

IN THE INDUSTRIAL RELATIONS COURT  
HOLDEN AT NDOLA

COMP/113/2014

**BETWEEN:**

SOHIL MEGHANI

AND

MOUNT MERU PETROLEUM



COMPLAINANT

RESPONDENT

**BEFORE: HON. JUDGE DERRICK MULENGA - DEPUTY CHAIRMAN**  
**HON. J.M. BWALYA - MEMBER**  
**HON. G.M. SAMUSUNGWA - MEMBER**

For the Complainant: Mr. Caristo Mukonka of Messrs Caristo  
Mukonka Legal Practitioners

For the Respondent : Mr. Willa Mutofwe of Messrs Willa Mutofwe  
and Associates

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**JUDGMENT**

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**Cases referred to:**

- 1. Wilson Masautso Zulu v Avondale Housing Project (1982) Z.R.  
172**
- 2. Zambia China Mulungushi Textile Limited vs Gabriel Mwami  
(2002) Z R 2444.**

**Statute referred to:**

**Immigration and Deportation Act No. 18 of 2010.**

On 13<sup>th</sup> November, 2014, Sohil Meghani hereinafter referred to as the Complainant filed a Notice of Complaint against Mount Meru Petroleum (Z) Limited, the Respondent.

The grounds upon which his complaint was presented was that the purported verbal termination of the Complainant's employment without raising any charges and withholding of the Complainant's monthly salaries, allowances and money by the Respondent is wrongful, unlawful, illegal, null and void.

The relief sought by the Complainant was as follows:-

- (i) Damages for wrongful, unlawful termination of employment;
- (ii) Payment of withheld salaries, allowances personal money and accrued leave days;
- (iii) Interest and cost;
- (iv) Any other relief the Court may grant.

The complaint was supported by an affidavit filed by the Complainant in which he deposed that he was employed by the Respondent on 1<sup>st</sup> June, 2012 as Retail Station Controller and posted to Solwezi.

It was the Complainant's evidence that on 17<sup>th</sup> June, 2013 he was verbally asked to stay away from work and subsequently the Respondent caused his arrest on false allegation that he had stolen money from the Respondent.

The Complainant further deposed that he was prosecuted in Solwezi Subordinate Court and on 23<sup>rd</sup> July, he was found innocent and acquitted.

In addition, the Complainant deposed that apart from the verbal request to stay away from work on 17<sup>th</sup> June, 2013 he has not been charged or subjected to any disciplinary process and no case hearing has been held by the Respondent.

The Complainant further stated that meanwhile his monthly salary of US\$ 800 and K2, 7500 food and house allowance have been withheld and his saving in the sum of K44, 000 was taken away by the Respondent when he was detained by the Police.

The Complainant contends that when he inquired about his withheld salaries, allowances and money during the meeting held on 1<sup>st</sup> November, 2014 he was told that the Respondent will never pay the said monies.

According to the Complainant the Respondent has no legal basis not to pay the aforesaid monies and hence he craves for an Order for payment of

The Respondent filed a Notice of Intention to Raise a preliminary issue



Counsel for the Respondent averred that it is the complaint that the Court must determine which had nothing to do with the work permit. According to him at the time the Complaint was made CW was only on suspension.

Counsel reiterated that the Complainant was and is still on suspension pending administrative procedures to be followed.

The Court made a ruling that the Complainant be heard and on 30<sup>th</sup> September, 2015 Counsel for the Complainant informed the Court that the Complainant's Visa had expired and hence they would rely entirely on affidavits filed in Court.

In view of the foregoing the Respondent filed an Answer wherein they deposed that:-

1. The Complainant has not yet been dismissed from employment, as he was only placed on suspension pending the outcome of his Criminal charges he was facing in the Solwezi Subordinate Court.
2. Furthermore, the Respondent has not terminated the Complainant's employment therefore an allegation by the Complainant that his employment was terminated is false, and the same is within peculiar knowledge of the Complainant and as such he will be put to strict proof.
3. That the Complainant is not entitled to any relief.

After a number of adjournments, the matter came up for hearing on 14<sup>th</sup> March, 2016. The Respondent produced two witnesses RW1. Mr. Lawrence Steven Mulengeshi, Human Resources Manager and RW2, Victor Buumba, an Assistant Superintendent in Zambia Police.

RW1 confirmed that the Complainant was their employee and was employed on 6<sup>th</sup> June, 2012 as Station Manager for Solwezi Station.

It was RW1's testimony that on the 18<sup>th</sup> June, 2013 the Complainant informed him that there was an armed robbery at the station and that unknown people grabbed K420, 000 from him.

