

IN THE SUPREME COURT FOR ZAMBIA

Appeal No. 58 of 1994

HOLDEN AT LUSAKA

SCZ/8/36/94

(Civil Jurisdiction)

BETWEEN:

The Attorney General

Appellant

and

Jentre Mwanza

Respondent

Coram: Bweupe Ag. C.J. Gardner and Muzyamba JJS.,

K. Kasote State Advocate for the appellant.

No appearance on behalf of the respondent.

JUDGMENT

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

This is an appeal against a refusal by the Industrial Relations Court to review its judgment in a case concerning Jentre Mwanza and the National Agricultural Information Services. In that case the complaint was made by the complainant and a copy of the complaint was served on the National Agricultural Information Services, which is a Government department. The Government department through its representative filed an answer to the complaint and thereafter the complaint was heard by the Industrial Relations Court. At the hearing the Chairman of the Industrial Relations Court indicated that the representative of the Attorney General's Chambers had been expected to attend. The matter was adjourned while some form of notice was sent to the Attorney General.

When the matter came for the adjourned hearing the court heard evidence from a police witness who said that on a date which he could not remember he had delivered a letter to the Attorney General. There was no identification of the letter which he delivered. When the court came to deliver its judgment it said at the end of its judgment that it would like to express its disappointment about the failure of the Attorney General to send a State Advocate to represent him. The court pointed out that this was the second case where the absence of a representative from the Attorney General's Chambers had been noted, and said that if such conduct continued

in the future it would be forced to use all means at its disposal to compel the attendance of the Attorney General.

The Attorney General's Chambers then applied to the Industrial Relations Court to review its own judgment in respect of the comments against the Attorney General's behaviour. Having heard representations the Industrial Relations Court delivered a judgment on review in which it said that in view of the fact that the Attorney General had been notified by summons and that proof of service thereof had been given it could not review its judgment. This appeal arises out of that refusal.

Mr. Kasote, on behalf of the Attorney General, has filed an affidavit sworn by the Attorney General in which he affirms that he received no notice in respect of the case in question but he did receive a summons in respect of an entirely different case in which he had instructed one of the State Advocates to deal with the matter. The matter in that other case had been dealt with thereafter satisfactorily. Mr. Kasote also drew our attention to the fact that the initial complaint was not served on the Attorney General in accordance with the provisions of section 13 of the State Proceedings Act Cap. 92.

We are quite satisfied, having seen the affidavit from the Attorney General and having noted that the complaint was not served on the Attorney General that in this case the complaint was wrongly originated. The respondent to this appeal should, in terms of section 12 of the State Proceedings Act, have cited the Attorney General as respondent to the complaint. He should have served the document on the Attorney General not the National Agricultural Information Services. Thereafter the Attorney General would have handled the case in his own right and the question of a summons or notice to appear before the court would not have been arisen. As to the service of the document on the Attorney General, it is regrettable that the normal procedure of proof of service was not followed, that is to say, a copy of the letter or summons was not produced by the witness. Obviously that is why the mistake arose. The Attorney General never received a notice about the case in question at all, whereas the court thought the summons or letter had been served. In the circumstances, therefore, the comments in the judgment were quite unjustified and the judgment should have been reviewed on the representation of the Attorney General.

This appeal is allowed and we declare that the derogatory remarks about the Attorney General should not have been made.

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B. K. Bweupe
ACTING CHIEF JUSTICE

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B. T. Gardner
SUPREME COURT JUDGE

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W. M. M. Muzyamba
SUPREME COURT JUDGE
