

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

**2010/HP/1093**



**BETWEEN:**

**SIMON MKANDAWIRE**

**PLAINTIFF**

**AND**

**ZAMBIA REVENUE AUTHORITY**

**DEFENDANT**

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, ON  
30<sup>TH</sup> DAY OF DECEMBER, 2022.**

*For the Plaintiff: Mr. J. Chibalabala – Messrs. John Chibalabala  
Legal Practitioners.*

*For the Defendant: Ms. M. Chanda – In House Legal Counsel.*

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**JUDGMENT**

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**CASES REFERRED TO:**

1. *Bank of Zambia v Joseph Kasonde* (1996) S.J. (S.C.);
2. *The Attorney General v Richard Jackson Phiri* (1988 - 1989) Z.R. 121(S.C.);
3. *Albert Mwanaumo and others v N.F.C. Mining Plc and others* (2011) 1 Z.R. 30;
4. *ZESCO Limited v David Lubasi Muyambango* (2006) Z.R.22;
5. *Lemmy Chanda v Mopani Copper Mines Plc – Comp/19/2014;*
6. *Simon Mukanzo v ZCCM Limited – S.C.Z Appeal No. 133 of 1999;*
7. *Chimanga Changa v Stephen Chipango Ngombe – S.C.Z. Judgment No. 5 of 2010;*
8. *Zambia Railways Limited v Pauline S Mundia, Brian Sialumba* (2008) Vol 1 Z.R. 287; and
9. *Wilson Masauso vs. Avondale Housing Project* (1982) Z.R. 172.

**LEGISLATION AND OTHER WORKS REFERRED TO:**

1. *The Industrial and Labour Relations Act No.27 of 1993;*
2. *Phipson on Evidence, Seventeenth Edition, (Thomson Reuters (Legal) Limited, 2010); and*
3. *Employment Law in Zambia: Cases and Materials, Mwenda W. S., (UNZA Press, Lusaka 2004)*

## **1 INTRODUCTION**

1.1 This matter has taken long to be concluded, having passed through various Courts. It was re-allocated from the Task Force on Backlog to this Court on 11<sup>th</sup> February, 2021.

1.2 In this action, the Plaintiff, Simon Mkandawire, challenges his dismissal by the Defendant, Zambia Revenue Authority, citing unfair dismissal. This Judgment is in respect of his claims, which *inter alia*, includes reinstatement, accrued leave days and other entitlements.

## **2 BACKGROUND**

2.1 The background to this matter, as ascertained from the pleadings and evidence on record, is that the Plaintiff was employed by the Defendant and stationed at Lusaka International Airport. He was charged with an offence of Dishonest conduct, pursuant to clause 40(1) of the Defendant's Disciplinary and Grievance Procedure, for which he was dismissed. Unhappy with his dismissal, which he terms as being unfair, the Plaintiff launched this action.

## **3 PLEADINGS**

3.1 The Plaintiff issued a Writ of Summons, dated 11<sup>th</sup> October, 2010, with claims for the following reliefs: -

1. *Damages for unfair dismissal and/or in the alternative reinstatement;*
2. *Accrued leave days and other entitlements from the date of suspension to the date of full and final settlement; and*
3. *Costs of these proceedings and any other relief the court may deem fit.*

3.2 By Statement of Claim, the Plaintiff averred, *inter alia*, that he was employed by the Defendant in 1996 as a clerical officer and was stationed at Lusaka International Airport. On 3<sup>rd</sup> June, 2009, the Plaintiff was charged with the offence of dishonest conduct pursuant to clause 40(1) of the Disciplinary and Grievance Procedure. By the said charge it was alleged that the Plaintiff herein did not bank Revenue collected in cash between August, 2006 and August, 2008, amounting to a total sum of K3,337,957,960.20 (unrebased), from the Lusaka International Airport.

