

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

SCZ APPEAL NO. 74/97.

Civil

CHARLES LITIA MUTEMWA APPELLANT
AND
NATIONAL HOUSING AUTHORITY RESPONDENT

Coram: Sakala ADCJ, Chaila and Chirwa JJS.
21st May and30th October,..1998.

For the Appellant, Mr. C.L. Mundia, of Mundia Kakoma and Company.
For the Respondent, Mr. A.J. Nyangulu of Nyangulu and Company.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

Cases referred to:-

- 1. Attorney-General Vs Mpundu (1984) ZR6.**
- 2. Zambia Privatisation Agency Vs Matale Appeal No. 96 of 1995.**
- 3. Kafue District Council Vs James Chipulu, SCZ judgment No 5 of 1997.**

This appeal was heard on 21st May, 1998 when Judgment was reserved. I was assigned to write the judgment of the court. But in the meantime there were a number of intervening events, among them, I had to be out of the country for a period of almost four weeks and the others being administrative oversight.. The delay in delivering this judgment is therefore deeply regretted.

This appeal is against the awards by the High Court to the appellant of six months salary in lieu of notice for wrongful termination of employment and K500,000.00 damages for mental distress and inconvenience. These awards were to attract interest at the rate of twenty percent per annum from the date of the writ up to the date of judgment and thereafter six percent per annum until final payment. There was a cross appeal which was abandoned during the hearing. The parties did not lead evidence. The decision of the court was based on a statement of agreed facts. The agreed facts in so far as they are relevant to the determination of the appeal against the quantum of damages are that, by a letter dated 16th March, 1991, the appellant was appointed by

the former Head of State as Managing Director of the respondent company for a fixed three years contract, renewable by mutual consent for terms of three years. Almost six months after his appointment there were no written terms and conditions of service in place. The terms and conditions of service were finally served on the appellant by letter dated 17th September 1991. These terms and conditions contained no termination clause.

By letter dated 20th November 1991, the appellant's appointment was nullified on the directives of the then Minister of Local Government on the grounds that the appointment was contrary to the provisions of the law governing the respondent and that his qualifications were not related to the operations of the respondent and that he was imposed on the respondent which imposition demoralized the rank and file

On 12th December, 1991, the plaintiff filed a specially endorsed writ claiming K11,039,215-00 as monies due to him as a result of the wrongful termination of employment. He also claimed damages for inconvenience and distress.

The learned counsel for both parties made submissions on liability based on the agreed facts and the law. The court found that the appellant was validly appointed as Managing Director of the respondent. The court then considered the consequences of terminating the plaintiff's contract before the full term agreed upon. The court found that the appellant's appointment even in the absence of a termination clause was subject to Section 26 of the Interpretation and General Provisions Act which provides that where by any written law a power to make any appointment is conferred, the authority having power to make the appointment shall also have power to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power. The court found that the respondent had the power, by statute to terminate the appellant's services before the contract ran its full course. The court however found that on the facts of the case, although the respondent had the right to terminate the appellant's services at any time, the termination of the appellant's services in the manner the respondent did, and for the reasons given in their letter dated 20th November, 1991, was unlawful and that the appellant was in fact summarily dismissed. The court

observed that the appellant committed no disciplinary offence to justify the summary dismissal.

On quantum of damages the court held that in the absence of the notice clause, six months was reasonable notice for the appellant to find alternative employment and mitigate his loss. This notice in terms of salary worked out to be K2,045,158.89. For convenience and distress the court considered the case of Attorney-General Vs Mpundu (1) in which the Supreme Court awarded K2000 as damages about thirteen years ago and that today K500,000 would be an appropriate award under this head.

In his submissions Mr. Mundia contended that the termination having been found to be unlawful the appellant should have been awarded damages equivalent to the remaining period of the contract and not narrowed to the notice period. Counsel argued that the case of ZAMBIA PRIVATISATION AGENCY VS MATALE (2) must be distinguished as there were aggravating circumstances in the present case in that the termination was done at political level and therefore the appellant could not easily have found another job to mitigate his loss. Counsel complained of the lower rate of interest. Mr. Nyangulu in his submissions supported the quantum of damages as awarded by the learned trial judge.

We have considered the facts of the case and the judgment of the learned trial judge in relation to the damages awarded. In determining the notice period at six months in the absence of the notice clause in the contract of employment we are satisfied that the learned trial judge cannot be faulted. In the case of ZAMBIA PRIVATISATION AGENCY VS MATALE, the contract of employment was terminated in the absence of any termination clause. The argument for the respondent was that he was entitled to full salary and benefits for the remaining period of the contract. We considered what amounts to reasonable notice in that case. We held that six months was reasonable notice and awarded six months salary in lieu of notice. Mr. Mundia contended that we should distinguish Matale case from the present in that the termination in present case was political and therefore appellant would not have easily been employed to mitigate his loss. This argument, attractive as it may be, does not

find favour with us. Termination of employment can be lawful or unlawful, justifiable or unjustifiable. The result is the same namely, the services of an employee come to an end. The individual has therefore a duty to mitigate his loss.

Mr. Mundia has complained that damages for inconvenience and distress were inadequate. The court considered the Mpundu damages and awarded a figure namely K500,000 higher than the Mpundu damages. In the recent decisions of this court one of them being Kafue District Council Vs James Chipulu (3), we upheld a claim for inconvenience and distress in the sum of K2,000,000. after considering the Mpundu case. On the facts of the present case we consider a sum of K500,000.00 for inconvenience and distress to be on the lower side bearing in mind the fast running inflation of the Kwacha. Accordingly we set aside that award. In its place we award a sum of K2 million for inconvenience and distress.

As regards interest awarded, we take note that it is a matter within the discretion of the court. We therefore find no basis to disturb the rate awarded. But this appeal is, however, allowed on the ground of quantum of damages for inconvenience and distress. The costs will follow the event to be taxed in default of agreement.

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E. L. Sakala,

ACTING DEPUTY CHIEF JUSTICE.

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M. S. Chaila,

SUPREME COURT JUDGE.

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D. K. Chirwa

SUPREME COURT JUDGE.