

**IN THE SUPREME COURT OF ZAMBIA**  
**HOLDEN AT LUSAKA**  
(CIVIL JURISDICTION)

Appeal No. 165/2005

IN THE MATTER BETWEEN:

**MWEWA MWANSA**

**APPELLANT**

**AND**

**DYNO-NOBEL ZAMBIA LIMITED**

**RESPONDENT**

**Coram:** **Lewanika, DCJ, Mumba, Mushabati, JJS**  
6<sup>th</sup> June 2006 and 4<sup>th</sup> December 2007

For the Appellant: In person

For the Respondent: Mr S.G. Twumasi of Kitwe Chambers

---

**JUDGMENT**

---

**Mumba, JS, delivered the Judgment of the court.**

CASE CITED

1. BARCLAYS BANK (Z) LIMITED VS MANDO CHOLA & IGNATIUS  
MUBANGA (1997) Z.R, 212

This is an appeal against the judgment of the Industrial Relations Court whereby claims for wrong dismissal and discrimination by the appellant against the respondent were dismissed.

The appellant was employed by the respondent on 1<sup>st</sup> March 1994 as Assistant Cost Accountant. In 1996, he was promoted to Logistics Officer and head of supplies. His duties included sourcing supplies and office equipment required by the respondent in its operations. The appellant was also required to source services and contract other companies for services required by the respondent. Apart from these duties, the appellant was also supervising the purchasing officer, a Mr Mayfield Kombe, who was subordinate to him.

The appellant was summarily dismissed on 12<sup>th</sup> April, 1998 for gross negligence of duty. He appealed against summary dismissal by letter on page 28 of the record of appeal, but the appeal was rejected by the managing director in a letter dated 18<sup>th</sup> April 1998, on page 30 of the record of appeal.

The evidence on record shows that investigations were conducted on allegations of overpriced invoices on orders for goods and services required by the respondent. There were also allegations that servicing and repairing of the respondent's motor vehicles were done on oral agreements by the appellant

without following laid down procedures. For instance, at one time the respondent was faced with bills from Berncu Motors for servicing the respondent's motor vehicles when there were no supporting documents. Investigations conducted by the Chief Security Officer, Mr Tyson Harawa, revealed that the appellant made arrangements orally for such services without following procedure whereby documents raised for such services were supposed to be approved by the appellant's superiors.

On 12<sup>th</sup> April, 1998, the appellant's subordinate officer, Mr Mayfield Kombe, resigned. According to his letter on page 45 of the record of appeal, he resigned on account of malpractices in purchasing company items as found by the respondent's investigating team. As a result of these investigations the appellant was charged and was later found guilty of gross negligence of duty by the disciplinary committee. The appellant was advised that the offence would lead to summary dismissal but that because he was a senior employee, he was given the option to resign from employment. The appellant refused to resign but instead wrote a letter appearing

on page 79 of the record of appeal, requesting for early retirement. It was then that he was summarily dismissed.

The appellant claimed that he was not charged with any offence and that he was dismissed orally when he was told of the options available. However, the evidence on record supported the findings of the court below. Even the appellant's letter shows that in his letter asking for early retirement, on page 79 of the record of appeal, supports the judgment below in that the appellant states that, "**... following the exhaustive and unusual three week fault finding investigation instigated by the Financial and Administration Manager together with the Chief Security officer...**" This clearly shows that investigations were conducted and the appellant was found to be at fault.

In the same letter, the paragraphs appearing at page 80 of the record of appeal, under a subheading 'Purchasing Function', it is stated, "**This function is overseen by the I.O and I do agree it has a lot of flaws but most of them were undocumented but requested works ...**" This in effect is the

appellant's own admission which demonstrates that correct procedures were not followed when purchases were made.

The evidence of three witnesses called by the respondent in the court below, RW1 Mr Victor Mtanga, Marketing Manager who was acting Managing Director at the time of trial, RW2, Mr Joseph Mwenya, Senior Human Resources Officer, together with RW3, Mr Tyson Harawa, Chief Security Officer, was clear and unshaken that indeed as per findings of the court below appellant was negligent in the conduct of his duties. On the resignation of appellant's subordinate officer, Mr Kombe, appellant told the court below that he did not know what Kombe was doing when making purchases. That, in our view, was a clear admission of appellant's failure to supervise his subordinate. Having been given the option to resign, Mr Kombe resigned in order to avoid summary dismissal. The appellant's claim that he was dismissed orally is against his own evidence on record that after being told of the options available, he received a letter of summary dismissal against which he appealed to the managing director.

On the claim that he was discriminated against on account of his post, the court below found that the discrimination available in law is that based on ones' standing in the community and not that of ones' position at the place of work. The court below found that there was no evidence to uphold the claim on the legal requirement for discrimination to succeed as Section 108 provides for discrimination based on social status.

