

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

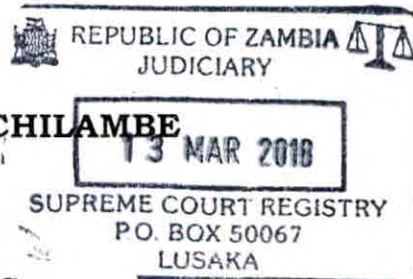
APPEAL NO. 101/2015

BETWEEN:

EVANCE BORNWELL CHILAMBE

AND

JIMBARA MERCHANTS



Coram: Mambilima, CJ, Malila and Musonda, JJS
on 6th and 13th March, 2018

For the Appellant: In person

For the Respondent: Major (Rtd) Mubanga, Mubanga & Associates

JUDGMENT

MUSONDA, JS, delivered the Judgment of the Court

Case referred to:

1. **Buchman v. A-G: (1993-94) Z.R. 131**

Legislation referred to:

1. **The Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia**
2. **The Minimum Wages and Conditions of Employment (General) Order, 2011**
3. **The Minimum Wages and Conditions of Employment (General) (Amendment) Order, 2012**

This is an appeal by the appellant by which he seeks to have this court disturb the judgment of the Industrial Relations Court dated 22nd September, 2014, in terms of which that court dismissed, as frivolous, a complaint which the appellant and one Edwin Ng'andwe (the two are referred to in this judgment as "the complainants" while the appellant is referred to as such) had instituted in that court seeking a variety of reliefs, the details of which shall be adverted to shortly.

The history and background circumstances surrounding this appeal are that the appellant was employed as a truck driver by the respondent on 27th January, 2012. By a letter dated 17th October, 2012 addressed to the respondent's Managing Director, the appellant demanded to be paid a number of allowances which he deemed to have been due to him on the basis of the provisions which were contained in Statutory Instrument No. 2 of 2011 which had been promulgated pursuant to the provisions of the Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia.

The record relating to this appeal revealed that, by the time the appellant was writing his said letter of 17th October, 2012, he

had abandoned his employment with the respondent and had since taken up employment with another company called Talwaka Lumo Company Limited.

Between 18th February and 25th March, 2013, the respondent, with the blessing of the Labour Office at the Ministry of Labour and Social Security, Mansa, paid a total sum of K2,473.71 to the appellant by way of addressing his complaints over his unpaid allowances.

On 5th April, 2013, the appellant and one Edwin Ng'andwe, his co-complainant, filed a complaint in the court below against the respondent. In his Affidavit in Support of that complaint, the appellant confirmed having resigned from his employment but sought to be paid allowances as follows:

- (a) Subsistence allowance;
- (b) Housing allowance;
- (c) Repatriation allowance;
- (d) Gratuity;
- (e) Medical allowance;
- (f) Clothing allowance;
- (g) Transport allowance; and
- (h) Lunch allowance.

In its Answer to the complaint, the respondent averred that the appellant had absconded or deserted from work sometime in September, 2012 and that, following his desertion, the appellant got employed by a company called Talwaka Lumo Company Limited.

The respondent further averred that, in spite of having absconded from work, the appellant was paid allowances as follows:

- (a) Housing allowance at the rate of K180,000 per month for 7 months... Total: K1,260,000;
- (b) Housing allowance at the rate of K300,716.00 per month for two months ... Total: K601,432.00;
- (c) Transport allowance at K102,000.00 per month for 9 months ... Total: K918,000.

In addition to the above payments, the appellant was paid a gratuitous 2 days' pay for each of the 9 months that he had worked for the respondent together with a commutation of his 18 leave days.

It was further averred in the respondent's Answer that, in terms of the terms and conditions under which the appellant had been employed, he was not entitled to any other allowances other than the ones which have been specified above.

The complaint was subsequently tried before the court below in the usual way with the then complainants (one of them being the appellant) calling one witness while the respondent called two witnesses.

According to the evidence which was laid before the trial court on behalf of the complainants (by "CW1"), the grievances which had prompted the appellant (and his colleague) to haul up the respondent before the court below revolved around non-payment of allowances as set out below. The first such allowance was subsistence allowance which the appellant had computed at K52,065 (unrebased) over a period of 267 days which the appellant claimed to have worked for from the time he was engaged. Other allowances whose non-payment had aroused the appellant's disaffection were housing, medical, lunch, transport and clothing allowances.

