

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 176/2005

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

ATTORNEY GENERAL

APPELLANT

AND

PARDON CHIBWE

RESPONDENT

CORAM: Sakala, C.J., Chibesakunda and Mushabati, JJS.

On 26th July 2007 and 27th February 2008

For the Appellant

Col. M. Phiri, State Counsel

For the Respondent

In Person

J U D G M E N T

Sakala, C.J., delivered the Judgment of the Court.

This is an appeal against a Ruling of the Industrial Relations Court granting the Respondent leave to file a complaint out of time.

For convenience, we shall refer to the Appellant as the Respondent and to the Respondent as the Complainant, which designations they were in the court below.

The short facts, leading to the appeal, are that the Complainant was employed as a causal daily employee with the Zambia Air Force on 11th November, 1995. His services were

terminated on 5th December 2000. Sometime in September 2002, he applied before the Registrar, by way of summons, for leave to file a complaint out of time. The Registrar refused the application on the ground that it was statute barred in terms of Section 85 (3) of the Industrial and Labour Relations Act.

The Complainant appealed to the Deputy Chairman, who made the following Ruling:

“Having heard the two parties, we feel the complainant also had to file his complaint as there is no time limit to do so. Costs in the cause.”

The Respondent, dissatisfied with this Ruling, appealed to this Court. The Respondent filed a memorandum of appeal containing two grounds; namely:

- (i) That the Deputy Chairman erred in law and in fact, when he held that there is no time limit in which to file a complaint; and
- (ii) That the Deputy Chairman erred in law and in fact, when he allowed the Complainant to file a complaint out of time without taking into consideration that the Zambia Air Force was an institution under the Defence Force.

The Respondent filed written heads of argument, supplemented by short oral submissions, based on the two grounds

of appeal. The Complainant, too, filed his heads of argument and made brief oral submissions.

On ground one, the gist of the written heads of argument is that the Ruling appealed against is contained in the form of court proceedings as opposed to a formal Ruling. It was submitted that notwithstanding the format of the Ruling, the Ruling was contrary to the provisions of Section 85 (3) of the Industrial and Labour Relations Act, CAP 269 of the Laws of Zambia. It was pointed out that the Complainant was dismissed in December 2000, but only commenced his action in September 2002, a period of one year nine months, contrary to the provisions of the law; and that no evidence was adduced to show that the Complainant had ever taken any positive steps to address his grievances. It was submitted that notwithstanding failure to take steps, the action was statute barred at the time he commenced the proceedings.

On ground two, it was pointed out that the action was titled **Pardon Chibwe VS Zambia Air Force**; but that in terms of Section 2 (1) of the Industrial and Labour Relations Act, the Act does not apply to the Zambia Defence Force of which the Zambia Air Force is part.

In response, the Complainant argued, on ground one that the Deputy Chairman did not err as the Court was informed that the delay was not caused by the Complainant's fault but by sickness. The Complainant criticized the record of appeal that it lacked other documents, among them, the dismissal letter, the letter from Lloyd Siame and leave forms. He contended that the forms would have

shown that his former employers made a mistake in dismissing him without notice and without according him an opportunity to explain. He submitted that the delay was caused by his attempts to seek assistance because he was a patient.

On ground two, he submitted that the Industrial and Labour Relations Act, does not apply to Zambia Air Force soldiers and other officers, but that it applies to civilian employees.

On account of the views we take of this appeal, we do not intend to discuss the arguments in detail. Suffice it to state that the law is very clear in relation to when an action should be commenced in the Industrial Relations Court. Section 85 (3) of the Industrial and Labour Relations Act CAP 269 of the Laws of Zambia provides :

“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 further period of three months after the date on which the complaint or applicant has exhausted the administrative channels available to that person”.

The Appellant was dismissed on 5th December, 2000. He applied for leave to file complaint out of time sometime in September, 2002. He was definitely out of time. On record, there was no convincing reason given for the delay. In his Ruling granting leave, the Deputy Chairman never addressed his mind to Section 85 (3) of the Act.

On ground one, this appeal must be allowed.

On ground two, Section 2 (1) of the Act is also clear. The Act does not apply to the Zambia Defence Force of which Zambia Air Force is part.

This ground is also allowed.

In the result, the appeal is allowed. The Ruling of the Deputy Chairman granting leave to the Complainant to file complaint out of time is set aside as the whole action is statute barred.

We make no order as to costs.


E.L. Sakala
CHIEF JUSTICE


P.L. Chibesakunda
SUPREME COURT JUDGE


C.S. Mushabati
SUPREME COURT JUDGE