

**IN THE COURT OF APPEAL OF ZAMBIA APPEAL No.14/2019
HOLDEN AT KABWE**

(Civil Jurisdiction)

BETWEEN:



STANDARD CHARTERED BANK PLC

APPELLANT

AND

CELINE MEENA NAIR

RESPONDENT

CORAM: Chashi, Mulongoti and Lengalenga, JJA

On 16th and 25th October, 2019

For the Appellant:

Mr. N. Nchito, SC of Nchito & Nchito

For the Respondent:

*Mr. M.Z. Mwandenga of M.Z. Mwandenga & Company
& Mr. J.C. Kalokoni of Kalokoni & Company*

J U D G M E N T

Mulongoti, JA, delivered the Judgment of the Court

Cases referred to:

1. *Chilanga Cement PLC v Kasote Singogo SCZ No. 13 of 2009*
2. *Western Excavating (ECC) Limited v Sharp (1978) IRLR*
3. *WA Goold (Pearmak) Ltd v McConnell (1995) IRLR 516*

4. *Wilson Masauso Zulu v Avondale Housing Projects Limited (1982) ZR 172 at 175 (SC)*
5. *Maamba Collieries Limited v Godfrey Mudenda Ng'andu SCZ Appeal No. 79/2005*
6. *Attorney General v Marcus Kapamba Achiume (1983) ZR 1 (SC)*
7. *Bahamas Air Holdings Limited v Messeir Dowty Inc-(2019) 1 ALL ER 285*
8. *Kitwe City Council v William Nguni (2005) ZR 57 (SC)*
9. *Michael Kahula v Finance Bank (Z) Limited SCZ Appeal No.96 of 2012*
10. *Engen Petroleum Limited v Willis Muhanga and Jeromy Lumba SCZ Appeal No. 117 of 2016*
11. *National Milling Company Limited v Grace Simataa and others (2000) ZR 91 (SC)*
12. *Elias Tembo v Florence Chiwala Salati and two others SCZ Appeal No. 200 of 2016*
13. *Lewis v Motorworld Garages Ltd [1986] ICR 157, 167*
14. *Isle v Wight Tourist Board v Coomers (1976) IRLR 413*
15. *Council of Scientific and Industrial Research v Figen (1996) 17 1LJ 18*
16. *Gab Robins (UK) Ltd v Triggs [2007] UKEAT*
17. *Amiran Limited v Robert Bones SCZ Appeal No. 42 of 2010*
18. *Zambia Telecommunications Company Limited v Mirriam Shabwanga & 5 others SCZ Appeal No. 78 of 2016*
19. *Nevers Mumba v Muhabi Lungu SCZ Appeal No. 200 of 2014*

Legislation referred to:

1. *The Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia*

Other works referred to:

1. *Halsbury's Laws of England /Employment Volume 39 of 2014 paragraph 48*
2. *Singapore Academy of Law Journal (2013)*
3. *Criag Bosch, "The Implied Term of Trust and Confidence in South African Labour Law" in Industrial Law Journal 27, 2006*

1.0 **Introduction**

1.1 This is an appeal against the Judgment of Musaluke, J in the High Court Industrial Relations Division (as his Lordship then was) which found that the complainant, now respondent, Ms. Celine Meena Nair, had been constructively dismissed by Standard Chartered Bank Zambia (appellant). The trial Judge awarded 36 months gross salary as damages for constructive dismissal. Aggrieved with this decision the appellant lodged this appeal.

2.0 **Background**

2.1 By notice of complaint and affidavit in support filed in the High Court Industrial Relations Division, Ms. Nair sued the appellant alleging that she had been constructively dismissed as a result of acts and words of abuse by the appellant's Managing Director and Chief Executive Officer, Mr. Okai. She sought the following reliefs:

- "(a) Declaration that the complainant was constructively dismissed;***
- (b) Payment of 36 months' salary with all allowances as damages for constructive dismissal;***
- (c) Damages for loss of earnings;***
- (d) Damages for mental torture;***
- (e) Damages for loss of expectation of remaining in employment***

(f) Payment for leave days; and

(g) An order for payment for the 3 months' pay in lieu of Notice."

2.2 The appellant filed an Answer denying the respondent's allegations and that the same were unfounded.

3.0 **Evidence Adduced in Court Below**

3.1 Ms. Celine Meena Nair testified that she was employed by the appellant on 17th July, 2006, as Head Legal/Company Secretary.

3.2 On 28th July, 2015, she resigned from her position and alleged that she had been constructively dismissed by the appellant on account of the acts and words of abuse suffered over the last 20 months (October 2013-July 2015) at the hands of the Managing Director and Chief Executive Officer, Mr. Brian Okai, which acts and words were clearly meant and succeeded to frustrate, victimize, and get rid of her.

3.3 The respondent testified that she worked well with the previous Managing Directors and Chief Executive Officers except with Mr. Okai who became Managing Director on 1st October, 2013. Mr. Okai victimized and harassed her and forced her to resign on 28th July, 2015.

- 3.4 Prior to her resignation, she informed the appellant of the acts of abuse by the Managing Director by email on 9th June, 2015. She stated that some of the acts of abuse and harassment were that at her inaugural meeting with Mr. Okai, during a one on one session, he told her that he could not work with her based on information given to him by confidants in the Executive Committee (EXCO).
- 3.5 In March, 2014, at a team building of EXCO, the team builder asked the participants to write on a flip chart what they did not like about the new Managing Director. She did not participate in this exercise but the Managing Director attributed all the negative things written about him to her. She was also accused of pushing payments for law firms because she was getting commission when the legal bills were paid on time.
- 3.6 The major incident was that on 22nd May, 2015 she underwent wisdom tooth extraction, which also led to removal of the root. She subsequently developed an infection in her jaw and had unbearable pain. During one of the meetings of EXCO one of the members Mr. Sonny Zulu arrived late, and in a bid to rush and sit, he slammed the door behind him. This resulted in the respondent experiencing excruciating pain. Her two colleagues

who sat on each of her side, asked what was wrong. When the Managing Director noticed them talking, he asked what it was about. She was unable to speak and so her colleague Mr. Koni explained that she experienced pain when the door was slammed.

Then Mr. Okai got up and began to slam the door repeatedly saying "*did that pain, did it hurt?*" He even asked Mr. Sonny Zulu to join him in banging the door repeatedly in full view of the EXCO members.

3.7 The other incident occurred on 29th May, 2015, when she had a cannula as she was being treated for the jaw infection. At 14:00 hours she had to leave for her antibiotic treatment at CFB Hospital. As she left the meeting she met the Managing Director in the lift, who said he wished he knew someone at CFB so he could administer her treatment. She responded that as he was not a doctor he would kill her, then he said that would be the idea.

3.8 On 5th June, 2015, Mr. Okai called her into his office and accused her of rushing into State House that morning to reveal the status of the Board meeting and that she was trying to have him deported. She denied and demanded for proof. He said by

