

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 54 OF 1993

HOLDEN AT LUSAKA

B E T W E E N:-

EASTERN CO-OPERATIVE UNION LIMITED

APPELLANT

Vs

GOODSON LEONARD WILLIMA

RESPONDENT

CORAM: GARDNER, CHIRWA AND MUZYAMBA JJS.,

9th November, 1993

Mr. R. Simeza of RMA Chongwe and Company appeared for the appellant.

Mr. H. Silweya of Silweya and Company appeared for the respondent.

J U D G M E N T

Gardner J.S. delivered the judgment of the court.

This is an appeal against the grant of an interim injunction restraining the appellant from removing the respondent as Chairman of Board of Directors of the appellant Co-operative Union.

The facts of the case are that the appellant by its board of directors resolved that the respondent should be dismissed from his position as Chairman of the Board of Directors. The respondent issued a writ claiming damages for such dismissal and for an injunction restraining the appellant from effecting his removal. At the hearing of the application for an injunction, arguments were advanced, and repeated in this court, to the effect that, on behalf of the appellant, the Board of Directors had power, having been the board who properly appointed the respondent as Chairman, to remove him by ordinary resolution of the Directors. On behalf of the respondent it was argued that Sections 122 and 162 of the Co-operative Societies Act provided the only methods by which any officer similar to a Chairman of the Board of Directors could be dismissed, and consequently, as those sections provided for a dismissal by a general meeting or by the Registrar of Co-operative Societies, the dismissal by the Board of Directors alone was invalid.

Mr. Silweya, on behalf of the respondent, argued that although his client

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is claiming damages which would compensate him for his actual out of pocket loss there was the intangible loss arising out of removal from office which could not be calculated in monetary terms. For this reason, he argued that an injunction should be granted because in no other way could the respondent continuing term be protected.

Mr. Simeza however, argued that damages had in fact been quantified in the statement of claim so that a sum of money could be calculated as compensation and an injunction should not be granted.

In the circumstances of this case we agree with Mr. Simeza that damage would be an adequate remedy. It follows therefore that we are satisfied that an injunction should not have been granted in this case.

The appeal is allowed, the order for an injunction is set aside and there will be costs to the appellant in this court and in the court below.

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B. T. GARDNER
SUPREME COURT JUDGE

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D. K. CHIRWA
SUPREME COURT JUDGE

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W. M. MUZYAMBA
SUPREME COURT JUDGE