

ZAMBIA RAILWAYS LIMITED v OSWELL JOSEPH SIMUMBA (1995) S.J. 3 (S.C.)

SUPREME COURT

GARDNER, SAKALA AND CHIRWA JJ.S.

5TH DECEMBER, 1994 AND 23RD FEBRUARY, 1995.

S.C.Z. JUDGMENT NO. 2 OF 1995

Flynote

Employment - Dismissal - Damages for wrongful dismissal - When court will order reinstatement.

Headnote

Respondent had obtained an interim injunction restraining appellant from evicting him from company house he occupied and ordering appellant to provide respondent with a motor vehicle for his use. Appellant appealed against the injunction and against some subsidiary orders made by the Industrial Relations Court.

Held:

That reinstatement of respondent unlikely and deprivation of house and car not an irreparable injury incapable of remedy by payment of damages.

Cases referred to:

- (1) Zambia State Insurance Corporation Limited v Mulikelela (1990) S.C.Z. Judgment No.9
- (2) Ngwira v Zambia National Insurance Brokers Ltd. (1994) S.C.Z. Judgment No.9
- (3) Mubanga v Zambia Airways Corporation Ltd (1992) S.C.Z. Judgment No.5
- (4) Shell and BP v Codidaris and Ors (1975) Z.R. 174

For the appellant: N. C. Muneku of Zambia Railways Limited

For the respondent: No appearance

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GARDNER, JS

Judgment

GARDNER, J.S.: delivered the judgment of the court.

On the 5th of December, 1994 we gave judgment discharging an injunction herein and 3333`ordering that the respondent deliver up possession on the house belonging to the appellant within three months from that date and to deliver up possession of the company motor vehicle within seven days of that date. we said we would give our reasons later and we now give those reasons. The facts of the case are that the respondent lodged a complaint with the Industrial Relations Court claiming that he had been wrongfully dismissed, and asking for reinstatement and damages for wrongful dismissal.

During the course of the proceedings, while the matter stood adjourned after the hearing of

evidence from some of the witnesses, the respondent, through his counsel, made an application for an interim injunction restraining the appellant from evicting the respondent from the company house he occupied and ordering the appellant to issue to the respondent a suitable vehicle for the respondent's use until the determination of the case. This injunction was granted and the order was made. The appellant appealed against the order for the injunction and also appealed against some subsidiary orders made by the Industrial relations Court.

At the hearing of this appeal there was no appearance by the respondent and this court dealt with the matter in the absence of the respondent under the provisions of Rule 71 (a) (b) of the Rules of the Supreme Court. This case is very similar to the case of *Zambia State Insurance Corporation Limited v Mulikelela* (1990) S.C.Z. Judgment No. 9 (1), in which this court, following the cases cited in that judgment, said that the question of whether the respondent was likely to obtain an order of reinstatement was a vital importance. We commented in that case that reinstatement is rarely ordered in master and servant cases and held that an injunction restraining the employer from evicting the employee from company property and from repossessing a company motor vehicle should not have been made. In consequence, we discharged the injunction in that case.

In this case, the respondent claimed that he had been discriminated against because of his social status, contrary to the provisions of the Industrial and Labour Relations Act 1993, section 198. In the course of his evidence the respondent said that he was appointed Managing Director of the appellant's organisation and that after working for some time he was given a letter of dismissal with three months pay in lieu of notice after an audit report about which no disciplinary action was taken. He said he felt that he was discriminated against because of his social status because it seemed that ZIMCO did not appreciate those who had come from outside. From this evidence it is difficult to understand why the appellant felt that his dismissal had anything to do with social status. In *Ngwira v Zambia National Insurance Brokers Limited* (1994) S.C.Z. Judgment No. 9, this court held that social status means a person's standing in society generally, not his standing in an employer's organisation. It does not appear therefore that in the present case the appellant was dismissed because of his social status.

The reason why the question of such discrimination arises is that, where there is discrimination for any of the grounds referred to in section 198 (1), the court has power under sub-section (3) to order reinstatement in accordance with the gravity of the circumstances of each case. Apart from statutory provision, the

courts, as we have said, will very rarely grant orders of reinstatement and for such an order to be made, the case would have to be exceptional to the general rule as for example, in the case of *Mubanga v Zambia Airways Corporation Limited* (1992) S.C.Z. Judgment No. 5 in which the court found that the employee had been dismissed for no reason at all except the malicious vindictiveness of the Managing Director of the employing company, which Managing Director had since left the employing company so that no personal difficulty would be caused by the reinstatement of the employee. It follows therefore, that in this case, it is not likely that an order for re-instatement will be made and in any event the depriving of the respondent of this house and car is not an irreparable injury which cannot be adequately remedied or atoned for by damages in terms of our comments in *Shell and BP v Conidaris and Ors* (1975) ZR 174 (4). For these reasons we ordered the discharge of the injunction and delivery of possession of the premises and motor vehicle to the appellant.

So far as the other grounds are concerned these relate to the failure by the Industrial Relations Court to order further and better particulars of the respondent's claim, the failure by the Industrial Relations Court to make a preliminary ruling that the respondent was a political appointee, which appointment did not comply with the appellant company's Articles of Association and the indicated by the Industrial Relations Court that the matter before it related only to the ZIMCO Audit Report and not to any other means of management. We are given to understand that all these matters will be dealt with in the judgment of the Industrial Relations Court and the matters would be better dealt with by this court if and when it becomes necessary to appeal against the final judgment of the Industrial Relations Court. In all other respects, the appeal is allowed with costs to the appellant in this court and in the court below.

Appeal allowed
