IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 83/2008**

# **HOLDEN AT LUSAKA/NDOLA** SCZ/08/66/2008

*(Civil Jurisdiction)*

**B E T W E EN :**

**HILDAH SAKALA SILUNGWE APPELLANT**

**AND**

**KONKOLA COPPER MINES RESPONDENT**

**CORAM: Mambilima, D.C.J., Silomba and Mwanamwambwa, J.J.S.**

***On 2nd June 2009 and 17th September 2012***

## *For The Appellant: In person*

*For the Respondent: Mr. Banda and Mr. N. Nchito, both of*

*Messrs M.N.B. Legal Practitioners*

JUDGMENT

**Mwanamwambwa, J.S., delivered the Judgment of the Court.**

***Cases Referred to:***

1. **Barclays Bank of Zambia Limited vs Chola & Mubanga [1995/1997] Z.R. 212.**

The delay in delivering this Judgment is deeply regretted. It is due to a heavy workload. Hon Mr. Justice S S Silomba was part of the Court that heard this appeal. He has since retired. Therefore, this Judgment is by the majority.

The Appellant is appealing the Judgment of 13th February 2008, by the Industrial Relations Court, dismissing her case against the Respondent.

The facts of this matter are that one Muwowo resigned from the services of the Respondent. The Respondent informed the Appellant of the resignation and told her to remove him from its payroll. The Appellant was then employed by the Respondent, as an Assistant Accountant, in the pay Accounts Department. Upon receiving the notification of resignation, she put it in a basket. She forgot to delete Muwowo from the payroll. As a result, he continued to receive salary, for five months, amounting to K17,999,842.00. The Appellant was charged with inefficiency and given a chance to be heard by the Disciplinary Committee. She was found guilty and dismissed. She appealed against the dismissal, but her appeal failed. She lodged a complaint against the Respondent, in the Industrial Relations Court, claiming the following:-

1. **Damages and compensation for wrongful dismissal.**
2. **Declaration that my dismissal was wrongful, illegal, null and void.**
3. **Any other relief the Court will deem fit.**
4. **Interest.**

After hearing and evaluating the evidence, the trial Court observed that the issue for its consideration was whether the Appellant was wrongfully dismissed. It held that, on the evidence, the Appellant was not wrongfully dismissed. That the Respondent complied with its Disciplinary Code and Section 26A of the Employment Act, CAP 268 of the Laws of Zambia, in that the Appellant was charged and afforded a chance to be heard. Accordingly, her case was dismissed.

There are five (5) grounds of appeal. These read as follows:-

1. **That the learned Madam Justice B.M. Majula misdirected herself in law and in fact in the Appellant’s case (Hildah Sakala Silungwe) when she dismissed her complaint, when there was enough evidence to show that the Appellant was actually on leave when the date to terminate Mr. Muwowo from the system was due.**
2. **That the learned Madam Justice B.M. Majula misdirected herself in law and in fact when she did not consider the fact that Idah Phiri was the person who was supposed to execute a termination since I was on leave and she did not terminate on 12th June 2005. I handed over the work to her on 10th June 2005. She was my Supervisor and in no way i could have proceeded to go on leave without handing over.**
3. **That the learned Madam Justice B.M. Majula misdirected herself in law and in fact when she did not consider that Mr. Muwowo’s termination from employment did not have to wait for me to return from leave but was supposed to be terminated on the 12th of June 2005 whilst I was on leave. The aspect of getting sick and strike action was meant to justify that I was not there and it was not for me to discharge the duty of removing Mr. Muwowo from payroll. This gentleman got paid a salary at the end of June, which means that the payroll accountant executed all the duties of her (position over looking the termination of Mr. Morton Muwowo).**
4. **That the learned Madam Justice B.M. Majula misdirected herself in law and in fact when she forgot to consider that the procedure of dismissal was not correctly followed. The reasons are as follows:**
5. **When one causes an offence, there are other procedures to be followed before resorting to dismissal.**
6. **The disciplinary code and grievance procedures for general payroll employed for KCM has provisions that are followed before management resorts to dismissing an employee.**
7. **Disciplinary code schedule of offences and sanctions table – 01 has guidelines of disciplinary actions to be taken, depending on the nature of an offence but this was ignored by both the Respondent and the Court.**

The Appellant did not file heads of argument. She argued her appeal orally.

On **ground one**, her submissions were mostly a reproduction of her evidence in the Court below, to the effect that she was on leave. That before going on leave she handed over the termination notification of Muwowo, to her Supervisor, Idah Phiri. She submitted that it was Idah Phiri who should have removed Muwowo from the payroll. She submitted that the trial Court misdirected itself in not finding that it was Idah Phiri, who should have removed Muwowo from the Respondent’s payroll.

In response on ground one, on behalf of the Respondent, Mr. Banda and Mr. N. Nchito submitted that ground one entirely challenges a finding of fact. They argued that it is an established principle of law that appeals from the Industrial Relations Court should not lie against findings of fact. As authority for that principle they cited **Barclays Bank of Zambia Limited vs Chola & Mubanga (1)**.

We have considered the submissions on ground one and totally agree with Mr. Banda and Mr. Nchito that ground one is against findings of fact. It lacks legal substance. We repeat our decision in the **Barclays case**, cited above, that when the Industrial Relations Court makes a decision, the parties can only appeal to the Supreme Court against that decision on a point of law.

On the evidence, the trial Court found as a fact that upon receiving the notification of Muwowo’s resignation, the Appellant put it in a basket and forgot to act on it. The record shows that she conceded on this fact. Accordingly, we hereby dismiss ground one, for lack of merit.

The Appellant argued **grounds 2, 3** and **4** together. The gist of her submission on these grounds is that inefficiency was not a dismissible offence, under the Respondent’s conditions of service. That her good record of 17 years should have been taken into account.

In response on grounds 2, 3 and 4, on behalf of the Respondent, Mr. Banda and Mr. Nchito repeated their submission on ground one that the Appellant is basically challenging the findings of fact.

We have considered grounds 2, 3, and 4 and the submissions thereon. We agree with Mr. Banda and Mr. Nchito that these mainly challenge the trial Court’s findings of fact. We repeat what we said on ground one that an appeal cannot lie against findings of fact by the Industrial Relations Court. As to whether inefficiency is a dismissible offence, we have looked at the Respondent’s Disciplinary Code. Penalties are dealt with by Section 3 of the Respondent’s Disciplinary Code and Grievance Procedure. Below Section 3, on page 91 of the record of appeal is a paragraph which reads as follows:

**“N.B: It must be emphasized that this schedule of penalties provides guidelines only, and depending on the circumstances of the case, an offence may warrant a more or less severe penalty than laid down.”**

Then at Page 92 of the record of appeal, sanctions are laid out as follows:-

**“3.3.1 Sanctions in order of increasing severity are:-**

1. **Recorded warning.**
2. **Severe warning.**
3. **Final warning**
4. **Dismissal.**

**NOTE: Depending on the severity of the case, any of the above penalties may be imposed.”**

From the foregoing, we are of the view that under the Respondent’s Disciplinary and Grievance Code, it is severity of the offence and not its type, which determines its penalty. In the present case, we would say that the Appellant’s inefficiency was a serious offence; because it led to loss of K17,999,842.00. Therefore, the Respondent was justified in dismissing the Appellant. We find no merit in ground 4. Accordingly, it is hereby dismissed. The net result is that the appeal fails. We award costs to the Respondent, to be taxed, in default of agreement.

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**I.C. MAMBILIMA**

**DEPUTY CHIEF JUSTICE**

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**M. S. MWANAMWAMBWA**

**SUPREME COURT JUDGE**