

IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL No.93 OF 1999
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

B E T W E E N:

THE ATTORNEY GENERAL

APPELLANT

AND

MIKE KAIRA

RESPONDENT

Coram: Bweupe D.C.J. ; Chaila and Muzyamba, JJS

7th March and 7th June 2000

For the Appellant: R.O. Okafor, Principal State Advocate

For the Respondent: In person

J U D G M E N T

Muzyamba, J.S. delivered the Judgment of the court

This is an appeal against a finding by the court below that there was a valid contract of service between the parties.

The brief facts of this case were that on 20th February 1992 the then Minister of Communication and Transport, Mr. Andrew Kashita offered the respondent a job as General Manager of Zamcargo Limited, which he accepted and was given a letter, addressed to the Managing Director of Zamcargo, Mr. Cris Yumbe. The letter was copied to him and is at page 30 of the record of appeal. The respondent took the letter to Mr. Yumbe, who upon reading the letter gave the respondent an official car and assigned some security guards to him. He was also introduced to members of staff. On 24th February 1992 the Deputy Minister in the

Ministry of Communications and Transport, Mr. Mululu wrote a letter to Mr. Yumbe withdrawing the respondent's appointment. The respondent then brought an action against the appellant and Zambia Privatization Agency by way of originating notice of motion for judicial review and sought the following reliefs:

- "(a) Whether the appointment of the Applicant by the 1st respondent as General Manager of ZamCargo was valid
- (b) Whether the applicant's appointment aforesaid could be revoked by and through A third party
- (c) For an order of the prerogative writ of certiorari to quash the decision of the Third Party to revoke the appointment of the applicant as General Manager of ZamCargo and for a further order that the revocation was done mala fides.
- (d) For an order of the prerogative writ of mandamus to compel the respondents' to reinstate the applicant in his erstwhile position as General Manager of ZamCargo and a further order that the applicant is entitled to enjoy all conditions appertaining thereto."

The court below found in favour of the respondent and awarded him damages.

Mr. Okafor argued before us that the court below erred in holding that the letter of 19th February 1992 constituted a valid contract of service. That the respondent's appointment was subject to ratification by the Board of Directors of ZamCargo upon reconstitution of the board. That the board was never reconstituted and the respondent's appointment was never ratified by the board.

The respondent, who appeared in person submitted that he was an ordinary citizen summoned to Lusaka by the Minister and offered a job which he accepted and given a letter of appointment. That although the Board of Directors of ZamCargo was not reconstituted and transfer formalities had not been fulfilled

yet the appointment was valid and that the learned trial Judge was right in coming to the conclusion that he did.

We have considered the evidence on record and the submissions by both sides. The letter at page 30 reads:

"CONFIDENTIAL

19th February 1992

Mr. Cris Yumbe,
Managing Director,
ZAMCARGO
LUSAKA.

Dear Mr. Yumbe,

I refer to our discussion of today, and wish to confirm that it is the wish of this Ministry to replace Mr. Richard Best, General Manager, ZAMCARGO, on the Copper-Belt, with Mr. Michael Kaira, with effect from 20th February 1992.

Mr. Kaira will be temporarily holding the position of General Manager pending the Reconstitution of the Board, and completion of transfer formalities.

I shall be grateful if you will give Mr. Kaira all the help to enable him settle in the job Quickly.

Yours sincerely,

C.M. Sikazwe

PERMANENT SECRETARY

MINISTRY OF COMMUNICATION AND TRANSPORT

c.c. Mr. M. Kaira,

NDOLA."

It is quite clear from this letter that the respondent's appointment was subject to ratification by ZAMCARGO's Board of Directors. It is common cause that the appointment was not ratified as no board was reconstituted as stated in the letter. We would therefore agree with Mr. Okafor that the learned trial Judge erred in finding that there was a valid contract of employment between the Parties. We therefore allow the appeal and set aside the award of damages which was unsupported by evidence.

In passing off we wish to state here that on 23rd November 1999 the respondent caused his former advocate, Mr. V.K. Mwewa of V.K. Mwewa and Company to write a letter to the Master of the Supreme Court in the following manner.

"Dear Sir,

Re: **ATTORNEY GENERAL AND MIKE KAIRA - APPEAL No.SCZ/8/123/99**

I refer to the above matter and to the brief discussion I held with you at the Ndola High Court.

I wish to advise that I have received instructions from the Respondent herein that he feels uncomfortable for personal reasons that the bench to hear his appeal should have a composition of the Honourable Deputy Chief Justice Mr. Justice Bweupe, Mr. Justice Chaila and Mr. Justice David Lewanika.

I do not seem to be sure as to the reason for this but he indicates it is for personal reasons.

Probably you could look at this aspect."

The letter borders on contempt of court as it tends to disparage their Lordships mentioned in the letter. Both the respondent and his former Lawyer are therefore

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strongly advised to desist from such conduct lest they find themselves in serious trouble.

Costs will follow the event and to be taxed in default of agreement.

.....
B.K. BWEUPE
DEPUTY CHIEF JUSTICE

.....
M.S. CHAILA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE