

DEVELOPMENT BANK OF ZAMBIA v DOMINIC MAMBE (1994) S.J. 92 (S.C.)

SUPREME COURT
GARDNER, SAKALA AND MUZYAMBA, JJ.S.
7 TH MARCH 1995 AND 7 TH JUNE, 1994
APPEAL NO. 82 OF 1994

Flynote

Employment Law - Breach of contract - Payment in lieu of notice - Salary increase during course of the notice

Headnote

The respondent was employed by the appellant. On the 6th November, 1992, the 10 respondent received a letter from the appellant giving him three months notice of termination of employment purporting to take effect from the 1st November, 1992. Thereafter the respondent was paid three months salary, based on his current salary, in lieu of notice. Later the appellant increased salaries for all employees in the respondent's category. The respondent claimed that, in view of the fact that he did not receive his notice until 1st November 1992 then back dated increase in pay should apply to him, so that he should receive an increase of over K5,000,000 in respect of his three months salary in lieu of notice. The High Court found in his favour and the appellant now appealed against that finding.

Held:

- (i) The original employment between the appellant and the respondent came to an end, and whatever happened to the other employees who continued in employment could not affect the completed obligations between these parties
- (ii) There was no consideration or contract between the parties after the payment of the money in lieu of notice

For the Appellant: S.L. Chisulo ZCCM
For the Respondent: J.B. Sakala of J.J. Sakala and Co.

This is an appeal from a judgement of the High Court awarding damages for breach of a contract of employment.

Judgement

GARDNER, J.S.: delivered the judgement of the court.

The facts of the case are that the respondent was employed by the appellant. On the 6th November, 1992, the respondent received a letter from the appellant giving him three months notice of termination of employment purporting to take effect from the 1st November, 1992. Thereafter the respondent was paid three months salary, based on his current salary, in lieu of notice. On or about the 1st February, 1993 the appellant revised the salary structure of its employees so that employees in the respondent's category received increases in pay with effect from the 1st November 1992. The respondent claimed that, in view of the fact that he

did not receive his notice until 1st November 1992 then back dated increase in pay should apply to him, so that he should receive an increase of over K5,000,000 in respect of his three months salary in lieu of notice. The High Court found in his favour and the appellant now appeals against that finding.

p93

Counsel for each party have argued their respective cases, and we must now consider the contract that existed between the parties. It is all too easy to forget, in cases involving large institutions which make pronouncements about matters such as salary increases, that the requirement that contracts need to be given for a consideration order for them to be enforceable always applies, unless excepted in some way which does not, in fact, apply here.

When the original notice was given there was in existence a contract to pay the respondent at his old rate of pay. When he received the notice on the 5th November, 1992, that was the only contract in existence, and as at that date the only way of calculating what was three months salary in lieu of notice was to apply the only rate that was known to the parties at the time, that is, the old rate. When the payment was made in lieu of notice that was an end of the appellant's liability under that contract. When such money was paid the respondent was not deemed to continue in employment until three months after the original notice. The original employment came to an end, and whatever happened to the other employees who continued in employment could not affect the completed obligations between these parties. The reason for this is, of course, that there was no consideration and no continuing contract between the parties to this action after the three months salary in lieu of notice, calculate as the only rate known to the parties at the time, and been paid in final settlement of the appellant's obligation under the original contract.

We agree that there is sufficient evidence on the record to support the respondent's claim that he did not receive the letter of dismissal until the 5th November, 1992. Such notice can never, at law, be back dated, and he is entitled to be paid the 1st November upto and including the 5th November 1993 at the old rate payable under his then existing contract. He is entitled to interest at the average short term bank deposit rate from the 7th November, 1993, until the date of this judgement.

For the reasons we have given the appeal is allowed, the judgement for K5,311,706.93 in favour of the respondent is set aside and in its place we order judgement for the respondent for arrears of salary between the 1st and the 5th November,1992, together with interest as set out above.

Costs will follow the event.

Appeal allowed.
