

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Civil Jurisdiction)

Appeal No.110/2015

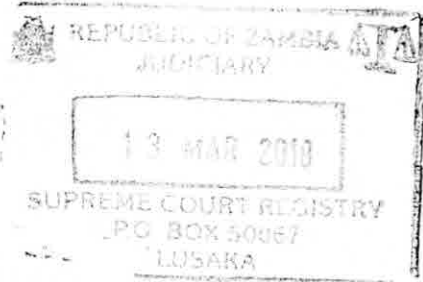
BETWEEN:

WILSON TEMBO

AND

WILLIAM KAPAMBWE

(Sued as Chairman of the Board of Governors of
Lake Road PTA School)



APPELLANT

RESPONDENT

CORAM: Mwanamwamba DCJ, Wood and Kajimanga JJS

On 6th March 2018 and 13th March 2018

FOR THE APPELLANT: Mr. N. Nchito SC, Messrs Nchito & Nchito

FOR THE RESPONDENT: No Appearance

J U D G M E N T

Kajimanga, JS delivered the judgment of the court.

Cases referred to:

1. **Zambia Airways Corporation Limited v Gershom Mubanga (1990-1992) Z. R. 149**
2. **Bank of Zambia v Joseph Kasonde (1995-1997) Z. R. 238**
3. **Zambia Consolidated Copper Mines v James Matale (1995-1997) Z. R. 144**
4. **Redrilza Limited v Abuid Nkazi and Others (2011) Z. R. 394**
5. **Nkhata and 4 Others v Attorney General (1966) Z. R. 124**
6. **Contract Haulage Limited v Mumbuwa Kamayoyo (1982) Z. R. 13**
7. **Gerald Musonda Mumba v Maamba Collieries Limited (1988 - 1989) Z. R. 217**

This is an appeal against the decision of the Industrial Relations Court, dismissing the appellant's claims against the respondent.

The undisputed facts leading to this appeal are that the appellant was employed as superintendent of Lake Road PTA school in 2004 and served on a fixed term contract of three years which was renewed on three occasions with the last one expiring on 30th April 2013. By conduct of the parties, the contract remained effective until 16th September 2013 when it was terminated. Prior to the expiry of the contract, the school's board of governors ("the board") held a meeting where it was resolved to renew the appellant's contract. He was accordingly informed of this decision and continued to work under the same terms of the expired contract.

The appellant was not availed with any formal contract of employment with the school as according to the respondent, his personal file, which would have assisted the board to finalise the terms relating to his salary and allowances, could not be traced. In the absence of his personal file, the board was unsure as to how the appellant's salary and allowances came about under his previous contract. Consequently, a forensic audit was instituted to try and

establish these issues. The forensic audit by the school's external auditors was, however, inconclusive with regard to the appellant's salary and allowances due to the fact that his personal file could not be traced. The board subsequently made a resolution to terminate the appellant's contract on 16th September 2013, pursuant to clause 11 of the contract.

Aggrieved by this decision, the appellant filed a complaint against the respondent in the Industrial Relations Court seeking the following:

- 1. A declaration that the termination of the appellant's employment by notice was a dismissal in disguise and was therefore wrongful, unjust and unmerited given the circumstances of the case and that he be compensated to the tune of all contractual benefits he would have been entitled to had his contract not been terminated;**
- 2. Damages for the mental anguish, inconvenience and loss suffered and occasioned by the respondent's action;**
- 3. Any other relief the Court may deem fit;**
- 4. Costs.**

The appellant contended that the purported termination of his employment was preceded by allegations made against him by way of board resolutions to the effect that he had awarded himself allowances but he was not formally charged and the said allegations

were in fact baseless. He, therefore, asserted that the termination of his employment was a dismissal disguised as an exercise of the respondent's right to terminate by giving notice.

The respondent disputed the appellant's claim and contended that the board was within its right to terminate the appellant's employment by notice as the same was provided for under clause 11 (a) of his contract. Further, that the entitlements due to the appellant under the said contract were paid to him in full following the termination and, therefore, the respondent had effectively satisfied its obligations towards the appellant under the contract and was not in breach thereof.

The appellant's evidence in the court below was that when his contract was coming to an end, he indicated to the board of the school that he was seeking another contract which would be his last one. Consequently, he was appraised by one Mr. Robert Ng'uni, a board member, on 3rd April 2013 and the board chairman, Mr. William Kapambwe. On 5th April 2013, the board of the school met to discuss his appraisal. The following morning, he received a handwritten letter from the chairman of the board informing him that he had earned

his contract renewal from the board. He then waited for the formal written contract to be drafted and continued working with the assurance that the contract would be prepared and signed within the shortest possible time. Whilst awaiting the contract, he was being paid in accordance with the terms and conditions of his previous contract. This went on for four months and the payments were being signed by the board. In June 2013, the respondent pledged that he himself was going to work on the contract but this did not materialize despite the repeated reminders made to him regarding the contract.

It was his further evidence that between 20th and 23rd June 2013, he received an email from the respondent stating that he had ordered a vehicle worth K50,000.00 and that he had a shortfall of K20,000.00 which was needed to clear the vehicle. The respondent requested that the school lends him the sum of K20,000.00 to enable him pay for duty on the car he had ordered. The appellant replied and advised the respondent that it would not be appropriate for him to use money from the school coffers for this purpose. The respondent thanked the appellant for the advice.

Shortly afterwards, however, he came across some communica-

