

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

APPEAL NO. 185 OF 2000

BETWEEN:

**ZAMBIA CO-OPERATIVE FEDERATION LTD
AND
ZONDANI LUNGU**

APPELLANTS

RESPONDENT

CORAM: Sakala, Chirwa and Chibesakunda, JJs on
11th September 2001 and 15th October 2002

For the Appellant: Mr. K. Shepande, Shepande & Co.
For the Respondent: Mr. N. Nchito, MNB Legal Practitioners

J U D G M E N T

Chirwa, JS, delivered judgment of the Court: -

This is an appeal from the Industrial Relations Court upholding the respondent's claim for wrongful dismissal and he was awarded retrenchment package and in the absence of the same, Statutory Instrument No. 171 of 1995 was to apply. The respondent was further awarded one-month salary in lieu of notice. The award attracted interest at the Bank of Zambia lending rate from the date of dismissal to date of payment.

The facts leading to the dismissal are common ground. The respondent was employed by the appellant in various capacities until as Controller, Commercial Operations. While working as Controller of Commercial Operations, he was made to act as Managing Director of the appellant whilst the substantive holder went on leave. Among other instructions, he was left with was never to deal with clients for sale of goods

without cash payment or bank guarantee. Whilst acting as Managing Director he was approached by a delegation of Lusaka Province Co-operative Union led by Chieftainess Chiawa who was a Board member for the appellant. They wanted to place an order for 300,000 empty grain bags and he reminded the delegation of the mode of payment. They produced a bank guarantee in the name of Lusaka Province Co-operative Union, which he rejected and asked them to secure one in the name of the bank. They produced a bank guarantee in the name of Lusaka Province Co-operative Union, which he rejected and asked them to secure one in the name of the appellant which they did. He inspected this bank guarantee and found nothing wrong on the face of it. He passed it on to his Finance/Administration Manager who also looked at it and found nothing wrong with it. The bank guarantee was accepted and the 300,000 empty grain bags were released to the Lusaka Province Co-operative Union. On the maturity date of the bank guarantee and when the appellants wanted to call upon the bank to pay, it was discovered that the bank guarantee was a forgery. The respondent was then charged with negligence in that he caused the loss of 300,000 empty bags some of which had not been paid for.

The respondent wrote his exculpatory letter and later appeared before the disciplinary committee of the appellant which found him guilty and dismissed him from his more than 8 years employment with the appellant. His appeal to the respondents Board was unsuccessful, hence his complaint to the Industrial Relations Court and its resultant judgment and award.

The Industrial Relations Court faulted the disciplinary committee chaired by the Managing Director instead of the Secretary-General of the respondent. Further the court felt it unfair that a man on whom the respondent depended for financial advice and who in fact never recognised the faulty bank guarantee should also sit on the disciplinary committee. The court was of the view that impartiality of the committee was compromised resulting in unfairness. On negligence, the court found that the respondent took prudent steps, including consulting the Managing Director and Finance/Administration Manager before he accepted the bank guarantee.

The court was of the view that the Finance/Administration Manager beguiled the respondent by not giving any advice and opinion on the bank guarantee. The court further was of the view that the respondent was dealing diligently with known people some of whom were on the appellant's Board and the Lusaka Province Co-operative Union was a known culprit and concluded that the respondent was not negligent. It then made the awards we have referred to already.

The first ground of appeal was that the court misdirected itself when it held that the disciplinary committee should not have been chaired by the Managing Director but the Secretary-General. It was submitted that the code provided that the Secretary-General could appoint a nominee to convene the meeting and that the Managing Director was such a nominee. Further it was submitted that there was nothing wrong in the Financial/Administration Manager sitting on the disciplinary committee. In reply for the respondent, it was submitted that the findings of unfairness of the disciplinary committee could not be faulted. The court was guided by the appellant's own code. Furthermore it was unfair for the Finance/Administration Manager to sit on the committee as he was a junior to the respondent.

We have considered the ground of appeal. Although the disciplinary code might provide for a Secretary-General to appoint a nominee, there is no evidence that the Managing Director was such a nominee. Further from the exculpatory statement of the respondent, it is clear that the Finance/Administration manager was mentioned as having had a sight of the bank guarantee but never offered any advice. This man was equally negligent if the respondent was negligent. He therefore had an interest to serve. We cannot fault the finding of the Industrial Relations Court that the committee was impartial. This ground of appeal is dismissed.

The second ground was that the court below did not properly direct itself when it held that the respondent was correct in receiving the defective guarantee and in releasing the 300,000 empty grain bags since the culprit, the Lusaka Province Co-operative Union was a known culprit and the people who

misbehaved are known. This ground of appeal cannot stand. It is a fact on the evidence that Lusaka Province Co-operative Union was a known "culprit" or institution. In fact it was a shareholder in the appellant. Also the people that the respondent dealt with over this bank guarantee were known people and were in fact on the appellant's Board. This obviously created more confidence in the respondent to deal with them over the bank guarantee. Who can suspect that a shareholder would defraud his own company or himself. This ground of appeal is also dismissed.

The third ground of appeal was that the court below misdirected itself when it held that the appellant has not suffered irredeemable financial loss. This ground cannot stand in view of the evidence on record which has also been reflected in the heads of arguments that a total of K140,000,000 has been recovered and the Lusaka Province Co-operative Union was still paying off the debt.

The last ground of appeal was on the award redundancy package and one month salary in lieu of notice, which were made to run at the Bank of Zambia lending rate of interest. Further that the respondent was not entitled to damages calculated under the formula in the Statutory Instrument No. 171 of 1995. We agree with this ground of appeal. We appreciate that the Industrial Relations Court is a court of substantial justice but awards should not lead to unjust enrichment. The court also should be guided by this courts guidelines on the award of damages. It is a fact that the Statutory Instrument No. 171 of 1995 does not apply to persons like the respondent. The respondent never was under the protection of the Minimum Wages and Conditions of Employment Act. In the absence of any redundancy package in the respondent's condition of service, the normal way of calculating damages on wrongful dismissal apply. We would therefore set aside the award made in this case and in its place, we award the respondent 2 years salary. The same

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will carry interest rate at the short-term fixed deposit account as advised by Bank of Zambia.

As the appeal has failed on liability but succeeded on quantum of damages only, we make no order as to costs.

E. L. SAKALA
SUPREME COURT JUDGE

D. K. CHIRWA
SUPREME COURT JUDGE

L. P. CHIBESAKUNDA
SUPREME COURT JUDGE