited SCZ Judgment No. 17 of 2003**

7. **Wilson Masauso Zulu v Avondale Housing Project Limited (1982)
Z.R. 172**
8. **Zambia Railways Limited v Oswell Joseph Silmumba (1995) S.J.3
(S.C)**
9. **Zambia Airways Corporation Limited v B.B. Mubanga (1992)
Z.R.13 (S.C.)**
10. **Caroline Tomaida Daka v Zambia National Commercial Bank
Limited (2012) Z.R 3**
11. **Jones v Lee and Guilding (1980) ICR 310**

LEGISLATION REFERRED TO:

1. Section 21 Service Commission Act, Chapter 259 of the laws of Zambia.

MATERIALS REFERED TO:

1 Halsbury's Laws of England 4th Edition volume 16 1992

2. Halsbury Laws of England 4th Edition volume 16 p 414 para 451

3. Cases and Material 2011 by W.S. Mwenda at page 105

This is a matter where the Plaintiff took out a Writ of Summons and Statement of Claim wherein, he claimed for: -

- i. An order declaring that Plaintiff was wrongly dismissed from employment and be reinstated as procedure was not followed*
- ii. Compensation for malicious accusation*
- iii. Special damages for loss of earning of K45,600.00 per annum*

- iv. Payment of monthly salaries from November 2014 to the date of full determination of the matter.*
- v. Payment of full repatriation benefits awards and allowances due.*
- vi. Damages for trauma suffered by the plaintiff and his family.*
- vii. Any other relief the Court may deem fit*
- viii. Costs*

In the statement of claim filed on 30th December, 2015 the Plaintiff stated that on or about 28th July 2008, he was employed as an Assistant Registration Officer by the Government of the Republic of Zambia under the Ministry of Home Affairs and at the time of dismissal from employment served at Passport Issuance Centre as counter officer in the Department of National Registration, Passport and Citizenship in the city and Province of Lusaka. It was further averred that his role as a counter officer was to release or surrender already processed or issued copies of passports to applicants who possessed receipts of payment and national registration card as proof of entitlement to collect the passports or release them to their appointed agents. He also stated that he released a passport for John Kanangu to his agent, Whyson Phiri, who had in his possession proof of payment and a copy of National Registration Card to entitle him to collect the passport as a daily procedure in the collection of fully processed passports by the applicants.

It was further averred that on 30th May 2013, the Defendant through the office of the Permanent Secretary in the Ministry of Home Affairs wrote a letter to the Plaintiff accusing him of aiding a foreign national to obtain a Zambian passport. The accusation came as a result of releasing the passport for John Kanangu to his agent Whyson Phiri. He further stated that before

passports are given to the counter officers for collection by the applicants, they pass through a chain and holistic process handled by different officers and offices which among other things include obtaining of National Registration Card, filling in and making payments of application forms, authorization of application forms, face capturing, processing of passport copies, signing and registration of already processed passports issued for collection. It was further stated that upon receiving the letter in question, the Plaintiff made a reply to the Defendant's claim and allegation but on or about 4th November, 2014, the Defendant through the Permanent Secretary in the Ministry of Home Affairs wrote another letter to the Plaintiff dismissing him from employment without proper reasons. It was further averred that on or about 14th August, 2015 the Defendant wrote a letter through the Permanent Secretary Ministry of Home Affairs rescinding its earlier decision to dismiss him and instead retired him from the public service in the public interest citing provisions of the Terms and Conditions of Services for the Public Service No. 62 (a) and disciplinary code and procedures of handling offences in the public service category G (e) and 21 (a) (v) as a base of their stand in retiring him in public interest .It was also stated that when he released the passport to the agent of John Kanangu he merely carried out his statutory duty of surrendering it to the applicant as he always did to other applicants in the course of his duty.

The Plaintiff further averred that the Defendant should have retired officers involved in the process of issuing of the passport to John Kanangu who failed to establish the nationality of John Kanangu during their work of processing and issuing the alleged passport and not to blame and retire the Plaintiff who only carried out his duty to release an already processed and issued passport for John Kanangu to Whyson Phiri who had in his possession proof of payment and National Registration Card as required,

identification and allowed documents in the collection of passports. He further stated that the reasons stated by the Defendant in their letters to the Plaintiff are malicious accusation and defame the Plaintiff's character in that many people regard him as a dangerous criminal, a threat to national security and a person who sold passports to foreign nationals for personal gain when in fact not. It was further argued that the act of retiring the Plaintiff in national interest is illegal as the Defendant neither established facts nor followed the procedure provided under the disciplinary code and procedures for handling offences in the public service and terms and conditions of service for the public service.

