

**IN THE HIGH COURT FOR ZAMBIA**  
**INDUSTRIAL RELATIONS DIVISION**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2022/HPIR/488**

**BETWEEN:**

**LAZAROUS SIANYAZI**

**AND**

**MABUYU FARMS LIMITED**



**COMPLAINANT**

**RESPONDENT**

**Coram: Before Hon. Lady Justice Mrs. Mwaka. S. Ngoma this 30<sup>th</sup> day of April, 2024**

*For the Complainant* : *In Person*

*For the Respondent* : *Mr. W. Mwenya of Messrs Lukona Chambers*

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## **JUDGMENT**

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**Legislation referred to:**

- i. The Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia.
- ii. Employment Code Act No. 3 of 2019
- iii. Employment Act, Cap 268 of the Laws of Zambia
- iv. Industrial Relations Court Rules, Cap 269 of the Laws of Zambia

**Case referred to:**

- i. Victoria Daka Vs Petauke District Council Appeal No. 8/2011

## **Introduction**

1. The complainant commenced this action by way of notice of complaint and supporting affidavit on 20<sup>th</sup> June, 2022 seeking the following reliefs:
  - a. Terminal benefits
  - b. Leave pay
  - c. Unpaid salaries
  - d. Incidental costs

## **Complainant's Affidavit Evidence**

2. The complainant averred that he was employed by the respondent on 1<sup>st</sup> April, 2015 until 27<sup>th</sup> June 2020 when he was summarily dismissed on an allegation of stealing cobs of maize. Although he admitted picking some cobs of maize, he stated that he only picked a few cobs from where the combine harvester was blowing and that it was his intention to cook the maize for his own consumption. He further averred that the practice of employees picking maize for their consumption had been going on for years and the respondent was aware of it.
3. The complainant contended that the respondent summarily dismissed him without following the disciplinary code of conduct or the Laws of Zambia, thus rendering the whole process illegal and entitling him to the reliefs sought in his notice of complaint.

## **Respondent's Answer**

4. The respondent filed an answer on 10<sup>th</sup> August 2022 in which it stated that the complainant was employed as a tractor driver under the terms and conditions of employment regulated by a collective agreement. It denied flouting the law or its own procedures contained in the disciplinary code.

5. The affidavit verifying answer was deposed to by Kodack Muchini, the Human Resources Manager. Mr. Muchini averred that the complainant was caught with 51 cobs of maize after which he was charged with dishonest conduct/theft of the maize and given an opportunity to defend himself before a disciplinary committee. The committee found him guilty as charged. He was then dismissed as the offence he had committed was punishable by summary dismissal as provided for in the collective agreement under clauses 22 and 23 of the disciplinary code. Copies of the collective agreement, charge form, the complainant's exculpatory letter and letter of dismissal, among others, were exhibited as "KM2".

### **Hearing**

6. At the hearing held on 7<sup>th</sup> November, 2023, the complainant told the court that on the 8<sup>th</sup> June 2020, he was assigned to work from the pump station. As such, he decided to pick some maize from the workshop so he could cook it from the pump station. The manager found him cooking maize and when asked where he had gotten it from, he explained that he got it from the workshop. He said he further told the manager that picking maize cobs from the workshop and cooking it was a practice known to the respondent. The Chief Security Officer and Supervisor were called in and he was later asked to submit a written report.
7. It was his further testimony that on the 19<sup>th</sup> June, 2020, he was called for a meeting in the office of the Human Resources Manager. In attendance were the union representatives, the Chief Security Officer and Farm Committee members. He was later suspended for 14 days without pay. On the 27<sup>th</sup> June, 2020, he was summoned again and told that his matter had resumed. Management invited the union officials to a meeting but the

union officials refused to attend stating that the matter had already been concluded. On that very day, he was dismissed summarily.

