

**IN THE COURT OF APPEAL FOR ZAMBIA  
HOLDEN AT LUSAKA**

APPEAL NO. 033/2018

*(Civil Jurisdiction)*

**BETWEEN:**

ATLAS COPCO ZAMBIA LIMITED

AND

LAWRENCE MALAMBO



APPELLANT

RESPONDENT

*Coram: Mchenga DJP, Chishimba and Majula, JJA  
On 27<sup>th</sup> of June, 2018 and 24<sup>th</sup> July, 2018*

*For the Appellant: Mr. A. Imonda of Imonda & Company.*

*For the Respondents : In Person*

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**JUDGMENT**

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MAJULA, JA, delivered the Judgment of the Court

**Cases cited:**

1. *Richman Chulu vs Monarch (Z) Ltd (1983) ZR 33.*
2. *ZCCM vs George Nyambe (SCZ Appeal No.95 of 1997).*
3. *Claude Samuel Graynor vs Robert Cowley (1971) ZR 50.*
4. *The Attorney-General & Others vs Phiri (Appeal No. 161/2014) (2017) ZNSC 63.*
5. *The Attorney-General vs Kakoma (1975) ZR.273.*

**Legislation referred to:**

*Criminal Procedure Code, Chapter 88 of the Laws of Zambia.*

*Zambia Police Act, Chapter 107 of the Laws of Zambia.*

*Prisons Act, Chapter 97 of the Laws of Zambia.*

**Other authorities referred to:**

*Bryan A. Garner, Black's Law Dictionary, Revised 4<sup>th</sup> edition (West Publishing Co. 1966).*

This is an appeal against a judgment of the High Court granting the respondent damages for false imprisonment against the appellant. In the court below, the respondent commenced legal proceedings against the appellant and the Attorney-General, by way of writ of summons seeking, inter-alia, damages for unlawful dismissal and false imprisonment. He also claimed damages for defamation of character.

The case for the respondent, who was the plaintiff in the court below, was that he was employment by the appellant in the year 2003. On 7<sup>th</sup> August, 2009 around 03.00 hours, some police officers, including Alex Yanganani who was the arresting officer, went and arrested him from his house. During the operation, his house was searched and no properties belonging to the appellant were found. He was detained by the police, who took him to the appellant's premises the next day, where he was told that three pistons were missing from the main warehouse. He was also informed that according to the closed-circuit television (CCTV) footage, the image of the thief was similar to his. The respondent, however, denied the charge.

Consequently, he was ordered to undress and they took pictures of him wearing only his boxer shorts. He was later taken to Chingola Central Police where he spent a night. He was thereafter charged with breaking into a building and committing a felony therein. The next day, he appeared before the Subordinate Court, where bail was granted but he failed to pay K10,000.00 and provide a surety, as conditions precedent to his release. He was confined in prison from 7<sup>th</sup> August, 2009 to 2011, when he was acquitted of the criminal charged in the Subordinate Court.

In addition, he stated that he suffered while in prison and that he did not commit the offence that he was charged with.

The respondent stated that he left employment because he was frustrated. He conceded that there was nothing wrong with the police carrying out investigations on a matter reported by the appellant. Further that, there was a possibility of an honest mistake on the part of the appellant in the identification of the suspect.

During the course of the trial, reference was made of page 1 of the defendant's bundle of documents, which is a report by Delta Security team, to the appellant. According to that document, the respondent was working on the night of 22<sup>nd</sup> December 2007, around 23.30 hours, having obtained a permit to do so, on the pretext that he was going to be away the following morning. The respondent was charged for illegal access to company premises and a final written warning relating to the said charge was given on 18<sup>th</sup>

January, 2008. The same is shown on pages 3,4 and defendant's bundle of documents.

The respondent was also referred to pages 6 and 7 of the defendant's bundle of documents which is a charge form dated 28th July, 2008 indicating that he was charged with dishonest conduct for removing a wall clock without authority. The respondent was subsequently dismissed from employment with effect from 8<sup>th</sup> August, 2009 for desertion for more than 10 days.

The case for the appellant, who was the 1<sup>st</sup> defendant in the court below, was that the respondent was employed on 1<sup>st</sup> June, 2004 as a office orderly, messenger/cleaner up until he quit his employment through desertion. His employment was formerly terminated on 20<sup>th</sup> August, 2009. That there was no false report issued against him by the appellant. On or about 7<sup>th</sup> August, 2009, three pistons belonging to the appellant went missing from its warehouse and the matter was reported to the police.

That upon examination and analysis of the surveillance cameras installed at the premises, the police reasonably suspected the image of the intruder to be that of the respondent. Consequently, the respondent was arrested, detained and charged with one count of breaking into a building and committing a felony therein contrary to **Section 303 (a) of the Penal Code**.

At the conclusion of the prosecution evidence in the Subordinate Court, the respondent was found with a case to answer

