

**IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA**

COMP/17/2015

BETWEEN:

HILLARY HAMBABA

COMPLAINANT

AND

STANDARD CHARTERED BANK PLC

RESPONDENTS

BEFORE:

Hon. Judge E.L. Musona



MEMBERS:

- 1. Hon. J. Hasson**
- 2. Hon. W.M. Siame**

For the Complainant : In Person

For the Respondents: Mr. R. Mwanza of Messrs Robbert and Partners

JUDGMENT

Date : 17th December, 2015

CASES REFERRED TO:

- 1. Galaunia Farms Ltd v National Milling Corporation (2004) ZR.**
- 2. Wilson Masauso Zulu v Avondale Housing Project (1982) ZR.**

This Complaint was filed by M/Hillary Hambaba. The Complaint was filed against Standard Chartered Bank Plc. We

shall, therefore, refer to M/Hillary Hambaba as the Complainant and to Standard Chartered Bank as the Respondents which is what the parties to this action actually were.

The Complainant's claim is for the following relief:

1. Compensation for loss of employment.
2. Reinstatement.
3. Costs.
4. Interest.
5. Any other dues the court may deem fit.

The duty for this court is to ascertain whether or not the Complainant has proved his claims.

The evidence for the Complainant was that he was employed by the Respondents as a Teller on 4th April, 2010 in Livingstone. He was transferred to Chingola in April, 2011. In 2014 he was given a letter of transfer to Kasama dated 28th April, 2014. It was upon receipt of this letter of transfer to Kasama that the Complainant told Victor Chikafya that he the Complainant was suffering from epilepsy. Victor Chikafya was Manager for Chingola Standard Chartered Bank Branch. The matter of the Complainant's epilepsy was then handed over to Human Resources Department but the Human Resources Department did not get in touch with the Complainant.

The Complainant reported to Kasama but kept reminding the Human Resources Department of his epilepsy condition. While in Kasama the Complainant saw a Dr. Kazembe who issued him with a sick note.

The Complainant was subsequently charged with (1) dishonest conduct (2) absence from work for 10 days without leave and (3) failure to obey or comply with direct verbal or written instructions.

At the commencement of defence the Complainant was not present. We noted that when this matter was adjourned for defence the Complainant was present and the date was accepted by both parties. There was no communication from the Complainant to explain why he did not come to court. The Complainant had since closed his case. We, therefore, ordered that the matter proceeds to defence.

The only defence witness called was M/Lovemore Gumbo a Manager for Standard Chartered Bank Plc, Buteko Branch in Ndola. We shall refer to this witness as RW1.

The evidence for RW1 was that he was Manager for Kasama Branch when this issue started. The Complainant who was then based at Standard Chartered Bank Plc, Chingola Branch was transferred to Kasama Branch.

In April 2014, RW1 inquired from the Complainant when he was reporting to Kasama. The Complainant told RW1 that he would only report to Kasama after his annual leave.

After his annual leave the Complainant still did not report to Kasama but reported to Chingola instead. When RW1 inquired from the Complainant why the Complainant had not reported to Kasama, the Complainant responded that he had changed his mind and added that he had filed an appeal against the transfer from Chingola to Kasama because he was studying for ACCA. The Complainant still remained adamant even after the Respondent advised that he could study from Kasama. In the process the Complainant said he could not move to Kasama because he had epilepsy and could, therefore, not move away from his relatives.

After pressure was mounted on the Complainant to move to Kasama he reported to Kasama in July, 2014, but worked for only about three (3) days and claimed that he had an attack of epilepsy and stayed away from work. RW1 then discovered that the Complainant had travelled back to Chingola. After some pressure on the Complainant, the Complainant travelled to Kasama in August, 2014 but worked for less than a week and claimed that he had another epilepsy attack. He produced a sick note and gave it to RW1. On the sick note he was given 4 days bed rest. That sick note was produced and exhibited as 'HH4'. We have seen 'HH4'. There is no indication on 'HH4' of any epilepsy condition. He was given 4 days off duty but the Complainant travelled from Kasama to

Chingola and never returned to Kasama. When RW1 got in touch with the Complainant, the Complainant told RW1 that he had made another appeal against the transfer to Kasama. That was in August, 2014. By November 2014 the Complainant had still not returned to Kasama. The Respondent then charged the Complainant with three (3) offenses one of which was absenteeism. He was subsequently dismissed.