The Plaintiff also stated that the Defendant has discriminated and unjustly treated him, further that the Plaintiff's right to work, social security, protection against discrimination, equal pay for equal work, protection against unemployment, rights to just and favorable conditions of work, ensuring for his and family existence, justice, worth of human respect and dignity, standard of living adequate for the health and wellbeing of the family and himself were violated in laying against him a charge suitable for other officers involved in issuing and processing the National Registration Card and passport which process and system he is not part.

It was also averred that the Plaintiff was retired without pay and further that the Defendant's action and citing of Terms and Conditions of Service for Public service No. 62(a) and Disciplinary Code and Procedures for Handling Offences in the Public Service category G (e) and 21 (a) (v) are meant to cause injury on the Plaintiff's human dignity as the allegation against him was false. He further stated that the allegation in question was not proved against him either by the Defendants or John Kanangu.

According to the Plaintiff the Defendant's reasons stated in their letters to the Plaintiff are malicious accusations meant to defame his character in that many people regard him as a dangerous criminal, a threat to national security and a person who sold passports to foreign national for personal gain when in fact not.

It was further averred that retiring the Plaintiff in public interest did not warrant Defendant authority to deny the Plaintiff payments of his leave days, salaries, allowances, as prescribed by the terms and conditions of service. It was argued that the Plaintiff having worked for 7 years he is entitled to terminal benefits of his K45,600.00 salary per annum.

The Defendant stated that the Plaintiff was employed as a counter officer, whose duty was to release or surrender already processed passports, that before the passports are released for collection, they pass a chain and holistic process by different people. The Defendant also denied that the Plaintiff never supervised any of the supervising officers in the issuance of passports. It was also denied that the Plaintiff performed his duties as assistant registration officer diligently.

The Defendant further averred that the Plaintiff issued the passport to a third party or an agent who came with two different NRC's bearing the same surnames in blatant disregard of standing procedure. The Defendant also denied the allegation by the Plaintiff that on 30th May 2013, the Defendant through the office of Permanent Secretary in the Ministry of Home Affairs wrote a letter to the Plaintiff accusing him of aiding a foreign national to obtain a Zambian passport upon releasing the passport for John Kanangu to his agent Whyson Phiri. It was also denied that the Defendant

did not investigate the matter properly to establish who issued the passport to John Kanangu. The assertion by the Plaintiff that on or about 14th August, 2015 the Defendant wrote a letter through the Permanent Secretary Ministry of Home Affairs rescinding its earlier decision to dismiss him and instead retired him from the public service in the public interest citing provisions of the terms and conditions of services for the public service No. 62 (a) and Disciplinary code and procedures of handling offences in the public service category G (e) and 21 (a) (v) as a base of their stand in retiring him in public interest was denied and the Defendant averred the charge letter dated 30th May, 2013 was written, to the Plaintiff, as per procedure and the Plaintiff in response, failed to exculpate himself. Further that a disciplinary committee hearing was held and it was resolved that the Plaintiff be dismissed from the Civil Service in accordance with the provisions of the Terms and Conditions of Service for the Public Service. The Defendant further admitted that the decision to dismiss the Plaintiff was rescinded on 15th July 2015 and it was instead recommended that the Plaintiff be retired in public interest.

The Defendant further denied the assertion by the Plaintiff that when he released the passport to the agent of John Kanangu he merely carried out his statutory duty of surrendering it to the applicant as he always did to other applicants in the course of his duty. It was further denied that the Defendant should have retired officers involved in the process and issuing of the passport to John Kanangu who failed to establish the nationality of John Kanangu during their work of processing and issuing the alleged passport and not to blame and retire the Plaintiff who only carried out his duty to release an already processed and issued passport to John Kanangu. It was contented by the Defendant that the Plaintiff did not follow procedure when

he issued the passport to a third party and that his action constituted a serious offence. However, the Defendant joined hands with the Plaintiff's statement that on or about 28th July 2008, the Plaintiff was employed as an Assistant Registration Officer by the Government of the Republic of Zambia under the Ministry of Home Affairs and at his time of dismissal from employment served at passport issuance centre as counter officer in the Department of National Registration, Passport and Citizenship in the city and Province of Lusaka.

