

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO 89/2005

IN THE MATTER BETWEEN:

KLEENLINE PRODUCTS LIMITED

APPELLANT

VS.

ENOCK SAKALA

RESPONDENT

Coram: Mumba, Silomba, Mushabati, JJS
23rd November, 2006 and 14th March, 2007

For the Appellant: Mr. Mabutwe of Messrs Mabutwe & Co. Lusaka.

**For the Respondent: Mr. Eric M Kamwi, Law Association of Zambia,
Legal Aid Scheme, Lusaka**

JUDGMENT

Mumba, JS., delivered the Judgment of the court.

This is an appeal from the Industrial Relations Court. In this appeal we shall refer to the Appellant as the Respondent and the Respondent as the Complainant as this is what they were in the court below.

The Complainant, Enock Sakala, was employed by the Respondent, Kleenline Products Limited, on 1st April, 1991. On 15th March, 1999 he was dismissed. On 12th April, 1999 he filed a complaint on the ground that he was unlawfully dismissed and that the dismissal was based on his status as a junior officer. He claimed damages, compensation and all terminal benefits. The

Respondent contested the allegations. On 30th July, 2002 the court below referred the complaint to mediation. The mediation did not take place because of non-attendance by the Complainant. The complaint was dismissed on 20th June, 2003 by the court below. The Complainant applied to set aside the Order of dismissal on 30th March, 2004. The Complainant succeeded and the court set aside the Order of dismissal. It is against this Order that this appeal lies.

The Respondent filed one ground of appeal that the court below misdirected itself in law and in fact under Rule 25 of the Rules of the Court when it set aside the Order dismissing the complaint for lack of attendance at the scheduled mediation hearing. Both parties filed heads of arguments and supplemented them with oral submissions.

The basis of the appeal, according to the submissions by Mr. Mabutwe, is that the Complainant was aware of the mediation proceedings, his reasons for non appearance were contradictory in that he said he went to Mpika to look for mediation fees, but took long because he found his brother ill and could not raise the money so the Complainant had to do piece work. Further, that the Complainant had failed to give the court his address for communication purposes.

Mr. Mabutwe in his written heads of arguments stated that Rule 25 of the Industrial Relations Court (Arbitration and Mediation Procedures) Rules, 2002 provides that:

“Where the Court or Judge makes an order or Judgment under Rule 24 the Court or Judge may not set aside such decision unless sufficient cause is shown on application duly made by a party to the Court or Judge”. (underlining for emphasis)

Mr. Mabutwe submitted that Rule 25 should not be loosely invoked but should be strictly applied taking into account all the requirements of the Rule. He stated that the use of the words *may* and *not* in the Rule support his submission for strict application of the Rule. Mr. Mabutwe quoted the record of appeal containing the Complainant's explanation as follows:

“The delay in coming to Court was due to the fact that I went to Mpika District to ask for money from my brother to pay the Mediation fee. I was well informed by the Court that I will need to pay K150,000.00 as mediation fee. I found my brother indisposed and as such he could not assist me with K150,000.00 cash. It took me time to raise K150,000.00 by doing piece work”

Further, on the same ground, the Respondent stated that the application to set aside the dismissal Order could not be said to have been duly made when it was made 8 months late and that although the court was a court of substantial justice, that should apply to both parties. Thus, submitted Mr. Mabutwe, the application to set aside Order of dismissal should not have been entertained.

Mr. Kamwi on behalf of the Complainant, submitted that the court below was in order to restore the complaint because sufficient reasons had been shown as required under Rule 25. He submitted that the court below had discretion to restore the complaint even after dismissing it under Rule 24. He submitted that the Complainant had shown sufficient cause in that he had travelled out of Lusaka to seek mediation fees and he had to look after his sick brother. The discretion was therefore not abused or misapplied.

Further, Mr. Kamwi submitted that the court below is a court of substantial justice whose main objective is to resolve disputes on merit. The case having been commenced there was need to resolve it on merit, that an interlocutory technicality should not defeat the course of justice and that it was only fair that the complaint should be resolved on merit. He submitted that Rule 24 outlined circumstances when a court can dismiss a matter.

The Complainant prayed for the appeal to be dismissed with costs and that the matter be referred to the court below for hearing and determination on the merits.

We have carefully perused the submissions by both parties, in particular we have looked at the Rules in question and also the objectives of the mediation process which the court below referred

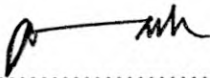
to. Because of the view we take of this appeal we shall not go into substantive arguments.

As decided in previous appeals by this court, we reiterate the principle that the Industrial Relations Court is a court of substantial justice. When a complaint is dismissed because of non attendance at a mediation hearing it is only fair that it is restored so that issues in dispute are resolved on merit. We are satisfied that the court below was in order to set aside the order of dismissal. This is a matter which should be referred to the court below for full process as provided under the law and for determination in the usual manner. We order that the matter be set down for hearing without undue delay.

This appeal fails. Costs to the Complainant, to be taxed in default of agreement.



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F. N.M. MUMBA
SUPREME COURT JUDGE



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S.S. SIOMBA
SUPREME COURT JUDGE



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C. S. MUSHABATI
SUPREME COURT JUDGE