

File

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 25/2003

HOLDEN AT NDOLA

(Civil Jurisdiction)

BETWEEN:

DICK MUMBA

Appellant

AND

ZAMBIA CONSOLIDATED COPPER MINES LIMITED

Respondent

CORAM: Sakala, CJ, Chibesakunda and Chitengi, JJS

On 3rd June, 2003 and 8th December, 2004

For the Appellant : In Person

For the Respondent : Mr. P.M. Chamutangi
Legal Counsel

JUDGMENT

Chitengi, JS, delivered the judgment of the court.

We regret the delay in delivering this judgment. The court has been very busy during the last year and this year because of the Presidential Election Petition.

In this appeal we shall refer to the Appellant as the complainant and the Respondent as the Respondent, which were their designations in the court below.

The facts of this case are that the complainant was employed by the Respondent's Luanshya Division as a Senior Costs Clerk. According to the Complainant, in October, 1991 he was sent to the taverns and

trading section of the Respondent, according to him, to sort out problems of cash shortages which other persons had failed to solve. The head of department was happy with his performance and told him he would assume the office of Operations Accountant instead of his position of a clerk. But on 31st October, 1992 he was retrenched. When he enquired why he was retrenched, he was told because the taverns and trading section was closed. He was not an employee of the taverns and trading section but of the costs accounts section and, therefore, it was wrong to target him for redundancy when he was doing well the job others had failed to do.

When retrenching him, the Respondent did not follow the procedure of notifying the employees three months in advance. By the time he had his retrenchment, answers had not yet come from the other divisions to say whether or not the other divisions had work for him. The answers from the other divisions came ten days after he had left. His boss, a Mr. Musana, wanted to remove him because he was a holder of AAT certificate while he (complainant) was a holder of CABS. Whenever he advised his boss the latter thought he was big headed when in fact he had wide experience in the job. His superiors first wanted to destroy his education. Even in his record of a service he is referred to as a painter.

But when cross examined he said he was given the redundancy letter on 31st August, 1992 and was told to stop work on 30th November, 1992. He was one of the many thousands declared redundant by the Respondent. As an employee of the Respondent he could be taken to any department where his services were required. He received his full benefits. He said in December, 1992 salaries were improved and everybody declared redundant in 1992 was paid in accordance with the **Mugala case** and he was fully paid. He is in court because he was not supposed to be retrenched.

According to the evidence given on behalf of the Respondent by Mr. Masekela (PW1) and Mr. Sakala (PW2), the Complainant was working for the Respondent as a Senior Accounts Clerk Grade SG4 in the taverns and trading section in the Finance Department. On 31st August, 1992, the Complainant was given three months notice of retrenchment on 30th November, 1992. The Complainant's name, rank and grade were circulated to the other divisions. Replies came from Nkana, Kabwe, Nchanga and Power Divisions saying they had no vacancies. At that time, all the other divisions were also reducing their labour. The complainant was not advertised to the other divisions as painter. The closure of the taverns and trading section was a result of serious reorganization which the Respondent had embarked upon and the taverns and trading section was identified for closure. The emphasis was not the individuals but the jobs and the complainant was identified as one of those whose services were no longer required by the Respondent. The complainant's name was advertised to the other divisions before his retrenchment.

On these facts, the complainant brought a complaint under **Section 85 (2)(4) of Act No. 27 of 1993** alleging that he was unfairly and unlawfully treated when he was declared redundant on 31st August, 1992 as the correct procedure prescribed by the redundancy agreement was not followed. He prayed for reinstatement or alternatively damages for wrongful and unlawful redundancy and payment to him of all entitlements and other benefits appertaining thereto.

On this evidence the court below found that there was nothing wrongful or unfair in the way the Respondent acted in declaring the complainant redundant and consequently, dismissed the complainant's claim.

The complainant now appeals to this court against the judgment of the court below. The complainant filed a Memorandum of Appeal with four grounds of appeal. These grounds of appeal are in fact not grounds of appeal but a repeat of the Respondent's answer to the complaint. The complainant also treats the Respondent's answer as the findings of the court below. The court below never made such findings of law or facts.

In his oral submissions before us the complainant argued in relation to the so called ground one that he was on secondment to the taverns and trading section and when this section was abolished, he should have been returned to the section he came from. He argued that it was therefore wrong to be retrenched on the abolition of the taverns and trading section. Further, he argued that the time of circulation to the other division was too short.