The Defendant also denied the assertion by the Plaintiff that the reasons stated by the Defendant in the letters to the Plaintiff are malicious accusation meant to defame the Plaintiff's character in that many people regard him as a dangerous criminal, a threat to national security and a person who sold passports to foreign nationals for personal gain when in fact not. The accusation that the act of retiring the Plaintiff in national interest is illegal was also denied by the Defendant. It was also denied that the Defendant has discriminated and unjustly treated the Plaintiff and violated his social rights in laying against him a charge suitable for other officers involved in issuing and processing National Registration Card and passport which process and system he is not part. The Defendant further averred that when an officer is retired in public interest, the President is not obliged to give reasons for his decision to retire a civil servant from the public service in public interest. It was also averred that in arriving at the decision to retire the Plaintiff in public interest, the Plaintiff was given an opportunity to be heard.

At the trial of the matter the Plaintiff testified that he was employed as an Assistant Registration Officer in the Ministry of Home Affairs, Department

of National Registration Passport and Citizenship and was operating at Passport Office along Cairo Road. He explained the procedure at the Passport Office when an applicant applies for a passport until the release of the passport to the client as stated in his statement of claim above. He also stated that he was not involved in the process of issuing passports but only got involved in releasing the passport after it has been endorsed. It was his testimony that when collecting a passport, the applicant would come with their NRC and general receipt as proof of payment, after which the Plaintiff would record the details of the passport and the person collecting the passport. He also stated that it was not always that the passport was collected by the applicant. If a person is collecting on behalf of an applicant, they must produce their NRC as well as that of the applicant on whose behalf the passport is being collected and the receipt as proof of payment.

He testified that in the case in casu, a few weeks after the passport was released to Whyson Phiri, it was discovered that the applicant was a foreigner, a Nigerian national, who used wrong names to acquire a Zambian passport. Upon discovering that the passport was issued by the Plaintiff, the Plaintiff was asked to stay away from work. Later he received a letter from the Permanent Secretary Ministry of Home Affairs where it was stated that he was part of a syndicate issuing passports to foreigners in exchange of money. He exculpated himself in response to the said letter but was eventually dismissed. The Plaintiff also testified that he appealed against the dismissal but was finally retired in public interest. He referred the court to pages 10 and 11 of the Plaintiff's bundle of documents for reference to the said letters. He also stated that all the officers involved in the process were still working but only he, the counter officer, was dismissed and that it was unfair on his part.

The Plaintiff asked the court to order his reinstatement, payment of salaries, damages to him and the family and any other relief.

In cross examination he stated that he was employed by the Public Service Commission. He stated that he was to be governed by the terms and conditions of public servants. He also acknowledged that the letter of termination of his employment was authored by the Public Service Commission. It was further stated that it was not always that the applicant collected the passport, they were instances where a third party would collect a passport for the applicant upon producing the NRC for the applicant and the receipt. He agreed that he released the passport of John Kanangu to Whyson Phiri and that he knew Whyson Phiri even before. He confirmed that the disciplinary committee meeting was held as per page 1-5 of the Defendant bundle of documents but that he was not called to exculpate himself.

DW1 was **Lucy N. Hanyambu** the Human Resource Manager in the Ministry of Home Affairs who was the only witness for the Defendant. She testified that the duties of the Plaintiff as a counter officer were to issue already processed passports to clients, ensure that passports are signed and follow up on delayed applications for passports. She further stated that the President through the Public Service Commission has powers to hire and fire. She testified that the Plaintiff was charged for the offence of aiding a foreign national to obtain a passport contrary to section 8(a) (2) and 4 a (b) (3) of Disciplinary Code and Procedures. She testified that the Plaintiff was charged with the said offence because he aided a Non- Zambian to obtain a passport. She also stated that the rules at the Passport Office allowed an

applicant who was unable to collect the passport to authorise a third party to collect it on their behalf. The authorisation has to be in writing and besides that the applicant has to release his NRC and the receipt to the third party. She stated that in the case in casu, the Plaintiff in his exculpatory letter stated that Mr Whyson came with an NRC and receipt but did not state whether he came with a letter authorizing him to collect the passport on behalf of the applicant. She further narrated that when an officer commits an offence he must be charged and when an officer is charged it is not always that they are called for a hearing. She stated that an officer so charged is asked to exculpate himself in writing and once the exculpatory letter is clear the disciplinary committee will base its decision on the same without calling the officer for a hearing. An officer would only be called for a hearing if the exculpatory letter is not clear. She indicted that the exculpatory letter that was written by the Plaintiff was clear and therefore he was not called for a hearing.

