

Registry

IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA

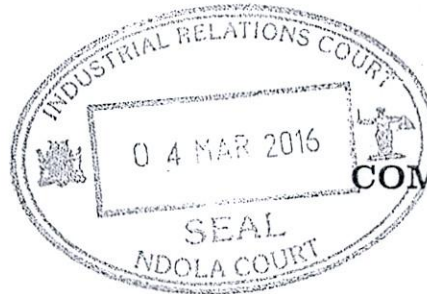
COMP/125/2014

BETWEEN:

JULIET L. MUKONDE

AND

CHIBULUMA MINES PLC



COMPLAINANT

RESPONDENT

BEFORE:

Hon. Judge E.L. Musona

MEMBERS:

1. Hon. W.M. Siame
2. Hon. J. Hasson

For the Complainant : Mr. K. Msoni of Messrs J.B. Sakala & Co.

For the Respondents : Mr. A. Imonda of Messrs A. Imonda & Co.

JUDGMENT

Date: 4 - 3 - 16

Cases referred to:

1. Galaunia Farms Ltd v National Milling Corporation Ltd (2004) ZR.
2. Wilson Masauso Zulu v Avondale Housing Project (1982) ZR.

According to the Complainant herself, she was dismissed in October, 2014. She told this court that her dismissal was triggered by her declaration of interest which she made on 5th September, 2014. She made a declaration of anticipated personal relationship with a Managing Director of a company which had business relationship with the Respondents who were the Complainant's employers. She told this court that the rules for the Respondents require to declare any perceived or actual interest in order to avoid any perceived favouritism to any individual or company. The Complainant produced the form of declaration of interest and was marked "JLM4". We have looked at exhibit "JLM4". JLM4 is dated 5th September, 2014. In "JLM4" the Complainant disclosed that she met the Managing Director of Mapchan Industries Ltd on 7th August, 2014 and had dated him on five (5) different occasions from that date. The Complainant gave JLM4 to Mr. Munsaka. Mr. Munsaka was Chief Financial Officer and was also the Head of Department to which the Complainant belonged. The Complainant stated that Mr. Munsaka reviewed JLM4 after which the Complainant took JLM4 to Mr. Justin Njobvu. Mr. Justin Njobvu was Human Resources Manager.

On 8th September, 2014 the Complainant was called by Mr. Munsaka who was Chief Financial Officer and gave the Complainant a letter of suspension by which the Complainant was suspended with immediate effect pending investigations. That letter of suspension was produced by the Complainant and was marked as exhibit "JLM6". On 24th September, 2014 the

Complainant was given a letter wherein she was asked to exculpate herself within 48 hours. That letter was produced by the Complainant and was marked "JLM7". The Complainant wrote to the Respondents exculpating herself. That exculpating letter was produced by the Complainant and marked as "exhibit 'JLM8'".

On 21st October, 2014 the Complainant was charged with the offence of approving the application from Mapchan Industries Ltd for registration as a Contractor/Supplier with Chibuluma Mines Plc without following the established practice, process and for breach of rules of confidentiality.

The Complainant appeared for the case hearing and was dismissed. On 23rd October, 2014, the Complainant appealed but lost the appeal. The Complainant made a second appeal but again lost the appeal. She then brought the case to this court.

The Complainant emphasized that she is challenging her dismissal from employment because it was triggered by her declaration of interest. The Complainant argued that the Respondents ensure that employees who declare interest are protected but she was not protected when she declared her interest, and that she was dismissed instead.

The evidence for the Complainant further shows that for anyone requesting to register with the Respondent they had to obtain forms for registration from the Contracts Administrator.

Depending on the services which the supplier wants to provide, the supplier will be directed to the relevant end user department. If the end user expresses interest in the service, the supplier will complete the supplier registration form and that form will be submitted to the Contracts Administrator. The Contracts Administrator or Supply Superintendent will appraise the supply application form for statutory compliance and if it has been completed correctly. After that the Contracts Administrator or the Supply Manager will take the form to the end user department for approval. The approval must be done from the level of Manager and above. The form is then taken to the Supply Manager for final appraisal.

M/Grey Mbambara was the only witness for the Respondents. We shall refer to M/Grey Mbambara as RW1.

