

IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 118/2005
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN

JONES ATKINS NYIRENDA

APPELLANT

AND

PRE-SECURE LIMITED

RESPONDENT

Coram: Sakala, CJ, Chibesakunda, Mushabati, JJS.
 15th November, 2006 and 30th November, 2007

For the Appellant: In person

For the Respondent: Mr. L. M. Sikaulu of Messrs Jitesh Naik
Advocates

JUDGMENT

Chibesakunda, JS., delivered the Judgment of the Court.

Legislation referred to:

1. ***Section 97 of the Industrial Relations, Cap 269.***

In this Appeal, the Appellant (**who was the Complainant before the Industrial Relations Court**) is challenging the Industrial Relations court's Judgment which was that his dismissal was lawful, thus in favour of the Respondent Company.

The Appellant had filed a complaint against the Respondent Company, his former employers stating that he was demoted on the 18th of July, 2001 on unsubstantiated

allegations and that he was put on half salary and then was dismissed summarily on 21st November, 2001 on these unsubstantiated allegations.

He therefore sought the following reliefs:

- 1. Damages for unlawful and wrongful dismissal*
- 2. Compensation for loss of employment*
- 3. Payment of salary arrears from 1st July 2001 when he was demoted to Deputy Zone Manager's position.*
- 4. Damages for pain and suffering*
- 5. Costs*
- 6. Any other relief the court was to deem fit.*

In support of these claims his evidence, in gist, was that he joined the Respondent on the 1st August, 1996 as a Security Officer. He rose to the rank of Zone Manager on the 1st April, 1999. His evidence is that in June, 2001, he and another senior manager attended a meeting which was chaired by the chief Executive Officer a Mr Peter F. Lalor, who announced that he was the new Managing Director and that he had acquired 48 per cent shares in the Respondent Company from a Mr John Borne. This new Managing director explained that 2 percent of these shares had been sold to the Director of Administration and the remaining 50 percent had been sold to **Safe Guard Security Company of Zimbabwe**. The Appellant at this meeting questioned this idea of selling 50% shares to a foreign Company and why Management had not come up with new forms of contracts between the employees and the

employers, to review the provisions of the contracts they had been under. He testified that as a result of this question, the Respondents threatened to deal with him. According to him, soon after that, on 4th July, 2001, the Respondent's Management accused him of having knocked off early from duty at 18.00hurs instead of 20:00hours. He denied that. On the 18th of July, the Managing director read out to him three statements in which he was accused of not having been on duty. Resulting from these reports he was demoted from the rank of Zone Manager. On the 5th November, 2001 he was charged with another offence of falsehood and negligence on duty. He was accused of falsehood because it was alleged that he marked Day Security Guard Sililo to be on duty at plot No. 10977 Kokota Road when this officer was not on duty on that night. According to him, this officer Sililo had reported at the parade square and was assigned duties at the parade square but did not go to his working location at plot No. 10977 Kokota Road. He stated that the officer went to the University Teaching Hospital (UTH) instead of going for duty at his location on the day in question. He testified that on 5th November, 2001 Security guard Sililo did not get permission before going to UTH. He went on to state that when he explained this to the Respondent's Management, they told him that he should have checked on whether or not Security Guard Sililo was on duty on the day in question as this was one of his duties. He maintained that all security guards who were on duty were not checked immediately as

to find out whether they reached their locations as '**straight goers**'. The rest of his evidence was given by two witnesses. They testified that because of this he was summarily dismissed. He maintained that that was wrongfully dismissal.



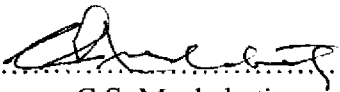
The Respondent's response was that, the Appellant was not dismissed unlawfully and wrongly because he was dismissed for falsehood and for not following instructions. Their evidence was given by 7 witnesses, they testified that contrary to the evidence of the Appellant on the 5th of November, 2001 at 06:00 hours, the Appellant wrongly and falsely marked No. 42706 Security Guard Sililo on duty when in actual fact this Security guard had not reported on duty because he had taken a dead body of his brother to UTH mortuary at 04:00 hours. He finished doing this assignment around 07:00 hours. They testified that around 09:00 hours, they went to Plot 10977 Kokota Lodge after a complaint from their client and found there was no day guard and the night guard was still on duty. Their evidence was that the security guard Sililo only reported at his station around 09:00 hours and he sought leave to attend to the funeral. They testified that because of these false reports, they lost business. According to them, Zone managers have a duty to ensure that all locations are covered by 06:00hrs. They further testified that the Appellant was supposed to check Kariba Minerals location to satisfy himself that there was a day Security Guard or to find a reliever.

Their evidence also was that, it was also discovered that after the Respondent Company had recorded charges against him, the Appellant approached the other security guards, employed by the Respondent Company, to lie on his behalf. They even found out that he tried to falsify the records to indicate that the security guard Sililo reported on duty on 5th November, 2001.

On the evidence before court, the court accepted the Respondents' witnesses. The court rejected the evidence of the Appellant and therefore found in favour of the Respondents.

Before us, the Appellant argued that the Industrial Relations Court erred in making these findings of facts. Without restating his full arguments, we hold that the challenge before this court by the Appellant is on the Industrial Relations Court's findings of fact as at page 31-33. The finding of fact at page 31 of the record is that on 4th July 2001, the Appellant knocked off early and that this was so because the Appellant's patrol sheet for that day, as indicated in the Supplementary bundles of documents, showed that the Appellant did not append his signature from 16:30 to 20hours. The industrial Relations Court's finding on page 33 is that, security guard Muketisi Sililo did not attend parade on the material day to warrant the Appellant to mark him on duty on the call sheet. **Section 97 of the**

Industrial Relations Act (1) bars an appeal on findings of fact to come to this court. We therefore find no merit in this appeal. We dismiss it. However, because the Appellant is most likely unemployed we make no order on costs.


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E. L. Sakala
CHIEF JUSTICE
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L. P. Chibesakunda
SUPREME COURT JUDGE
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C.S. Mushabati
SUPREME COURT JUDGE