She testified that the procedure was followed in handling the case for the Plaintiff and also that the Plaintiff appealed to the Public Service Commission which body reviewed his case and the earlier decision to dismiss the Plaintiff was rescinded. It was further stated that the Public Service Commission recommended that the Plaintiff be retired in public interest and that upon him being so retired, he was supposed to apply to be paid all his dues but he has not done so.

In cross examination she stated that “processed passport” refers to passports that are ready for collection. She also indicated that among his duties, the Plaintiff was to ensure that the passport was signed for by the applicant. She

also indicated that the other processes such as interviews, printing and signing of the passport are done by other officers.

It was submitted for the Plaintiff that his dismissal was wrongful. Reference was made to the case of Contract Haulage vs Mumbuwa Kamayoyo (1982) ZR 13⁽¹⁾ where it was held that:

“the dismissal was wrongful, null and void because in that case the procedure in dismissing the Respondent was not followed as he was not given an opportunity to personally answer charges against him”.

It was further submitted that wrongful dismissal may arise where an employee’s contract is terminated before expiration of his employment or where there was procedural breach in dismissing the employee.

The Court was further referred to the case of Zambia Airways Corporatipon Limited v Gershom Mubanga B.B (1992) S.J. 24 SC⁽²⁾ where the supreme court stated that:

“since the Appellant (employer) failed to comply with the correct procedure in the purported dismissal of the Respondent (employee) the dismissal was wrongful”

A further reference was made to the book Cases and Material 2011 by W.S. Mwenda at page 105 where it is stated that:

“wrongful dismissal is one at the instance of the employer that is contrary to the terms of employment. When considering whether the dismissal is

wrongful or not, the form rather than the merits of the dismissal must be examined. The question is not why but how the dismissal was effected”

It was further submitted that even if the procedure was followed in the current case, there were other officers involved who were not brought in for questioning and no further investigations were conducted over their conduct. The Court was also referred to the case of Attorney General v Richard Phiri (1988) (1989) ZR⁽³⁾ where it was held that:

“once the correct procedures have been followed the only question which can arise for the consideration of the court, based on then facts of the case would be whether there were in fact facts established to support the disciplinary measures since any exercise of powers will be regarded as bad faith if there is no substratum of fact to support them”

It was submitted for the Defendant that as stated in the case of Konkola Copper Mines v Kaleya (2018) ZMSC 41⁽⁴⁾, the role of the Court in wrongful dismissal proceedings is threefold. The Court must determine:

- a) **Whether the disciplinary body had valid powers to dismiss the employee;**
- b) **Whether there was a substratum of facts to support the institution of disciplinary proceedings; and**
- c) **If the correct disciplinary procedure was followed taking into account the rules of natural justice;**

It was further submitted that the Plaintiff having been employed in the Public Service was amenable to the Terms and Conditions of the Service, 2003 and any disciplinary action instituted against him was to be done in accordance with the Disciplinary Code and Procedure for Handling Offences in the Public Service pursuant to Section 21 Service Commission Act Cap 259 of the Laws of Zambia. As to whether a substratum of facts exist to justify disciplinary proceedings, it was submitted that it was the Plaintiffs duty to release already processed passports to Applicants or their duly appointed agents and that in the charge sheet he was charged with contravening **Disciplinary Code No. 8 (b) (ii)** which states that:

“Negligence: failure to exercise proper care and regard in the manner of discharging duty to the extent that... persons are put at risk of damage or injury”.

It was further submitted that the above provision was ready with **Disciplinary Code No. 9(a) (iii)** which states that:

“Non- compliance with the established procedures or standing instructions: failure to follow established procedures”.