8. He also told the court that he engaged union officials and the labour office in a bid to resolve the matter, but to no avail, as the respondent continued neglecting to pay his benefits.
9. He stated that his last salary was K1,000 and that his leave days were probably 3 only.
10. Under cross examination, the complainant confirmed being a union member. He also admitted that he was found with cobs of maize and that no one authorized him to take the maize. He further told the court that he was charged twice for the same offence of dishonest conduct and theft, firstly, by the committee and, secondly, by the Human Resources Manager.
11. Under further cross examination, the complainant admitted that the amount due to him for his unpaid salary and leave pay as shown on exhibit "KM3" in the affidavit in support of answer was correct.
12. The complainant closed his case and did not call any witness.
13. The respondent called two witnesses, the first of whom was Kodach Munchini. It was his testimony that workers needed permission from their supervisors to pick and eat any maize from the respondent premises contrary to what the complainant stated that employees were free to eat maize as they wished.
14. It was his further testimony that the complainant was dismissed after being found guilty of dishonest conduct by a duly constituted disciplinary

committee. The complainant refused to acknowledge receipt of his dismissal letter, so the respondent was unable to pay his terminal benefits.

15. The witness' testimony under cross-examination was the same as his evidence in chief. As such, I consider it unnecessary to rehash it here.
16. The 2<sup>nd</sup> witness called by the respondent was Isaac Chilende, the Chief Security Officer, who testified that the complainant was caught with 51 cobs of maize which was the basis of the charge for which he was dismissed in accordance with the respondent's disciplinary code.
17. At the close of the hearing, the respondent's advocates filed written submissions for which I am grateful.

### **Respondent's Submissions**

18. It was the respondent's submission that the complainant was a member of the Trade Union and his conditions of service were regulated by a collective agreement.
19. It was further submitted that the termination of the complainant's employment was not wrongful or unlawful as due process of the disciplinary procedure in the respondent company was followed before the summary dismissal was effected. The case of **Victoria Daka Vs Petauke District Council**<sup>1</sup> was relied upon to highlight that wrongful termination occurs where the employer terminates employment without carrying out the disciplinary procedure which was incorporated into the employee's contract.
20. It was the respondent's further submission that upon being summarily dismissed, the complainant was only entitled to his salary for the days

worked up to the date of dismissal and leave pay. Reference was made to Clause 25(e) of the respondent's disciplinary code which states as follows:

***“Summary dismissal: In the event of an employee being summarily dismissed, the employee shall be entitled to accrued leave pay and pay for the days worked.”***

21. Numerous authorities were cited to underscore the argument that in the employer/employee relationship, the parties were bound by whatever terms and conditions they set out for themselves. As such, there is no basis for the payment of benefits for the years served by the complainant.

#### **Determination**

22. The issue for determination is whether the complainant is entitled to the reliefs sought in the notice of complaint.
23. It was the complainant's averment in his notice of complaint and supporting affidavit that he was summarily dismissed without following the procedure laid out in the disciplinary code. Under cross-examination, he admitted that he was, indeed, charged for dishonest conduct, albeit he claimed that he was charged twice, firstly, by the disciplinary committee, and secondly by the Human Resources Manager. The complainant also admitted that he was caught with cobs of maize, although he could not say how many they were as he did not count them.
24. The testimony of the respondent's witnesses that the complainant was caught with 51 cobs of maize and that the procedure in the disciplinary code was followed was uncontroverted. The evidence on record, as exhibited in the respondent's affidavit in support of answer, shows that the complainant was charged with the offence of dishonest conduct/theft

of 51 cobs of maize. He exculpated himself in writing and appeared before the disciplinary committee which found him guilty as charged after which he was summarily dismissed.

25. In view of the clear evidence before me, I am satisfied that the respondent cannot be faulted for summarily dismissing the complainant. The complainant has failed to prove that the respondent flouted its own disciplinary procedure or the law. He has also not proved that he was punished twice for the same offence, firstly, by being placed on suspension for 14 days and, secondly, by being summarily dismissed.
26. I now turn to the reliefs claimed by the complainant. I shall do so in the order most convenient.

