

DEVELOPMENT BANK OF ZAMBIA v MAMBO (1995 - 1997) Z.R. 89 (S.C.)

SUPREME COURT
7TH MARCH AND 7TH JUNE, 1995.
(S.C.Z. JUDGMENT NO 13 OF 1995)

Flynote

Contract - Damages on breach - Computation of - Contract of employment where retrospective increase granted after termination of employment.

Headnote

The respondent had been employed by the appellant but was given notice on 6 November 1992 that his services were to be terminated with effect from 1st November, 1992, and giving him three months notice I thereof. He was paid his three months's salary based on his then current salary. On 1st February ,1993, the appellant restructured its salary scales with retrospective effect to 1st November, 1992. The respondent claimed that since he only received notice on 6 November 1992 his three months' notice pay was to be calculated at the new revised rate.

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Held:

That when the respondent received his notice on 6 November the only way of calculating his entitlement was to use his then existing salary scale: whatever happened to other employees who continued in employment could not affect the completed obligations between the parties. There was no consideration and no continuing contract between the parties.

Held:

Accordingly, that the respondent's notice pay had to be calculated on the old salary scale. Appeal from decision of High Court allowed.

For the appellant: S.L. Chisulo, ZCCM.
For ther respondent: J.B. Sakala, J.B. Sakala & Co.

Judgment

GARDNER, J.S.: delivered the judgment of the Court.

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

The facts of the case are that the respondent was employed by the appellant. On 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 1st November, 1992. Thereafter the respondent was paid three months' salary, based on his current salary, in lieu of notice. On or about 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 1st November, 1992. The respondent claimed that, in view of the fact that he did not receive his notice until 6th November, 1992, the backdated 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.

Counsel for each party has 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 in 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 6th 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 reasons 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, calculated as the only rate known to the parties at the time, had been paid in final settlement of the appellant's obligation under the original contract.

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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 6th November, 1992. Such a notice can never, at law, be backdated, and he is entitled to be paid from 1st November, up to and including 6th 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 7th November, 1993, until the date of this judgment.

For the reasons we have given the appeal is allowed, the judgment for K5 511 705,93 in favour of the respondent is set aside, and in its place we order judgment for the respondent for arrears of salary between 1st and 6th November, 1992, together with interest as set out above.

Costs will follow the event.
Appeal allowed.