It was further stated that the conduct by the Plaintiff of releasing the passport in dispute to Mr. Whyson Phiri had ‘great potential to endanger the security of the nation.’ It was further contended for the Defendant that Mr Whyson Phiri cannot be deemed to have been a duly appointed agent of the Applicant of the passport as no satisfactory evidence was produced to the Plaintiff to show that he was the uncle to the Applicant as claimed. It was argued that because of the Plaintiffs failure to adhere or comply with the laid down procedure in releasing a passport to a third party, a fake

passport made its way into the hands of a non-Zambian National. It was submitted that there was a serious dereliction of duty on the part of the Plaintiff and the Public Service Commission was justified in terminating his employment.

It was also the Defendants contention that the Plaintiff was neither charged with issuing a fake passport nor failing to conduct proper background checks on the Applicant. It was emphasized that the charge was for the improper release of the passport in contravention of the standing procedure. It was further argued that the Plaintiff was heard and reference was made to DWI's testimony that when an officer commits an offence he must be charged. Further that when an officer is charged it is not always that he was invited for a hearing. It is only when the information provided in the exculpatory letter was insufficient or required clarification that they are called for a hearing. For the above principle the Court was referred to the case of **Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa (1986) Z.R 70 (S.C)**⁽⁵⁾. A further reference on the right to be heard was made to the case of **Tolani Zulu and Musa Hamwala v Barclays Bank of Zambia Limited SCZ Judgment No. 17 of 2003**⁽⁶⁾ where it was stated that:

“in other words, the employee is notified of his questionable conduct related to his work and he is given an opportunity to explain and it is then up to the employer to decide. The provisions do not set any standard of proof, they merely emphasize on the employee being given the right to be heard.”

The Defendant contended that the exculpatory letter in the case in casu was on adequate opportunity to hear the Plaintiff before termination of his

employment. The Defence further urged the Court to distinguish the case of Contract Haulage cited by the Plaintiff from the facts of this case. It was argued that in the case of Contract Haulage the Appellant therein was summarily dismissed while in the current case the Plaintiff was dismissed for disciplinary reasons. Also, that in the case of Contract Haulage did not deal with a scenario where no injustice was occasioned to the employee by the failure to follow procedure before taking the disciplinary action. It was also submitted that no injustice arises from a failure to comply with the laid down disciplinary procedure if it is not disputed that the employee has committed an offence that warrants dismissal.

It was further submitted that the Plaintiff was incompetent in the performance of his duty by releasing an already processed passport to a third party who was not duly authorized and that the penalty for incompetent performance of duties is retirement in the public interest pursuant to Terms and Conditions of Service for the Public Service No. 38(f) (ii).

As regards the assertion that the Plaintiff was discriminated because as the other officers who issued the fake passport were still working, it was contended by the Defence that no evidence was led by the Plaintiff to prove the allegations that the officers tasked with the background checks or who were alleged to have been part of the syndicate had not been disciplined by the Public Service Commission. The Court was referred to the case of Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172⁽⁷⁾ on the principle that the Plaintiff bears the onus of proving each and every allegation he makes against the Defendant. It was argued that the Plaintiff herein did not provide the names of the unknown officers nor did

he provide any evidence to show that they had not been dealt with by the Public Service Commission.

On the claim for reinstatement it was stated with reference to the case of **Zambia Railways Limited v Oswell Joseph Simumba (1995) S.J.3 (S.C)**⁽⁸⁾ that reinstatement as held in that case, is rarely ordered in Master Servant cases unless there are exceptional circumstances. It was argued that the Plaintiff in this matter has not led any evidence to show how this case is exceptional to warrant his re-instatement to his former position.

As regards the claim for special damages, it was submitted that the Plaintiff has not given any justification for special damages herein and that he is not entitled to an award of damages whatsoever. The court was referred to the case of **Zambia Airways Corporation Limited v B.B. Mubanga (1992) Z.R.13 (S.C.)**⁽⁹⁾ where it was held that it was the duty of the employee to mitigate any loss caused by his dismissal from employment.

I have considered the submissions and all the arguments advanced by the parties in this matter. It is common cause that the Plaintiff was employed by the Defendant as an Assistant Registration Officer in 2008 and served as a counter officer in the Department of National Registration. It is also common cause that the Plaintiff released a passport for John Kanangu to Whyson Phiri. Further that it turned out that the said John Kanangu was a foreign national. It is also common cause that the Plaintiff was retired in the public interest arising from the release of the said passport.

This case concerns wrongful dismissal. Whether the action taken by the defendant to dismiss the Plaintiff does constitute a wrongful dismissal must

be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the case.

