GERALD MUSONDA LUMPA v MAAMBA COLLIERIES LTD. (1988 - 1989) ZR 217 (SC)

SUPREME COURT
GARDNER Ag DCJ, CULLINAN JS and BWEUPE Ag JS A
17th JANUARY, 1989
(SCZ JUDGMENT No. 29 of 1989)

Flynote B

Employment - Right of employer to give notice without reason - If reason given no obligation to substantiate it.

Headnote

The appellant's service with the respondent company was terminated on account of disrespect of authority. He applied to the High Court for a declaration that his dismissal was null and void, or in the alternative, damages for wrongful dismissal. The High Court rejected his claim and he appealed. He argued that as he C had been dismissed for disciplinary reasons and the disciplinary code had not been followed his dismissal had, therefore, been wrongful. Further, that the respondent company was obliged to consult his union before giving notice of termination of employment, and in any event no notice of termination could be given without agreement of an employee.

Held: D

(1) In an ordinary master and servant relationship the master can terminate the contract with his servant at any time and for any reason or for not whatsoever If a master gives a reason for termination, he is not obliged to substantiate it. It is is the giving of notice or pay in lieu that terminates the employment. E

A reason is only necessary to justify summary dismissal without notice or pay in lieu (*Contract Haulage Ltd v Kamayoyo*, followed).

Case referred to:

(1) *Contract Haulage Ltd. v Kamayoyo*(1982) ZR 13 F

E. Hamaundu, Legal Counsel for the respondent.
Appellant in person.

Judgment

Gardner Ag DCJ delivered the judgment of the Court.

This is an appeal against a judgment of the High Court dismissing the appellant's claim for a G declaration that his dismissal by the respondent was null and void, or in the alternative, damages for unlawful dismissal.

The appellant was employed in the accounts department of the respondent company, and in November 1981 he had a difference of opinion with his superior as to who should be sent to collect money from Choma, an H assignment which was usually his responsibility. There was evidence that in the general accounts office, the appellant had used abusive language concerning his superior, the financial accountant. There was further evidence that a complaint was raised by the financial accountant against the appellant for having used abusive language to a superior officer. The learned trial judged, after hearing the evidence, found that the I provisions of the disciplinary code which formed part of the contract of employment had not been correctly observed by the respondent. However, there was evidence that on 23 December 1981 the respondent wrote a letter to the appellant which read as follows: J

GARDNER AG DCJ

'23 December, 1981
Mr. G. M. Mumba
Accounts Department
MAAMBA

Dear Sir, A

TERMINATION of SERVICE

I have to inform you that it has been decided to terminate your services with this company with effect from 23 December, 1981 for disrespect of authority on 25 November, 1981 when you uttered abusive language to your Supervisor. B

You will be paid one month salary in lieu of notice and any other terminal benefits due to you, amongst which are the benefits contained in Clause 5.5 of the Conditions of Service.

Yours faithfully,
MAAMBA COLLIERIES LTD.
(Sgd)... C
A. BandA
APM (I)'

The appellant's service was accordingly terminated in accordance with the terms of the letter and he was paid terminal benefits and other monies due to him together with one month's salary in lieu of notice. D

The appellant maintained that he had been wrongly dismissed from his employment and he therefore instituted proceedings against the respondent claiming a declaration that his dismissal was null and void, or in the alternative, damages for wrongful dismissal. This claim was rejected by the High Court, and it is against E that rejection that the appellant now appeals.

In his appeal the appellant argued that, although it was said that his services had been terminated, the true position was that he had been dismissed for disciplinary reasons as set out in the respondent's letter dated 23 F December 1981. He argued that, as it had been found that the disciplinary code had not been followed, he had been improperly dismissed. He also maintained that it was the duty of his employer to consult his union before giving notice of termination of employment, and that in any event, no notice of termination of employment could be given without the agreement of an employee. He further argued that there was no G evidence that he uttered any abusive language to his superior officer, in that there was evidence that the only discussion with his superior officer concerning the difference of opinion took place behind closed doors, and that the witnesses who referred to the abusive language referred to the language used in the main office, not H in the presence of his superior.

The complainant referred to the definition of 'dismissal' in Stroud's *Judicial Dictionary* and further argued that when disciplinary proceedings are instituted, notice can only run from the time when such disciplinary proceedings are properly concluded. Neither of which comments were, in the event, relevant. I

We have considered the collective agreement made between the appellant's union and the respondent and note that clause 4.4 reads as follows:

'4.4 Termination of Employment - Notice of

Except in the case of instant dismissal, termination of employment will be J

subject to written notice of a month in case of permanent employees and one day in case of those on probation. The party terminating the employment without observing the said notice will pay the other an indemnity equal to a month's or a day's basic pay.'

We are quite satisfied that, under the agreement and the code, that provision for the termination A of employment under Clause 4.4 of the collective agreement is not excluded in any way. The plaintiff maintains that because in the letter of dismissal (as he called it), his use of insubordinate language was given as the reason for that dismissal, it follows that it should have been dealt with properly under the disciplinary B code, and if not so dealt with, the dismissal, even though it is called termination of employment, can have no effect.

In view of the fact that, as we have said, the clause providing for termination of employment by notice or pay in lieu of notice, is not excluded in any way, we are satisfied that, as we said in the case of *Contract* C *Haulage Ltd. vs. Kamayoyo*(1982) ZR 13 (1), the relationship between the parties was that of ordinary master and servant. Although the collective agreement had the force of law under the Industrial Relations Act, the code did not apply in this case and the giving of notice to terminate under clause 4.4 was a perfectly D proper way of terminating the plaintiff's employment. In our view, it made no difference that the employment was terminated because of the alleged use of abusive language. The employer, in this case the respondent, was perfectly entitled to give notice for no reason whatsoever. In this respect, we disagree with the learned trial commissioner that, if a reason is given for termination of employment, that reason must be E substantiated; that is not the law. It is the giving of notice or pay in

lieu that terminates the employment. A reason is only necessary to justify summary dismissal without notice or pay in lieu. We would also disagree with the plaintiff's argument, in the context of this case, that there is no difference between dismissal F and termination of service and that, in any event, an employee, who is dismissed after disciplinary action would receive one month's salary regardless of his culpability. The relative clause 4.4, specifically states that 'except in the case of instant dismissal', termination of employment will be subject to written notice for a G month. As to his argument that his union should have been consulted, there is ample evidence that the union had full knowledge of the circumstances, if that was required. In this respect no such requirement in the collective agreement was drawn to our attention. With regard to the appellant's suggestion that no notice of H termination can be given without an employee's consent, there is no authority for such a position which is contrary to all common sense.
The appeal is dismissed with costs to the respondent.
Appeal dismissed.