

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

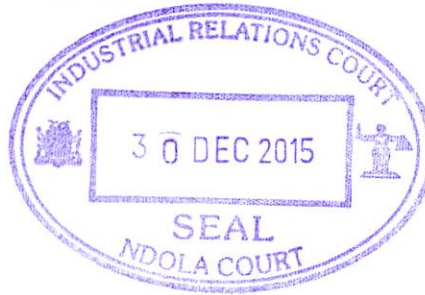
COMP/61/2013

BETWEEN:

LAZAROUS MUSAKA

AND

AIR PRODUCTS LTD



COMPLAINANT

RESPONDENT

BEFORE:

Hon. Judge E.L. Musona

MEMBERS:

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

For the Complainant : In Person

For the Respondents : None attendance

JUDGMENT

Date : 30th December, 2015

CASES REFERRED TO:

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

This Complaint was filed by M/Lazarous Musaka. The Complaint was filed against Air Products Ltd. We shall, therefore, refer to

M/Lazarous Musaka as the Complainant and to Air Products Ltd as the Respondents which is what the parties to these proceedings actually were.

The Complainant's claim as amended is for the following reliefs:

1. Damages and compensation for wrongful dismissal.
2. An order and declaration that in terms of Employment Act he is entitled to receive a formal charge and allow him to appeal if need be.
3. Any other relief the court may deem fit.

When the matter came up for commencement of hearing on 26th November, 2015 the Complainant was present. The Respondents were not present.

There was proof that the Respondents were served. That proof is the copy of the Notice of Hearing on which ECB Legal Practitioners affixed their date stamp and appended a signature to acknowledge receipt of service. There was no dispute, therefore, that the Respondents were served. There was no correspondence from the Respondents to explain their absence. On the above basis we ordered that trial commences. Indeed, litigation should not be delayed or frustrated on account of a party that does not come to court and worse still, who offers no explanation for non-attendance. There is very little a court can do to a party who does not come to court even after receipt of a Notice of Hearing. In such

circumstances the court has an option to proceed in the absence of the defaulting party. We did just that. The fact that the Respondents were not present to defend themselves does not mean that the Complainant's duty became in any way lighter because the Complainant still had a duty to prove his case. The standard of proof to which a case in the Industrial Relations Court must be proved is the degree of substantial justice and not the balance of probability.

What this means is that if the Complainant does not prove his case he cannot succeed on the relief sought.

We have looked at the case of **Wilson Masauso Zulu v Avondale Housing Project (1)**, where the Supreme Court held that if a Plaintiff does not prove his case he cannot be entitled to judgment whatever may be said of the opponent's case. Again, in the case of **Galaunia Farms Ltd v National Milling Corporation (2)**, the Supreme Court stated that the Plaintiff must prove his case and if he does not he cannot be entitled to judgment. We have been well guided. We shall now consider the evidence by the Complainant.

The Complainant's evidence was that he was employed by the Respondent on 6th October, 2005. According to the Complainant himself, on 7th August, 2013 Chester Perks who was a supervisor accused the Complainant of failure to switch on the heater to warm the air.

On 9th August, 2013 the Complainant was picked by Security Officers but was later released after Chester Perks intervened suggesting that he would deal with the Complainant administratively. On 13th August, 2013 Chester Perks handed over the Complainant to Max Simwanza. Max Simwanza dismissed the Complainant from employment on the allegation that he failed to switch on a heater.

We have considered the evidence for the Complainant. We have found that the Complainant has been economical in his evidence. We say so because of the following reasons.


1. He did not testify as to the disciplinary hearing which he infact alluded to in Paragraph 4 (h) (i) (j) of his amended Notice of Complaint.
2. He informed this court in his evidence in chief that he was accused of failing to switch on a heater yet in Paragraph (4) (o) of his amended Notice of Complaint he alleged that he was not informed of the allegations against him.
3. He has attributed his dismissal to a hostile relationship between himself and his supervisor but has not proved this hostility.

On the above facts we find that this Complaint is destitute of merit and we accordingly dismiss it in its totality.

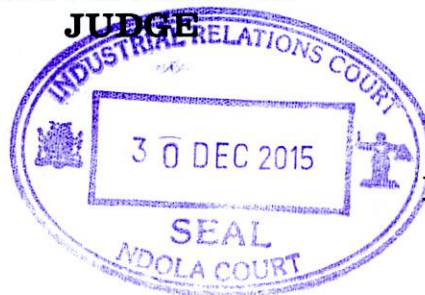
We shall order no costs.


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

Delivered and signed at Ndola and parties shall uplift their judgment on 30th December, 2015.


Hon. E.L. Musona

JUDGE




Hon. J. Hasson
MEMBER


Hon. W.M. Siame
MEMBER