

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE AND LUSAKA

Appeal No 113/2004

(Civil Jurisdiction)

BETWEEN:

BRIGHTON HAKUYU

Appellant

AND

THE ATTORNEY GENERAL

Respondent

Coram: Sakala, CJ., Silomba JS and Mushabati Acting JS.

2nd November and 26th November 2004

For the Appellant: Mr. F.S. Kongwa of Messrs Kongwa and Company

For the Respondent: N/A

J U D G M E N T

Sakala, CJ., delivered the Judgment of the Court.

We heard this appeal in the absence of the respondents and their advocates upon being satisfied that the advocates for the respondents were aware of this appeal coming up during the Sessions at Kabwe.

This is an appeal, by the appellant, who was the plaintiff in the court below, against the judgment of the High Court refusing to award him an order

of reinstatement in his former job in the Civil Service. The High Court instead awarded him damages for wrongful dismissal.

The facts of this case were not in serious dispute. The case for the plaintiff as pleaded and as revealed from the evidence, was that at the material time the plaintiff who was an established officer in the Civil Service, was driving a Government motor vehicle, which was involved in a road traffic accident in which one person died. The plaintiff, who had no authority to drive a Government motor vehicle, was charged with causing death by dangerous driving but finally convicted of careless driving and fined K40.00. While the criminal proceedings were before court, the plaintiff was put on suspension. At the completion of the court proceedings, he was discharged from the Civil Service but without being given an opportunity to be heard in accordance with the relevant General Orders. According to the evidence, at the time of the accident, the plaintiff was on an approved leave. He drove the motor vehicle in question because the authorized driver had fallen sick on their way to Mongu. He took over the driving of the vehicle with the permission of his Administrative Secretary and the Assistant Secretary. The permission was, however, for him to drive up to Kaoma but he continued up to Mongu. The witness who testified on behalf of the defendant explained that no person could be dismissed from his employment for careless driving.

On the facts and the evidence not in dispute, the court found that the plaintiff was discharged from his employment because he drove the Government vehicle without authority, a charge not brought to his attention. The court accepted the evidence that the plaintiff could not be discharged on the basis of his conviction for careless driving. The court found that in

discharging the plaintiff, the defendant acted high-handedly. The court did not accept that an established Civil Servant, who had been acquitted of a serious offence and convicted of a minor offence of careless driving could have been laid off in the manner the defendant did. The court found no basis upon which the plaintiff's discharge could be sustained and held that the plaintiff's discharge was unlawful, null and void.

In dealing with the claim for reinstatement, the court rejected the submission that this was a proper case for reinstatement. The court noted that the discharge from employment was almost ten years ago at that time; and that during this period a lot of restructuring and retrenchments had taken place in the Civil Service. The court pointed out that it would be totally unrealistic to order reinstatement in this case. Accordingly, the court awarded the plaintiff damages for wrongful dismissal, which was to be a salary in lieu of appropriate number of months of notice, less the one month already paid. The plaintiff appealed to this court against the refusal to reinstate him.

On behalf of the plaintiff, Mr. Kongwa filed and relied on written heads of argument based on two grounds; namely, that the Judge erred in holding that on the facts of the case this was not a proper case for reinstatement; and that even if it could be held that the facts did not support the remedy for reinstatement, the remedy granted was nugatory in view of the fact that in the Conditions of Service applicable to the plaintiff, the appropriate number of months of notice was one month which had been paid on dismissal.

In his written heads of argument, Counsel cited a number of authorities of this court, where reinstatement has been granted and where it has been

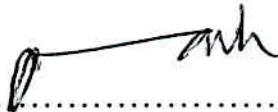
rejected and damages awarded. Counsel pointed out that the facts of the case were not in dispute. He outlined these facts not in dispute. Counsel submitted that on the facts not in dispute and on the circumstances leading to the discharge of the plaintiff, which circumstances the trial Judge termed "high handed", there were special circumstances in this case to warrant the court to order reinstatement of the plaintiff. Counsel pointed out that taking into account the size of the Civil Service and the relatively junior position of the plaintiff, there was no basis for the learned Judge's apprehension that the passage of time during which there has been restructuring programme would make it unrealistic to reinstate the plaintiff, a small fish in a big pond. Counsel submitted that this is a case in which the facts militated in favour of granting the special remedy of reinstatement on terms the court might find proper and equitable.

We have addressed our minds to the facts not in dispute, and the circumstances leading to the dismissal of the plaintiff as well as to the submissions on behalf of the plaintiff and the judgment of the learned trial Judge. We totally agree with all the principles on the cases cited. We also agree with the learned trial court that the plaintiff having been discharged from his employment some ten years ago, this would not be a proper case for ordering reinstatement. The learned trial Judge was, therefore, on firm ground in his observation that from the period the plaintiff was discharged from his employment, a lot of restructuring and retrenchments had taken place in the Civil Service. In the circumstances, it would be totally unrealistic to order reinstatement in this case.

Indeed, the award of damages for wrongful dismissal was the proper award in the circumstances of this case. Whether this award is nugatory, which we do not agree, it does not change the case into a special one to justify the award of reinstatement. We find no merit in the appeal. It is dismissed. We make no orders as to costs.



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E.L. Sakala
CHIEF JUSTICE



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S.S. Silomba
SUPREME COURT JUDGE



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C.S. Mushabati
ACTING SUPREME COURT JUDGE