P.C.CHEELO AND 9 OTHERS v ZAMBIA CONSOLIDATED COPPER MINES LIMITED

SUPREME COURT
NGULUBE, C.J., MUZYAMBA AND CHIBESAKUNDA, JJ.S.
1ST JUNE AND 7TH SEPTEMBER, 1999.
(S.C.Z. JUDGMENT NO. 27 OF 1999)

Flynote
Employment - Redundancy Agreement - Terminal benefits and redundancy packages
Legal Process - High Court - Issue of Jurisdiction over employment matters.

Headnote
The appellants were employed by the respondent. They were members of Mineworkers' Union of Zambia. The Union and the Association of Copper mining employers, to which the respondent belonged signed a redundancy agreement on 26th August ,1992. Following the agreement the appellants were declared redundant but never received their terminal benefits or redundancy packages. They then commenced an action in Kitwe High Court for recovery of their benefits. The respondents. objected and filed summons to dismiss action on grounds that the court had no jurisdiction to try the case. The matter was heard by the District Registrar who, instead of dismissing the matter transferred it to the Industrial Relations Court. The appellants appealed to a judge in chambers who said there was no authority for the transfer of cases to the Industrial Relations Court and asked the appellants to discontinue the matter. On appel the court referred to Section 85(1) and (9), the latter of which gave the Industrial Relations Court jurisdiction over "industrial relations matters"...

Held:
(i) To give the expression "industrial relations matters" so wide an interpretation as to include breach of contract, wrongful dismissal or claims which could be tried by the surbodinate or local courts would lead to absurdity.
(ii) The High Court has jurisdiction to hear matters arising out of a pure master and servant relations.

For the Appellants: W.M. Forrest, Forrest, Price and Company.
For the Respondents: A. Imonda, Legal Counsel

Judgment
MUZYAMBA, J.S.: delivered the judgment of the court

This is an appeal against a High Court decision that it had no jurisdiction to try the appellants' case.

The appellants were employed by the respondent. They were members of Mineworkers Union of Zambia.The Union and the Association of Copper Mining employers, to which the respondent belonged signed a redundancy agreement on 26th August ,1992. Following that agreement the appellants were declared but never received their terminal benefits or redundancy packages. They then commenced an action in the Kitwe High Court for recovery of their benefits. The respondent objected and filed summons to dismiss the action on the ground that the court had no jurisdiction to try the case. The application was heard by the District Registrar who instead of dismissing the action transferred it to the Industrial Relations Court.

The appellants appealed to a Judge at Chambers who observed that there was no authority for the transfer of causes from the High Court to the Industrial Relations Court and advised the appellants to discontinue the action and seek leave of the Industrial Relations Court to file a complaint out of time.

The appellants filed four grounds of appeal. We propose to first deal with those grounds relating to the amendment to Section 85 of the Industrial and Labour Relations Act, Cap.269 and depending upon what we say on those grounds we may turn to other the ground on accrued rights.

Mr. Forrest argued that the learned Judge misdirected himself in finding that Act No.30 of 1997 which amended Section 85 of Cap.269 removed the jurisdiction of the High Court in all matters or disputes between employers and employees. That he also erred on the interpretation of the term ''Industrial Relations Matters'' in the amendment. He urged that definition of Industrial Relations Matters in Section 85 (9) of Cap.269 was unambiquous; that it related to collective agreements and disputes and other related matters. That to widen the interpretation and include petty disputes between master and servant which could easily be heard and tried by Local Courts would be absurd. That on a proper interpretation of the amendment not all disputes between master and servant are Industrial Relations matters and therefore that the High Court still has the jurisdiction to hear claims between master and servant and the present case was one such case which fall under the jurisdiction of the High Court because it was not a collective dispute but one involving Individual rights. On behalf of the respondent Mr. Imonda argued that the learned Judge was right on deciding that Act No. 30 of 1997 ousted the jurisdiction of the High Court in all disputes arising from master and servant relationships. That this was so is strengthened by Act No.15 of 1997 which amended Section 3 of the Employment Act, Cap.268 by omission of High Court from the definition of ''court'' and by defining the word ''court'' to mean Supreme Court and Industrial Relations Court. He further argued that the appellants' claim in this matter arose out of a Redundancy Agreement and therefore that it was an Industrial Relations matter in terms of Section 85 (9) of Cap.269.

We have considered the arguments by both learned Counsel. The new Subsection (1) of Section 85 of Cap.269 provides:

> "85(1) The court shall have original and exclusive jurisdiction to hear and determine any Industrial relation matters and any proceedings under this Act."

And the new Subsection 9 provides:

> "85(9) For the purpose of this Section 'industrial relations matters' shall include issues relating to:
>
> (a) Employers and their representative bodies. Inquiries, awards and decisions in collective disputes;
>
> (b) Interpretation of the terms of awards, collective agreements and recognition agreements;
>
> (c) General inquiries into, and adjudication on, any matter affecting the rights, obligations and privileges of employees;''

The key words in subsection (9) are collective disputes, collective agreements and recognition agreements, matters affecting the rights, obligations and privileges of employees, employers and their respective bodies. It is quite clear from this subsection that the terms ''Industrial Relations matters'' mean collective disputes, collective agreements or recognition agreements or matters affecting the rights, obligations and privileges of employees, employers and their

respective bodies under the signed agreement. In the instant case the appellants are no longer employees of the respondent and their claim is for benefits due to them under the redundancy agreement. To give the expression ''Industrial Relations Matters'' a wide interpretation so as to encampass cases of breach of contract, wrongful dismissal or claims of the nature before us which could be tried by a local court or subordinate court would lead to absurdity. We cannot conceive a situation where a domestic servant in Kaputa who has not been paid his salary or leave pay should come and file a complaint in the Industrial Relations Court in Lusaka or Ndola against his employer.

We also know that under the Employment Act, Cap.268 an employer may commit certain offences which hitherto have been prosecuted in the subordinate courts. We do not conceive any such prosecution before the Industrial Relations Court. We find therefore and hold that, notwithstanding the removal of High Court from the Employment Act and on a proper interpretation of subsection (9) of Section 85 of Cap.269 the High Court has jurisdiction to try cases arising out of pure master and servant relationships and the instant case is one such case. The appeal would succeed on this ground. In view of what we have said here we do not propose to deal with the ground relating to accrued rights.

We reverse the order below and order the High Court to hear and determine the case. Costs in this court will abide by the event and are to be taxed in default of agreement.

Appeal allowed.
