

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

SCZ APPEAL No.137 OF 1999

B E T W E E N:

FREDDY A. MUYOYETA

APPELLANT

AND

DEVELOPMENT BANK OF ZAMBIA

RESPONDENT

**Coram: Sakala, Ag. D.C.J., Chirwa and Muzyamba, JJS
20th July and 31st August 2000**

For the Appellant: Mr. B.S. Miazzi, Equity Chambers

For the Respondent: Miss M.C. Kayuma, Senior Legal Officer

J U D G M E N T

Muzyamba, J.S. delivered the judgment of the Court.

This is an appeal against an award of 'token' damages by the Industrial Relations Court.

The brief facts of this case were that the appellant was employed by the Respondent as Chief Security Officer. On 16th February 1999 his services were terminated for gross misconduct. He then brought a complaint in the Industrial Relations Court claiming 'retirement with effect from date of Judgment' and payment of retirement benefits and salary arrears from the date of dismissal to the date of Judgment.

The Court found that his dismissal was wrong and therefore null and void. The Court also found that the appellant was much to blame for his dismissal and as such could not expect the full fruits of his judgment and declined to deem him as retired and awarded him 12 months salary as compensation.

The thrust of Mr. Miazzi's argument in support of the appeal was that the court below erred in taking into account the appellant's previous misconduct and in holding that the appellant was therefore much to blame for the dismissal. That since the court found that the appellant's dismissal was null and void the proper award should have been a retirement package instead of 12 months salary. In response Miss Kayuma argued that the appellant's case was devoid of exceptional circumstances and therefore that the award of 12 months salary was proper.

We have considered the evidence on record, the judgment of the court below and the arguments by both learned Counsel. The complaint was brought under Section 85 of the Industrial and Labour Relations Act Cap 269. The Section was amended by Section 70 of Act No. 30 of 1997 by insertion of a new Section 85A, which 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."

The court was alive to this amendment and declined to deem the appellant as retired. In the circumstances of this case we cannot say that the court was wrong in any way in declining to deem the appellant as retired. Further, although the court described the award of 12 months salary as token compensation it cannot be said to be 'token' because the highest award made by this court in similar cases where exceptional circumstances have been shown is 2 years salary. As no exceptional circumstances were shown in this case the award was proper and not token.

We therefore find no merit in the appeal. It is dismissed with costs to be taxed in default of agreement.

: J3 :

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E.L. SAKALA

ACTING DEPUTY CHIEF JUSTICE

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D.K. CHIRWA

SUPREME COURT JUDGE

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W.M. MUZYAMBA

SUPREME COURT JUDGE