IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL NO. 112 OF 1995

HOLDEN AT NDOLA

(Civil Jurisdiction)

B E T W E E N:

C. KAPANSA AND 47 OTHERS Appellants

vs

ZAMBIA CONSOLIDATED COPPER MINES LIMITED Respondents

Coram: Sakala, Chaila and Chirwa JJs at Ndola on 7th March and 4th June, 1996

For the Appellants: Mr. M. Chitabo, Chitabo Chiinga Associates

For the Respondent: Mr. J.K. Kaite, Assistant Legal Counsel, ZCCM

J U D G M E N T

Chirwa, J.S. read the judgment of the Court.

Cases referred to:-

(1) ZAMBIA BROADCASTING CORPORATION LTD v PENIAS TEMBO 7 OTHERS SCZ JUDGMENT NO. 9 OF 1995

(2) CONTRACT HAULAGE LTD v KAMAYOYO [1982]ZR 13

This is an appeal by the 47 appellants against the awards given to them by the High Court after entering judgment in their favour.

The history of the matter is that the appellants were employed by the respondent at its Mufulira Division in various capacities. Part of the conditions of service were governed by a Collective Agreement entered into by the appellants' Union and the respondents' Association of Employers.

From about 31st August, 1992 the appellants received individual letters giving them notice of redundancy giving them three months notice effective from 31st September, 1992 and the last shifts were on 30th November, 1992. They were however given an option, if they so wished, to leave immediately and were to be paid three months basic salary in lieu of notice. There are some who opted for the three months pay in lieu of notice, others served the three months. The claim of the appellants as endorsed on the writ was for:

(i) A declaration that the respondent breached Clause 3 of the Redundancy agreement dated 26th August, 1992 when it gave notice of redundancy to the appellants on 30th August, 1992 when it failed to give alternative employment to the appellants;

(ii) Damages arising from the said breach of agreement;

(iii) A further declaration that the appellants had been discriminated against on ground of age in the award of the redundancy package in that those of 50 years and above had better package than themselves;

(iv) An order that the respondent pays the appellants the difference between the 30th November, 1992 and 1st December 1992 redundancy packages with interest.

The relevant Clause 3 of the Redundancy Agreement reads as follows:-

"3. In the case of Redundancy mentioned above, the managements of the member companies of the Association shall initially endevour to find alternative employment at any Division of the member companies before declaring an employee redundant provided always:

(i) that where such alternative employment is found at a grade equivalent to the former job, any employee to whom an offer of such alternative employment is made who refuses such offer shall have his employment terminated and shall not be entitled to any redundancy compensation except that:

(a) in cases where an employee is aggrieved by such offer of employment, he may within seven days of notification of the said offer refer his grievance (stating his reasons) to the Divisional Redundancy Review Committee (constituted of an equal number of management and Union representatives) which shall hear and determine his case;

(b) .....(not relevant)

(ii) .....(not relevant)"

This Redundancy Agreement was to run from 1st July 1992 to 30th November, 1992.

From the evidence the learned trial Commissioner found that out of the original 62 plaintiffs, the letters of redundancies in respect of 11 plaintiffs, namely plaintiff 1, 2, 3, 7, 13, 15, 18, 19, 20, 22 and 62 were written after the respondent had endevoured to find alternative employment but failed to secure any. Further during the trial cases for plaintiffs number 5, 9, 14 and 16 were discontinued and this left only 47 plaintiffs in the court below.

The finding of the plaintiffs listed above as having been written to after endevouring to find alternative employment cannot be faulted, there was ample evidence to support this finding. For the remainder of the 47 plaintiffs in the court below, the learned Commissioner found that their letters of redundancy were written before the respondent endevoures to find alternative employment were made. This finding cannot be faulted also although there is evidence that there was communication later that there was no alternative employment in the other divisions of the respondent. There is no cross-appeal on this finding. In view of the evidence that the respondent did infact make an effort to find alternative employment for the 47 plaintiffs in the court below after they were written letters of redundancy and there was none available, in our view shows that there was merely a technical breach of the Redundancy Agreement. We agree that it was obligatory for the respondent to endevour to look for alternative employment before declaring any unionised employee redundant per the Redundancy Agreement of 26th August, 1992. The breach in the agreement, which we have found to be technical, the evidence is that if the respondent waited for the responses before the letters of redundancy were written, the outcome would have been that the three months notices required under the agreement would have been covered by the new redundancy package which came into effect on 1st December, 1992. In awarding damages for this breach of agreement, this is the formula that the learned trial Commissioner used and it is this mode of calculating damages that the appellants have appealed against.

In arguing this appeal, Mr. Chitabo, for the appellants advanced two grounds of appeal. The first ground was that the learned trial Commissioner erred to have quantified damages for breach of contract as the difference between the old redundancy package and the new package that came into effect on 1st December, 1992.

He submitted that adequate damages should have been awarded and to this effect, in the absence of any measure in the agreement one year (1) salary would have been adequate damages as this court did in the case of TEMBO v ZNBC (1) if he failed to reinstate them. We should state that the TEMBO case (1) was one where the Industrial Relations Court found that there was discrimination on account of political affiliation or belief and one of the remedies is reinstatement. This court, under the circumstances of that case of having the positions of the apellants already filled, ordering their reinstatement would have led to some dislocation at ZNBC, felt that one year salary was adequate damages. In the present case, the court below found that there was no discrimination at all and the case was therefore a normal breach of contract of a master and servant relationship and guided by the KAMAYOYO Case (2) the relevant conditions of service of master and servant contract if any, have to be resorted to in calculating damages. It is agreed that the redundancy package of 26th August 1992 formed part of the conditions of service for the appellants and this agreement provided for three months notice or three months salary in lieu of that notice. This was what was done except that the period, if given after getting the responses from the other divisions of possible redeployment of the appellants in those other divisions, the notices would have expired under the new package which came into force on 1st December, 1992.

Having taken this approach, we cannot fault the learned trial Commissioner in assessing damages suffered by the appellants in this form. We do not see any reason for departing from calculating damages according to what notice is provided for under the conditions of service. The learned trial Commissioner, therefore did not err in calculating damages due to the apellants under this formula.

We see no merits in these appeals and they are dismissed with costs to the respondent to be agreed in default to be taxed.

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E.L. Sakala
SUPREME COURT JUDGE

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE