

HOLDEN AT NDOLA

(CIVIL JURISDICTION)

B E T W E E N :

GLADY LUPUWE

APPELLANT

and

ZCCM LIMITED

RESPONDENT

Coram: Bweupe DCJ., Chaila, Lewanika JJS

On 4th September, 1996 and 29th December, 1997

For the Appellant - .N/A

For the Respondent - Assistant Legal Counsel, Nchanga House.

JUDGEMENT

Bweupe DCJ delivered the judgment of the court.

This is an appeal against a decision of a High Court Judge refusing to grant a declaration that the Appellant's dismissal was null and void.

The facts as appearing on the record are these: The Appellant was working for ZCCM Limited at Konkola Division as an Artisan. He said he was unfairly treated because before he was discharged, Grievance Procedure under the ZCCM Condition of Service was not followed. He said the person who made a complaint against him was not his immediate supervisor and was not given an opportunity to give a statement.

The Personnel Officer who gave evidence for the Respondent said that the Appellant was working for the ZCCM Limited as a Police Officer. The Appellant was taken on after sitting for an aptitude test and was transferred to engineering department as a trainee Artisan. When he failed his exams twice, they found him unsuitable for the course and surrendered him to Human Resources Department. The Head of the Department deployed him back

to the Mine Police Department where he was working before. After reporting for work as a Constable instead of a Sergeant, the rank he was holding before he was transferred, he told them that he was not interested to work as a Police Officer and applied for a long leave which was refused. After staying away from work for more than 10 days, he wrote a letter of resignation dated 4th March, 1994. It was too late because the Respondent had already dismissed him from employment.

The learned counsel for the Appellant, Mr. D.E. NDHLOVU of Luso Chambers presented two grounds of appeal, namely:-

1. that the trial Judge erred when he said that the Respondent was entitled to summarily dismiss the Appellant without a reason; and
2. that it also failed to consider alternative claims.

Mr. NDHLOVU then went on to argue the grounds. He said there was no desertion as the Appellant had reported for duty on four occasions. He said there would be no desertion for six days. He also argued that the trial Judge erred in not considering the alternate claims for damages or retrenchment.

The learned Advocate for the Respondent argued that the trial court came to the right decision in holding that the dismissal of the Appellant was lawful. He said the Appellant was recruited by the Respondent as a Police Officer. At his request was transferred to Engineering Department. He was sent back to Human Resources Department after failure in exams twice. He was transferred to go back to Police 4. He absented himself from duty for more than 10 days. He was charged and referred to give a statement in his defence. His resignation was not accepted as the Appellant was already charged and dismissed. Mr. CHAMUTANGI said further that this was a case of pure master and servant relationship and therefore termination of the Appellant's employment was effective.

The trial Judge, after considering the facts adduced before him and

the cases cited he came to the conclusion that the Grievance and Disciplinary Code had no application because it was not gazetted, it had no statutory support; that the relationship between the Appellant and the Respondent was that of master and servant and the Appellant was properly dismissed regardless of the reasons; and that the Appellant absented himself from duty for more than 10 days and discounted the suggestion that the Appellant had reported for duty on four occasions.

We have carefully considered the evidence, judgment of the court below and the authorities cited by both counsel. We are of the view that the Judge meticulously analysed the evidence, judgment of the court and cases cited. We find no error in his conclusion and he cannot be faulted. We confirm his finding that the dismissal was lawful and would also refuse to grant him a declaration that his dismissal was null and void. We would dismiss this appeal as being devoid of merit. Costs to follow the event and to be taxed if not agreed.

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B.K. Bweupe
DEPUTY CHIEF JUSTICE

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M.S. Chaila
SUPREME COURT JUDGE

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D.M. Lewanika
SUPREME COURT JUDGE