RW1 who is Human Resource Coordinator for the Respondents, he told this court that the Complainant was Supply Chain Department Manager until she was summarily dismissed on 22nd October, 2014. He narrated that on 5th September, 2014 in a meeting attended by M/George Mutono who was Human Resources Manager, M/Justine Njobvu who was Training Manager and M/Davies Kabaso who was Employee Relations Manager, RW1 was briefed about the allegations wherein the Complainant was said to have been favouring Mapchan Industries Ltd in the placement of orders and contracts. The Security were already investigating the matter. At 15.00 hrs of that same day M/Justine Njobvu who was

Training Manager handed to RW1 a declaration of interest form which was given to him by the Complainant.

RW1 further narrated that the Complainant was charged and dismissed for failure to follow established procedure and breach of confidentiality. This procedure is in relation to the Registration of supplier and/or contractors. According to RW1, the procedure is that registration form is supposed to be signed by three (3) people. Those three (3) people are as follows:

1. Procurement Coordinator
2. End user
3. Supply Chain Departmental Manager

RW1 stated that, in this case, the registration form only had slots for two (2) signatures instead of three (3) and the Complainant signed on both slots as upraiser as well as approver. RW1 further stated that the registration form is an in-house document which a supplier should not know as to who has approved and who has not approved, yet in this case upon signing the registration form the Complainant gave it to the supplier and the supplier walked it to M/Aswell Makungu who was at the end user. According to RW1, this was wrong because this registration form having been signed by the Complainant who was the Supply Chain Manager with full knowledge of the Supplier (Applicant) it was subjecting the end user to undue pressure and was a recipe for corruption.

We have looked at and also analysed the whole of the evidence in this case. The facts of this case as they appear on the record are as follows:

1. Mapchan Industries Ltd was registered by Chibuluma Mines Plc as Supplier. This is evidenced by the form of registration which was exhibited as page 29 in the Respondents' bundle of documents.
2. The Complainant signed on that form as a Procurement Coordinator as well as a Supply Manager. This is evidenced by the form of registration which was exhibited as page 29 in the Respondents' bundle of documents. According to the evidence of RW1, it was wrong for the Complainant to sign as Procurement Coordinator as well as a Supply Manager because the practice was that there must be three (3) people to approve the application for registration. The three (3) people should be in the following order:
 - a. Procurement Coordinator who scrutinizes the application and passes it to end user.
 - b. End user who puts in comments whether they consent to the application or not and sends it to the supply Manager.
 - c. Supply Manager who is the last person in the line of approval.

In this case, the Complainant who was supply Manager acted both as Procurement Coordinator as well as Supply Manager. She also acted wrongly by being the first and second to sign the application form when by practice she should have been the third (last) to do so.

3. After the Complainant had signed registration forms, the Complainant gave the forms to the Applicants from Mapchan Industries Ltd and those officials walked the registration forms to M/Aswell Makungu who was the end user. According to RW1, that was wrong because the registration forms having been signed by the Complainant who was Supply Manager with full knowledge of the Applicants, it was subjecting the end user to undue pressure and was a recipe for corruption because the Applicant is not supposed to know who has approved and who has not approved the application.
4. All the foregoing show that the registration of Mapchan Industries Ltd with the Respondents at the hand of the Complainant was laced with irregularities.
5. After this registration of Mapchan Industries Ltd with the Respondents, Mapchan Industries Ltd enjoyed massive favour in the award of contracts to Mapchan Industries Ltd. The facts show the following events as some of the favours which were accorded to Mapchan Industries Ltd:
 - a. Mapchan Industries Ltd was registered with the Respondents on 19th March, 2014. On 24th March, 2014, just four (4) days after it was registered, Mapchan Industries Ltd received a business order worthy K30,069.20.
 - b. Three (3) days later Mapchan Industries Ltd received a business order worthy K41,760.00. This was without competition with any other supplier.

- c. Mapchan Industries Ltd received further business amounting to K261,324.80 without being subjected to any competition with other Suppliers.
- d. On 20th June, 2014 Mapchan Industries Ltd was awarded business worthy K27,500.00 leaving out Bell Equipment which had offered K24,398.87
- e. On 10th July 2014 Mapchan Industries Ltd was awarded business worthy K764,520.00 leaving out Highlands Investments which offered a lower amount of K616,000. This order to Mapchan Industries Ltd was issued by the Complainant in person.

The above facts were produced by the Respondents and exhibited as page 8 to 10 in the Respondents' bundle of documents and have not been disputed.

