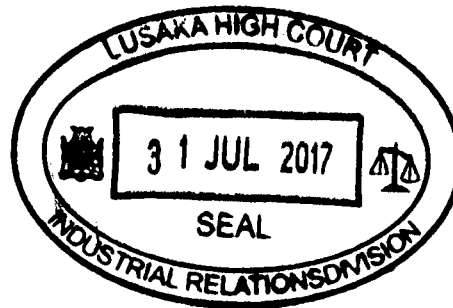


**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA**

COMP/93/2014

BETWEEN:

**MWAMBA MUTALE
CLARENCE MWAMI
VICTOR LOLOZI**



**1ST COMPLAINANT
2ND COMPLAINANT
3RD COMPLAINANT**

AND

SOS CHILDREN'S VILLAGE ZAMBIA

RESPONDENT

CORAM

**Hon. M. Musaluke - Judge
Hon. E. C. Katai - Member
Hon. N. Z. Mbewe - Member**

Appearances:

For the Complainant:

*Dr. S. Sumaili with Mrs. Mary M. Harawa of Messrs.
MC Mulenga & Company*

For the Respondent:

Mr. L. Mwanabo of Messrs. L. L. Chambers

JUDGMENT

31st July, 2017

Legislation referred to:

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

Cases referred to:

1. *Attorney General -Vs- Richard Jackson Phiri (1988-1989) Z.R. 121 (S.C.).*

2. *National Breweries -Vs- Phillip Mwenya SCZ Judgment No. 28 of 2002*

3. *Zambia National Provident Fund -Vs- Yekweniya Chirwa (1989) Z.R. 70.*

4. *Anandram Vaswani -Vs- Union of India (1983) 2LL.N 510.*

1.0 COMPLAINANTS' CASE

1.1 On 5th May, 2014, **Mwamba Mutale** (1st Complainant), **Clarence Mwami** (2nd Complainant) and **Victor Lolozi** (3rd Complainant) filed a Notice of Complaint against the Respondent.

1.2 The grounds on which the Complaint was presented were that:

- (a) On 21st August, 2013, the Complainants, owing to the deteriorated working conditions, applied to leave the Organisation (Respondent) on Voluntary Separation, as was provided by the Conditions of Service;
- (b) On 4th September, 2013 the Complainants were suspended from duty to pave way for investigations;
- (c) On 21st October, 2013, the Complainants were charged with various offences by the National Director of the Respondent.
- (d) On 11th December, 2013 the Complainants were dismissed from employment by the Disciplinary Committee;
- (e) On 18th December, 2013, the Complainants appealed to the Board of Trustees against the verdict of the Disciplinary Committee;

- (f) On 3rd January, 2014, the Board Chairman wrote to the Complainants refusing to hear their Appeal, and upheld the verdict of the Disciplinary Committee for the reason that they had decided to appeal to the Labour Commissioner also;
- (g) On 7th April, 2014, the Organisation's representatives walked out of the meeting at the Ministry of Labour;
- (h) The Complainants sought the indulgence of the Court to grant the following reliefs:
 - (a) A declaration that their dismissal from employment was illegal, wrongful and unfair;
 - (b) A declaration that the procedure used was legally flawed and a sham;
 - (c) Reinstatement or, in the alternative, payment of full Salaries and all fringe benefits which the Complainants could have received at the normal retirement age, or the benefits which the Complainants would have received had their request for Voluntary Mutual Separation been granted;
- (i) Repatriation to their place of Engagement;
- (j) Punitive damages for shock, trauma, embarrassment and humiliation arising from the dismissal;

(k) Interest, costs and any other relief the Court may deem fit.

1.3 The Notice of Complaint was supported by an Affidavit.

1.4 At trial, the Complainants relied on their individual Notices of Complaint and Affidavits in support, and they also gave oral evidence on Oath individually.

1. **VICTOR LOLOZI:**

The first Complainants' witness (**CW1**) was Victor Lolozi, former Human Resource Manager in the Respondent Organisation.

It was his testimony that when he joined the Respondent in 2013, the 1st Complainant, Mwamba Mutale, was Acting as National Director (ND) and the working environment was cordial until the new National Director, Bwalya Melu, was employed in March 2013.

