

## **BANK OF ZAMBIA v KASONDE (1995 - 1997) Z.R. 238 (S.C.)**

SUPREME COURT

CHAILA, CHIRWA AND MUZYAMBA, JJ.S.

**30TH JULY AND 10TH DECEMBER, 1997.**

(S.C.Z. JUDGMENT NO.14 OF 1997)

### **Flynote**

Employment - Wrongful dismissal - Remedy.

### **Headnote**

Respondent employed by appellant in a clerical capacity. Was summarily dismissed for dishonesty but important invoices never produced in disciplinary hearing or in the High Court. Allegation of dishonesty not proven and dismissal therefore wrongful. Finding, furthermore, that special circumstances existed to justify order of reinstatement.

### **Held:**

- (i) The reason for respondent's dismissal raised a serious stigma against him.
- (ii) Reinstatement, a remedy rarely granted unless special circumstances present, which was the case here.
- (iii) Appellant a public institution which should adhere to fair play.

### **Cases referred to:**

- (1) Vine v National Dock Labour Board [1956] 1 All E.R. 1.
- (2) Francis v Municipal Councillors of Kuala Lumpur [1962] 3 All E.R. 633.
- (3) Zambia Airways v Gershom Mubanga (1990-92) Z.R. 149.
- (4) Contract Haulage v Kamayoyo (1982) Z.R. 13.

For the appellant: F.J. Mensah of Achimota Chambers.

For the respondent: M.F. Sikatana of Veritas Chambers.

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## **Judgment**

**CHIRWA, J.S.:** delivered the judgment of the Court.

This is an appeal by the Bank of Zambia, hereinafter referred to as the defendant for that is what it was in the Court below, against the judgment of the High Court in favour of Joseph Kasonde, hereinafter referred to as plaintiff, where it was adjudged that the plaintiff be reinstated in his former job with all his benefits following his dismissal.

The undisputed facts are that the plaintiff was employed by the defendant in January, 1989, as a clerical officer. His duties involved the processing of invoices for approval before payment in respect of stationery, insurance and fuel. On the procedure of obtaining fuel, it was common cause that the plaintiff would carry with him an invoice book on going to the garage and he

would be accompanied by a security officer who would carry a security fuel book. At the garage the vehicles would be filled with petrol, then the plaintiff, driver, security officer and the petrol attendant would sign the invoice book. The security officer would then enter in his book the security fuel book. On 4<sup>th</sup> December, 1991, the plaintiff was asked to see Mr Mwansa, a security investigations officer who in turn told him to see Mrs Chikumbi, another security officer where he was told that they had enough evidence to prove that on a certain day the plaintiff had gone to Levi Filling Station with three vehicles to fill in fuel but that one of these vehicles was parked at the bank already fuelled while another was in the garage. He was asked for the invoices but the plaintiff pleaded ignorance of the said invoices. He asked for invoice numbers so that he could check and bring the original, but he was told that he should just produce the invoices or else things would not be good for him. The plaintiff then asked for the names of the drivers, the security officer and the vehicle numbers but he was told not to waste their time but was only given the name of the security officer as Mr Kaluba Muzeba who was called and asked to give details but he failed. The group was then joined by a senior security officer by the name of Nenechi who advised the plaintiff to co-operate and bring the invoices or else they would recommend for his suspension. The plaintiff still told them that he could not bring something he did not know. The plaintiff was then asked to give a statement to Mrs Chikumbi. A statement was recorded which the plaintiff however said that it was not his and he signed in anger.

A few days later he received a suspension letter; the suspension was indefinite and he was put on half salary. The plaintiff was later put on a disciplinary charge of dishonest conduct contrary to s 6.5(a)(ii) of the Bank of Zambia Disciplinary Code. He wrote an exculpatory statement in which he still pleaded ignorance and requested for invoice numbers, vehicle numbers, drivers' names and date when he is alleged to have conducted himself dishonestly. This information was not given to him. In August 1992 he appeared before a disciplinary committee where he was then told that the service station involved was Standard Auto Filling Station. He admitted signing the invoices because his signature was on them. The plaintiff then asked for the security fuel book, the book was called for but never brought. In November 1992 the plaintiff was called before the disciplinary committee again and was told that they were ready to pass their verdict and he was asked if he had any questions. The plaintiff then reminded them of the questions raised at the last meeting in relation to the security fuel book. On 3rd December, 1992, he received his summary dismissal letter. He appealed and his appeal was dismissed. On the evidence the learned trial judge found that the plaintiff was dismissed for the alleged dishonesty which involved fuel invoices. She accepted that with the system in place at the defendant's place any anomalies would easily be detected because of the number of people signing the invoices and the security fuel book. She found that the invoices allegedly involved were never produced to the plaintiff and not even in Court. She finally found that the allegation of dishonesty was not proved and therefore dismissal of the plaintiff was wrongful and she found that there were special circumstances in this in which the Court could order reinstatement. The special circumstances were put by the learned trial judge as:

“In this case, I have found that the allegations against the plaintiff are unsubstantiated. The fate of the other players he should have worked with or if they were exonerated is unknown. The defendant bank is a public institution and those running it must at all times adhere to the principles of fair play. Dismissals based on misconduct must be on proved grounds. All employees should enjoy equal treatment under the ruling regulations. My considered view is that these are special circumstances to warrant this Court to exercise its discretion in favour of the plaintiff. I accordingly order that the plaintiff should be reinstated to his former job and paid all his arrears of salary and benefits from the date of his suspension up to date.”

