

## **SAMSON KALONGA AND PHONIX CONTRACTORS**

SUPREME COURT  
MUZYAMBA, J.S.

5<sup>TH</sup> SEPTEMBER AND 5<sup>TH</sup> DECEMBER, 2000  
(S.C.Z. APPEAL NO. 129 OF 2000)

### **Flynote**

Labour Law - reinstatement and compensation.  
Labour Law - dismissal - rules of natural justice - whether rules were observed.

### **Headnote**

The appellant was employed by the respondent as a driver at Lusaka. On 24<sup>th</sup> April 1997 he and other drivers drove to Ndola to get their salaries. The appellant upon his arrival in Ndola got his Cheque and cashed it. He came back from Kitwe and parked the vehicle at the respondent's premises in Ndola around 18:30 hours. Shortly thereafter the respondent's supervisor arrived and instructed the guard to get the keys from the appellant. The appellant was dismissed the following morning on the grounds of misuse of company property and being drunk on duty. The Industrial Relations Court dismissed his complaint. On appeal the respondent argued that he was not afforded the opportunity to exculpate himself.

### **Held:**

It is common cause that the appellant, on two occasions was found drunk on duty, an offence warranting summary dismissal but for some reasons he was pardoned. He is certainly unrepentant and we agree with the court below that he was properly disciplined. Appeal dismissed.

For the Appellant In person  
For the Respondent K.M. Kasongo, Mwale Musonda & Associates

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### **Judgment**

**MUZYAMBA, J.S.**, delivered the judgment of the court.

This is an appeal against a decision of the Industrial Relations Court dismissing the appellant's complaint for reinstatement and compensation.

The brief facts of this case were that the appellant was employed by the respondent as a driver at Lusaka. On 24<sup>th</sup> April, 1997 he and other drivers drove to Ndola to get their salaries. They arrived in Ndola around 11.00 hours. At 13.00 hours the appellant got his cheque and later cashed it. After that he took some drivers to Kitwe to cash their cheques. He came back from Kitwe and parked the vehicle at the respondent's premises in Ndola around 18.30 hours. Shortly after that, a Mr. Musonda the respondent's supervisor at Masaiti arrived and instructed the guard to get the car keys from the appellant.

The following day the appellant received a letter from Mr. Musonda dismissing him for misuse of company property and being drunk on duty. He then appealed to the Site Agent and later to the Union and Works Committee who rejected his appeal. He then moved to the Industrial Relations Court which dismissed his complaint. He now appeals to this court.

He filed 3 grounds of appeal. The first two related to findings of fact and since no appeal lies on finding of fact by the Industrial Relations Court. He only argued the last ground that he was not given a chance to exculpate himself and that this was against the rules of natural justice.

He argued that although on two previous occasions he had been found drunk on duty the court below was wrong to take those offences into account because they occurred when he was engaged on contracts which had since expired and that he was on a new and separate contract

at the time he was dismissed for a similar offence.

In response Miss. Kasongo submitted that there was no breach of the rules of natural justice because Mr. Musonda confronted the appellant at the time he parked the vehicle and accused him of being drunk and misusing the company property and the appellant said nothing.

We have considered the evidence on record and the judgment of the court below. We have also considered the submissions by both sides. It is common cause that the appellant, on two occasions was found drunk on duty, an offence warranting summary dismissal but for some reasons he was pardoned. From his submissions the appellant was saying that for every new contract of service he could get drunk on duty and get away with it.

He is certainly unrepentant and agree with the court below that he was properly disciplined. His appeal is without merit. It is dismissed with costs to be taxed if not agreed upon.

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