CW1 testified that the new ND had no regard for the law as well as the Rules and Procedures of the Respondent, a situation which strained the relationship between Senior Managers and the new National Director.

He stated that the new National Director was issuing threats that he would fire all of them and recruit new staff in a new deal.

CW1 further testified that in a bid to cultivate cordial Human Relations in the Institution, he called a meeting with the ND and all Senior staff but the meeting bore no good results.

The ND was shouting at all the Senior Managers and the meeting ended without tangible solution.

It was CW1's testimony that with the approval of the ND himself, he sought the indulgence of the Board Chairman at another meeting with the ND and Senior Managers in an attempt to reach a workable solution, but the meeting ended up again with no solution. He said the ND still continued threatening them with dismissal and bring in a New Team.

CW1 testified that it was after failure of the meetings to cultivate and instil the culture of cordial and harmonious relationship between the ND and the Senior Staff that CW1 and the other Complainants requested for Mutual Separation, in line with Clause 11.5(a) of the Respondent Disciplinary Code and Grievance Procedure.

He further testified that with the consent of the Chairman of the Board of Trustees, he wrote to the legal firm, Musa

Mwenye Advocates, to seek a Legal Opinion on how best to execute the Mutual Separation, since there were no detailed guidelines on the same in the Respondent's Disciplinary Code and Grievance Procedure (DCGP). Musa Mwenye Legal Practitioners responded by sending a quotation to CW1.

CW1 testified also that the ND had told him to go ahead getting a Legal Opinion, since he (ND) was in the process of getting rid of the Deputy National Director (DND), Mwamba Mutale.

CW1 went on to state that the Board Chairman initially thought the Legal Opinion was free, but the Respondent ended up paying K2,500 for it. He contended that when this expenditure was queried by Mr. Leufloa Moteetee, Regional Director – AFSA Region based in South Africa, the Board Chairman expressed ignorance about the authorisation of CW1 to seek a Legal Opinion.

CW1 informed Court that he was suspended from duty on 3rd September, 2013, pending investigations which were concluded on 15th September, 2013, and he was charged on 21st October, 46 days after he was suspended. He was charged with two Offences, namely **(i) Gross Misconduct and Misrepresentation**, and, **(ii) Gross Negligence of Duty**.

CW1 testified that he did not understand the Offences in the Charge Letter since there was no reference to any Clause in the DCGP under the Table of Offences.

He wrote an exculpatory letter on 23rd October, 2013 addressed to the ND, in which he contended that he was authorised in everything he did.

He informed Court that his Disciplinary Hearing was on 1st November, 2013 and he received the Verdict of Dismissal on 16th December, 46 days after the Disciplinary Hearing took place.

CW1 further informed Court that he wrote an Appeal against his dismissal to the Board Chairman on 21st December, 2013 in which he contended that the Respondent did not follow the DCGP in dealing with his case.

He informed Court also that his request for Mutual Separation was lodged earlier before charges were leveled against him, and the Complainants then wrote to the Labour Office appealing against their Unfair Dismissal and Unjust Practices in the Institution. This followed their loss of hope after seeing how the ND and the Chairman of the Disciplinary hearing were conniving, through e-mail communication, on dismissing the three Complainants.

CW1 further testified that he received an invitation to attend Appeal Hearing 4 days after he lodged the Appeal and that since it was short Notice, he requested for an extension by one day but never received a response from the Appeals Committee. He said even without being heard by the Appeals Committee, what he received next was a final decision made by the Committee upholding the Dismissal Verdict.

CW1 contended that Clause 10(b) in the DCGP provides for the Appeals Committee to invite him for the second time to appear for the Appeal hearing, if he did not attend at the first invitation, but the Committee ignored this provision and just kept silent after he asked for a one day extension. He said he was ready to attend the Appeal Hearing if they gave him that extension.

He further contended that his dismissal was illegal and unfair as he was not availed a copy of the Investigation Report following his suspension, so that he could have the opportunity to interrogate whoever testified against him.

CW1 asked Court to grant him reliefs as sought in the Notice of Complaint.

Under cross-examination, CW1 testified that the Respondent wrote to him informing him that his Appeal had lapsed and could not continue with it because the Complainants had