

SELECTED JUDGMENT NO. 27/2019

P.848

IN THE SUPREME COURT FOR ZAMBIA APPEAL No. 110/2016

HOLDEN AT KABWE

(Civil Jurisdiction)



BETWEEN:

SUPABETS SPORTS BETTING

APPELLANT

AND

BATUKE KALIMUKWA

RESPONDENT

CORAM: Wood, Kabuka and Mutuna, JJS.

On 2nd April, 2019 and 8th October, 2019.

FOR THE APPELLANT:

Mr. E. K. Mwitwa, Mwenye and Mwitwa Advocates.

FOR THE RESPONDENT:

Mr. F. Mudenda, Messrs Chonta, Musaila and Pindani Advocates.

JUDGMENT

KABUKA, JS, delivered the Judgment of the Court.

Cases referred to:

1. The Attorney-General v Richard Jackson Phiri (1988 -1989) ZR 121 (SC).
2. Zambia Electricity Supply Corporation Limited v David Lubasi Muyambango (2006) 22 (SC).
3. Dennis Chansa v Barclays Bank, SCZ/8/128/2011.
4. Zambia Airways Corporation Ltd v Gershom Mubanga (1992) ZR (SC).
5. Chintomfwa v Ndola Lime Limited (1999) ZR 173 (SC).
6. Zambia National Provident Fund v Yekweniya Mbiniwa Chirwa (1986) ZR 70 (SC).
7. Wilson Masauso Zulu v Avondale Housing Project Limited (1983) ZR 172 (SC).
10. The Attorney General v Marcus Kampumba Achiume (1983) ZR 1(SC).
11. Chilanga Cement Limited v Kasote Singogo (2009) ZR 122 (SC).
12. Zambia Consolidated Copper Mines v Ennedie Zulu (1999) ZR (SC).
13. Carnel Silomba v Mulonga Water and Sewerage Company, SCZ Appeal No. 139 of 2013.
14. Konkola Copper Mines Plc v Aaron Chimfwembe and Another Appeal No. 195 of 2013.
15. Dennis Chansa v Barclays Bank Plc SCZ /8/128/2011.
16. YB and F Transport Limited v Supersonic Motors Limited (2000) ZR 22.
17. Zambia China Mulungushi Textiles (Joint Venture) Limited vs Gabriel Mwami (2004) ZR 244.
18. Zinka (Shilling Bob) v The Attorney General (1991) ZR 73 (SC).
19. Moses Choonga v Zesco Recreation Club, Itezhi Itezhi Appeal No. 168 of 2013.
20. Care International v Misheck Tembo Appeal No. 57 of 2016.
21. Swarp Spinning Mills Plc v Sebastian Chileshe & Others (2002) ZR 23 (SC).

22. Jacob Nyoni v Attorney General SCZ Judgment No. 11 of 2001.
23. Kitwe City Council vs William Ng'uni (2005) ZR 57 (SC).

Legislation and Other Works referred to:

1. The Industrial and Labour Relations Act, Cap. 269, S.97.
2. Industrial Relations Court Rules, rule 44 (1).
3. The Employment (Amendment) Act No. 15 of 2015 s.36 (1) (c).
4. Employment Law in Zambia, Cases and Materials, 2011, W. S. Mwenda, revised edition; UNZA Press, Zambia.
5. Halsbury's Laws of England, Vol.16, 4th Ed, Re-issue, paragraphs 628 and 629.

Introduction

1. This is the appellant's appeal against a judgment of the Labour Division of the High Court dated 9th February, 2016 which found that the appellant had wrongfully and unfairly dismissed the respondent from his employment.

Background

2. The background to the appeal is that, the South African based appellant intended to expand its business presence in Zambia. In pursuit of that objective, the respondent was on 5th June, 2014 employed as manager for the Zambia office, on permanent terms and conditions of service. The respondent was sent to the appellant's headquarters in South Africa for

training and upon his return, proposed the opening of three container pro-shops in the Chawama, Mtendere and City Market areas of Lusaka. According to the respondent, the appellant accepted his proposal and undertook to pay him K2,000.00 commission for each new container pro-shop opened.

3. The three pro-shops were opened as proposed and the respondent began a recruitment exercise of interviewing persons who were computer literate to be employed as cashiers and supervisors. Five months later, in November, 2014 the appellant appointed Steve Irvin as country manager for Zambia.
4. Two months after that appointment, two concerns were received in South Africa from Zambian customers. The first concern was that the respondent was taking deposits and selling fixtures, which was contrary to the appellant's policy. The second, accused the respondent of having illicit sexual

relations with some members of staff, including prospective employees undergoing training.

5. In order to address those concerns, an impromptu visit was made to the Zambia office on 26th January, 2015 by Steve Irvin and the appellant's operations manager, one Fittinghoff. Investigations were immediately launched, in the process of which a cash reconciliation was also undertaken and revealed a shortfall of K400.00. The respondent was queried about this shortfall but he produced a document showing that the country manager had authorised two salary advances of K200.00 each, to two employees. When the investigations were concluded on 27th January, 2015 the respondent was charged with the following four disciplinary offences:

- (i) breach of good faith for selling fixtures to customers;*
- (ii) gross incompetence for failing to carry out duties;*
- (iii) gross insubordination (later changed to sexual harassment); and*
- (iv) gross misconduct (later altered to misrepresentation of cash figures, appearing on the reconciliation report).*

6. At the disciplinary hearing held the following day on 28th January, 2015 the respondent requested for and was granted