3.3 The Plaintiff further averred that on 9<sup>th</sup> September, 2009, a disciplinary hearing was held and he was summarily dismissed on the basis of the foregoing allegation. He stated that the Defendant refused to take into account the

explanations he made at the said hearing and proceeded to make a finding of guilty without adducing sufficient evidence against him.

- 3.4 The Plaintiff also averred that the decision to dismiss him was pre-meditated and was done in bad faith, unfair and was therefore illegal, null and void. He stated that based on the foregoing he had suffered loss and damage.
- 3.5 By the Defendant's Defence filed on 22<sup>nd</sup> October, 2010, the Defendant averred, *inter alia*, that the Plaintiff was charged with the offence of dishonest conduct in line with clause 40 of the Grievance and Disciplinary Procedure Code after the investigations by the Internal Affairs unit proved that the Plaintiff was involved in theft of over K3.3 Billion (unrebased), being money which was entrusted to him to deposit with the Bank of Zambia.
- 3.6 The Defendant further averred that at the said disciplinary hearing, the charge and particulars of offence were availed to the Plaintiff. The Defendant called witnesses to prove the charge and the Plaintiff gave his defence. Based on the evidence tendered, the Plaintiff was found guilty.
- 3.7 The Defendant denied that the Plaintiff's explanation was not taken into account as he was given an opportunity to exonerate himself but failed to do so as his explanation

was not plausible enough to rebut the evidence against him.

#### **4 EVIDENCE AT TRIAL**

4.1 At trial, **PW1** was **Simon Watson Mkandawire**, the Plaintiff herein, who testified, *inter alia*, that he was employed by the Defendant as a cleaner in 1994. Later, in 1996, he was appointed as a clerical officer and stationed at the Lusaka International Airport.

4.2 PW1 testified that whilst working at Lusaka International Airport, he was given a task by the Station Manager of depositing the Defendant's banking revenue at the Bank of Zambia, which task was not part of his job description. He started depositing the money at the Bank of Zambia. As part of this delegated task, PW1 would get the cash from a cashier called Bupe and in the company of a Police Officer, he would drive to Bank of Zambia where he would deposit the revenue. The Police officer would stand at the entrance to the Bank and direct PW1 to the queue which he could join, where the cashier would count the money. A deposit slip would be issued stamped and given to the Plaintiff who would take it back to the cashier at the airport. PW1 stated that at the time, the system was such that when money was deposited at Bank of Zambia, the system at the airport would reflect the amount of money that he had deposited at the bank.

- 4.3 PW1 stated that after a while, he was charged for not depositing the money at the Bank of Zambia and was taken to the Police station where he was detained for 3 days despite his explanation to the police that he had been depositing the money at the bank. PW1 attested that he was charged by the Defendant and went through all the appeal processes but was still dismissed. PW1 wanted the Defendant to re-instate him and for his benefits to be paid for the 16 years that he had worked for the Defendant.
- 4.4 During cross examination, PW1 testified that he was unfairly dismissed and treated. He stated that he exculpated himself in writing and that on 25<sup>th</sup> August, 2009, he was invited for a disciplinary hearing. At the disciplinary hearing he had invited Godfrey Siatwinda to go with him as his representative. The Defendant's Commissioner General was present among the panellists and PW1 was given an opportunity to defend himself and he was found guilty.
- 4.5 PW1 stated that he attended the appeals hearing on 26<sup>th</sup> October, 2009, where he did not raise any objection to the composition of the panel on the appeals committee. He conceded that he was given an opportunity to talk but that he did not explain much. He further stated that he was not paid anything following his dismissal.



