

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT LUSAKA**

**APPEAL NO. 128/2000**

**(CIVIL JURISDICTION)**

**AUSTIN HINYUNGWE MUHYILA**  
**AND**  
**ZAMBIA NATIONAL PROVIDENT FUND BOARD**

**APPELLANT**  
**RESPONDENT**

Corum: Chaila, Chirwa and Chibesakunda, JJS  
9<sup>th</sup> November 2000 and 27<sup>th</sup> August 2002

For the Appellant: Mr Mumba Malila of Phoenix Partners  
For the Respondent: Dr J Mulwila of Intuna and Partners

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**JUDGMENT**

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Chibesakunda, JS, delivered the Judgment of the Court

Due to the untimely death of our learned brother the Late Hon. Justice Chaila, who was supposed to have written this Judgment, this Judgment now is a majority Judgment. The delay in delivering it is deeply regretted.

In this appeal the Appellant who was a successful litigant before the Industrial Relations Court (IRC) has appealed to this court challenging the quantum of damages awarded to him.

Before the Industrial Relations Court the Appellant sued his former employers, Zambia National Provident Fund (ZNPF), seeking a declaration that his dismissal was null and void and then an order reinstating him and paying him compensation for wrongful and unfair dismissal. He had initially sought for an injunction to restrain the Respondents from evicting him from the house, Plot No. 6126, Mwinilunga Road, Sunningdale, Lusaka, pending the determination of this complaint by the Industrial Relations Court. That application was not part of the appeal before us.

His case before the Industrial Relations Court was that he was employed by the Respondent and rose to the rank of Board secretary/legal counsel. In June 1997, whilst he was in Mauritius on duty he suddenly received a call for him to come back.

When he got back to Zambia he was served with a charge stating that firstly he had corruptly obtained K2 500 000 00 from a Ms Catherine Mugala, Managing Director of Interland Marketing Limited as a reward or inducement to obtaining mortgage documentation and the disbursement of funds. Interland Marketing had applied for a loan of K450 000 00 to purchase a block of flats from ZIMCO in liquidation.

According to him the directors' code of discipline makes it obligatory for the Respondent to establish the allegations of corruption beyond reasonable doubt before any disciplinary measures can be taken against him. His case, therefore, is that the dismissal on the allegation of corrupt that had not been proved by the Respondent or any other disciplinary measures against him were a total miscarriage of justice.

The second charge against him is that he failed, neglected and ignored to ensure that suitable securities were in place before the disbursement of the loan to Interland Marketing Limited and that consequences of that failure and negligence was that the Boards' financial interests had and was at the time of hearing still subject to high risk.

The Appellant's case on that allegation was that the Loan Investment Committee of the Respondent had approved the loan and that the loan agreement had been duly executed and the title deeds released to the Respondents. His case is that the registration of the mortgage was the least element of such transaction. But under cross examination he conceded to the suggestion that he did not prepare a third party mortgage but according to him whatever actions he undertook in connection with the loan agreement amounted to an equitable mortgage.

On the third allegation relating to the that the mortgage transaction for La-Hacienda, Cash Mart Limited and Zambia Farmers' Cooperative Society Limited his case was that he prepared all the documents on the loan agreement Document No. 23 was the loan agreement, Document No. 24 – 40 was the specific charge, Document No. 41 – 51 was the mortgage, Document 56 – 58 was the certificate of title in the name of ZIMCO.

His case also was that as far as the assignment was concerned that was the responsibility of the Respondent's advocate, Messrs. Simeza Sangwa and Associates who were the advocates for Interland Market Limited. His witnesses included Ms Catherine Mugala who supported his case that he was not involved in any corruption and that the so-called minutes produced by the Respondent were a total fabrication.

The Respondent's case before the court, on the contrary, was that the Appellant was involved in corrupting Ms Catherine Mugala. They produced minutes of the meeting in the Managing Director's office between Interland Marketing Limited, Managing Director, Ms Mugala, and other people at which the minutes now produced before the court were taken. In these minutes then Ms Mugala informed the meeting that the Appellant had solicited for a bribe and that a sum of K2 500 000 00 had been given to him in order for him to facilitate the mortgage from the Respondent. So the their case was that the Appellant's contract was properly terminated for dishonest conduct under Clause 1.8 – 1.7 of the Disciplinary Code, which provides for summary dismissal. The Industrial Relations Court rejected the Respondent's story and ruled in favour of the Appellant. The learned Deputy Chairman with his members went on to award the Appellant as damages K15 000 000 00 as they ruled against reinstating him because of the hostilities prevailing in the Respondent's establishment.

The Appellant is now challenging that token sum advancing three grounds which are inter-related. The gist of the Appellant's arguments are that since the Industrial Relations Court found as a fact that the dismissal was null and void, it misdirected itself to award a token sum of K15 000 000 00 without justification. According to him the court should have in assessing damages considered the fact in law of a dismissal that is null and void. Consequentially, it was argued that the court should have considered the Appellant's entitlements, including fringe benefits. The sum awarded by the court was inadequate having no regard to the circumstances of the case.

The Respondent's case on the other hand which was a cross examination appeal is that the IRC erred in considering the evidence on record.

According to them there was sufficient evidence on corruption charges. So there was evidence of failure by the Appellant to adhere to the procedures in handling the mortgage application by Interland and Marketing Limited and La-Hacienda.

We have considered the evidence before the Industrial Relations Court. We have also weighed the arguments before us. We are of the view that the learned Deputy Chairman and his members were on firm ground in their findings on liability. On the question of damages, taking into account the various charges which this court has made, we hold the considered view that the lower court was on firm ground to award the amount of K15 000 000 00. Costs to be borne by the Respondents.

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**D K Chirwa**  
**SUPREME COURT JUDGE**

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**L P Chibesakunda**  
**SUPREME COURT JUDGE**