

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 29 OF 2004

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

EUSTONE DAVID CHOLA

APPELLANT

AND

THE ATTORNEY GENERAL

RESPONDENT

CORAM: Lewanika, DCJ, Mumba and Silomba, J.J.S.

On the 10th October, 2006 and 29th January, 2008.

For the Appellant: In Person

For the Respondent: Not Present

J U D G M E N T

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

When we heard the appeal, the Late Deputy Chief Justice, Honourable Mr. Justice David Lewanika, was a member of the panel but he passed on before the judgment was ready. The judgment is, therefore, by the majority.

This is an appeal against the ruling of the Industrial Relations Court dated the 20th day of January, 2004. The facts of the case were that the appellant was dismissed from employment with the Government on the 23rd February, 1994 for failure to perform his duties effectively. On the 15th January, 2003, he filed a notice of complaint in the Industrial Relations Court pursuant to Section 85 (4) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia. In his complaint, the appellant alleged that he was wrongfully, unfairly and unjustly victimized when his employment was terminated and sought reinstatement as one of the reliefs.

He gave evidence on the 19th November, 2003 but later sought an adjournment to allow him to file certain documents, which he considered to be useful to his case. The application was granted. The record of appeal shows that the respondent was not represented in Court on the 19th November, 2003. When trial resumed on the 20th January, 2004, the respondent raised a preliminary issue.

The basis of the preliminary issue was that the complaint filed by the appellant on the 15th January, 2003 was statute barred because it was not filed within the stipulated time. According to the respondent, the cause of action accrued on the 23rd February, 1994, when the appellant was dismissed from employment.

The respondent submitted before the trial Court that according to the Law Reform (Limitation of Actions etc) Act, Chapter 72, which amended the Limitation Act of 1939, an English Act, an action founded on simple contract or tort cannot be brought to court after the expiration of 6 years from the date on which the cause of action accrued. The respondent also referred the trial Court to the provisions in Section 85 (3) of the Industrial and Labour Relations Act, which stipulate that the Industrial Relations Court shall not consider a complaint or application unless it is presented to it within 30 days of the occurrence of the event that gave rise to the complaint or application.

The appellant, in his response, conceded that in terms of Section 85 (3) of the Industrial and Labour Relations Act his complaint was supposed to be filed within 30 days from the date he was dismissed from employment. According to the appellant, he did not do so and neither did he apply to the Court to have his complaint filed out of time because an officer in the filing registry of the trial Court told him that he was within the prescribed time. He urged the trial Court to proceed with the trial of the complaint because the omission was not intentional but because he was a layman.

After considering the preliminary issue raised and the submissions of the parties, the Court below found that the appellant did not comply with the requirements of Section 85 (3) of the Industrial and Labour Relations Act and

dismissed the complaint. Since the appellant was wrongly advised by a Court official, the trial Court did not condemn the appellant in costs.

Initially, the appellant filed only one ground of appeal. However, at the time we heard the appeal two additional grounds were presented to us. There was no evidence that the appellant had complied with Rule 68 of the Supreme Court Rules, Chapter 25, for the inclusion of the two grounds of appeal.

● Notwithstanding the foregoing observations, we wish to assure the parties to the appeal that we have carefully considered the record of appeal and the only submission of the appellant as outlined in the filed heads of argument. In the view we take of this appeal, we do not think that it will serve any useful purpose by setting out the grounds of appeal and summarizing the arguments of the appellant.

The fact that the appellant did not comply with Section 83 (3) of the Industrial and Labour Relations Act and filed his complaint after nine years from the date the cause of action accrued without the leave of the Court cannot be glossed over on appeal. We say so because the mandatory provisions of Section 85 (3) do not, in our view, give any discretion to the trial Court to proceed with the trial of a complaint which is clearly statute barred. We reproduce, for the sake of clarity, the full text of Section 85 (3)÷

85 (3): “ The Court shall not consider a complaint or application unless it is presented to it within thirty days of the occurrence of the event which gave rise to the complaint or application:

Provided that, upon application by the complainant or applicant, the Court may extend the thirty day period for a further period of three months after the date on which the complainant or applicant has exhausted the administrative channels available to that person.

There is no merit in this appeal. We accordingly dismiss it. On account of the position the appellant is in, we shall not condemn him in costs.

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D. M. LEWANIKA
DEPUTY CHIEF JUSTICE


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F. N. M. MUMBA
SUPREME COURT JUDGE


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S. S. SILOMBA
SUPREME COURT JUDGE