

IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA.
(CIVIL JURISDICTION)

SCZ APPEAL NO.77/99

**ANDREW CHISENGA
AND
NDOLA LIME CO. LTD**

**APPELLANT
RESPONDENT**

Coram: Ngulube, C.J., Sakala and Lewanika JJS.
7th March and 7th June, 2000.

For the Appellant, Mr. P. Mwale of P. Mwale & Company.
For the Respondent, Mr. P. M. Chamutangi, Legal Counsel.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

On 7th March 2000 when we heard this appeal, we dismissed the appeal and indicated that we shall give our reasons later. We now give those reasons.

But before we give those reasons, it is necessary to mention that on 8th September 1999 when the appeal first came up for hearing, we drew counsel's attention to the grounds of appeal in the memorandum of appeal, pointing out that the grounds of appeal as they stood raised no point of law as required by Section 97 of the Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia. Counsel immediately applied to amend the memorandum of appeal and also applied for an adjournment. Both applications were granted. After several adjournments, the matter finally came up for hearing on 7th March at Ndola. Counsel had then filed an amended memorandum of appeal.

The appeal is against a judgment of the Industrial Relations court dismissing the appellant's complaint as one without merits. The brief facts of the case which were not in dispute were that the appellant was employed by the respondent as an Assistant Mechanic from 30th November 1991 to 19th January 1994 when he was dismissed by the respondent. During his employment with the respondent, the appellant was a member of the Mine Workers Union of Zambia holding the post of Branch Treasurer. The circumstances leading to his dismissal were that, on the material date, a rumour had been circulating within the respondent company that there was a discrepancy between

the money indicated on the workers' pay slips relating to the Christmas Bonus to be paid and that on cheques. After investigations the appellant was identified and was charged for spreading false information which had the effect of inciting workers into an industrial unrest and jeopardising one of the employee's position. He appeared before a Disciplinary Committee and his services were terminated after losing his appeal.

The appellant filed a complaint with the Industrial Relations Court pursuant to section 108(2) on the ground that he had been discriminated on account of his status as a Union Branch official for investigating together with his fellow Union Branch officials anomalies in workers payment in order to prevent a possible strike action by the workers. The reliefs sought were reinstatement and payment of salary arrears. The Industrial Relations Court considered the evidence and noted that the evidence established that it was only the appellant who had been charged with the offence that led to his dismissal. The court pointed out that discrimination only arises where two or more people are charged with an offence arising out of the same facts and where different punishments are accorded to them. The court found that the appellant's contention that he was discriminated as a Unionist was not true. The court also found as a fact that all those who had been interviewed in connection with the allegation were Union Members. The court noted that Union matters are, as a matter of practice, brought to the attention of Management in the respondent company by a Branch Secretary and not a Treasurer. The court, accordingly, found also that the appellant was not acting in his capacity as a Union Official when he made the allegations that led to his dismissal. The court observed that if the appellant had been acting in his capacity as a Union Official the other Union officials would have made representations to Management or instituted the action on his behalf. The court further noted that the Union's failure to act on his behalf was an indication that the Union did not approve of the appellant's conduct. The court concluded that the appellant had not proved that his dismissal was discriminatory or unfair and dismissed the complaint.

The three grounds of appeal in the original memorandum alleged that the Industrial Relations Court erred in fact in holding that the appellant committed an offence for which he was dismissed; that the court erred in fact in holding that there was no genuine complaint from workers upon which the

appellant, as a representative of the workers, could have made inquiries; and that the court erred in fact in holding that the failure of the other Union officials to come to the appellant's aid was good reason to assume that the appellant was not acting within his duties as a Unionist. These grounds of appeal in our view raised no point of law. It was for that reason that we drew the attention of counsel to the provisions of section 97 of the Industrial and Labour Relations Act. It was further for that reason that we allowed counsel for the appellant to amend the memorandum of appeal. The amended memorandum of appeal, in content, repeated everything as in the original memorandum of appeal except for the phrase "erred in fact" now read "erred in fact and law" and stated all that was stated in the original grounds of appeal..

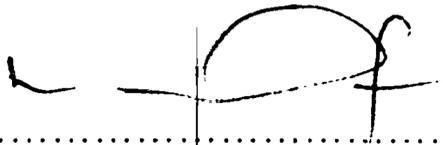
On 7th March, when we were hearing the appeal we again invited counsel to point out to us the point of law raised in his amended grounds of appeal. But instead he made submissions that the evidence on record established that, the appellant was an executive member of the Union and did not spread the alleged false information. Yet, the Industrial Relations Court found as a fact that he was not acting in his capacity as a Unionist. Counsel further tried, in vain, to impress on us that even if the appellant committed the offence, as a Union official, he was immune. We did not call upon Mr. Chamutangi on behalf of the respondent to address us.

The Industrial Relations Court found as a fact that the appellant, who was a Union official, was not acting in such a capacity when he made the allegations that led to his dismissal. The court also found as a fact that after the respondent carried out investigations, it was established that the appellant was responsible for spreading the false rumours. These were all findings of fact. The appeal was therefore against findings of fact. But Section 97 of the Industrial Labour Relations Act states:

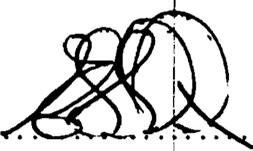
"Any person aggrieved by any award, declaration, decision or judgment of the court, may appeal to the Supreme Court on any point of law or any point of mixed law and fact."

: J4:

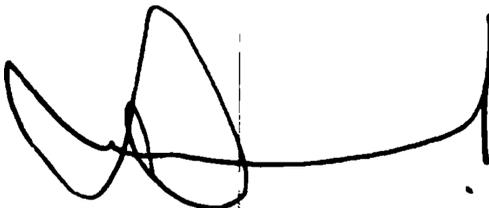
Counsel for the appellant was unable to point out to us any points of law or of mixed law and fact raised by this appeal. It was for that reason that we did not call upon Mr. Chamutangi to address us. It is also for that reason that we dismissed the appeal with costs to be taxed in default of agreement.



.....
M.M.S.W. Ngulube,
CHIEF JUSTICE.



.....
E. L. Sakala,
SUPREME COURT JUDGE.



.....
D. M. Lewanika,
SUPREME COURT JUDGE.