

(Civil Jurisdiction)

GOODSON KAPEMBWA

Appellant

and

NATIONAL MILLING CO. LIMITED

Respondent

CORAM: Bweupe, D.C.J., Sakala and Chaila JJ.S.

18th and 20th April, 1995.

For the Appellant : In person

For the Respondent : Mr. I.C. Ng'onga of Ng'onga and Company

J U D G M E N T

Chaila, J.S. delivered the judgment of the Court.

Cases referred to:

- (1) Mumpa vs Maamba Collieries SCZ Judgment No. 29 of 1989
- (2) Saidi vs State Insurance Corp.

The appellant was an employee of the respondent company. On 3rd March 1991 he got involved in some problem at his working place. He was accused of having behaved in ungentlemanly manner which led him to being charged with riotous behaviour and use of an abusive language to his superiors. He was requested to exculpate himself, but he did not do so; he was asked to appear before the disciplinary committee of the company to answer charges but again he declined to do so, saying that there was no need for him to explain anything since he never committed any offence. His services were terminated and he was paid terminal benefits. He took the company to court and the case was dismissed. In disposing of the case the learned trial judge said:

"The evidence here is very clear and straight forward, from the evidence of the plaintiff himself, it crystalised that the plaintiff denied himself justice. He was given all the chances to give his side of the story but he stubbornly refused to cooperate with the Management. He even refused to attend a well constituted disciplinary committee to hear him.

/2... His insistence

His insistence that he would only attend to any authority if the charge was changed was childish because a charge is a mere allegation which can be proved or disproved. That is the reason why they called him to give his version of the story to show that his accusers were telling lies. His refusal to give his story is a clear manifestation that he had no contradicting evidence to one of those alleged that he acted violently and that the court cannot make language, therefore there is no merit in this claim and the court cannot make any declaration sought by the plaintiff. The learned trial judge went to say that there was no merit in the claim and dismissed the action."

The appellant has argued here that he could not attend the disciplinary meeting because he found it unnecessary to answer the charges he never committed. He has complained that he found it not necessary to be disciplined on the charges that he did not commit despite they knew very well that there was no riot at the company. He further complained that on writing a dismissal letter, he found that it was not proper for the Manager or Head of Department to write it without the knowledge of Personnel Department. He further complained that they calculated wrong terminal benefits using leave days of 34 days when in the actual fact his payslip was reading 77 days without considering the years he served with the company. He further complained that there was no riot which he committed at the company and that he never used any abusive language or words to anybody at the working place.

We have considered the evidence and documents placed before the lower court and we have observed that there was a careless use of the word riot in the levying charges against the appellant. The evidence did not prove that there was any riot. The evidence showed that the appellant after the incident of the alleged violent behaviour at the place of work was given chance to exculpate himself but did not do so. He was further given a chance to appear before the disciplinary committee but he declined. In our view the rules of natural justice were followed in handling this case. But despite all that, the appellant was not dismissed from employment but the services were merely terminated. In the case of Mumpa v. Maamba Collieries (1) it was clearly spelled out that the employer does not have to give reasons to terminate the employment of the employee. This case was recently followed in the case of Saidi v. State Insurance Corp (2).

The Respondent's Advocate has maintained that the learned trial judge was proper in dismissing the case. The appellant was given ample opportunity to appear before the Disciplinary Committee to clear himself of those charges. Mr. Ng'onga has maintained that the learned trial judge made a correct decision. We have considered the authorities already referred to above and facts of the case and we fully agree with the conclusion reached by the learned trial judge. We agree that the appellant denied himself chance to avail himself of the rules of natural justice when he refused to exculpate himself and to appeal before the disciplinary committee.

For the foregoing reasons this appeal cannot succeed. The appeal is dismissed and since the learned trial judge had ordered that there will be no order as to costs, we also order that there will be no order as to costs.

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B.K. Bweupe
DEPUTY CHIEF JUSTICE

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E.L. Sakala
SUPREME COURT JUDGE

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M.S. Chaila
SUPREME COURT JUDGE