

HOLDEN AT LUSAKA

(Civil Jurisdiction)

SYME BILL CHILALA MWIINGA

Appellant

and

NATIONAL AGRICULTURE MARKETING BOARD

Respondent

CORAM: Chaila, Chirwa and Muzymba JJ.S.

6th February, 1996 and 11th July, 1997

For the Appellant : In person

For the Respondent : Mr. R. Simeza of Sangwa Simeza & Company

J U D G M E N T

Chaila J.S. delivered the judgment of the court.

In this appeal the issue involved is a claim by the appellant (herein after called the plaintiff) that when he was employed by the respondent (herein after called the defendant) he was given a wrong grading i.e. S13/10 instead of S8 and that his scale must be up graded to S8.

Briefly the facts in this case were that the plaintiff was employed by the defendant as security officer. He responded to the advertisement and he was interviewed and that during the interview he was informed that the job he was being interviewed for was at scale S8. He was surprised subsequently to get an offer at the scale of S13/10. He inquired from the Chief of Security why he was offered a lower grade. He was promised that they would look into the matter. He accepted the offer given to him and started work. He put up representations to the management about the scale but the management did not change the scale. He was later retired and took up the matter with Industrial Relations Court claiming that he had been discriminated on social status by not being offered the promised scale. The case was dismissed for lack of merit. In his appeal he has argued

that the court below erred by ignoring the facts and that the court further erred in not addressing itself on premature retirement and that he was discriminated. He further argued that the court erred in law and fact when it refused to make an order in his favour on the question of scale and urged the court to rule in his favour.

Counsel for the respondent Mr. Simeza submitted that the evidence in the lower court was very clear. The plaintiff was given an offer of the appointment at S13/10. The plaintiff accepted the offer and signed for it. He submitted that there was no evidence to support the claim that there was no other offer other than the one contained in the letter he accepted. On social status the counsel argued that the appellant was not discriminated on any ground. He relied on the case of **Ngwira vs Zambia National Insurance Brokers Limited** and urged the court to dismiss the appeal. On the question of premature retirement Mr. Simeza argued that it was not an issue before the Industrial Relations Court and that it was struck out.

We have seriously considered the submissions both written and those presented by the plaintiff. The plaintiff responded to the advertisement. He was interviewed for the job of security officer. He was later offered the post at S13/10 and he accepted the offer and reported for work. He may have made representations about the scale but the fact is he accepted the offer given to him. If he were not happy with the scale he would have declined the appointment. The appeal cannot succeed on the ground that during the interview a mention of S8 was made. On social status it must be observed that the appellant was not an employee of the organisation when he applied for the post. The evidence showed there were several of them who applied and a good number of them were taken and offered posts at S13/10. The plaintiff did not adduce any evidence to show that when he was offered S13/10 appointment he was discriminated on ground of social status. The lower court was right in rejecting the claim on the ground of discrimination of social status. The appeal cannot succeed on this ground.

The plaintiff raised before us the question of premature retirement. As rightly observed by Mr. Simeza, this was not an issue in the lower court. In fact that had been struck out. We cannot therefore consider this question.

For the reasons we have given above this appeal is dismissed. We make no order as to costs.

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE

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W.M. Muzyamba
SUPREME COURT JUDGE