#### **Leave Pay and Unpaid Salaries**

27. It was the complainant's testimony that he was not paid his salary for June 2020 and that his leave days at the time of his dismissal were 3. Under cross-examination, the complainant admitted that the amount for his unpaid salary and the leave pay exhibited on "KM3" was correct and that the same was offered to him but he refused to take it because the respondent wanted him to sign the dismissal letter prior to him collecting the money which he was not willing to do.
28. As there is no dispute on the amount for unpaid salary and leave pay, I find that the complainant is entitled to the sum of K1332 in respect of outstanding salary and leave pay.

#### **Terminal Benefits**

29. With regard to terminal benefits, the complainant did not adduce any evidence as to the nature of benefits he was claiming under this head. The

respondent, on its part, referred to clause 25(e) of the collective agreement, which clause is reproduced above, to buttress its position that the complainant, having been summarily dismissed, was only entitled to unpaid wages for the period worked and leave pay.

30. The record shows that the conditions of service applicable to the complainant were regulated through a process of collective bargaining. This fact was not disputed. In fact, the complainant confirmed he was a member of the union. As such, I find that the complainant was not a protected employee as defined by the now repealed Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia.

31. I have examined the provisions of the Employment Code Act No 3 of 2019 and its predecessor, the Employment Act, Cap 268 of the Laws of Zambia to determine any other benefits that accrued to the complainant at the time of his dismissal and found none. The latter, in section 26, only provides for payment of wages and other working or other allowances due to an employee up to the date of such dismissal.

32. Section 51 of the Employment Code Act provides as follows:

***“An employer who summarily dismisses an employee under section 50 shall pay the employee, on dismissal, the wages and other accrued benefits due to the employee up to the date of the dismissal.”***

33. The complainant spoke in general terms about terminal benefits but did not claim that he was entitled to gratuity or severance pay. Section 73, of the Employment Code Act, provides for gratuity payable to employees on long term contracts which contracts defined under section 3 as:

***“Long-term contract” means a contract of service for—***



***(a) A period exceeding twelve months, renewable for a further term; or***

***(b) The performance of a specific task or project to be undertaken over a specified period of time, and whose termination is fixed in advance by both parties”***

34. The complainant did not adduce any evidence that he was on a long term contract. As such, I find that he was not, and consequently, not entitled to any gratuity under this section.

35. I have also examined section 54 which provides for severance pay to employees who are medically discharged; employees on fixed-term contract; employees declared redundant; or employees who die in service. Clearly, the complainant does not fall under any of the categories mentioned therein.

36. In view of the foregoing, I do not see any other benefit which the complainant may be entitled to other than the unpaid wages and leave pay as discussed above. The claim for benefits is accordingly dismissed.

### **Costs**

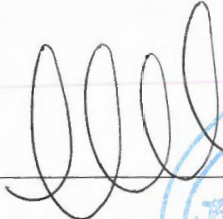
37. The claimant claims costs incidental to this action. Costs in this division are only slapped on a party in accordance with rule 44 of the Industrial Relations Court Rules, Cap 269. According to this provision, a party may bear costs or expenses if he is guilty of unreasonable delay, or of taking improper or vexatious or unnecessary steps in the proceedings or, indeed, if he is guilty of other unreasonable conduct. I am not satisfied that the respondent herein was guilty of conduct outlined in rule 44 to warrant an order of costs against it.

### **Conclusion and Orders**

38. The complainant has succeeded only to the extent shown above. He has proved that he is entitled to leave pay and wages for the days worked in June 2020. He has failed to prove his entitlement to any other benefits. In the circumstances, I make the following orders:

- i. The respondent shall pay the sum of K1332 in respect of leave pay and unpaid salary for the days worked by the complainant in June 2020.
- ii. The Judgment sum shall attract interest at short term bank deposit rate from the date of the notice of complaint to the date of judgment and thereafter, at current lending rate as determined by the Bank of Zambia from the date of Judgment until full payment.
- iii. Each party shall bear its own costs.
- iv. Leave to appeal is granted.

**Delivered at Lusaka this 30<sup>th</sup> Day of April, 2024.**

  
**Hon. Lady Justice Mrs. M.S Ngoma**  
**HIGH COURT JUDGE.**

