

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL No.129A OF 1999

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

B E T W E E N:

KAWAMBWA TEA COMPANY LIMITED

APPELLANT

AND

ADOLPH SILAS MUSONDA AND 15 OTHERS

RESPONDENTS

Coram: Sakala, Chirwa and Muzyamba, JJS

21st May and 12th July 2000

For the Appellant: T.S. Chilembo, T.S. Chilembo Chambers

For the Respondent: F.M. Sikatana, Veritas Chambers

J U D G M E N T

Muzyamba, J.S. delivered the Judgment of the court.

This is an appeal against compensation awarded by the Industrial Relations Court.

The facts of this case are that the respondents were employed by the appellant in various capacities. On 19th June 1995 they held a middle management Committee Meeting to discuss some of their grievances against top management. Following that meeting, the respondents were suspended in September 1995 and each served with 2 disciplinary charges. The charges were refusal to obey lawful instructions contrary to Clause 18 of the ZIMCO Disciplinary and Grievance Procedure Code and sabotage of company business contrary to Clause 26 of the same code i.e. hindering dispatch of tea to Ndola. The respondents exculpated themselves but their explanations were unacceptable and on 9th November 1995 they were all dismissed. They appealed against their dismissals. The appeals were unsuccessful. They then brought a joint complaint in the Industrial Relations Court under Section 85 of the Industrial Labour Relations Act, Cap 269 for, inter alia, reinstatement and arrears of salary. In its decision at pages 29-30 of the record of appeal the court below said:



"We have taken note that the Company is now a New Company but we take Judicial notice of the practice by any new owners to take over both assets and liabilities and existing cases against the company are part of the liabilities. In the instant case we however decline to order reinstatement in view of the new status of the Company and the fact that the Complaints have not showed any exceptional grounds to warrant such an order. We however feel that compensation will suffice. We therefore order that the Respondent do compensate the Complainants as follows:

- (i) 24 months pay plus one month's salary inclusive for each completed year of service;
- (ii) Repatriation expenses to their various destinations;
- (iii) A long service gratuity for those of the Complainants who have served with the ZIMCO group for a minimum of ten (10) years.

We further order that the Respondent do pay the above package to be calculated on the basic of the Complainants' salaries and conditions of service prevailing at the time their services were terminated.

We also order that the Respondent pay interest thereon from the time of complaint namely 19th February 1996 to date of Judgment at the average short term fixed deposit account rate and thereafter interest to run at the current lending rate as determined by the Bank of Zambia."

The sole ground of appeal argued by Mr. Chilembo was that the compensation awarded by the court below was excessive and wrong in principle. He argued that the court erred in principle in awarding a redundancy package, that it should have made an ordinary compensation which, on the authority of the ATTORNEY GENERAL and KAMOYO MWALE Appeal No.79 of 1996 is 12 months salary. That the highest award of 24 months salary made by this court would not be appropriate in this case because the respondents were employed in the Agro-Sector and in this Sector jobs were easy to come by.

On behalf of the respondents Mr. Sikatana, while conceding that it was not competent for the court to award compensation as well as retirement benefits argued that it was proper for the court, in the circumstances of this case, to award a redundancy package. That the respondents had worked for 15 months prior to their suspension without being paid.

We have considered the evidence on the record, the Judgment of the Court below and the arguments by both Counsel. It seems quite obvious to us that the court implicitly deemed the respondents to have been declared redundant, otherwise it could not have ordered a redundancy package. At the time of the Judgment on 24th December 1998 Section 85 of the Act had been amended by Section 70 of Act No.30 of 1997. The new Section 85A provides:

"85A. Where the Court finds that the complaint or application presented to it is justified and reasonable, the Court shall grant such remedy as it considers just and equitable and may-

- (a) award the complainant or applicant damages or compensation for loss of employment;
- (b) make an order for reinstatement, re-employment or re-engagement;
- (c) deem the complainant or applicant as retired, retrenched or redundant; or
- (d) make any other order or award as the court may consider fit in the circumstances of the case."

It is quite clear from the above Section that it was within the court's jurisdiction to deem the respondents to have been declared redundant and to award a redundancy package. We would therefore dismiss the appeal with costs to be taxed in default of agreement.

.....
E.L. SAKALA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE

.....
D.K. CHIRWA
SUPREME COURT JUDGE