In relation to the so called ground two, the complainant submitted that the circulation of his name to the other divisions was useless because the other divisions were facing the same problem.

In the so called ground three the complainant argued that he was under paid. He said he is owed K846,271.89 interest. According to the complainant this is the difference between 123% interest paid at Nampundwe Mine and the 35% interest paid at Luanshya division.

In this ground, the complainant also complained that he was supposed to be paid at Grade 3 on the strength of document 33 in the record of appeal. But we do not see how, because according to the document the complaint is relying upon, he was Grade 4.

In the so called ground 4 the complainant argued that he was not given three months notice. His retrenchment was immediate.

Mr. Chamutangi, learned counsel for the Respondent, submitted that there are no findings in the judgment of the court below on which the first, third and fourth grounds of appeal are based. As to the second ground of appeal Mr. Chamutangi submitted the Appellant's name was circulated to other divisions and replies received before the complainant was declared redundant. In fact, Mr. Chamutangi argued, the evidence is that the complainant was declared redundant a month after replies from other divisions had been received. As to the compensation Mr. Chamutangi submitted that the complainant acknowledged being fully paid but the complainant wants more money because he says he should not have been declared redundant. Mr. Chamutangi ended by saying that the complainant is seeking double compensation.

We have considered the evidence, the submissions by the complainant and Counsel for the Respondent and the judgment of the court below.

We propose to deal with the fourth ground of appeal first. In the fourth ground of appeal the complainant submitted that he was not given three months notice and that his retrenchment was immediate. This submission is not supported by evidence. The evidence on record, which the complainant himself does not dispute, is that he was given three months notice. The letter of retrenchment was served on the complainant on 31st August, 1992 and he was to stop work on 30th November, 1992. That was three months notice. This ground of appeal, therefore, languishes.

We now deal with the third ground of appeal. This ground of appeal deals with K846,271.89 owing to the complainant as a result of interest difference between 123% interest paid to retrenchees at Nampundwe Mine and the 35% interest paid to retrenchees at Luanshya Division. We have perused the pleadings and the proceedings before the court below

to find whether this issue was raised and argued in the court below but in vain. This issue cannot, therefore, be raised on appeal. This ground of appeal also fails.

We now deal with ground two. This ground is in fact an extension of the first ground of appeal and can conveniently be dealt together. After considering these grounds of appeal we find that the submissions on them are not supported by any evidence and are self defeating. The submission by the complainant that he was an employee of a different section and that when the taverns and trading section was abolished he should have been retired to the section he came from, flies in the teeth of his own evidence under cross examination that he was an employee of the Respondent and that he could be sent to any department where his services were required. The Respondent could, therefore, retrench the complainant regardless of what section he was working in as long as there was job shrinkage like was in this case. The submission that the complainant's name was not circulated to other divisions in accordance with the retrenchment regulations is baseless because there is abundant evidence that the complainant's name with his correct qualifications and grading were circulated before the complainant was retrenched. In any case, the complainant's submission shows to us that he was fully aware that there was job shrinkage in all the Respondent's divisions. We say this because it is the complainant's submission that it was a waste of time to circulate his name to the other divisions because the other divisions were facing the same problem (job shrinkage). The grounds of appeal therefore fail.

The result is that this appeal must fail. The court below was on firm ground when it found that there was nothing wrong or unfair in the way the Respondent acted in declaring the complainant redundant. As the court below found and as Mr. Chamutangi submitted, the Respondent

followed the correct procedures when declaring the complainant redundant. The allegations by the complainant that his immediate boss wanted him removed because his boss was the holder of AAT Certificate while he was the holder of CABS and that he had wide experience are, on the evidence, unfounded, and do not weigh with us. If anything these allegations by the complainant show to us the complainant's conceit.

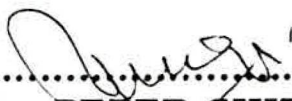
We find no merit whatever in this appeal and we dismiss it. We make no order as to costs.



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E. L. SAKALA
CHIEF JUSTICE



.....
L. P. CHIBESAKUNDA
SUPREME COURT JUDGE



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PETER CHITENGI
SUPREME COURT JUDGE