BARCLAYS BANK ZAMBIA LIMITED v MANDO CHOLA AND INGATIUS MUBANGA (1997) S.J. 35 (S.C.)

SUPREME COURT
M. M. S. W NGULUBE, CJ, W. M./MUZYAMBA AND LEWANIKA, JJ.S.
4TH MARCH AND 3RD JUNE, 1997
(S.C.Z. JUDGMENT NO. 8 OF 1997)

Flynote
Trade union - Illegal strike - Consequences.

Headnote
The respondents, employees of the appellant and members of the Zambian Union of Financial Institutions and Allied Workers, embarked on an illegal strike and were dismissed. Proceedings in the Industrial Relations Court led to finding that the dismissals were unfair. On appeal, as against first respondent only, the award of four years' salary put in issue; as against second respondent, the appellant questioned both the finding of liability and the compensation of three years' salary.

Held:

(i) The general jurisdiction of the Industrial Relations Court and the expansive extent of it is manifest in section 85 under various subsections which cumulatively, confer a sufficient jurisdiction unrestrained by technicalities under which real justice can be dispensed. Subsection 4 of section 85 for example confers jurisdiction to hear any dispute between employers and employees even if not connected with group rights or grievances.

(ii) In the process of doing substantial justice, there is nothing in the Act to stop the Industrial Relations Court from delving behind or into reasons given for termination in order to redress any real injustices discovered

(iii) It is not wrong for a court of substantive justice to entertain a complaint however inadequately couched-especially be a lay litigant - and to make a decision or give an award on the merits of the case, once it is heard

(iv) When the Industrial Relations Court makes a decision, parties can only appeal to the Supreme Court against that decision on a point of law and not of fact

(v) The Principle in *Mubanga* on plaintiffs mitigating their loss of employment should also guide the Industrial Relations Court

Cases referred to:

(i) Zambia Consolidated Copper Mines Limited v Matale S.C.Z. Judgment No. 9 of 1996
(ii) Zambia Airways v Gershom Mubanga S.C.Z. Judgement No. 5 of 1992

For appellant: Mr. L M Matibitini of Matibini and Company
For respondents: In Person

Judgment

M. M. S. W NGULUBE, C.J.: delivered the judgment of the Court.

On 27th June, 1997, bank employees in various towns who belonged to the Zambia Union of Financial Institutions and Allied Workers went on an illegal strike. Some were employees of the appellant bank which dismissed those of the employees who defied an order report for work on the mentioned date. The two respondents were among those who were dismissed in connection with the illegal strike. Their appeals and representations to the management in which each explained the innocent nature of their own absence were unsuccessful. The respondents commenced proceedings in the Industrial Relations Court. Each alleged that there had been discrimination on the grounds of social status, an allegation which was clearly not tenable and was not surprisingly rejected by the trial court. But the first respondent also stated in his notice of complaint that he was off sick on the day he was alleged to have gone on an illegal strike; while the second respondent had also stated that he was not given an opportunity to exculpate himself.

The Industrial Relations court found as a fact that the dismissal of the respondents were unwarranted and unfair. In the case of the first respondent, the court accepted and found that he was not on strike but off sick with the knowledge and permission of his supervisor. In case of the second respondent, the court accepted his evidence and found that he was physically prevented from reporting for work by the appellant's security guard who barred ingress. The trial court awarded the first respondent compensation equal to four years' salary and to the second respondent compensation equal to three years' salary.

As against the first respondent, there is no appeal on the finding of liability, the appeal in his respect being confined only to the award of four years' salary. As against the second respondent, the appeal relates both to the finding of liability and to the amount of compensation.

Mr Matibini's first argument on the question of liability was that because the second complainant had based his complaint on discrimination contrary to the relevant section of the Industrial and Labour Relations Act, the court should not have gone outside the case as pleaded to find for the second respondent on the basis of unfair dismissal.

