

**IN THE SUPREME COURT FOR ZAMBIA
2010
HOLDEN AT NDOLA
(CIVIL JURISDICTION)**

Appeal No. 25 of

B E T W E E N:

ZESCO LIMITED

APPELLANT

AND

BONAVENTURE CHIKOTI

RESPONDENT

Coram: Mambilima, DCJ, Chirwa and Chibomba, JJS.
On 8th September, 2010 and On 10th August, 2012.

**For the Appellant: Mr. M. B. Chiwale, Principal Legal Officer -
ZESCO**
For the Respondent: In Person

J U D G M E N T

Chibomba, JS, delivered the Judgment of the Court.

Case referred to:-

1. Luciano Chitalu and Jackson Chomba vs. Newstead Zimba 1988-89 Z. R. 64
2. Zulu vs. Avondale Housing Project Limited (1982) Z. R. 172
3. Attorney-General vs. Achiume (1983) Z. R. 1

This is an appeal against the Judgment of the Industrial Relations Court at Ndola, in which the Court held, inter alia, that the respondent was wrongfully dismissed from employment as the appellant had acted on unreliable and inconclusive circumstantial evidence to dismiss him from employment.

The facts leading to this appeal are not mainly in dispute. These are that the respondent was employed by the appellant as

a Meter Reader. On the date in question, the respondent was assigned to disconnect customers at the Market. What was in dispute is whether shop No. 28 was among the shops that the respondent was assigned to disconnect and if he did disconnect the shop.

The appellant's position at trial was that property No. 28 was one of the properties that the respondent was assigned to disconnect. The respondent's position was that the shop in question is not one of the properties that he was tasked to disconnect and that he did not, in fact, disconnect power at that shop.

In support of the claim that the respondent was assigned and that he did disconnect the shop, the appellant relied on the evidence of RW1 who was in the respondent's team when he went to the Market to disconnect power to some premises. RW1's evidence in the Court below was that he was ordered by the respondent to disconnect shop No. 28 and that he did disconnect that shop. However, that when he went back to the market the following day with the Supervisor, they found that power had been reconnected to the shop. And that the owner of the

premises told the team that he had paid K60,000 'to someone' to reconnect the premises.

As a consequence, the appellant charged the respondent with dishonesty conduct to which the respondent submitted an exculpatory statement in which he denied disconnecting power at that shop. He stated that the shop was not among the premises that he was directed to disconnect. The appellant, however, dismissed him. The respondent then commenced an action in the Court below in which he sought reinstatement, terminal benefits, damages, interest and any emolument the Court may deem fit and costs alleging that he was wrongfully and unfairly dismissed from employment.

The Court below heard evidence from both parties. After considering and analysing the evidence before it, the Court below found that it was not in dispute that the respondent, in the company of RW1 and a driver, had gone on a disconnection exercise on the given date. And that it was not also in dispute that the respondent met Collins at the Market. That however, what was in dispute, is whether shop No. 28 was among the properties that the respondent disconnected. And that although

it was the appellant's evidence that the customer at shop No. 28 told RW1's team that went there the following day that he had given K60,000 to 'someone' in the respondent's team in order for that person to reconnect the shop, there was however, no evidence to show that the money, indeed, exchanged hands. And that question whether the respondent was in possession of a 'Disconnection Order' for that shop, was a credibility issue to be decided on the respondent's and the appellant's witness(es). And that it could have been useful if the record showing the allocation to the respondent had been produced in Court by the appellant as the respondent's evidence was that once a disconnection is done, a disconnection Slip is retained by the appellant. And that the Disciplinary proceedings against the respondent show that although RW1 said he had disconnected that shop, the customer of that shop said his premises was not disconnected that day and that it was only disconnected at a later date by a Mr. Cheelo and RW1. Based on the above, the Court below came to the conclusion that the appellant's management had acted on unreliable and inconclusive circumstantial evidence to dismiss the respondent from employment.

Dissatisfied with this decision, the appellant appealed to this Court, advancing one ground of appeal, namely, that:-

“The learned trial Judge erred in law and fact when he held that the appellant acted on unreliable and inconclusive circumstantial evidence to dismiss the Complainant without regard to the evidence on record.”