The appellant filed three grounds of appeal as follows:

1. The trial Judge misdirected herself when she concluded that the complainant was given an opportunity to exculpate himself. Judgment page 15, lines 25-26. I submit that the hearing never took place.
  - a) If there was a committee to hear my case, it could not have had Joseph Mwenya as a complainant and as one who noted the proceeding of the meeting while he says he did not attend that hearing. Proceedings page 159, lines 6-11 and "noted by" on document page 35.
  - b) The appeal, the Judge has referred to was in absentia and the word is very clear. If the hearing

took place, then why appeal in absentia? Page 28, paragraph 1, sub-heading: Appeal Against Dismissal.

- c) Mtanga, the first witness is both the chairman of the disciplinary committee and the administering official. Signatures on document pages 35 and 36, which is not possible for a committee of two. Pages 159, lines 6 and 7. This the respondent did not bring to the attention of the court. Page 16, line 20.
2. The trial Judge misdirected herself when she said the appellant was properly charged with gross negligence of duty. Judgment Page 19, lines 15-20. I submit that this is a wrong charge.
    - a) Responsibilities of assembling the list of registered suppliers fell on the managing director, the finance and administration manager, the quality assurance manager, the logistics officer and the purchasing officer. Procedure page 84, paragraph 2.2 and 2.3. But Mr Harawa, the 3<sup>rd</sup> witness in charge of investigation clearly said I did not make any purchase outside this list. So if there was any problem, it is the problem of all the five people. Proceeding page 165, line 18-20 and page 166, line 18-20.
    - b) The Judge agreed with 3<sup>rd</sup> witness Harawa that the logistics department was made up of two people. Judgment page 19, line 24-26, but all purchase orders were signed by four officials. Pages 71 and

87. So the duty of care to the employer was met by following meticulously the procedure laid down, there could not have been gross negligence of duty.

- c) I recommend that payment to Berncu be made only for work done, Page 97 of April 1998. Amount K651,500. Also page 85, paragraph 3.1.7 but the respondent went on to pay K1,267,250 to the same company long after I had left. It is clear that the respondent in this case was negligent. Page 102 date 02/06/1998.

3. That the trial Judge misdirected herself when she adopted oral evidence which could not be backed by documents and documents which could not be supported by witnesses

- a) 3<sup>rd</sup> witness Harawa said he collected quotations in his investigations when most of them were not collected by him. Judgment page 13, lines 23-25. C & J of Chililabombwe, page 54 and Chati Interdevelopment Centre of Kalulushi, page 55. I am not sure how the respondent came in.
- b) Twiza Chemicals, manufacturers of cosmetics, submitted a quotation for Fumigation. This is a clear fabrication of documents.

The appellant filed written heads of argument which were detailed and are on record. At the hearing of the appeal, he

repeated most of the arguments in the written heads of argument. In the main, the appellant challenged the allegations against him by the respondent, and also criticized the manner in which the learned trial Judge analysed the evidence. Other than challenging the facts found by the lower court, no points of law were raised.

Mr Twumasi, counsel for the respondent filed written heads of argument on which he relied. In sum, the response to the appeal was that all the grounds of appeal were against findings of fact and as such were not valid because appeals against judgments of the Industrial Relations Court are only valid if they are appeals on points of law. Counsel cited the case of Barclays Bank (Z) Ltd Vs Mando Chola & Ignatius Mubanga (1), in support of his submissions.

In light of the view, we take of this appeal, we do not find it necessary to tabulate the whole submissions by both parties as they are on record, but we have duly considered them all. We have also considered the evidence on record and the judgment appealed against.

In the face of appellant's evidence that he did not know what was happening to purchases and that he did not know what his subordinate Kombe was doing, there cannot be any other conclusion other than that indeed the appellant was negligent of his duties. He did not know what was going on, when his subordinate, Mr Kombe, resigned. It was not possible for the to give any explanations on the allegations of malpractice raised against both Mr Kombe and himself.

We find that the court below analysed the evidence and made findings of fact which were amply supported by the evidence on record. We also note that the entire appeal is based on findings of fact and so it cannot succeed. This court has already made it clear that only appeals based on point of law or mixed findings fact and law, can be heard by this court. The case of Barclays Bank (Z) Ltd Vs Mando Chola & Ignatius Mubanga (1), cited by the respondent, is one of the many authorities that when the Industrial Relations Court makes a decision, parties can only appeal to the Supreme Court against

that decision on points of law or on mixed findings of fact and of law.

We find no merit in this appeal and it is dismissed. In view of the circumstances herein, we make no order on costs.

**D.M Lewanika**  
**DEPUTY CHIEF JUSTICE**



**F.N.M Mumba**  
**SUPREME COURT JUDGE**



**C.S Mushabati**  
**SUPREME COURT JUDGE**