It was submitted that the concept pleadings should apply even in the Industrial Relations Court to guide the dispensation of substantial justice. We take the opportunity to dispel the notion that the Industrial Relations Court should be regarded as a court of technicalities and pleadings. In ***Zambia Consolidated Copper Mines Limited v Matale*** **S.C.Z. Judgment No. 9 of 1996**, we expressed ourselves in the following terms and we quote:

> "The general jurisdiction of the Industrial Relations Court and the expansive extent of it is manifest in section 85 under various subsections which cumulatively, confer a sufficient jurisdiction unrestrained by technicalities under which real justice can be dispensed. Subsection 4 of section 85 for example confers jurisdiction to hear any dispute between employers and employees even if not connected with group rights or grievances."

The subsection reads:

> "*The court shall have the jurisdiction to hear any dispute between any employer and an employee notwithstanding that such dispute is not connected with a collective agreement or other trade union matter.*"

There is nothing in the language of this subsection to suggest that certain genuine complaints of any particular kind or category may not be litigated such as wrongful, or unjust dismissal.

The mandate in subsection 5 which requires that substantial justice be done does not in any way suggest that the Industrial Relations Court should fetter itself with any technicalities or rules. In the process of doing substantial justice, there is nothing in the Act to stop the Industrial Relations Court from delving behind or into reasons given for termination in order to redress any real injustices discovered;"

While, undoubtedly, it would be desirable that a recognisable cause of action should be manifest in the originating documents including the affidavits in order that the opponent may have reasonable notice of the case to be met and so prepare adequately, nonetheless, it is not wrong for a court of substantial justice to entertain a complaint however inadequately couched-especially by a lay litigant - and to make a decision or give an award on the merits of the case, once it is heard. The hearing is frequently a summary one and there is no need to depart from such practice. It follows that we do not accept the argument based on the "pleadings," such as they are.

Mr Matibini's alternative argument was that the finding of unfairness was not borne out by the evidence. He pointed out that there was variance between the second respondent's evidence-in-chief and that under cross examination. Thus while he had testified in chief that the security guard barred entry into the bank and told them he would not allow anyone who had attended the Union meeting to enter, the witness had stated under cross-examination that the Union had told them at the meeting not to report for work. The trial court had the variance in front of it and it accepted that the second respondent was prevented from reporting for work. That court had the advantage of seeing and hearing the witnesses at first hand and we cannot lightly interfere with their findings of fact. Above all, as we pointed out in the *Matale* case, parties can only appeal to this court (in terns of S.97 of the Act) on a point of law or any point of mixed law and fact. There was evidence to support the finding complained of so that we cannot say that it was a finding which was unsupported or which was made on a view of the facts which could not reasonably be entertained. In short, no question of law or of mixed fact and law arose in the ground of appeal advanced. We reject this aspect also. The result is that we do not disturb the finding of liability in favour of the second respondent.

The second ground of appeal was against the quantum awarded to the two respondents for these unfair and unwarranted dismissals. It was submitted that the awards were excessive and appear not to have been based on any rational criteria. Mr Matibini pointed to the absence of any *mala fides* in the terminations and to the principle that all plaintiffs are required to mitigate their loss. He suggested that compensation be based on the period of notice which would have been applicable had notice been invoked or alternatively, on the principle in ***Zambia Airways v Gershom Mubanga*** **S.C.Z. Judgment No 5 of 1992** of taking a period within which the employee could reasonably be expected to have obtained other comparable employment. These were valid submissions. Although the concept of substantive justice would be inconsistent with tying an award to the period of notice under the contract of employment, the *Mubanga* principle and the principle of mitigation should guide even the Industrial Relations Court; although, of course, that Court is expected to be more liberal and generous in its awards.

We allow this part of the appeal and set aside the awards below. In their place, each respondent will get compensation equivalent to twelve (12) months salary and fringe benefits (if any).

In all the circumstances of the case there should be no order for costs and each side will bear their own costs.

Appeal Allowed in part