- 4.6 PW1 further conceded that at the time of his dismissal he had a loan with ZANACO that the Defendant was deducting from his salary and remitting to ZANACO. He also conceded that he had received his dues accrued till the date of dismissal.
- 4.7 PW1 testified that the unfairness was that the Defendant did not understand what he was saying to defend himself.
- 4.8 There was no re-examination and this marked the close of the Plaintiff's case.
- 4.9 **DW1** was **Mukumbwa Davis**, the Human Resource Manager - Employee Relations, employed by the Defendant. He testified that the Plaintiff was employed by the Defendant as a clerk and that in 2009 management discovered that the money that the Plaintiff was being given to take to Bank of Zambia for the banking period between 2006 to 2008 amounting to K3.3billion (Unrebased) was not remitted at Bank of Zambia. Consequently, investigations were instituted and management came to the conclusion that the money was not being taken to Bank of Zambia.
- 4.10 The Plaintiff was charged with Dishonest Conduct and was asked to exculpate himself, of which he did. The Plaintiff was given an opportunity to appeal before the Disciplinary Committee and reminded to invite a representative of his

choice. The hearing took place and after the hearing, the Plaintiff was found guilty as charged and a dismissal was recommended. The Plaintiff appealed before the Appeals Committee and after deliberations, the dismissal was confirmed. The Defendant paid the Plaintiff his wages due to him at the date of his dismissal including his accrued leave days less what he was owing the Defendant and other banks.

4.11 DW1 testified that the purpose of the Appeals Committee, which is chaired by the Commissioner General is to hear the appeal by the appellant so as to ensure that the appellant has had a fair hearing at the Principal Disciplinary Committee level and that the decision made at that level is in accordance with the Disciplinary Code.

4.12 During cross examination, DW1 testified that the Plaintiff's duties as clerk included any other duties as assigned by his supervisor, which include driving, if he was competent. DW1 stated that the Plaintiff could be assigned to deposit money as clerk since he was competent to do so in the opinion of the Defendant.

4.13 DW1 referred the Court to page 4 of the Defendant's Supplementary Bundle of Documents, dated 10<sup>th</sup> July, 2014, containing a report in which one Patricia Besa Lungu, a Senior Collector employed by the Defendant stated, *inter alia*, that the correct procedure was for the



cashier to prepare the deposit slips and for the same cashier to go to Bank of Zambia to deposit the money and the cheques, whilst the other cashier kept the cash office running. However, the Plaintiff was sent to deposit the money because of the shortage of cashiers at the time. DW1 testified that just because a cashier was not available did not mean someone else could not go and deposit the money at Bank of Zambia.

4.14 DW1 referred the Court to pages 33 to 107 of the Defendant's Supplementary Bundle of Documents and testified that it contained details of the persons who prepared, checked and signed the deposit slips and that the names that appeared on most of them were that of Tembo and Bupe. DW1 further stated that the Plaintiff's signature was not amongst the said deposit slips and that he did not know whether or not it was normal for the Plaintiff not to sign on the deposit slip.

4.15 DW1 testified that what convinced the Defendant that the Plaintiff stole K3billion (Unrebased) was that the Plaintiff did not dispute banking money and that when there was an audit it was discovered that the money was not banked, which resulted in the Plaintiff being charged with Dishonest Conduct. DW1 stated that he did not know whether or not the Plaintiff had a lifestyle change and whether a search was conducted at the Plaintiff's house.

4.16 DW1 referred the Court to Page 7 of the Plaintiff's Bundle of Documents, containing the Plaintiff's exculpatory statement, wherein the Plaintiff stated that he was not the only person that was making deposits at the Bank of Zambia. DW1 stated that the Disciplinary Committee took into account the Plaintiff's assertions that there were others who were depositing the money at the Bank of Zambia.

4.17 DW1 was referred to pages 69 and 71 of the Defendant's Bundle of Documents, containing minutes of the Appeals Committee meeting. He testified that the findings and considerations of the meeting included an undertaking by the committee to have leniency on the Plaintiff if the investigations absolved him of the charge. DW1 stated that the disciplinary hearing took into account all the facts surrounding the Plaintiff's case.