Although the memorandum of appeal alludes to challenging the finding by the learned trial judge that the dismissal was wrongful, the appeal was argued mainly against the order of reinstatement. It is therefore plain that the appeal against this finding was abandoned. In the

same vein the finding by the learned trial judge that the allegations of dishonesty levelled against the plaintiff were not proved was not argued on appeal, therefore it stands.

Having said so we will now consider whether the learned trial judge was wrong in exercising her discretion in ordering the reinstatement of the plaintiff in his former job with all the benefits. In arguing the appeal, Mr Mensah submitted that the relationship between the plaintiff and the defendant was an ordinary master and servant relationship which could be terminated by either party and if there was any wrongful termination, the only remedy was damages and not reinstatement. He submitted that this point was well explained in the case of *Vine v National Dock Labour Board* [1] where it was said that in ordinary master and servant relationship, the relationship is effectively terminated even if it is terminated summarily or by giving insufficient notice although in breach of contract and the remedy is in damages. It was submitted that in *Vine's* case the dismissal was found to be invalid because the law under which he was dismissed was not followed. Mr Mensah further referred to the case of *Francis v Municipal Councillors of Kuala Lumpur* [2] where it was reiterated that the remedy of reinstatement is rarely granted unless there are special circumstances and the case of *Vine* [1] was specifically referred to. Mr Mensah tried to distinguish the *Zambia Airways v Mubanga* [3] case from the present case saying that in *Mubanga's* case the procedure was not strictly followed and also there were persons on the committee who were interested persons; and that although reinstatement was ordered, he was paid damages instead.

In reply Mr Sikatana for the plaintiff submitted that the findings of the learned trial judge were correct. The allegations against the plaintiff were vague and unknown even to the person who is said to have recorded a statement from the plaintiff and they were not proved even at the disciplinary committee stage. From the system used in procuring fuel, it is clear that the plaintiff could not alone falsify invoices because of the number of people required to sign. Also there was a further protection of the security fuel book. It was further submitted that the Court below correctly accepted the plaintiff's evidence that he never volunteered the statement attributed to him and that he signed in anger. On the evidence before her the learned trial judge was correct to find that there were special circumstances in the case which showed that damages would not be enough.

We have seriously considered the evidence and the judgment in the Court below and submissions before us. Looking at the evidence before the Court below, we cannot fault the finding of the learned trial judge that the allegations against the plaintiff were not proved. Even the charge of dishonest conduct lacks particular and details to enable anyone defend himself. It does not give the date(s) of the misconduct and what that misconduct was. It is alleged that investigations revealed that the plaintiff fraudulently raised invoices. Details such as dates, invoice numbers and the amounts involved are not given. In fact they alleged that he paid for them, so what is the loss to the defendant? They don't allege that he wanted a refund. Throughout the plaintiff pleaded ignorance of these invoices right from the beginning when he was first interviewed, at the disciplinary committee meeting and when he was charged. He kept on asking for details and the same were not forthcoming. It seems it was a fishing expedition by the defendant because the statement recorded from the plaintiff does not state why a statement was required from him to show what they were investigating. Even the recorder of the statement stated in Court that she had no details. None of the defendant's witnesses gave details of what they were investigating. We are sure up to now they don't know. If the defendant was following its disciplinary code in charging the plaintiff it should have given all the details. Also the service station changed from Levi to Standard Auto Service Station. In essence its disciplinary code was not followed; it was a straightforward wrongful dismissal.

The Court was left with the question of what remedy to give the plaintiff. The plaintiff prayed for reinstatement. It is trite law that the remedy of reinstatement is granted sparingly, with great care and jealousy and with extreme caution. The learned trial judge was very much

seized with the general principle of the law and she found in this case that there were special circumstances which we can enumerate as follows:

- (i) The allegations against the plaintiff were unsubstantiated.
- (ii) The fate of the other players he should have worked with or if they were exonerated is E unknown.
- (iii) The defendant is a public institution and those running it must at all times adhere to the principles of fair play. Dismissals based on misconduct must be on proven grounds. All employees should enjoy equal treatment under the ruling regulations.

And we may add a further factor in this case and that is that the plaintiff had been dismissed for dishonest misconduct. This is a very serious stigma to carry with which the plaintiff cannot easily get employment especially in Zambia now with a lot of unemployment. This stigma cannot be atoned by damages, it can only be atoned by the defendant themselves. We are aware of what we said in the *Kamayoyo v Contract Haulage* [4] but the circumstances of this case take it out from the normal master servant cases where damages would be adequate. Reinstatement is the only equitable and reasonable remedy so that the defendant may atone for the stigma pinned on the plaintiff. We are of the view that the learned trial judge was right in granting the remedy of reinstatement prayed for by the plaintiff that the case contain those special circumstances under which it can cautiously and jealously be granted. We would therefore dismiss the appeal with costs both here and in the Court below. The defendant has other avenues open to it such as early retirement package. To be more fair the arrears due attract interest at 15 % per annum up to date of reinstatement and thereafter 6 %.

Appeal dismissed.

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