We have analyzed the submissions in this case. We have also analyzed the evidence in this case.

There is no evidence to show that the accused was an epileptic patient. We say so because of the following reasons:

1. We have looked at exhibit 'HH2', 'HH3', 'HH4', 'HH11', 'HH12' and 'HH18'. All these exhibits are medical reports. None of these medical reports has confirmed that the Complainant had epilepsy. Infact, medical findings about the Complainant were normal. Also, exhibit 'HH12' does not show that the Complainant had epilepsy. Instead, it shows that what the Complainant had was clinical malaria. All these exhibits were produced by the Complainant himself. Exhibit 'HH17' is a letter dated 5th June, 2014. It came close to confirming that the Complainant was an epileptic patient. It was signed by a Mr. Phiri M who was an Acting Principal Clinical Officer. This exhibit 'HH17' was, however, disputed by a Dr. C. Chishimba in a letter dated 13th October, 2014 and is document number 2 in the Respondents' bundle of documents filed on 4th November,

2015. This letter by Dr. Chishimba shows that the hospital was unable to confirm whether the details on the medical report were correct since the patient's history revealed that the patient was only seen once on 27th May, 2014 by an Acting Principal Clinical Officer.

2. The evidence that the Complainant was absent from work has not been disputed. The Complainant himself testified as to several days when he was absent from his duty station in Kasama.
3. There is no evidence that the Complainant had permission to stay away from work.
4. We are not satisfied as to the reasons why the Complainant could not work in Kasama even assuming he was epileptic. We have seen no evidence to suggest that medical facilities in Kasama were unable to cope with an ailment of epilepsy. The argument by the Complainant that he could not live in Kasama alone because he had no relatives is not valid. We say so because if the Complainant wanted he could relocate to Kasama with a relative.
5. What we have seen in this case is mere refusal by the Complainant to accept a transfer from Chingola to Kasama. We say so because, while claiming that he could not go to Kasama because of his alleged epilepsy, during cross examination, the Complainant admitted telling the Respondents that he could not move to Kasama because he was pursuing ACCA studies. He also admitted during cross examination that although he raised

the issue of ACCA studies as a reason for refusing the transfer to Kasama and that he had infact already paid a tutor, he actually was lying.

On the above facts we are satisfied that the Complainant's failure to relocate to Kasama was unjustified. The Complainant's absence from his duty station in Kasama was also unjustified because there was no medical evidence to support his absence and there was also no permission produced in court to support his absence from his duty station in Kasama. We have looked at the case of **Galaunia Farms Ltd v National Milling Corporation Ltd (1)**, wherein the Supreme Court stated that a Plaintiff must prove his case. We have also looked at the case of **Wilson Masauso Zulu v Avondale Housing Project (2)**, wherein the Supreme Court stated that a Plaintiff who fails to prove his case cannot be entitled to judgment. We have been well guided.

We are satisfied that the Complainant has failed to prove his case. We, therefore, dismiss this case for being destitute of merit.

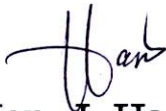
Leave to appeal to the Supreme Court within 30 days from today is granted.

We shall order no costs.

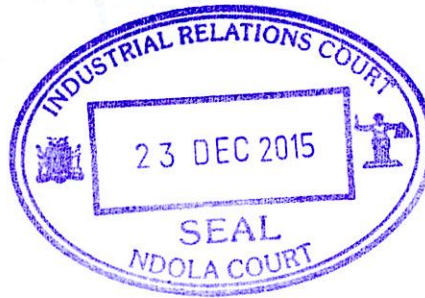
Delivered and signed at Ndola and parties shall uplift their judgment on 23rd December, 2015.



Hon. E.L. Musona
JUDGE



Hon. J. Hasson
MEMBER



Hon. W.M. Siame
MEMBER