- f. In the wake of these business matrix between Mapchan Industries Ltd and the Respondent there was growing agitation that Mapchan Industries Ltd was enjoying massive favours in the award of business contracts because its Managing Director a Mr. Reuben Mpando was enjoying intimate relationship with the Complainant who was the Supply Manager for the Respondents.
- g. As suspicion grew and complaints raised concerning the intimate relationship between a Mr. Reuben Mpando who was Managing Director for Mapchan Industries Ltd and the Complainant who was Supply Manager for the Respondent, the Management of the Respondent instituted

investigations to verify the veracity of the complaints. Those investigations revealed the following facts:

- i. The Complainant was spotted to have travelled to Solwezi with Mr. Reuben Mpando the said Managing Director for Mapchan Industries Ltd. That outing between the Complainant and the Managing Director for Mapchan Industries was on 2nd and 3rd September, 2014.
- ii. They were also spotted at some social spots in Kitwe together
- iii. Mr. Reuben Mpando was often been seen emerging from the Complainant's house in the mornings.

We have noted the Complainant's declaration. This was produced by the Complainant and exhibited as "JLM4". In exhibit 'JLM4', the Complainant has not disputed her relationship with the Managing Director for Mpachan Industries Ltd except she has called it "anticipated future relationship". We have wondered whether or not going together on an outing to Solwezi on 2nd and 3rd September, 2014 is part of "anticipated future relationship". We have again wondered if being spotted together at some social spots is also "anticipated future relationship". It has not been disputed that the Managing Director of Mapchan Industries Ltd was seen emerging from the Complainant's house in the morning, we still wonder if that too is an anticipated future relationship.

The Complainant has admitted in her declaration which is exhibited "JLM4" that she has since dated the Managing Director for Mapchan Industries Ltd on five (5) different times since 7th

August, 2014. That also cannot be in anticipation of a future relationship. Indeed, that was already a relationship at that level.

The Complainant emphasized that she met the Managing Director for Mapchan Industries Ltd on 7th August, 2014, but said nothing about their subsequent outing to Solwezi on 2nd and 3rd September, 2014 which allegedly took place after 7th August, 2014. This shows that when the Complainant went on an outing to Solwezi with Mr. Reuben Mpando the Complainant knew too well that she was on an outing with the Managing Director for Mapchan Industries Ltd the company which had a business relationship with the Respondent for which the Complainant was Supply Manager.

We have looked at the charge in this case. The charge is in a letter dated 21st October, 2014 and produced by the Complainant as exhibit "JML12". The Complainant was charged with "approving the application for Mapchan Industries Ltd for registration as a contractor/supplier with Chibuluma Mines Plc without following established practice, process, procedure or convention and breach of rules of confidentiality. She was subsequently dismissed for that offence as evidenced by letter of dismissal dated 27th October, 2014 and produced as exhibit "JML1b".

On the facts of this case we are satisfied that the Complainant violated the practice and procedure when she signed both as Procurement Coordinator as well as Supply Manager. She also violated the practice and procedure when she signed the

registration application form first instead of being last of the three (3) signatories who are supposed to sign the registration application form.

We are also satisfied that the Complainant breached the rules of confidentiality when she allowed the applicants to carry the registration application form to Mr. Aswell Makungu who was the end user. This was a breach of confidentiality because that registration application form having been signed by the Complainant with full knowledge of the Applicants it was subjecting Mr. Aswell Makungu to undue pressure and a recipe for corruption.

On the basis of the above facts we find that when the Respondents dismissed the Complainants, indeed the Respondents were on firm ground.

We have seen no illegality, unfairness or wrongfulness as the Complainant alleged in this case.

In the case of **Galaunia Farms Ltd v National Milling Corporation Ltd (1)** the Supreme Court held inter alia that: a Plaintiff must prove his case.

Also, in the case of **Wilson Masauso Zulu v Avondale Housing Project (2)** it was again held that a Plaintiff who does not prove his

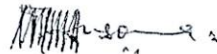
case cannot be entitled to judgment whatever may be said of the opponent's case.

The Complainant in this case has not proved her claims. We are satisfied that this case is destitute of merit and we accordingly dismiss it.

We shall order no costs.

Leave to appeal to the Supreme Court within 30 days from today is granted.

Delivered and signed at Ndola this the 4th day of March, 2016.



Hon. E.L. Musona
JUDGE



Hon. W.M. Siame
MEMBER



Hon. J. Hasson
MEMBER