4.18 DW1 was referred to pages 37 to 51 of the Defendant's Bundle of Documents and he testified that he could not remember how many witnesses were called by the Disciplinary Committee but that according to the minutes of the Disciplinary hearing on pages 56 to 58 of the Defendant's Bundle of Documents, three witnesses were called. DW1 stated that one witness, Lawrence Mbiri, stated that the Plaintiff confessed to sharing the money with other persons from Bank of Zambia. Other witnesses

just gave their side of the story and DW1 did not know whether or not their version of events supported the Plaintiff's assertions.

4.19 In re-examination, DW1 was referred to pages 57, 58 and 59 of the Defendant's Bundle of Documents and testified that it confirmed his earlier testimony that there were problems with banking whenever the Plaintiff was at his office.

4.20 This marked the close of the Defendant's case.

## **5 SUBMISSIONS**

5.1 By the Plaintiff's submissions filed on 15<sup>th</sup> June, 2022, the Plaintiff's Counsel submitted, *inter alia*, that the issue for consideration is whether or not the dismissal of the Plaintiff was fair in the absence of the following: -

- 1) Proof of dishonest conduct; and
- 2) Facts to support the charge.

5.2 In addressing the issue of absence of proof of dishonest conduct, Counsel submitted that on perusal of the hand written and typed statements on record from the Defendant's witness, none support the Defendant's assertion that the Internal Affairs Unit proved that the Plaintiff was involved in the theft of K3.3 billion (unrebased).

- 5.3 Counsel proceeded to highlight portions of the witness statements relating to the charge against the Plaintiff and submitted that the Defendant's Internal Affairs Unit had failed to prove that the Plaintiff was involved in the theft of K3.3 billion (unrebased). Counsel submitted that it is trite that he who alleges a fact must prove it and that dismissals based on misconduct must be on proven grounds.
- 5.4 It was further submitted that the Plaintiff did not enjoy equal treatment in so far as he was the only one exposed to criminal investigations and this was not addressed at the hearing. Further, it was contended that no evidence was produced at the disciplinary hearing such as receipts from the Lusaka International Airport.
- 5.5 Counsel contended that as the alleged offence of dishonest conduct involved deposit slips, the said copies of the deposit slips should have been produced during the disciplinary hearing and as such, the allegation of dishonesty has not been proved.
- 5.6 It was further contended by Counsel that the Plaintiff had been exonerated by Witness number 3 and gave an excerpt of the third witness' written testimony on record, wherein she stated that the money was banked and that reconciliation from Treasury was done on a daily basis and would raise a query whenever there was a discrepancy.

- 5.7 Counsel cited the case of ***Bank of Zambia v Joseph Kasonde***<sup>1</sup> in support of the submission that the Defendant's failure to prove the allegation of dishonest conduct against the Plaintiff was very unfair and wrongful and therefore null and void at law.
- 5.8 On the issue of whether facts existed to support the charge of dishonest conduct, Counsel highlighted portions of the Defendant's witnesses' testimonies at the disciplinary hearing and submitted that none of the witnesses tendered sufficient evidence in support of the charge levelled against the Plaintiff. Counsel further referred to the Findings and Considerations of the Appeals Committee and submitted that the disciplinary committee found the Plaintiff guilty as charged based on inferences and not personal knowledge or observation. The cases of ***The Attorney General v Richard Jackson Phiri***<sup>2</sup> and ***Albert Mwanaumo and others v N.F.C. Mining Plc***<sup>3</sup> were cited in support of the foregoing submission.
- 5.9 On the issue of unfair treatment, Counsel submitted that other persons were also involved in depositing the money at Bank of Zambia, but that only the Plaintiff was singled out, exposed to criminal proceedings and summarily dismissed. Based on the foregoing, it was submitted that the Plaintiff was unfairly treated as against other employees who were depositing the Defendant's revenue.



5.10 Further, it was submitted that the cashiers at Bank of Zambia have not been investigated to date despite the Defendant's Appeals Committee undertaking that the Defendant would be reinstated if after further investigations of the Cashiers at Bank of Zambia, absolve the Plaintiff of any wrong doing.

5.11 Finally, it was submitted that the Defendant's decision to dismiss the Plaintiff was pre-meditated and done in bad faith and he is therefore entitled to damages for unfair dismissal and/or reinstatement.

5.12 By the Defendant's submissions filed on 24<sup>th</sup> June, 2022, the Defendant's Counsel submitted, *inter alia*, that the following were the issues for determination: -

- 1 Whether there was due process;
- 2 Whether the necessary disciplinary power existed;  
and
- 3 Whether the disciplinary power was exercised in due from.

5.13 On the issue of whether there was due process in the dismissal of the Plaintiff, Counsel cited some the case of **ZESCO Limited v David Lubasi Muyambango**<sup>4</sup> as follows: -

***"It is not the function of the Court to interpose itself as an Appellate Tribunal within the domestic disciplinary***



*procedures to review what others have done. The duty of the Court is to examine if there was the necessary disciplinary power and if it was exercised in due form.”*

5.14 Based on the foregoing authority, it was submitted that the function of the Court must be to examine whether under the circumstances, the Defendant acted reasonably in coming to the decision which it had power to make. It was submitted that the function of this Court is to decide whether in effecting the dismissal, the Defendant had breached procedural rules dictated by common law or enacted by Parliament or embodied in the Plaintiff's conditions of service.

5.15 On the issue of whether there was due process, it was submitted by Counsel that the evidence on record clearly showed that there was. It was submitted that the Plaintiff was heard and exercised his right to appeal and was unsuccessful due to the overwhelming evidence against him. Further, Counsel stated that all the laid down procedures in the Defendant's Grievance and Disciplinary Procedure Code were strictly followed in the disciplining of the Plaintiff for the offence committed.

5.16 Counsel further submitted that by alleging unfair dismissal, the Plaintiff is in effect saying that he was discriminated against or victimised. It was contended, however, that the Plaintiff had failed to specify the ground

on which he was allegedly discriminated or victimised as required by **Section 108** of *The Industrial and Labour Relations Act*<sup>1</sup>. The case of *Lemmy Chanda v Mopani Copper Mines Plc*<sup>5</sup> was cited in support of the foregoing submission. Counsel stated that the Plaintiff had also failed to adduce evidence to support his claim of unfair dismissal to enable the Court determine whether the dismissal was justified or not.

5.17 On the issue of whether the necessary disciplinary power existed, it was submitted by Counsel that the offence of Dishonest Conduct is to be found under clause 40 of the Defendant's Grievance and Disciplinary Procedure Code exhibited at pages 1 to 24 of the Defendant's Bundle of Documents. It was therefore submitted that as long as the conduct for which the Plaintiff was disciplined established an offence under the Grievance and Disciplinary Procedure Code, the Defendant was entitled to dismiss the Plaintiff if found guilty as charged. The case of *Simon Mukanzo v ZCCM Limited*<sup>6</sup> was cited in support of the foregoing submission.

5.18 On the issue of whether there was a substratum of facts to support the disciplinary measures taken against the Plaintiff, Counsel submitted that since it is the Plaintiff that has alleged that his dismissal was unfair, the onus was on him to prove the allegation that there was no

substratum of facts to support the disciplinary measures taken out against him. It was contended that the Plaintiff had failed to discharge this burden.

5.19 On the issue of whether the disciplinary power was exercised in due form, it was submitted that in employment matters, what is crucial is that the employer carried out investigations as a result of which he reasonably believed that the employee is guilty of misconduct. It was further contended that it was trite law that the employer does not have to prove that an offence took place or satisfy himself (or itself) beyond reasonable doubt that the employee committed the actions in question. The Defendant's function is to act reasonably in coming to a decision. The case of ***Chimanga Changa v Stephen Chipango Ngombe***<sup>7</sup> was cited in support of the foregoing submission.

5.20 Finally, it was submitted that this matter was bereft of merit and ought to fail as the Plaintiff had failed to show that the Defendant's decision to dismiss the Plaintiff was unfair as alleged.

