

ZAMBIA CONSOLIDATED COPPER MINES LIMITED v PATRICK MULEMWA
(1995) S.J. (S.C.)

SUPREME COURT
GARDNER, A.C.J., CHAILA AND CHIRWA, JJ.S.
11TH MAY, 1995 AND 31ST OCTOBER, 1995.
(S.C.Z. JUDGMENT NO. 15 OF 1995)

Flynote

Employment Law - Dismissal - Giving untrue statement against subordinate - Misuse of company property - Discrimination - Definition of social status. Stare decisis - Upsetting a decision of the Supreme Court - Supreme Court decision is binding on all other courts until upset by Supreme Court itself.

Headnote

The respondent was dismissed from employment by the appellant on grounds of misuse of company property and giving a false statement against a subordinate. The respondent brought an action against the appellant in the Industrial Relations Court. The Industrial Relations Court found that the respondent had done nothing wrong and nullified the dismissal. The court further found that the respondent had been discriminated against on grounds of social status. The court also expressed disagreement with the Supreme Court on the definition of social status stating that social status referred to one's standing in the employment hierarchy only. On appeal,

Held:

- (i) Until such time as an earlier decision of the Supreme Court is upset by the Supreme Court itself, such decision remains binding on all other courts
- (ii) The Industrial Relations Court in this case was not in a position to say that in their view the words 'social status' in section 198 of the Industrial Relations Act referred to the appellant's position in the hierarchy of the company
- (iii) Discrimination *per se* is not a ground for making an order for reinstatement; the principle of *stare decisis* applies and the Industrial Relations Court had no power to reinstate in this case

Cases referred to:

- (1) Ngwira v Zambia National Insurance Brokers Ltd S.C.Z. Judgment No. 15 of 1994
- (2) Kasote v The People (1977) Z.R. 75 (S.C.)

For the appellenat: M. N. Nchito of ZCCM
For the Respondent: M. Sikatana or Veritas Chambers

Judgment

GARDNER.: delivered the judgment of the court.

The facts of the case are that the respondent was employed as a supervisor by the appellant.

On the 2nd January, 1991 the respondent gave instructions to his driver to use a company vehicle to deliver workers to their place of operations and permission was given to the driver thereafter to use the vehicle to go and see his sick wife in Chawama. The vehicle was involved in a traffic accident at Chawama/Kafue turnoff. The respondent saw some mealie meal in the vehicle and when the driver was asked about this he said he was delivering mealie meal of Miss Gertrude Mbewe, though initially he had asked for permission to go and see his ailing wife. On hearing this explanation the respondent charged the driver with misuse of company vehicle and after a disciplinary hearing the driver was dismissed. Subsequently, when it was ascertained that the respondent had in fact given permission to the driver to go to Chawama, the respondent himself was charged with deliberately giving an untrue statement against a subordinate, with a further charge of misuse of company property in that he had instructed the driver to use a company vehicle to ferry his children to and from school and to deliver mealie meal which led to the vehicle being involved in the road accident.

The Industrial Relations Court found that, because it was common practice for vehicles to be used to carry children and to carry mealie meal for employees, it was unfair to hold such practice against the respondent. With regard to the count of giving false information against the driver, the Industrial Relations Court found that, because the respondent later told the truth about having allowed the driver to go and see his sick wife, he had done nothing wrong. There was further evidence before the Industrial Relations Court that other employees had been guilty of misusing transport and had not been dismissed, and the court held that there had been discrimination against the respondent. The court further ordered that the respondent be reinstated and to be deemed to have been declared redundant with full terminal benefits on the 31st March 1992 upto which date it was ordered that he be paid all his salary arrears. In arriving at his decision the Industrial Relations Court held that they did not agree with the judgment of this court in *Ngwira v Zambia National Insurance Broker Limited* (1) and further held that they would define social status as relating to employment hierarchy.

On the appeal we asked Mr Sikatana on behalf of the respondent to open the arguments and he argued that the court below, having found that the treatment of the respondent was unfair, the case was distinguishable from the *Ngwira* case and the Industrial Relations Court had power to order reinstatement.

Mr Nchito on behalf of the appellant put forward a valid argument that in respect of the charge of giving false information about a subordinate which resulted in the subordinate's dismissal, the respondent was properly found to have committed the offence. Despite this argument however, the only ground of appeal put forward on behalf of the appellant was that the Industrial Relations Court had been wrong in finding that the complainant was discriminated against on the basis of social status and in this respect Mr Nchito argued that the principle of '*stare decisis*' applied. We agree with Mr Nchito that the Industrial Relations Court was in error when it sought to differ from the finding in the *Ngwira* case. We agree that, until such time as an earlier decision of this court is upset by this court itself, such decision remains binding on all other courts (see *Kasote v the People* 1977 Z. R - 75). The Industrial Relations Court in this case was not in a position to say that in their view the words 'social status' in section 198 of the Industrial relations Act referred to the appellant's position in the hierarchy of the company. As this court has been at pains to explain before, discrimination *per se* is not a ground for making an order for reinstatement. The fact that some members of a company are treated differently from others is evidence of discrimination but it is not in itself discrimination on the grounds of social status. In this case Mr. Nchito has quite correctly argued that there was no evidence from the respondent to show how he had been discriminated against because of his social class. We agree with Mr Nchito that the principle of *stare decisis* applies and the Industrial Relations Court had no power to reinstate in this case.

The Industrial Relations Court found that there was wrongful dismissal in this case and there

was no appeal against such finding. It follows therefore that the respondent is entitled to pay in lieu of the number of months notice to which he was entitled under the terms of his contract of employment.

For the reasons we have given the appeal is allowed and the order for reinstatement and payment of arrears of salary is set aside.

Costs of this appeal to the appellant.
Appeal Allowed
