

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 40/2001

HOLDEN AT NDOLA

(CIVIL JURISDICTION)

BETWEEN:

POSTAL SERVICES CORPORATION

Appellant

AND

MUTAFELA MUTAFELA

Respondent

Coram: Lewanika, DCJ, late Chaila, Chirwa, JJS

4th September, 2001 and 5th March 2002

For the Appellant: C.M. Mukonka, Legal Counsel, Zampost.

For the Respondent: A.M. Munyinda of Munyinda & Company.

JUDGMENT

Lewanika, DCJ, delivered the judgment of the court.

Cases referred to:

1. THE ATTORNEY GENERAL VS MARCUS KAMPUMBA ACHIUME,
1983 Z.R. 1

When we heard this appeal our late brother Chaila, JS, was on the panel before his untimely demise and this judgment is to be regarded as by the majority.

This is an appeal against the decision by the Industrial Relations Court as found that the respondent's employment was unfairly terminated and ordered that he be deemed to have been declared redundant from the date of termination and that his redundancy package do carry interest at the Bank of Zambia lending rate till payment.

The evidence on record is that the respondent was employed as a Postal Manager by the appellant and was based at Chipata Post Office. He was responsible for the postal offices in the eastern region and among his duties were that he was responsible for the overall control and supervision of staff at all levels in the postal area. He was also required to make regular checks of branch offices and agencies to ensure correct implementation of instructions. In March 1995 an Inspector, DW1 in the court below, was sent to Chipata to conduct investigations at Chipata Post Office and those investigations revealed that an amount in excess of K36 million had been misappropriated by postal employees between the period of January 1994 to March 1995. The witness compiled a report

which was produced in the court below. As a result of this report, the respondent was charged with gross negligence and after all the disciplinary procedures had been observed, he was dismissed from employment. This is what led to the proceedings in the court below. The Industrial Relations Court found that the report exonerated the respondent and that his employment had been unfairly terminated and ordered that he be deemed to have been declared redundant.

Counsel for the appellant has filed two grounds of appeal but we shall deal first with the first ground which is that the Industrial Relations Court erred in finding or misdirected itself when it made a finding to the effect that the report on money order frauds exonerated the respondent and hence the respondent never committed the offence of gross negligence.

In arguing this ground, counsel said that the finding by the trial court that the respondent's employment was unfairly terminated is not supported by the evidence on record. He said that the report which was construed by the court below to have exonerated the respondent from commission of the disciplinary offence of gross negligence even in its plain language does not exonerate the respondent. He said that the paragraph of the report relied upon by the court below in arriving at its

finding merely mentioned other factors which could have aggravated the situation. That with or without the last check at money order branch at headquarters in Ndola, the respondent was still negligent. He pointed out that the trial court had observed in its judgment that every weekend all money orders, including other transactions, were compiled into cash account and the first person who was to verify these transactions was the respondent. That the respondent acknowledged in his evidence that the cash account was submitted to his office for verification before it was forwarded to Ndola money order branch by his assistant. He submitted that the respondent grossly neglected his duties and for the trial court to find that the respondent never committed the offence in the face of the evidence adduced in court was a misdirection. He said that if the trial court had taken a well balanced view of the whole evidence laid before it, it would not have come to the conclusion that the respondent had not committed the disciplinary offence of gross negligence. He urged us to interfere with and reverse this finding and set aside the judgment of the court below.

In reply, counsel for the respondent submitted that the trial court did not err or misdirect itself in making a finding of fact to the effect that the report on money orders exonerated the respondent and hence that

the respondent was not guilty of gross negligence. Further he said that this court has no jurisdiction on points of fact but on points of law or mixed law and fact. He said that he relied on Section 97 of the Industrial and Labour Relations Act.

We have considered the submissions of counsel for the appellant and for the respondent, as well as the evidence on record. There is no disputing the fact that an amount in excess of K36 million was misappropriated by the appellant's employees who were under the supervision of the respondent. The court below in arriving at its decision relied on paragraph 6 of the report prepared by DW1 who apportioned some blame on the money orders branch at Ndola for not detecting the frauds. However, in doing so the court below totally ignored paragraph 8 of the same report which stated that the frauds were committed as a result of lack of supervision on the part of the respondent and his assistant. In no way does the report taken in its entirety exonerates the respondent. Admittedly, the finding by the court below was a finding of fact but it was a finding, which flew in the teeth of evidence. As we said in the case of the Attorney General vs. Marcus K. Achiume ⁽¹⁾ quoting from our decision in the case of **ZULU vs. AVONDALE HOUSING PROJECT LTD., 1982 Z.R. 172:-**

"Before this court can reverse findings of fact made by a trial Judge, we would have to be satisfied that the findings on the question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial court acting correctly could reasonably make."

We are satisfied that this was such a case and we would reverse the finding and allow the appeal and set aside the judgment. The second ground of appeal dealt with the question of interest awarded by the court below and in the light of our decision, this ground has fallen away and it would be otiose for us to deal with it. Having regard to the circumstances of the respondent, we make no order as to costs.

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D.M. LEWANIKA
DEPUTY CHIEF JUSTICE

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D.K. CHIRWA
SUPREME COURT JUDGE