## **6 CONSIDERATION AND DECISION OF THE COURT**

6.1 I have carefully considered the pleadings herein and evidence adduced before this Court. I have also considered the submissions by both Counsel and authorities cited

therein, for which I am grateful. I may not discuss all the cases cited, but I am alive to the principles espoused therein.

- 6.2 It is settled law that a person who commences a civil action must prove his case against the Defendant in order to succeed in his claim. To that effect, the learned authors of *Phipson on Evidence*<sup>2</sup>, in **paragraph 6-06**, at **page 151**, state the following regarding the burden of proof in civil cases: -

*“So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issue. If, when the evidence is adduced by all parties, the party who has the burden has not discharged it, the decision must be against him.”*

- 6.3 Additionally, the standard to which a Plaintiff should prove his case was discussed by the Supreme Court in ***Zambia Railways Limited v Pauline S Mundia, Brian Sialumba***<sup>8</sup> as follows: -

*“The standard of proof in a civil case is not as rigorous as the one obtaining in a criminal case. Simply stated, the proof required is on a balance of probability as opposed to beyond all reasonable doubt in a criminal case. The old adage is true that he who asserts a claim in a civil trial must prove on a balance of probability that the other party is liable...”*

- 6.4 The Plaintiff claims, *inter alia*, for damages for unfair dismissal and/or in the alternative reinstatement, accrued leave days and other entitlements from the date of suspension to the date of full and final settlement, costs of these proceedings and any other relief the court may deem fit.
- 6.5 From the pleadings and evidence adduced at the trial, it is common cause that the Plaintiff was employed by the Defendant as a cleaner in 1994. It is further common cause that in 1996, he was promoted to clerical officer and later transferred to Lusaka International Airport. Furthermore, it is common cause that the Plaintiff was tasked to deposit the Defendant's money at the Bank of Zambia from time to time and that in 2008, the Defendant discovered that the sum of K3,337,957,960.20 (unrebased) was not deposited at the Bank of Zambia during a two-year period.
- 6.6 The Defendant was charged with the offence of dishonest conduct and was suspended on 26<sup>th</sup> September, 2008 pending investigations. It is also not in dispute that the Plaintiff wrote an exculpatory statement, attended a disciplinary hearing, was found guilty and was summarily dismissed on 9<sup>th</sup> September, 2009. The Plaintiff was unsuccessful on appeal.



- 6.7 What is in dispute, however, is whether the Plaintiff was unfairly dismissed and therefore entitled to damages for unfair dismissal, accrued leave days and other entitlements from the date of suspension to the date of full and final settlement.
- 6.8 The Plaintiff contends by his pleadings and testimony at trial that the Defendant failed to take into account his explanation on the charges against him and that after the disciplinary hearing the Defendant proceeded to find him guilty without adducing sufficient evidence. The Plaintiff therefore alleges that his dismissal was unfair and therefore null and void.
- 6.9 The Defendant on the other hand contends that Plaintiff was given an opportunity to exonerate himself from the charge but failed to do so as his explanation was not plausible enough to rebut the evidence given by the Defendant's witnesses to support the charge.
- 6.10 On my analysis of the evidence on record, I find that the legal issues for determination are as follows: -
1. Whether the Plaintiff has proved that his dismissal was unfair and is thereby entitled to damages.
  2. Whether the Plaintiff is entitled to accrued leave days and other entitlements from the date of his suspension until full and final settlement.



