

ZAMBIA CONSOLIDATED COPPER MINES LIMITED AND ENNEDIE ZULU

SUPREME COURT

NGULUBE, C.J., CHAILA AND MUZYAMBA, JJ.S.

ON 4TH NOVEMBER, 1998 AND ON 20TH MAY, 1999.

(S.C.Z. JUDGMENT NO. 9 OF 1999)

Flynote

Employment Law - Dismissal of accused from work after acquittal by court

Tort - Vicarious liability - Members of the public

Headnote

The respondent was employed as a mine policeman for the appellant. On the material day, he was manning two gates, one of which used by Capital Holdings' staff. The supervisor of Capital Holdings staff authorised the removal of thirteen mild steel plates to Reedbuck Engineering. The respondent opened the gate at the request of the said supervisor. Following the theft of the steel plates, the mine policeman was dismissed notwithstanding the fact that the court acquitted of his charge. He sued against the dismissal and was awarded damages in court.

Held:

- (i) Members of the public who happened to be complainants cannot be vicariously liable for any wrongdoing by police in investigating or purporting to investigate the complaint.
- (ii) The police are not allowed to beat suspects and it is illegal to do so.
- (iii) In cases where the dismissal is held to be null and void, and where reinstatement might have been ordered if feasible within strict principles, compensatory damages beyond the notice period have been approved by the Supreme Court depending on the position held by the plaintiff and the diligence he exercised in his job.

For appellant: J.K. Kaite, of Zambia Consolidated Copper Mines Limited.

For respondent: D.E. Ndhlovu, of Luso Chambers.

Judgment

NGULUBE, C.J.: delivered judgment of the court.

This case concerns the dismissal of a mine policeman from ZCCM following the theft by other persons of steel plates from an area he was guarding. The respondent was manning two gates on the material day, one of which was used by Messrs Capital Holdings's staff. It was not in dispute that the supervisor of the Capital Holdings Stores authorised the removal of thirteen mild steel plates to Reedbuck Engineering and that the respondent merely did his duty by opening the gate at the request of the supervisor. As the learned trial Commissioner found, there was no suggestion of aiding and abetting or anything else on the part of the respondent. The steel plates were in fact thereby stolen by the supervisor and others. For not discovering and preventing the felonious removal of the goods from the yard, the respondent was – together with the others – handed over to the Zambia Police who prosecuted him for theft. He was found with no case to answer and acquitted after one of the appellant's managers withdrew the complaint in court. There was evidence that during the interrogations by the Zambia Police, the respondent was tortured and beaten up.

The respondent was summarily dismissed notwithstanding the acquittal and any lack of wrong doing on his part. He sued for:

- (a) A declaration that his dismissal was null and void,
- (b) Damages for wrongful dismissal;
- (c) Damages for wrongful arrest and false imprisonment;
- (d) Damages for assault and battery;
- (e) An order of reinstatement and payment of arrears; and
- (f) Interest.

The learned trial Commissioner found for the plaintiff respondent and, with the exception of reinstatement which was not given, awarded two years' salary as damages together with salary arrears, leave pay, allowances and gratuity (if any), to be assessed by the District Registrar; K2 million for wrongful arrest and false imprisonment; K3 Million for assault and battery and also interest.

The appeal is against the finding of liability as well as the amounts awarded. Mr. Kaite argued to the effect that there was wrong doing when the plaintiff failed to inspect the goods and get everybody concerned to sign for their removal. This was the aiding and abetting referred to in the disciplinary proceedings which did not allege any theft as such on his part. Mr. Kaite also submitted that in the absence of statutory procedures it was wrong to say that the dismissal was unlawful although he would have had no such argument had the learned trial Commissioner used the word "wrongful". Mr. Kaite complained against the refusal by the court below to allow witness statements taken in the domestic proceedings to be adduced in evidence, especially on an argument that no warn and caution had administered. Of course, it is wrong to talk about warning and cautioning by supervisors at the place of work. Judges Rules which are for the guidance of the police are not expected to be known and applied by lay persons: See **Abel Banda v The People (1996) Z.R. 105**. However, statements whose makers are not coming to testify are usually objectionable on other grounds as well, such as hearsay. The appellants had the simple option of calling the witnesses but chose not to do so. They cannot now complain that the statements were not admitted since quite clearly the object must have been to let in the contents.

The learned trial Commissioner made findings of fact on the evidence which was before him. None of the grounds of appeal demonstrate that he was wrong to accept that the plaintiff was wrongfully dismissed when he had done nothing wrong or that he was wrong to find that the appellants had caused the plaintiff's wrongful arrest and imprisonment. However, there is one aspect which we cannot possibly support the learned trial Commissioner. This was that because the appellants made an unwarranted complaint to the Zambia Police, they must be answerable for the beatings which the Zambia Police meted out on the plaintiff. Mr. Ndhlovu urged us to uphold a proposition that a complainant who reports someone to the Zambia Police should be answerable for any assaults committed by the police. We cannot accede to such a proposition. In the first place, members of the public who happen to be complainants cannot be vicariously liable for any wrong doing by the police in investigating or in purporting to investigate the complaint. Beatings and torture of suspects cannot be regarded as a natural and inevitable consequences of reporting cases to the police. The police are not allowed to beat suspects and it is illegal to do so. The appeal has to succeed on the question of liability for the assault and battery committed by the Zambia Police. The award of K3 million in this respect is set aside.

With regard to the complaint that the damages for wrongful dismissal were excessive, we note that these were ordered to be in sum equal to two years' salary. Mr. Kaite suggested that this should have corresponded with the appropriate notice period. In cases where the dismissal is held to be null and void and where reinstatement might have been ordered if feasible within the strict principles discussed in the various well – known cases on the subject (which it is here unnecessary to list) this court has approved of compensatory damages beyond the notice period: See for example, **Zambia Airways Corporation Limited v Mubanga S.C.Z. Judgemnt No. 5 of 1992**. We have approved of such damages over a period within which comparable work can be found by a diligent plaintiff. In this regard, a period of twelve months has been considered sufficient for most middle level positions of the kind the plaintiff had in this case. We consider an award equivalent to two years' salary to have been so high as to amount to an erroneous estimate. We allow the appeal on this point and reduce the damages to twelve months' salary, instead of two years' salary. Except as herein before varied, that is to say, the disallowance of K3 million for assault and battery at the hands of the Zambia Police Service and the reduction of the damages for wrongful dismissal from two years to twelve months' pay, the rest of the awards given in the court below remain intact.

The appeal succeeds to the extent indicated. Costs here follow the event and are to be taxed if not agreed.