RW1 said he instructed Complainant to report the case to the police which he did.

RW1 averred that the following day on 19<sup>th</sup> June, 2013 he travelled to Solwezi. When he arrived he went straight to the police station where he found Complainant detained. According to RW1 he asked the Arresting Officer why Complainant was detained in Police cells. The Arresting Officer informed him that there was no robbery. He said it was a fake robbery and that no one came to grab money.

It was RW1's further testimony that later the case was taken to Court where Complainant was tried, convicted and sentenced to three months for giving false information to the Police.

RW1 averred that Complainant was charged with two counts of giving false information and theft of K420, 000 and that the Court acquitted him of the theft case.

According to RW1 during the whole period Complainant was not dismissed but was put on suspension pending the court decision.



On the issue of withholding salary RW1 averred that Complainant was only put on suspension without pay and that the State had appealed against the Complainant's acquittal on the theft charge. He testified that this is why they could not go on with the disciplinary action.

RW1 averred that according company regulations the penalty for theft is dismissal. It was RW1's evidence that todate Complainant remains on suspension pending hearing and determination of the State's appeal against the acquittal of the Complainant on the theft charge.

During further cross-examination RW1 stated that Complainant did not appear before any disciplinary hearing to answer charges. He also admitted that they had not written any letter to Complainant to dismiss him from employment.

RW1 confirmed that whilst working, Complainant was entitled to a salary of US\$800 and K2, 750 housing allowance. He also admitted that during investigations the Company confiscated money from Complainant.

During Re-examination RW1 averred that it was not mandatory to apply for an extension of work permit for an employee.

He further reiterated that Complainant was not subjected to any disciplinary hearing because the case was in Court and that they were still awaiting the outcome of the Court process.

During further re-examination in RW1 indicated that they intend to call Complainant for a disciplinary case hearing.

RW2, Assistant Superintendent, Victor Buumba testified that he received a report of Aggravated Robbery in June, 2013. The robbery was alleged to have happened at Mount Meru Filling Station, Solwezi.

RW2 said acting on the report he led a team of officers to Mount Meru Filling Station where they interviewed some people doing business in the area, who informed them that they did not witness any aggravated robbery around that area.

The Complainant, who was the Manager and Francis Chewa the Supervisor of the Filing Station, who had reported the robbery to the Police Station were picked up for further interviews at the Police Station.

According to RW2 upon intensive interviews at the Police Station the two (Complainant and Francis Chewa) admitted having given false information of a robbery at the police station. They further said that they had decided to give a false statement because they wanted a cover up for the money they had failed to account for at the filing station. The Complainant and Francis Chewa were charged with two counts of giving false information to the Police and Theft. The Subordinate Court acquitted the Complainant of theft but it convicted him on the charge of giving false information to the Police.



During cross examination RW2 conceded that the report was received by his colleague. He however averred that he was leading the investigations. He said he recalls taking statements from workers at the filling station who indicated that there was a shortage.

It was put to RW2 by Counsel for the Complainant that there has not been any appeal on the charge of fraudulent false accounting. It was RW2's testimony that he was shown a copy of the appeal.

During further cross-examination RW2 averred that as Police they did not stop Mount Meru from having a disciplinary hearing.

During re-examination RW2 averred that Complainant was the Manager at the filling station and that the former informed him that he was the Manager. According to RW2 Complainant was accused number one during the Court case of giving false information and that he was convicted on his own admission.

We are alive to the legal requirement that the onus is on the Complainant to prove his case on the balance of probabilities. We find the following facts:-

1. That the Complainant was employed by the Respondent on 1<sup>st</sup> June, 2012 as Retail Station Controller and posted to Solwezi.
2. That following a reported incident of aggravated robbery which was investigated and found to be false the Complainant was on 17<sup>th</sup> June, 2013 verbally asked to stay away from work and he was subsequently arrested and charged with two offences, giving false information to a public officer and fraudulent false accounting.

3. That the Complainant was convicted on the First charge and sentenced to 3 months imprisonment with hard labour but suspended. He was however acquitted for the offence of Fraudulent False Accounting.
4. That the Complainant was never formally charged with any offence and never appeared before any disciplinary hearing.
5. That the Complainant's Visa expired and he had to leave the country and is currently out of jurisdiction.
6. That his monthly salary of US\$800 and K7, 750 Food and housing allowance have been withheld.
7. That further some money was confiscated from the Complainant by Management.