6.11 I will address the issues in the order I have identified them above starting with whether the Plaintiff has proved that his dismissal was unfair and is thereby entitled to damages. In the case of ***Wilson Masauso vs. Avondale Housing Project***<sup>9</sup> it was held as follows: -

*“Where a plaintiff alleges that he has been wrongfully or unfairly dismissed, as indeed any other case where he makes any allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent’s case.”*

6.12 The learned author of the book, ***Employment Law and Practice***<sup>2</sup>, at **page 117**, in contrasting wrongful dismissal from unfair dismissal, states as follows: -

*“Unfair dismissal is... usually a much more substantial right for the employee and the consequences for the employer of dismissing unfairly are usually much more serious than those which attend a wrongful dismissal.”*

6.13 In her book ***Employment Law in Zambia: Cases and Materials***<sup>3</sup>, the learned author states as follows: -

*“...Unfair dismissal is a creation of statute... Unlike wrongful dismissal, which looks at the form (of the dismissal) unfair dismissal looks at merits (or substance) of the dismissal and the form is only supportive of the whole merits (of) the dismissal... Under unfair dismissal, the courts will look at the*

*reasons for the dismissal (for the purpose of determining) whether the dismissal was justified or not.”*

6.14 From the forgoing authorities, it is clear that for the Plaintiff to be entitled to damages for unfair dismissal, the burden is on the Plaintiff to prove that the reason advanced by the Defendant for his dismissal was not justified.

6.15 To demonstrate that his dismissal was unfair, the Plaintiff at trial stated that when the Defendant transferred him to Lusaka International Airport as a Clerk, he was tasked to deposit the Defendant's revenue at the Bank of Zambia from time to time, a task which was not part of his job description. The Plaintiff stated that shortly thereafter, he was accused of not depositing the money and was later charged with the offence of dishonest conduct in accordance with the Defendant's Grievance and Disciplinary Procedure Code. The Plaintiff stated that he was taken to the police station and was detained for three days. He further asserted that he had tried to explain to the Defendant and to the Police, but that they did not understand his explanation.

6.16 The Plaintiff stated that when he was charged, he exculpated himself in writing and attended a disciplinary hearing where he was found guilty of dishonest conduct

by the Disciplinary Committee. The Plaintiff also testified that he appealed against the decision of the Disciplinary Committee and attended an appeal hearing composed of the Defendant's Commissioners.

6.17 At the hearing the Defendant was given an opportunity to challenge the Disciplinary Committee's finding of guilt. However, the panel confirmed the finding of the Disciplinary Committee and summarily dismissed him.

6.18 From my analysis of the Plaintiff's testimony at trial and the evidence on record, I find that the Plaintiff has not led sufficient evidence to demonstrate to this Court that his dismissal was unfair. The Plaintiff ought to have at least presented evidence to this Court to show that he had been depositing all the money that he had been sent to deposit at the Bank of Zambia through copies of deposit slips or other documentary evidence to support his assertion that he had been depositing the money. The evidence would have enabled the Court to determine whether or not the action of by the Defendant of dismissing the Plaintiff for not depositing the Defendant's money was unfair or not.

6.19 I note further, that the Plaintiff by his Statement on page 7 of the Plaintiff's Bundle of Documents alleges that there were other employees of the Defendant that used to deposit the Defendant's money at Bank of Zambia who were not investigated. However, the Plaintiff did not lead any

further cogent evidence to show that the other employees were not investigated and how they could be implicated in the non-depositing of the Defendant's money at the Bank of Zambia.

6.20 The Plaintiff further alleged by his submissions that he was the only employee that was subjected to criminal investigations. However, the Plaintiff did not lead cogent evidence to demonstrate that other employees of the Defendant were not subjected to criminal proceedings or to show the wrongfulness of such an investigation against him.

