

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

Appeal No.202/2014



BETWEEN:

CHARLES NYAMBE & 82 OTHERS

APPELLANT

AND

BUKS HAULAGE LIMITED

RESPONDENT

Coram: Mambilima CJ, Kaoma and Kajimanga, JJS

On 11th July 2017 and 7th September 2017

For the Appellant : In Person

For the Respondent : Mr. Chanda H. J. Chileshe, Messrs
Lloyd Jones & Collins

J U D G M E N T

Kajimanga, JS delivered the judgment of the court.

Cases referred to:

1. Mike Musonda Kabwe v. B. P. Zambia Limited (1995-1997) ZR 218
2. Zambia Oxygen Limited v. Bernard Kaniki & 25 Others and Zambia Privatisation Agency – Appeal No.120/1999
3. Lawrence Muyunda v Bank of Zambia – SCZ Judgment No.22 of 2010
4. Ndongo v Mulyango and Another (2011) ZR Volume 1 187
5. Newston Siulanda and Others v Foodcorp Products Limited, SCZ Judgment No. 9 of 2002.

Legislation referred to:

- 1. Supreme Court Act Chapter 25 of the Laws of Zambia, Rule 72**
- 2. Minimum Wages and Conditions of Employment (General) Order 2011.**

This is an appeal from a judgment of the Industrial Relations Court delivered on 10th June 2014, dismissing the appellant's claims against the respondent.

By an amended notice of complaint dated 7th November 2011, the appellant and 82 others (complainants in the court below), claimed the following against the respondent:

- i. An order that the complainants be paid K2,000,000.00 (now K2,000.00) each as the balance on their salaries per month from 1st October, 2007 to date.
- ii. An order that the complainants be paid K165,000.00 (now K165.00) each per night as the balance on night allowances from 1st October, 2008 to date.
- iii. An order that the complainants be paid their leave days and be reimbursed the funds wrongfully deducted without justification.

- iv. An order that the complainants be allowed to join a union of their choice and that their conditions of service be drawn together with a code of conduct.
- v. In the alternative, that the complainants be allowed to form a trade union of their own so as to facilitate negotiations of conditions of service.
- vi. Any other relief the court may award.
- vii. Interest and costs.

The basis of the complaint before the court below was that the complainants were truck drivers employed by the respondent on various dates prior to September 2007. It was alleged that no properly defined conditions of service and disciplinary code of conduct had been put in place for them and that they had not been allowed to join a trade union of their choice so that the terms of their employment could be properly defined and negotiated. By a letter dated 28th September 2007, the respondent awarded the complainants an increment of K2,000,000.00 (now K2,000.00) on their monthly salaries of K800,000.00 (now K800.00). According to the letter, the increment was to be effective from 1st October 2007. The

complainants, however, alleged that despite the increment the respondent continued to pay them a salary of K800.00. Further, in January 2008, the complainants were required to work out of station at Frontier Mine and in Solwezi and were entitled to a night allowance of K195,000.00 (now K195.00) per night but the respondent only paid them a night allowance of K30,000.00 (now K30.00) leaving a balance of K165,000.00 (now K165.00) per night.

The respondent issued an Answer in response to the complaint on 24th January 2012 which was essentially addressed exclusively to the appellant. It was asserted that the appellant, being the principal litigant in the matter, was falsely holding himself out and purporting to act in a representative capacity on behalf of the 82 other complainants when in fact they had all dissociated themselves from the complaint upon the respondent consulting them on the same. The respondent denied that the appellant was entitled to any of the claims set out in the complaint and averred that there was a written contract of employment made between the parties which was initially for a fixed term of one year ending 30th April, 2008 and was subsequently renewed from time to time. That it was from the said

contract that the parties derived their contractual rights since May 2007. According to the respondent, the appellant had been and continued to receive his salaries, emoluments and accrued contractual entitlements at the end of each month and he acknowledged the same from the respondent in writing without any protest or objection.

The respondent also averred that the appellant had failed to comply with the laid down internal administrative grievance resolution procedures set out in its Disciplinary and Grievance Procedure Code which was availed to the appellant and its other employees. That by reason thereof, the appellant was in breach of section 85 (3) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia as amended by Act No. 8 of 2008. Further, the respondent refuted the claim that the appellant had been subjected to any inhuman terms or that he had been denied leave and conventional working hours as a long distance truck driver. The respondent also denied that the appellant had been subjected to any wrongful or unjustified deductions from, or under payment of his salary, emoluments or allowances. It was asserted by the respondent

that the appellant had been generously compensated for his services as a driver since his employment in May 2007 and that his monthly salary and allowances amounted to K4,700,000.00 (now K4,700.00).

The appellant's evidence in the court below was that the respondent employed him in December 2004 as a truck driver on a permanent and pensionable basis but no conditions of service were ever availed to him and neither did he receive any letter of appointment. Sometime in 2005, the director of the company decided that the truck drivers would be working in shifts and that each truck would have two drivers. On 26th September 2007, the directors of the respondent company held a meeting with the drivers where it was directed that from 1st October 2007 each truck would be operated by one driver and that the salaries of the drivers had been increased to K2,800,000.00 (now K2,800.00) with effect from 1st October 2007. On 28th October 2007, he and his colleagues were given letters informing them, *inter alia*, of the increase in their salaries. He stated that although the letter was not signed, all the conditions listed by the respondent therein were implemented except for the payment of the new salaries. According to the witness, the respondent had a

practice of not signing letters and to support this argument, he referred to an internal memorandum admitted as exhibit "CN6" in his affidavit in support of the complaint which was unsigned.

The appellant also testified that from January 2008, the respondent told the drivers not to be knocking off and assured them that they would be paid night allowance. Subsequently, the drivers were being made to ferry copper between Frontier Mine and Ndola and also between Solwezi and Ndola as well as from Ndola to KCM in Chingola without any overtime allowance. Further, at the month end, they would find deductions from their salaries on account of purported shortages and despite working under such conditions, there were no written conditions of service in place. The appellant stated that the drivers were being paid K30,000.00 (now K30.00) as night allowance and those who queried the amount were dismissed from employment. The appellant and other drivers then went to the labour office where they were advised that the night allowance payable to drivers was K195.00 per night and they took that information to the respondent. However, the respondent refused to