At the time of writing this judgment we received written submissions from both Counsel for the Complainant and the Respondent for which we are grateful. We shall refer to them when necessary.

Having considered the evidence on record including the oral evidence from the Respondent we find that the issues to be resolved by this Court are as follows:-

1. Whether the Complainant's employment was terminated by the Respondent; if so, was the termination wrongful/unlawful?
2. Whether the Complainant is entitled to be paid withheld salaries, allowances personal money and accrued leave days.



We have already alluded to the fact that the Complainant was not subjected to a disciplinary case hearing which fact the Respondent has admitted. According to the Respondent they were waiting for the outcome of the Court proceedings in respect of the offence of Fraudulent False Accounting.

The Supreme Court has provided guidance in relation to the onus of proof in the case of **Wilson Masautso Zulu v Avondale Housing (1)** where it was held that:

*Where plaintiff alleges that he has been wrongly or unfairly dismissed, as indeed in any other case where he makes an allegation, it is for him to prove those allegations. A Plaintiff who has failed to prove his case cannot be entitled to a judgment whatever maybe said of the opponent's case.*

We find and hold that the Complainant having not been charged and heard on any disciplinary offence by the Respondent, his complaint was lodged before this Court, prematurely. In the circumstances there cannot be wrongful and or unlawful termination of his employment. The facts of the case herein do not disclose any factors to move us to arrive at a finding that there was constructive dismissal from employment of the Complainant. The Complainant has therefore failed to establish and prove on the balance of probabilities that he was wrongfully and or unlawfully terminated from his employment.



Counsel for the Complainant has referred the Court to the case of **Zambia China Mulungushi Textiles Limited vs Gabriel Mwami (3)** wherein the Supreme Court held:

*Tenets of good decision making impart fairness in the way decisions are arrived at. It is certainly desirable that an employee who will be affected by an adverse decision is given an opportunity to be heard.*

Further, Counsel has stated that as to the averment that the Respondent intend to carry out disciplinary action now, this is not attainable as the Complainant has ceased to be the Respondent's employee. It is Counsel's view that the Respondent had all the time to carry out disciplinary action against the Complainant.

The Respondent's Counsel contends that the Complainant became an illegal immigrant immediately upon his conviction for the offence of giving False Information to a public officer according to subsection (3) of Section 35 (H) paragraph (c) of the Immigration and Deportation Act No. 18 of 2010 of the Laws of Zambia.

According to Counsel, the Respondent had no obligation to keep the Complainant in employment as he had become a prohibited immigrant and his permit had ceased to have force and therefore could not be employed or claim any payments from the Respondent, it would have been subject to the sanction of the Law under section 43 of the Immigration and Deportation Act No. 18 of 2010.

We agree with both Learned Counsels' submissions that by operation of the Law the Complainant's employment with the Respondent was terminated when his Work Permit ceased to have force or became invalid by reason of conviction on a criminal charge.

We are also of the view that it is not feasible for the Respondent with ease to cause the Complainant formally charged and heard considering that he is out of jurisdiction and the same is a prohibited immigrant.

We were not furnished with the terms and conditions of employment of the Complainant, therefore we could not ascertain whether or not he was entitled to any payments during his suspension. We could not also with certainty tell whether or not the administrative action ought to have waited the outcome of criminal proceedings.

Having made a finding that the Complainant's employment with the Respondent was terminated by operation of the Law, we find that it is a statutory obligation placed on an employer under **Section 26 of the Employment, Chapter 268 of the Laws of Zambia as amended by Act No. 15 of 1997**, that where an employee is summarily dismissed and in our view even where the services are terminated by operation of the Law as in the case in casu, to pay the wages (salaries) for days worked in the month and other allowances.

We have, therefore, come to the conclusion that, the Complainant is entitled to his terminal dues the same being payment for the days worked in the month when he was suspended from employment, for accrued Leave days and the amount of K44, 000.00 personal money which the Respondent confiscated from him.

The sum of money that will be found to be payable to the Complainant in Zambian Kwacha shall attract interest at the Bank of Zambia current lending rate from the date of the Notice of Complaint to date of judgment herein and thereafter at six (6) per cent to date of payment.


Each party to bear own costs.

Informed of Right of Appeal to the Supreme Court within 30 days from the date hereof.

Delivered at Ndola this **24<sup>th</sup>** day of **May, 2016**

  
.....  
Hon. Derrick Mulenga  
**JUDGE**

  
.....  
Joseph M. Bwalya  
**Hon. Member**

  
.....  
Geoffrey M. Samusungwa  
**Hon. Member**