Wrongful dismissal is defined in the Halsbury Laws of England 4th Edition **16 p 414 para 451** as:

“A wrongful dismissal is a dismissal in breach of the relevant provisions in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages, two conditions must normally be fulfilled” namely

- 1) The employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case maybe; and*
- 2) The dismissal must have been wrongful, that is to say without sufficient cause to permit the employer to dismiss him summarily*

In accordance with the contract of employment, it is clear that the Plaintiff was appointed to work as a Public Service Officer amenable to the terms and conditions under the Zambia Civil Service. It follows therefore that the Plaintiff was engaged for a period terminable by notice.

Coming to the question whether the dismissal was wrongful, in the case of Caroline Tomaida Daka v Zambia National Commercial Bank Limited (2012)⁽¹⁰⁾ analysed the meaning of wrongful dismissal was analysed in comparison to unfair dismissal as follows:

“this unlike wrongful dismissal which looks at the form, unfair dismissal looks at the merits of the dismissal. And form is only supportive of the whole merits of the dismissal.

Furthermore, in Jones v Lee and Guilding (1980) ICR 310⁽¹¹⁾ it was held that:

“where the contract of employment makes a dismissal subject to a contractual condition of observing a particular procedure. on a proper construction of a contract, a dismissal for an extraneous reason or without observance of the procedure is a wrongful dismissal on that ground”.

Considering the evidence in this matter, the requirements before a passport could be released to a third party was, among other things, a letter from the applicant of the passport. It is not in dispute that the Plaintiff herein released the passport of John Kanangu to Whyson Phiri without the said letter. This was the reason for charging the Plaintiff which subsequently led to his retirement in public interest. Contrary to the Plaintiffs argument that he was dismissed for an offence committed by other people. The evidence shows that the Plaintiff was dismissed for failure to follow procedure for releasing a passport to a third party.

As regards procedure in handling the disciplinary hearing Section 21 of Service Commission Act states as follows:

“A Commission may, by statutory instrument made with the consent of the President, make regulations for the appointment, including the power to confirm appointments of persons, to any office with respect to which it is

charged with responsibility under this Act, promotions to such offices, the disciplinary control of persons holding or acting in such offices the termination of appointments and the removal of such persons from office and the practice and procedure of the Commission in the exercise of its functions under this Act.”

Furthermore, Part IV of The Judicial Service Commission Regulations particularly Resolution 37 A states that:

“If the responsible officer is of the opinion that a judicial officer has been repeatedly so reckless or negligent in the performance of his duties or is manifestly so incompetent that his further continuance as a judicial officer would be inimical to the public interest, the responsible officer shall request in writing the immediate supervising officer of the judicial officer and also such one of the judges as has had occasion to sit in appeal or revision over the judgments passed or orders made by the judicial officer, to make a report on the work and competence of the judicial officer, and the responsible officer shall submit such reports together with his comment thereon to the Commission, whereupon the Commission may, notwithstanding anything to the contrary contained in these Regulations, direct that the judicial officer shall without any further proceedings be removed from his post or make such other order as it thinks proper in the circumstances of the case.”

From the above analysis it is clear that there was just cause for charging the Plaintiff. The evidence shows that procedure was followed by the Commission in handling the disciplinary case in question. The Plaintiff has not brought evidence to justify the claim for discrimination. It is immaterial

that there were other officers who committed different offences. . Each officer is dealt with individually. The fact is that the Plaintiff was charged for not following procedure in releasing a processed passport and was given time to exculpate himself. Therefore, there is no basis for the allegation that he was unfairly dismissed

As regards the Plaintiff's dues, the Defendant stated that following his retirement in public interest, he was expected to follow up on his entitlements which he has not done to date. It is clear that the Defendant is not opposed to paying the Plaintiff. The Plaintiffs claim for his benefits succeed. Suffice it to say no interest will be paid on his dues as the reason for not paying him is that he neglected to follow up his payment.

In view of the foregoing the claims relating to wrongful dismissal lacks merit and fails. However, the claim for payment of full repatriation benefits awards and allowances succeed.

As the Plaintiff has not demonstrated any fault on the part of the Defendant. I will order that each party bears its own costs.

Leave to appeal is granted.

Delivered at Lusaka this day 3rd day of March, 2020.



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C. LOMBE PHIRI
JUDGE