

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 96/2002

**HOLDEN AT KABWE AND LUSAKA
[CIVIL JURISDICTION]**

BETWEEN:

LUFEYO ZIMBA

- APPELLANT

AND

STANDARD CHARTERED BANK Plc-

RESPONDENT

Coram: Sakala, CJ; Mambilima and Silomba; JJS on the 6th of
November, 2003 and 16th November, 2004.

For the Appellant - In Person.

For the Respondent - Mr. M. Banda, of Banda, Watae and
Advocates.

JUDGMENT

Mambilima, JS, delivered the Judgment of the Court.

Authorities and Legislation referred to:

1. **The Industrial and Labour Relations Act, Cap 269 of the Laws
of Zambia.**
2. **Zambezi Ranching vs Lloyd Chewes, Appeal No. 128 of 1999.**

This is an appeal by the Appellant against the Judgment of the Industrial Relations Court dismissing his complaint which he had lodged under Section 85(4) of the Industrial and Labour Relations Act .⁽¹⁾

The Appellant contended in his complaint that he was unfairly dismissed by the Respondent.

From what we can ascertain from the record, a forged cheque, drawn on the Respondent Bank, was presented to Kamwala Bargain Centre on the strength of which a number of goods were collected, among them, a radio which was found at the Appellants' home. According to the Appellant, he was not at home when the radio was brought. His explanation was that the radio was handed over to his wife who informed him that it was brought by his workmate, who was in the company of two others. They had brought it for sale.

The Appellant told the Court below that after three days, he was called by the Manager and asked about the radio found at his house. He explained that the radio was brought by his colleague, John Mwanda and that he did not know that it was stolen. This explanation was not accepted by the Respondent. The Appellant was charged with theft and given 24 hours in which to respond.

According to the Appellant, upon being charged, he was asked to resign but he refused, upon which he was locked up in the toilet for 45 minutes. He told the Court that after his incarceration in the toilet, he wrote the letter of resignation. The Appellant further testified that the Branch Manager drafted an exculpatory letter and asked him to copy it in his own handwriting. The Appellant refused because he wanted a Union Representative to sign as a witness. He was told to go and that he would be called later.

The Appellant further testified that three days later, he explained to his Union Chairman of what had happened. The Chairman advised him to withdraw both the resignation and the exculpatory letters. When he tried to do so, the Respondent only acceded to the withdrawal of the resignation letter, stating that the exculpatory letter could not be withdrawn until the tribunal was held. According to the Appellant, the tribunal was never held. Instead, he received a letter of summary dismissal on 13th January 1998. His appeal against dismissal to the Respondent's Appeals Committee was unsuccessful.

The Respondent, through DW1, denied having forced or dictated to the Appellant to write the resignation and the exculpatory letters. DW2, a former Cash Controller with the Respondent, testified that the fraudulent cheque had been presented to Kamwala Bargain Centre by

John Mwanda, a Messenger at the Bank and he is the one who implicated the Appellant. This witness told the Court below that a Disciplinary Tribunal was held on 7th January, 1998 and that the Appellant and a Union representative were present.

After considering the evidence before it, the Court below found that a forged cheque had been presented to Kamwala Bargain Centre by a Messenger from the Bank, who implicated the Appellant. The Court also found that the Appellant was found with a radio which was among the items procured by the forged cheque. The Court found that the implication of the Appellant by the Messenger and the finding of the radio in his possession was an odd coincidence which was unexplained and turned out to be supportive evidence.

The Court was of the view that the Appellant dwelt so much on procedural impropriety. Relying on the case of ***Zambezi Ranching vs Lloyd Chewes***⁽²⁾, the Court was of the view that it could not gloss over the wrong doing by the Appellant, in view of the facts and evidence which it ought to reasonably entertain. The Court found that there were no procedural defects but observed that even if there were, any reasonable tribunal would have reached the same conclusion, adding that the Court could not put a premium on dishonest bank employees, as the public

may lose confidence in the banking system. The Appellant's claim was dismissed.

Before us, the Appellant has advanced one ground of appeal; that the Court below misdirected itself on points of law and facts. The Appellant maintained that his exculpatory letter was drafted by the Manager and he was forced to sign so as to implicate him in the whole episode. The Appellant also submitted that the presenter of the cheque to Kamwala Bargain Centre was John Mwanda and that the finding of the radio at his house should not be taken to be supportive evidence because the radio was left there for him to buy. The Appellant denied that there was any conspiracy between him and John Mwanda, stating that he did not know of the fraudulent transaction in which the goods were stolen. The Appellant further submitted that John Mwanda denied that the Appellant had anything to do with the theft stating that he had brought the radio to the Appellant for him to buy. The Appellant maintained that he did not commit the offence.

Mr. Banda's response to the Appellant's submission is that the Court below was on firm ground in adjudging as it did on the matter. Counsel pointed out that the Appellant's story that he was forced to write the letter of resignation and the exculpatory statement was denied by DW1. The Court considered the issue and in its wisdom, disbelieved the


Appellant. Mr. Banda further submitted that the Court below did not misdirect itself in respect of the presenter of the fraudulent cheque at Kamwala Bargain Centre and in respect of the implication of the Appellant in the fraud. For this submission, he referred us to page 9 of the record of appeal, on which the Court observed that it was an odd coincidence that the presenter of the forged cheque implicated the Appellant and an item procured with the forged cheque was found in his possession. Counsel further submitted that the evidence of DW2 supported the findings of the Court.

On the Appellant's denial of a conspiracy between him and Mr. John Mwanda, Counsel again relied on the evidence of DW2 and submitted that this evidence shows that the Appellant was implicated by DW2. Mr. Banda further submitted that the Respondent followed all laid down procedures in the relevant conditions of service. The Appellant was charged and heard by a duly constituted tribunal whose decision had to be respected by the Court.

We have considered the evidence on record as well as the submissions of the Appellant and Counsel. In our view, most of the Appellant's arguments are contesting findings of fact by the lower Court. In terms of Section 97 of the ***Industrial and Labour Relations Act⁽¹⁾***, an appeal from the decision of the Industrial Relations Court can only lie

to this Court on a point of law or a point of mixed law and fact. In so far as one of the Appellant's argument is to deny any conspiracy or corroboration between him and a person who encashed the forged cheque, it could be argued that the Appellant almost strayed into a point of law.

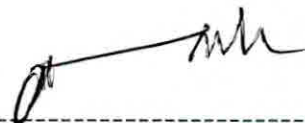
On considering the evidence on record however, we find that DW2 did testify that it is John Mwanda, the person who encashed the cheque who implicated the Appellant. It is not in dispute that the Appellant was found with one of the items bought from the proceeds of this forged cheque. Although the Appellant denied having appeared before the tribunal, it was DW2's evidence that a tribunal was convened and it was even attended by a Union Representative. In our view, the findings by the Court were amply supported by the evidence on record. We find no merit in the appeal. It is dismissed with costs to be taxed in default of agreement.



E. L. Sakala
CHIEF JUSTICE



I. C. Mambilima
SUPREME COURT JUDGE



S. S. Silomba
SUPREME COURT JUDGE