In support of this ground of appeal, the learned Counsel for the appellant, Mr. Chiwale, relied on the arguments advanced in the appellant’s Heads of Argument. It was contended that the trial Court erred by arriving at this finding because the Court below acted as an appeal body. And that this was therefore, a misdirection as the Court acted as a Court of appeal from the decision of the appellant’s domestic tribunal. It was pointed out that this Court, in the case of **Luciano Chitalu and Jackson Chomba vs. Newstead Zimba**¹, upheld the English authorities cited therein which state that:-

“The Court does not sit as a Court of appeal from the decision of a domestic tribunal to review its proceedings or to inquire whether the decision is fair or just or reasonable. The jurisdiction is limited to the question of whether the Court has power to intervene; that is to say, is limited to the questions of (1) whether the union has valid disciplinary powers and (2) if so, whether such powers have been validly exercised.”

It was submitted that what the Court below ought to have done was to determine the validity of the appellant's disciplinary power in dismissing the respondent and to determine whether or not such powers were properly exercised.

It was pointed out that it is not in dispute that the Disciplinary Code the respondent served on was followed in dismissing him from employment. And that on this premise, this appeal should succeed and the Judgment of the lower Court should accordingly, be quashed with costs to the appellant.

The respondent did not add anything in response.

We have seriously considered this appeal together with the arguments advanced in the appellant's Heads of Argument and the authorities cited. We have also considered the Judgment by the Court below. It is our considered view that this appeal raises the question whether in the circumstances of this case, the respondent was wrongfully dismissed from employment following the allegation that he had reconnected the shop in question after it was disconnected upon payment of K60,000 by the customer of that premises.

As found by the Court below, this issue depends on the question whether or not the respondent was assigned to disconnect the property in question and if he at all, did disconnect that premises.

We also agree with the Court below that this is a question of credibility of the witnesses for the parties since on one hand, the appellant's witness, RW1, told the Court below that he disconnected the premises in question on instruction of the respondent while the respondent's evidence was that he did not disconnect power from the said premises as the shop was not among the properties that he was assigned to disconnect power from. Our firm view is that the Court below cannot be faulted for coming to the conclusion that it did when it found that the respondent's evidence that he did not disconnect power at the said property was more credible than that of the appellant's witness. It is also correct that the respondent's evidence that a disconnection slip is retained by the appellant was not challenged in the Court below.

The Court below also gave plausible reasons why it found the respondent's evidence to be more credible than that of the appellant's witness. The appellant's failure to produce a disconnection order and a disconnection slip to prove that the respondent was ordered to disconnect that shop and that he did disconnect it was fatal to the appellant's case.

Further, what the owner of shop No. 28 told the appellant's disciplinary hearing constituted to investigate the appellant's alleged misconduct which led to his dismissal from employment also negatively affected the appellant's case. The customer told the disciplinary hearing that his shop was not disconnected by the respondent's team that day but on the following day by a Mr. Cheelo and his team which included RW1. Therefore, the Court below cannot be faulted for taking into account this piece of evidence.

Further, the Court below had the benefit of seeing and hearing the witnesses as they testified and of observing their demeanour. We do not have the same opportunity. In the case of **Zulu vs. Avondale Housing Project Limited**², we made it clear that:-

“The appellate Court would only reverse findings of fact made by a trial Court if it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of facts.”

We echoed this in **Attorney-General vs. Achume³**, where we went further to state that we would not reverse findings of fact unless the findings were, on a proper view of evidence, no trial Court acting correctly can reasonably make. This applies to findings made by the trial Court which are based on the credibility of witnesses.

We therefore find no merit in the sole ground of appeal. We dismiss it.

The sum total is that this appeal has failed on ground that it has no merit. The same is dismissed with costs to the respondent to be agreed and in default thereof, to be taxed.

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I. C. MAMBILIMA
DEPUTY CHIEF JUSTICE

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D. K. CHIRWA
SUPREME COURT JUDGE

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H. CHIBOMBA
SUPREME COURT JUDGE