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**IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT SOLWEZI**

COMP/9/2015

BETWEEN:

FELIX MALASA

COMPLAINANT

AND

MR. CLEAN ZAMBIA



RESPONDENTS

BEFORE:

Hon. Judge E.L. Musona

MEMBERS:

1. Hon. M. Siame
2. Hon. J. Hasson

**For the Complainant : Mr. M. Kapukutula and Mrs M. Makayi of
Messrs Legal Aid Board**

**For the Respondents : Mr. K. Botha of Messrs William Nyirenda
& Co.**

JUDGMENT

Date : 17th March, 2016

Cases Referred to:

1. **Galaunia Farms Ltd v National Milling Corporation Ltd (2004)
ZR (SC**

2. Wilson Masauso Zulu Avondale Housing Project (1982) ZR (SC)

This Complaint was filed by M/Felix Malasa against Mr. Clean Zambia Ltd. We shall, therefore, refer to M/Felix Malasa as the Complainant and to Mr. Clean Zambia Ltd as the Respondents which is what the parties to this action actually were.

The Complainant's claim is for the following relief:

1. Damages for loss of employment
2. Interest
3. Costs
4. Any other dues the court may deem fit

The duty for this court is to ascertain whether or not the Complainant has proved his claims.

The Complainant's evidence was that he was employed by the Respondents as a Gardener on 6th April, 2010.

He was assigned to work at Golf Estates at the house of Mrs Davy Campling. Behind that house there was a fig tree. Mrs Campling asked the Complainant to cut a branch from that fig tree and plant it, the Complainant obliged. Mr. Campling then went to Zimbabwe. She left an instruction that as she returns she must find that the branch of that fig tree has started sprouting. When she returned from Zimbabwe three (3) months later she lamented that the branch of the fig tree which was planted before she went to Zimbabwe was not looking good. That tree did not sprout.

Complainant reported this problem to M/John Lengwe who was his supervisor but Lengwe told the Complainant that he was not in a position to help the Complainant because he feared the contract between the Respondents and the client would be terminated.

On 24th December, 2014 Mrs. Campling and her husband chased away the Complainant. When the Complainant reported to M/Charles Kakoma who was the Assistant Administrator for the Respondent, Kakoma withdrew the identity card from the Complainant and told him that he was dismissed.

Kakoma accused the Complainant of reporting late for work.

The Respondents called two (2) witnesses. We shall refer to these witnesses as RW1 and RW2 respectively.

RW1 was M/Charles Kakoma, he is the Administrator for the Respondents.

The evidence for RW1 was that on 5th November, 2014 the Complainant was given a first warning letter for reporting late for work and early departure from work. He was again given a warning letter for the late reporting and earlier departure from work on 19th November, 2014. That was the final warning. We have looked at that final warning. It was produced and exhibited as "CK4".

There were security turn styles at Kansanshi Mine where the Complainant was deployed. These Machines record the time when one checks in and also when one checks out. An activity report can be generated from these machines. The activity report is a print out or the record of a person's entry into and exit from Kansanshi Mine. An activity report was generated and showed that the Complainant reported late for work on many occasions and also exited early from work.

We have seen that activity report. It was produced and exhibited as "CK6".

The Complainant was charged. The disciplinary hearing was held on 13th January, 2015. A copy of the minutes of the disciplinary committee was exhibited as "CK2".

RW2 was M/John Lengwe a supervisor for the Respondent. The evidence for RW2 was that the Complainant was dismissed for late reporting and early departure from work. RW2 used to hold meetings with the Complainant attempting to counsel him. On 5th November, 2014 RW2 issued the Complainant with a written warning. On 19th November, 2014 the Complainant again reported late for work and RW2 issued him with a final written warning. The Complainant again reported late for work on or about 24th December, 2014.

We have analyzed the whole of the evidence in this case. We have also analyzed the facts. The facts of this case are summarized as follows:

1. The Complainant was an employee of the Respondents. The Respondents had a contract with some clients. The Complainant was assigned to the house of one of those clients. Whilst at that house the working relationship between the Complainant and the Respondents' client went sour after the client asked the Complainant to plant a branch of a fig tree. When the Complainant planted that branch it did not sprout.
2. There are also allegations by the complainant that he used to be sent by RW2 to inquire about job prospects for RW2, and that when he returned late he was scolded by RW2 and was even given warnings.
3. RW2 denied sending the Complainant to inquire about job prospects for him.
4. Both RW1 and RW2 contend that the Complainant was dismissed for reporting late and exiting early. Exhibit "CK6" shows several occasions when the Complainant reported late for work and exited early. We have noted as a fact that the working relationship between the Complainant may not have been cordial but mainly due to the Complainant's history of reporting late for work and early departure from work. We have seen the warnings issued to the Complainant against reporting late for work. We have also seen the activity report which shows that the Complainant was reporting late for work and also exiting

early. We have seen the notice of disciplinary hearing with the charge indorsed thereon.

We have seen the minutes of the disciplinary hearing.

We have gone through the whole of the evidence in this case and have found no reason to doubt that the procedure leading to the dismissal of the Complainant was proper.

We have looked at the charge. We are satisfied that the charge against the Complainant was proved.

We are satisfied that the Complainant has not proved his claims.

We have looked at the case of **Galaunia Farms Ltd v National Milling Corporation (1)** where the Supreme Court held that a Plaintiff must prove his case. Again, in the case of **Wilson Masauso Zulu v Avondale Housing Project (2)** it was held that a Plaintiff who does not prove his case cannot be entitled to judgment. We have been well guided.

On the above facts, we are satisfied that the Complainant has not proved his case. We are satisfied that when the Respondents dismissed the complainant they were indeed on firm ground.

This Complaint is dismissed for being destitute of merit.

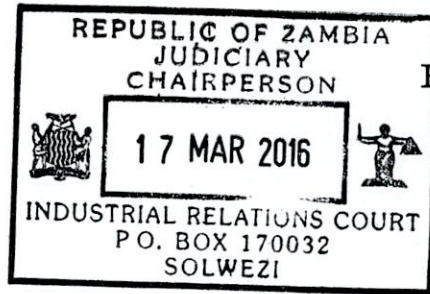
We shall order no costs.

Leave to appeal to the Supreme Court within 30 days from today is granted.

Delivered and signed at Solwezi this the 17th March, 2016.

Hon. E.L. Musona
JUDGE

Hon. W.M. Siame
MEMBER



Hon. J. Hasson
MEMBER