6.21 I now turn to consider whether the Defendant acted reasonably in coming to the decision to dismiss the Plaintiff. In the case of **Chimanga Changa v Stephen Chipango Ngombe**<sup>7</sup>, the Supreme Court stated as that: -

*“What is crucial is that an employer carried out investigations as a result of which he reasonably believed that the employee is guilty of misconduct... The employer does not have to prove that an offence took place or satisfy himself beyond reasonable doubt that the employee committed the act in question. His function is to act reasonably in coming to a decision. The rationale behind this is clear; an employment relationship is anchored on trust and once such is eroded, the very foundation of the relationship weakens.”*

6.22 Additionally, in the case of **ZESCO Limited v David Lubasi Muyambango**<sup>4</sup>, the Supreme Court stated as follows: -

*“It is not the function of the Court interpose itself as an Appellate Tribunal within the domestic disciplinary procedures to review what others have done. The duty of the court is to examine if there was necessary disciplinary power and if it was exercised in due form.”*

6.23 On the strength of the foregoing authorities and from my analysis of the evidence on record, it is clear that the Defendant carried out investigations against the Plaintiff, gave the Plaintiff an opportunity to exculpate himself and an opportunity to be heard in accordance with the Defendant’s Grievance and Disciplinary Procedure Code. Therefore, the Defendant herein properly exercised its disciplinary power against the Plaintiff.

6.24 Further, on my perusal of the minutes of the Disciplinary Committee and Appeals Committee meetings, contained in the Defendant’s Bundle of Documents, I find that the Defendant’s investigations revealed that portions of the Defendant’s money only went missing when the Plaintiff was tasked to deposit it. Further, the investigations revealed that the Plaintiff had confessed that on each transaction, he would keep a sum of K5,000,000.00 (unrebased) from the Defendant’s money that he had taken to deposit at Bank of Zambia.



6.25 To rebut the foregoing allegation, the Plaintiff stated that he had been forced to make the confession. However, on my analysis of the evidence on record, I find that the Plaintiff failed to demonstrate to this Court that he was forced to confess and also failed to successfully challenge the assertions made by the witnesses at the Disciplinary Committee and Appeal Committee meetings.

6.26 Based on the foregoing and the authorities cited above, I am of the view that the Defendant acted reasonably in dismissing the Plaintiff as the Defendant had reasonable ground to believe that the Plaintiff was guilty of misconduct. Therefore, the Plaintiff's assertion that he was dismissed without sufficient evidence of his misconduct, is unfounded as the Defendant was not required to prove the allegations against the Plaintiff beyond reasonable doubt.

6.27 I now turn to consider the second legal issue of whether the Plaintiff is entitled to accrued leave days and other entitlements from the date of his suspension to the date of full and final settlement. At trial, the Plaintiff stated that following his dismissal, he was only paid the salary that was due to him at the date of his dismissal. However, the Plaintiff did not lead any evidence to support the claim that he was entitled to certain dues such as leave days or that the Defendant still owed him an amount of money. DW1



on the other hand stated that the Plaintiff was paid the wages due to him at the date of his dismissal including his accrued leave days less what he was owing the Defendant and other banks.

6.28 On the strength of the case of ***Zambia Railways Limited v Pauline S Mundia, Brian Sialumba***<sup>8</sup>, cited above, I find that the Plaintiff has failed to prove his claim for accrued leave days and other entitlements. Accordingly, this claim is dismissed.

## **7 CONCLUSION**

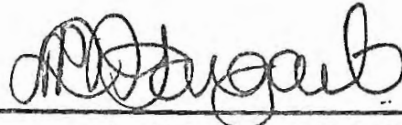
7.1 I find that the Plaintiff has not led sufficient evidence to demonstrate to this Court that his dismissal was unfair. Accordingly, the Plaintiff's claims for damages for unfair dismissal and /or reinstatement are dismissed.

7.2 Further, the Plaintiff did not lead any evidence to support the claim for accrued leave days and other entitlements from the date of his suspension to the date of full and final settlement. The claim is accordingly dismissed.

7.3 Costs are for the Defendant to be taxed in default of agreement.

7.4 Leave to appeal is granted.

**SIGNED, SEALED AND DELIVERED AT LUSAKA, THIS 30<sup>TH</sup> DAY  
OF DECEMBER, 2022.**

A handwritten signature in black ink, appearing to read 'P. K. Yangailo', is written over a horizontal line.

**P. K. YANGAILO  
HIGH COURT JUDGE**